

**REPORT OF THE
JUDICIAL COUNCIL OF VIRGINIA ON**

**FOREIGN LANGUAGE INTERPRETERS
IN VIRGINIA'S COURTS**

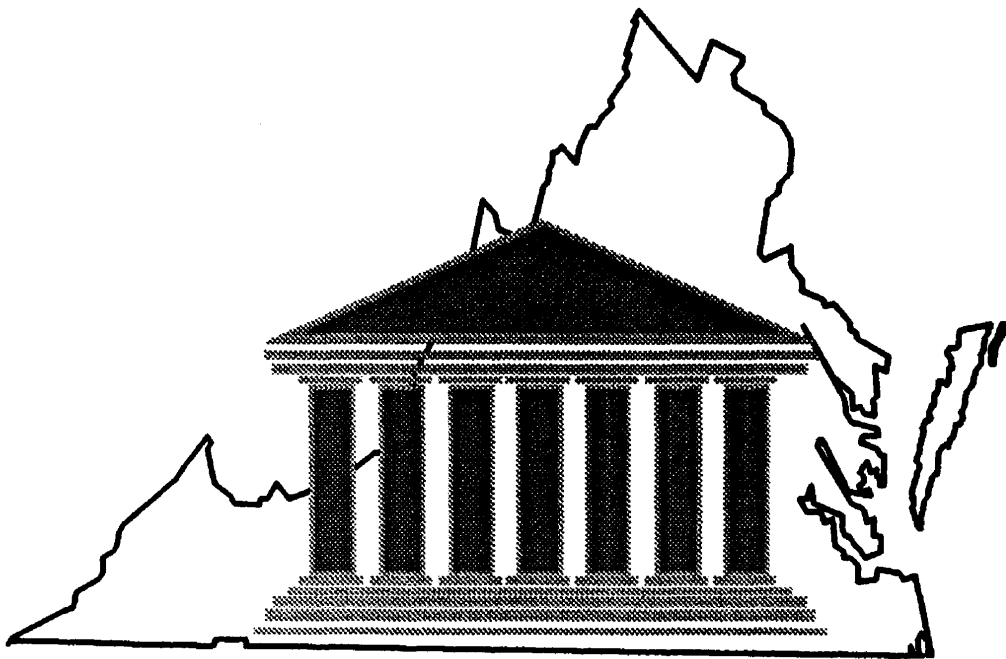
**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 20

**COMMONWEALTH OF VIRGINIA
RICHMOND
1995**

Foreign Language Interpreters in Virginia's Courts



*Judicial Council of Virginia
December, 1994*

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Foreign Language Interpreters in Virginia's Courts

"Growing cultural diversity will continue to increase the need for interpreter services at all levels of the justice system. Attention must be given to ways in which other types of forms and assistance will be delivered to those not conversant in English."

*from Courts in Transition: The Report
of the Commission on the Future of
Virginia's Judicial System, 1989*

Introduction

As the Commission on the Future of Virginia's Judicial System forecasted in 1989, the increasing diversity of Virginia's population is having and will continue to have an impact upon the operation of Virginia's justice system, and in particular, the trial courts. This was evidenced most recently in the passage of Senate Joint Resolution No. 93 during the 1994 General Assembly session. The resolution was introduced as a result of concerns raised by the Joint Legislative Subcommittee Studying Foreign-Born Individuals in the Commonwealth. The resolution requested that the Judicial Council of Virginia evaluate several policy issues relating to the use of foreign language interpreters in judicial proceedings in the Commonwealth. Specifically, SJR No. 93 asked the Council to evaluate:

- (1) the need for foreign language interpreters in civil matters;
- (2) the training and certification requirements of interpreters;
- (3) courtroom training for interpreters, judges, personnel of clerks' offices and attorneys;
- (4) legal issues which may arise from the use of interpreters; and

(5) the fiscal impact of such a program.

The rationale for requesting a study of the need for language interpreters in civil cases was premised, in part, on the conclusion that civil litigation, such as in housing and domestic relations cases, can involve a loss of rights as injurious as criminal penalties. The resolution further noted that a disproportionate share of foreign-born individuals settle in some areas of the Commonwealth, especially Northern Virginia and, therefore, have a correspondingly disproportionate impact on the legal system. Finally, the measure pointed to potential alternatives in the current funding and payment system for court interpreters that may create opportunities to expand coverage to civil cases. A copy of the resolution is included on page A-2 of the Appendix to this report.

Following the enactment of the resolution, a two-phase research design was developed. The first phase included a nationwide review and analysis of: (1) statutes regarding the use of court interpreters for linguistic minorities in civil cases at public expense; (2) the qualifications set forth either by statute or administrative policy for those who serve the courts as foreign language interpreters either in civil or criminal cases; (3) the types of and means by which training is provided both to judges and court staff; and (4) methods used in other states for payment of interpreters. This report presents the results of the first phase of the project.

The General Assembly appropriated \$50,000 to conduct this study. These funds have been reserved for the second phase of the project due to the potential costs involved in pursuing development of a statewide court interpreter certification and training program, should the General Assembly decide, based upon the Council's evaluation and their further discussions, to develop such requirements for court interpreters. If so, the Council will begin the second phase of the project to address the qualitative aspects involved in the provision of foreign language interpreters. Activities in the second phase would include establishment of a statewide interpreter testing and certification program, the designation of languages for which there should be certification programs, the establishment of standards of practice and professional conduct for interpreters, and an examination of the legal issues which may arise in using interpreters.

The Judicial Council referred the study of foreign language interpreters to the Judicial Administration Committee, a standing committee of the Council. This report represents the work of that Committee. Following completion of the study, the Council received the report and voted to transmit it to the Governor and members of the 1995 General Assembly, in particular to members of the Joint Subcommittee Studying the Needs of Foreign-Born Individuals in the Commonwealth.

The Presence of Linguistic Minorities in Virginia

Changing Demographics

Like the nation and the world, Virginia's population is becoming more diverse. African Americans, Asians and other minorities form the fastest growing segment of the state's population. In 1993, Virginia's population was 19.2% African-American, and 3.2% Asian or other non-white racial group. By 2020, the proportion of African-American will grow to 21.6% while the number of Asians will constitute 5.7% of the state's total population. Stated another way, Virginia's African- American population is expected to increase by 45.9% between 1993 and 2020; the Asian population should increase by nearly 144%.

While the state is becoming more racially diverse, it is also experiencing dramatic changes in ethnic composition. By 2020, the Hispanic population in Virginia is projected to grow by nearly 117%, from 2.8% of the total population in 1993 to nearly 5%. This change will be reflected in the numbers of citizens speaking languages other than English. In 1990, the estimated number of home speakers, aged five years and older, of non-English languages in Virginia was 419,000, or 6.7% of the total population. Other than English, there are 11 different languages spoken in the state by more than 10,000 people each. (See Table 1). Among these, the most commonly spoken language is Spanish with 153,000 speakers, or nearly 3% of the state's total population.

Table 1

Language Spoken At Home		
Virginians: Persons 5 Years and Over, 1990		
Language	Number	Percent
Speak Only English	5,327,989	92.7%
German	32,069	0.6%
Yiddish	641	0.0%
Other West Germanic Languages	3,012	0.1%
Scandinavian	2,710	0.0%
Greek	7,453	0.1%
Indic	17,117	0.3%
Italian	9,567	0.2%
French or French Creole	40,353	0.7%
Portuguese	3,240	0.1%
Spanish or Spanish Creole	152,663	2.7%
Polish	3,286	0.1%
Russian	1,484	0.0%
South Slavic	888	0.0%
Other Slavic	2,487	0.0%
Other Indo-European	16,123	0.3%
Arabic	11,399	0.2%
Tagalog	21,018	0.4%
Chinese	18,037	0.3%
Hungarian	1,698	0.0%
Japanese	5,370	0.1%
Non-khmer	3,319	0.1%
Korean	25,736	0.4%
Native No. American Language	556	0.0%
Vietnamese	19,025	0.3%
Other and Unspecified Languages	19,270	0.3%
<i>Total</i>	5,746,510	100.0%

This percentage is expected to increase in the future given the projected growth in the Hispanic population. Significant increases can also be expected in the number of Virginians who speak Korean, Vietnamese, and other Asian languages.

Economically, language and cultural minorities are disproportionately below the poverty level. In 1993, the poverty rate was 12.2% for whites, 33.1% for African-Americans, and 30.6% for persons of Hispanic origins. For Asians, the largest component of persons of other races, the

poverty rate was 15.3% in 1993. (Even though the poverty rate for whites was lower than that for the other racial and ethnic groups, the majority of poor persons were white--66.8%). The poverty rate was 35.6% for families with a female householder with no husband present. When the head of the household was African-American with no husband present, the poverty rate stood at 49.9%.

Reports issued in Virginia indicate that the low socio-economic status of language and cultural minorities makes it more difficult for them to meet basic needs for housing, employment and transportation, as well as their need for education, language training, and other kinds of services. In addition to economic barriers, language and cultural barriers to equal access to services faced by linguistic minorities need to be addressed when trying to respond to their needs.

Assistance to Linguistic Minorities by Governmental Branches

The presence of linguistic minorities in Virginia varies considerably among the localities. Some counties have large populations of persons who speak languages other than English, while negligible populations of such persons are found in others. Among the localities where there are larger populations of linguistic minorities, numerous issues regarding the provision of services by the government to non-English speaking citizens are being brought to the fore.

As an example, in 1992, the Criminal Justice Policy Group of Fairfax County created a Subcommittee on Access to the Criminal Justice System by Language and Cultural Minorities. The subcommittee was established as a result of meetings held with representatives of the Hispanic community, the criminal justice system, and the County. Its charge was to: (1) evaluate existing practices in the criminal justice system to determine if defendants who have limited or no understanding of the English language can understand the charges against them, understand the consequences of the court action, and make informed decisions during the process; (2) examine the role of cultural differences as they affect both the defendant's view of the criminal justice system and the response of the criminal justice system to the defendant; and (3) make recommendations to the full Policy Group on these issues and to develop long range strategies to improve the process for foreign language and cultural minorities. As a result, the Policy Group submitted a number of proposals to the Joint Legislative Subcommittee Studying the Needs of the

Foreign Born in Virginia. These proposals served as impetus, in part, for the Subcommittee's introduction of SJR No. 93.

In courts in Northern Virginia and throughout the Commonwealth, measures have been taken to try to accommodate the needs of language and cultural minorities while continuing to ensure due process. These measures include the translation of court forms and information pamphlets and the hiring of persons in the clerks' offices' who are bilingual, particularly Spanish-speaking employees. A foreign language interpreter program using volunteers has been established in the Fairfax Juvenile and Domestic Relations District Court. These volunteers help staff the court's information desk, interpret for lawyers interviewing their clients in the hall, and assist clients by reviewing information in case files, according to the chief judge. However, they do not act as interpreters in the courtroom.

Within the executive branch of Virginia's government, numerous agencies have begun to address in more comprehensive ways the policy issues presented by increasing linguistic diversity in Virginia. Some already have moved to adopt efforts to guarantee that non-English speaking persons have access to those benefits and services to which they are entitled by law. Among these agencies are the Department of Social Services, the Department of Mental Health, Mental Retardation, and Substance Abuse Services, the Virginia Employment Commission, and the Department of Motor Vehicles.

For example, the Department of Social Services has many forms translated, at least into Spanish, and has identified all bilingual staff in local offices. The Virginia Employment Commission also has bilingual staff members in numerous local offices (mostly Spanish speaking). In any of the VEC's administrative adjudication processes (which are "civil" in nature), if the person cannot speak English, an interpreter is secured to translate during the hearing.

The General Assembly long has recognized the need for interpreters in court proceedings. The legislature has authorized the use of foreign language interpreters in criminal cases and interpreters for the deaf or hearing impaired persons in both civil and criminal proceedings.

In other actions by the legislature, it is interesting to note that in 1981, Section 22.1-212.1 of the *Code of Virginia*

was adopted designating English as the official language in Virginia, as guidance for school boards. The law says that school boards have no obligation to teach their curricula in a language other than English, but should endeavor to provide instruction in English to promote the education of those for whom English is a second language.

In 1992, the Assembly established the Joint Subcommittee Studying the Needs of the Foreign Born to assess and make recommendations regarding the issues and problems facing the foreign born in Virginia in numerous areas. The Subcommittee's work has been continued since to complete, among other tasks, the development of a coherent and encompassing solution and policy to address the needs of foreign-born individuals living in the Commonwealth so that they might become self-sufficient.

Thus, at present, all three branches of government are seeking ways to determine and respond appropriately to the moral, legal and administrative obligations that are perceived to exist in ensuring effective and efficient delivery of services to linguistic minorities. Given the expected increases in the population of ethnic minorities, it appears that non-English speaking citizens of the Commonwealth will seek services from all public institutions and the judicial system certainly will not be an exception.

Among the state's most significant trends for the 1990's and beyond are those related to immigration and cultural diversity. These trends amplify the significance of court interpretation as a management issue for the courts. Today, the volume of interpreted proceedings, as allowed by law in criminal and traffic cases, varies substantially by locality and by type of court. Clearly, the courts in Northern Virginia are impacted most significantly at present. For most courts in the remainder of the Commonwealth this is still an emerging issue. Thus, an excellent opportunity exists for the the General Assembly and the council to adopt and implement uniform and consistent policies and procedures governing the provision of foreign language interpreters in all courts.

In completing this report, the Judicial Council was aided and informed substantially by the research on foreign language interpretation in courts that has been undertaken in recent years by the National Center for State Courts.

Organization of the Council's Phase I Report

- Section I - presents the findings and recommendations regarding the need for provision of foreign language interpreters in civil cases and the financial analysis on the projected costs for such services;
- Section II - discusses the findings and recommendations regarding the establishment of a certification procedure for those who serve Virginia's courts as foreign language interpreters; and
- Section III - offers the findings and recommendations regarding the need for training for judges and court personnel in the handling of cases involving such interpreters.

A summary of the recommendations on each of these topics follows.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1: It is recommended that the *Code of Virginia* be amended to provide that in any civil case in which a non-English speaking person is a party or witness, an interpreter for the non-English speaking person may be appointed by the court and that payment for such interpreters shall be made from the general fund of the state treasury, and further, that the court be given the discretion to assess the amount paid to the interpreter as costs against either party to the case. (See page A-57 of the Appendix for copy of the draft of this proposed statute.)

RECOMMENDATION 2: It is recommended that the Judicial Council develop and implement a statewide interpreter testing and certification program for Spanish language interpreters and that the Council should maintain a statewide list of persons certified to provide such services as well as a location and referral system for such interpreters.

RECOMMENDATION 3: It is recommended that the Council also identify and maintain a list of any foreign language interpreters certified by the federal courts who live in Virginia. The list should contain information on the language or languages for which these persons are so certified.

RECOMMENDATION 4: It is recommended that under the auspices of the Council, the Office of the Executive Secretary administer and manage the certification program for foreign language interpreters. Funds should be provided for the Office to carry out the following responsibilities:

- a. establishing interpreter proficiency standards;
- b. establishing procedures for the recruitment, testing, evaluation, and certification of interpreters consistent with the proficiency standards;
- c. designating other languages for certification as the need arises;
- d. establishing standards for the professional conduct of court interpreters;
- e. adopting and disseminating to each court guidelines for the compensation of certified interpreters; and

- f. assisting trial courts in assessing the need for establishing interpreter positions as full-time court employees, where significant cost savings may be achieved as a result.

RECOMMENDATION 5: Information on dealing with non-English speaking persons and on working with interpreters should be included in the pre-bench orientation sessions for newly elected judges. Similar information should be included in training sessions for new clerks of court and magistrates.

RECOMMENDATION 6: Educational programs on cross-cultural communication and on working with interpreters should be presented at mandatory conferences for judges, clerks of court, and magistrates.

RECOMMENDATION 7: A section on interpreted proceedings and working with foreign language interpreters should be added to all benchbooks.

RECOMMENDATION 8: Efforts should be made to cooperate in planning and delivering educational sessions for the bar on interpreted proceedings and working with interpreters.

Section I - Evaluating the Need for Foreign Language Interpreters in Civil Cases

The threshold question presented by SJR No. 93 is whether the need exists for providing court interpreters in civil cases at public expense. Several research activities were conducted to address this question. First, a nationwide review and analysis was undertaken in order to compare Virginia's current policy on foreign language interpreters in civil cases to the statutes existing in other states. An explanation of the policy utilized by the federal courts also was prepared.

Secondly, the need was evaluated in light of the quality of justice issues that are presented for courts in resolving civil disputes in which non-English speaking persons are parties or witnesses. In undertaking this evaluation, a number of judges, clerks of court and other court officials, attorneys, and foreign language interpreters were contacted to obtain their perspectives on the issues involved. The information they provided has been incorporated in this analysis.

The third part of this section presents information on the fiscal impact of providing interpreters in civil cases.

For purposes of this study, the Council utilized the definition of a non-English speaking person or a linguistic minority as any person who is unable to communicate in English or who has a limited ability to communicate in English. Further, when this term is used in this report, it generally refers to a principal party in interest or a witness in the case.

Current Policy in Virginia

Since 1974, Virginia statutes have permitted reimbursement for foreign language interpreters in criminal cases, based on the fundamental proposition that when loss of freedom is involved, it is essential that a person be able to participate in his own defense. Section 19.2-164 of the *Code of Virginia* specifies that in any criminal case in a circuit or district court in which a non-English speaking person is the accused, an interpreter shall be appointed by the court. Where a non-English speaking person is the victim of a crime, an interpreter may be appointed upon the request of the Commonwealth's attorney following a showing of good cause.

English speaking persons fluent in the language of the accused or a crime victim may be appointed as an interpreter by the trial judge. In lieu thereof, the accused or a crime victim may obtain an interpreter of his/her choosing. An interpreter appointed in the latter instance must be approved by the court as being competent. (However, the determination of competence is entirely within the discretion of the judge.) Whichever method is used, the law provides for the court to set the compensation of such interpreters. Their fees are paid from the "criminal fund" (a name given to a fund established by statute and administered by the Supreme Court to provide reimbursement for certain expenses incident to the trial of criminal defendants) as part of the expense of the trial. Such fees are not assessed as part of the costs.

The law further specifies that whenever a person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such person could not be compelled to testify as to the communications, this privilege also shall apply to the interpreter. A copy of the current statute is included on page A-4 of the Appendix.

Because the issue of foreign language interpreters in courts is so regularly analogized to the provision of interpreters for the deaf and hearing impaired, public policy in this area is worthy of repeating here. Section 8.01-384.1 of the *Code of Virginia* provides that in any civil proceeding in which a speech-impaired or hearing-impaired person is a party or witness, the court may appoint a qualified interpreter to assist such person in the proceeding. The court appoints such an interpreter for any person who requests assistance.

A speech or hearing-impaired person may waive the use of an interpreter appointed by the court for all or a portion of the proceedings. Interpreters so appointed by the court are paid from the criminal fund or compensation may, in the discretion of the court, be assessed as a part of the cost of the proceedings.

The language governing such interpreters in criminal cases is stated slightly differently. Section 19.2-164.1 of the *Code of Virginia* covers instances in which interpreters are needed for persons who are deaf. There, if the deaf person is the accused, the judge is required to appoint an interpreter unless the person waives the services for any part or all of the proceedings. However, the waiver must be made by the

person on the record after an opportunity to consult with legal counsel. In addition, the judge or judicial officer, utilizing an interpreter, must explain to the deaf person the nature and effect of any such waiver. Such waiver must be approved in writing by counsel or by the judicial officer.

In any criminal cases in which a deaf person is the victim, an interpreter is appointed upon the request of the Commonwealth's attorney and a showing of good cause. As in the case of foreign language interpreters in criminal cases, communication between the deaf person and the interpreter is privileged. Further, in the case of deaf persons, the judge, on his own motion or on the motion of a party, may order all of the testimony of a deaf person and the interpretation to be visually electronically recorded for use in verifying the official transcript of the proceedings.

In both civil and criminal cases involving the deaf or speech or hearing impaired persons, interpreters are procured through a list maintained of qualified individuals, as certified by the Department for the Deaf and Hard-of-Hearing. However, in either type of proceeding, a person who waives his right to an interpreter may bring his own interpreter at his own expense without regard to whether the interpreter is qualified under the provisions of the law. A copy of the relevant statutes is included on page A-6 of the Appendix.

Current Policy in Other States and the Federal Courts

The state-by-state analysis sought to determine three things: (1) how other states, particularly those with high concentrations on non-English speaking persons, have responded by statute, policy, or rule to the need for interpreters in civil cases; (2) the statutory schemes for compensation of such interpreters, where provided; and (3) an estimation of the statewide costs incurred for the provision of such services.

Based upon this analysis, it appears that the provision of court interpreters for non-English speaking persons also is an emerging issue in other states. Foreign language interpreters in criminal cases are provided at public expense in virtually every state. The same is true for interpreters for the deaf or hearing-impaired. In civil cases, many states allow the costs for interpreters for the deaf or hearing impaired to be assessed against the parties or taxed as a part of the costs, in the court's discretion.

According to information compiled by the National Center for State Courts, it appears that 25 states authorize court appointment of foreign language interpreters in civil cases, either by statute, court rule, administrative policy or policy adopted by the locality. See page A-9 of the Appendix for a copy of the state-by-state analysis. However, information about the actual usage of civil case interpreters is scant and appears to vary considerably between and within the states.

There was no pattern or trend seen among the states that provide foreign language interpreters in civil cases. Texas and California statutes provide for such coverage, with the fees being paid by the locality or in the discretion of the courts, they may be assessed against the parties or taxed as costs. Florida statutes provide for interpreters for witnesses in civil cases but not for the parties.

Other states, such as Iowa, Oregon and Washington, provide publicly funded interpreters only for citizens who are indigent. Witnesses compelled to testify in civil cases in a few states, including Iowa, and Washington also may have an interpreter appointed at public expense. Still others appear to limit the provision of such interpreters to domestic relations, landlord-tenant, and small claims cases.

Among Virginia's neighbors, the District of Columbia statutes allow for the appointment of a qualified interpreter in any judicial proceeding and mandates such appointment when the party, witness, or a parent requests it any case. Further, an interpreter is required to be appointed when counsel has been appointed for an indigent defendant in any criminal, delinquency, or neglect proceeding, to assist in communicating with counsel during all phases of case preparation and trial, unless such assistance is waived. Except in indigent cases, in civil actions, the judge may direct that any interpreter charge be apportioned among the parties or taxed as costs.

Maryland currently is looking into this public policy question. West Virginia and Kentucky statutes provide for interpreters in civil cases but those in North and South Carolina as well as Tennessee do not.

In the federal courts, non-English speaking persons are provided interpreters in civil cases, including administrative agency hearings, only in actions initiated by the government. Staff at the Administrative Office of the United States Courts

say such interpreters also are appointed at times, for pro se litigants and in some bankruptcy cases. In reviewing the statutes of other states, the most commonly found scheme for the provision of interpreter services in civil cases is one that allows for the appointment of such an interpreter with his/her fees paid, in the discretion of the judge, by the state or local government, by the parties, or the fees are taxed as a part of the costs of the proceedings. See Table 2 below.

Table 2

Foreign Language Interpreters Study: Analysis of Compensation Methods

<u>State</u>	<u>Coverage of Civil Cases</u>	<u>Paid by State</u>	<u>Paid by County</u>	<u>Paid by Party</u>	<u>Taxed as Costs</u>	<u>Other Specifications</u>	<u>Appt. by Judge Discretion</u>
1 Arizona	All civil cases		X	X	X		X
2 Arkansas	Civil proceedings		X	X	X		
3 California	Civil		X	X	X		
4 Colorado	Civil proceedings			X	X		X
5 D.C.	Any civil proceeding	X indigents		X	X	Except for indigents, in civil actions the judge may direct changes to be apportioned among parties or taxed as costs	
6 Florida	Witnesses in civil cases	No public appropriation supports provision in civil cases; up to litigants to supply.					
7 Hawaii	Civil	X		X	X		X
8 Idaho	Civil		X				
9 Illinois	Civil in discretion of the court						
10 Indiana	Civil in discretion of the court		X		X	Very few counties	
11 Iowa	For witnesses in civil cases; for persons who cannot afford an interpreter				X		
12 Kansas	Civil		X	X	X		
13 Kentucky	In civil cases, interpreters may be appointed with the judge's permission	X if in the discretion of the court, if justice requires			X against the losing party		
14 Maryland			X		X		
15 Massachusetts		X			X		
16 Michigan	In civil proceedings, by judicial discretion	X		X	X		
17 Minnesota			X	X	X		
18 Nebraska			X				
19 New Jersey			X			Funds used to pay interpreters used to be administered in local courts; currently being assumed by the state	

Foreign Language Interpreters Study: Analysis of Compensation Methods

<u>State</u>	<u>Coverage of Civil Cases</u>	<u>Paid by State</u>	<u>Paid by County</u>	<u>Paid by Party</u>	<u>Taxed as Costs</u>	<u>Other Specifications</u>	<u>Appt. by Judge Discretion</u>
20 New York			X				
21 Oregon		X if indigent			X if indigent		
22 South Dakota					X		
23 Texas			X	X	X		
24 Washington		X if indigent or compelled witnesses or parties				In all other actions, person needing the interpreter pays for a qualified interpreter	
25 West Virginia		X				Very low usage	
26 Federal courts	Civil	X paid by federal gov't. in any civil action initiated by the gov't.				X in all other civil cases	

Unfortunately, overall statewide cost data on interpreter fees in civil cases was not available in any of the 25 states where such services currently are authorized by law. In some states where the court systems are not unified, such information simply is not collected by any central source. However, even in states where the court systems are unified, cost data for foreign language interpreters is not recorded separately from fees for interpreters in criminal cases. This also was found to be true when telephone calls were made to individual courts in non-unified state court systems.

However, the research did indicate that the costs for providing interpreters in civil cases can be attributed to three factors: (1) the nature and scope of civil proceedings covered; (2) statutory designations regarding who pays for the interpreters; and (3) regulations governing the compensation for interpreters, including caps on interpreter fees and the particular methods used for securing such services, that is whether interpreters work on a contractual basis or are full-time employees of the court system.

In summary, the overall costs for interpreters in civil cases can best be estimated once the statutory construct for the provision of such services is known. Although such a construct has not yet been established in Virginia, the existing approach for providing foreign language interpreters in criminal cases and interpreters for the deaf and hard of

hearing in civil and criminal cases in the Commonwealth can be used as a guide in developing a statutory scheme. See table 3.

Table 3

Matrix Comparing Statutory Provisions for Payment of Interpreters in Virginia

Statutory Provisions for Interpreters for:	Criminal Cases			Civil Cases		
	Coverage	How Paid		Coverage	How Paid	
		General Fund Approp.	Taxed as Costs, in Court's Discretion		General Fund Approp.	Taxed as Costs, in Court's Discretion
A Deaf or Hearing Impaired	Yes	Yes	No	Yes	Yes	Yes
B Non-English Speaking Persons	Yes	Yes	No	No	No	No

Issues Affecting the Quality of Justice Rendered by the Courts

In addition to the statutes, rules and case law governing the administration of justice, the judiciary's policy making bodies, in addressing issues confronting Virginia's courts, are guided by the stated mission of the courts. In addition, ten vision statements have been adopted by the Council to provide direction regarding the further development of the court system. These statements articulate the core values and fundamental aims of the courts as well as providing the conceptual framework under which the system operates. The provision of foreign language interpreters in civil cases can be argued on the basis of six of these statements:

1. the need to provide effective access to the courts by all citizens in resolving disputes peaceably;
2. the duty of the courts to ensure a fair process, equally applied;
3. the need to preserve the integrity of the fact-finding process;
4. the need to promote efficient and uniform administration of justice;
5. the need to establish and maintain public confidence in the courts; and
6. the need to ensure a judicial system that is responsive

to change.

In light of these philosophical underpinnings, the advantages and disadvantages of changing current public policy in Virginia are set forth below.

Effective Access to Justice

The themes embodied in this vision include the belief that all persons should have effective access to justice, including the opportunity to resolve disputes without undue hardship, cost, inconvenience or delay. That is, the courts must be accessible to all who desire or are required to use them. In attempting to provide effective access, the judiciary aims to provide clear language and simple procedures in order to open the courts to a broader range of users and enhance their acceptance of the results. Courts which are accessible, affordable, usable and efficient offer an appropriate forum in which to seek justice.

Arguments Favoring Court Interpreters in Civil Cases

1. The civil justice system exists for the orderly functioning of society in that it provides a forum for resolving disputes peacefully. Thus, it is in the best interest of society that this avenue be accessible and responsive to all citizens. If discrete portions of society are denied effective access to the protection of the judicial process as either a putative plaintiff or defendant, then it is arguable that significant portions of society are disenfranchised with regard to our legal system. This may serve as an inducement to view recourse to legal process as an ineffective alternative to the traditions of self-help justice which civil legal remedies are intended to avoid.
2. Fundamental due process requires notice and a right to be heard. Every person should have the right to present their own case and to present whatever defense they can. If there is no interpreter to assist non-English speaking persons, they cannot present their claims effectively nor can they defend against an adversary's claim.
3. Access to the courts depends on the right and the ability of its citizens to communicate with their government and the right and ability of the government to communicate with them. Substantial numbers of Virginians who live, work, and pay taxes in this state are unable, either because they do not speak or write in English, to effectively communicate with the courts nor can the courts effectively communicate with

them. Thus, they may be denied rights and benefits.

4. The justice system can be difficult to negotiate for people who can speak English. As noted in the 1992 report of the Fairfax County Criminal Justice Policy Group, "Information is often not available, or when it is available, it is written in "legalese" and is difficult for many offenders and the public to comprehend. For persons who do not speak English, grew up in another culture, are illiterate in their own language, and believe that authority figures are dangerous and threatening, the criminal justice system can be terrifying. Some individuals who do not have a command of the English language may give the appearance of understanding English, but in reality, do not comprehend English sufficiently to understand the nature and the consequences of decisions being made."

5. As noted in SJR No. 93, civil litigation such as in landlord-tenant and small claims cases, custody disputes and terminations of parental rights can involve a loss of rights as injurious to the individual as criminal penalties. This is especially true given the low socio-economic status of many immigrants and non-English speaking persons and the difficulties they face in meeting their basic needs for housing, employment and transportation. In such situations, the absence of qualified interpreters limits their ability to tell their side of the story and thus to have their day in court.

6. At present, non-English speaking persons must bring with them to court friends or relatives to translate for them. On many occasions, judges are reduced to asking for volunteers from the audience in court to do so. In either case, the judge has no idea of the individual's command of the English language nor his ability to convey what the judge is saying to the litigant. In the words of one judge, the resulting situation is "a crap shoot".

Thus, failure to provide for court appointment of foreign language interpreters in civil cases can result in parties misunderstanding what takes place, and the evidence heard by the judge and jury being incomplete or distorted, if not significantly changed. When there is poor interpretation or no interpretation at all, the English speaking members of the court and the non-English speaking witnesses or litigants literally may not be attending the same trial.

Not only can linguistic minorities be restricted in their

access to justice, English speaking persons who wish to call non-English speaking persons as *witnesses* in their cases are restricted in their ability to provide testimony as to the facts in the case.

7. There is a clear trend among states to adopt legislation to require certification and training for court interpreters. The existence of such legislation further serves to undercut the notion that volunteers, friends, and relatives can provide adequate interpretive services for linguistic minorities.

Arguments Opposing Court Interpreters in Civil Cases

1. By statute, English is the official language of Virginia. Provision of interpreters may contribute to a reliance upon these services by non-English speaking citizens.

2. Civil disputes are controversies between two or more parties. They are, to an extent, private disputes. Why should public funds be appropriated for use in private disputes?

3. The present system does not preclude any non-English speaker from obtaining the services of an interpreter. To extend the provisions of the law to include court appointment of an interpreter in civil cases would convert the present right into an entitlement.

4. Although the case decisions reviewed for this study are somewhat conflicting, there has been no definitive interpretation by the courts to conclude that "effective access" or meaningful access to the courts requires the appointment of an interpreter for non-English speaking persons in civil cases.

Ensuring a Fair Process, Equally Applied

The duty of the courts is to ensure equal application of the judicial process to all controversies, in order to eliminate disparate treatment. Further, the dignity of the judicial process also presumes a reciprocal dignity afforded to each individual who comes before the courts.

Arguments Favoring Court Interpreters in Civil Cases

1. It is important to remember that a non-English speaker's right during his or her trial is not a language right, but simply guarantees a right to equal application of the law. Thus, the interpreter's role is to enable the judge and jury to react to a non-English speaking person as they do to one who

speaks English, thus enabling the non-English speaking person to enjoy due process and equal protection under the law.

2. Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency. It is essential that the resulting communication barriers be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier. The Commonwealth has already recognized and addressed this issue for the hearing impaired.

3. It is the responsibility of the courts to ensure to the extent possible a "level playing field" in resolving disputes.

4. Both the dignity of the trial process and the dignity of the individual before the court can be diminished if interpretation is not available so that the court can understand the nature and facts involved in a dispute.

Arguments Opposing Court Interpreters in Civil Cases

1. The only appropriate guarantee is base access, not the entitled provision by the court system of services necessary for private citizens to participate in that system.

2. Again, there have been no rulings either by the state or federal courts to suggest that either the due process or equal protection clauses of the constitution have been violated due to the absence of interpreters in civil cases.

Preserving the Integrity of the Fact-Finding Process

A trial is a truth-seeking process. Truth is found by each side presenting all facts. Any impediment to a clear statement of these facts strikes at the heart of the fundamental function of the judicial process.

Arguments Favoring Court Interpreters in Civil Cases

1. The inability of the court to provide interpreters for non-English speaking witnesses deprives the court the benefit of testimony necessary in seeking the truth during the fact-finding process.

2. Court interpreters, when present and qualified, assist in protecting the integrity of the trial process because they are acting both as interpreters and as officers of the court. They

are neutral participants in the process.

3. When the testimony of a party or witness is rendered through a court interpreter, only the English interpretation is preserved on the record. Thus, the integrity of the fact-finding process depends on the ability of the court to have an interpreter and on the competence and integrity of the court interpreter.

4. Where there is no court appointed interpreter, a non-English speaking person generally will, if possible, bring a spouse, relative, or friend who not only may be totally unqualified to provide court interpretation, but also may have a direct conflict of interest in the case. This is particularly true in domestic relations cases. When these circumstances exist, the integrity of the judicial process is diminished.

Arguments Opposing Court Interpreters in Civil Cases

1. Each party to a trial brings different strengths and weaknesses. Some have better lawyers. Some have investigators. The court cannot make them equal and must accept them as they come.

Promoting the Efficient and Cost-Effective Administration of Justice

Administration of the court system exists to facilitate the judiciary's substantive role of dispute resolution. In so doing, the judicial branch strives to administer its resources efficiently and to assure that services are uniform statewide.

Arguments Favoring Court Interpreters in Civil Cases

1. The inability of the court to appoint foreign language interpreters in civil cases affects the ability of the courts to provide all litigants an expeditious hearing. The necessity for judges to interrupt and delay the proceedings to find someone who can assist a non-English speaking person affects the orderly movement of all cases and all parties in court on any given trial date. In addition, the absence of interpreters often requires continuances or postponements in the disposition of cases.

2. With respect to uniformity, considerations of equal protection imply that services in the courts should be available uniformly unless there is a rational basis for the differences.

Arguments Opposing Court Interpreters in Civil Cases

1. State costs would be best served by having the parties bear the expense of interpretation.
2. The provision of state-funded resources to potential civil litigants could be construed as an inappropriate inducement to litigation.

Establishing and Maintaining Public Confidence in the Courts

Compliance with the law depends heavily upon public confidence in the court system as well as its legitimacy in the eyes of the citizens it serves. The deference and esteem accorded to the courts come not only from actual performance but also from how the public perceives justice to be done. For those who participate, the court's demeanor must convey an appreciation of the value and dignity of all individuals, not a sense of distance or indifference. Courts and their staff must create an environment of courtesy and respect for all who have contact with the court.

Arguments Favoring Court Interpreters in Civil Cases

1. The non-provision of interpreters in civil cases can lead to a perception by non-English speakers and English speakers alike that the courts are insensitive to the disadvantage and sense of alienation suffered by those who cannot effectively communicate with the courts because of language barriers.
2. By being able to comprehend everything that is being said around them, non-English speaking parties and witnesses may perceive the courts as being open and accessible to all. Thus this segment of the population could have greater confidence in the judicial process.

Arguments Opposing Court Interpreters in Civil Cases

1. The provision of interpreters for non-English speaking persons might represent a move to a dual language judicial system.

Ensuring a Judicial System that is Responsive to Change

Virginia's present justice system is a product of multiple forces both internal and external. The needs and demands of society change and the legal system and courts must be able to respond to these changes. The laws should provide a framework to regulate and to ensure consistency in governmental action and should reflect the ideals and social

values of the citizens of Virginia.

Arguments Favoring Court Interpreters in Civil Cases

1. The adoption of a policy change to include appointment of interpreters in civil cases is a pro-active means for responsibly accommodating long term cultural change.
2. This action would be consistent with Executive Branch agencies which are moving now to accommodate non-English speaking persons in an effort to guarantee that they have access to those benefits and services to which they are entitled by law.

Arguments Opposing Court Interpreters in Civil Cases

1. Since English is the official language of the state, the court system should not change to accommodate non-English speaking people. Rather, those people must change to take advantage of the judicial system.

Summary

There are compelling arguments favoring the provision of interpreters for non-English speaking citizens of the Commonwealth who are parties to or witnesses in civil proceedings. The legitimacy of the legal system is a function of the opportunity which citizens have for meaningful, effective access to the system, whether to vindicate rights allegedly violated or to defend against claims directed against them. The mission of the courts is undercut if, for a significant number of people, there is no effective access to the courts as a forum for resolving disputes. Basic to effective access is the ability to communicate with the court and for the court, in turn, to be able to communicate with citizens in all types of disputes. Such a legislative change statutes further demonstrates the commitment both of the judiciary and the General Assembly in providing an accessible, responsive, and fair justice system for all Virginians.

A copy of the suggested language in revising current law is provided on page A-56 of the the Appendix. The following section provides estimates of the costs involved in the policy change.

Analyzing the Fiscal Impact of Foreign Language Interpreter Costs in Civil Cases

As previously noted, cost data on foreign language interpreter services in civil cases was not available from other states. Therefore, in order to estimate the required funding in Virginia, a cost analysis was devised by extrapolating from current costs for interpreters in criminal cases. Two basic assumptions guided this analysis. First, it was assumed that the "demand" for interpreter services in civil cases would approximate the demand for interpreters in criminal cases. Secondly, the demand was projected to increase over the next two years at the historical rate experienced in criminal cases.

As a first step, the number of cases and average cost per case for providing interpreters in criminal and traffic cases were examined for the circuit, general district, J&DR district, and combined district courts over the last six fiscal years. Traffic infractions which were prepaid were excluded from the calculations. Also, it was necessary to consider combined district courts separately due to the fact that criminal fund accounting records (from which the data for the analysis were taken) treat combined courts separate from general district and J&DR district courts.

Table 4 presents data on the usage of foreign language interpreters in criminal and traffic cases in Virginia's courts over the past several years. Since 1989, the total number of cases in which an interpreter for a non-English speaking litigant was used and compensated through the criminal fund has more than doubled, from 1,738 to 5,346 in fiscal year 1993-94. In the same time period, total expenditures for providing these interpreter services increased 146%, from nearly \$282,000 to \$694,000. Interestingly, while total expenditures for providing interpreter services has increased, the average cost paid has declined from just over \$162 per case in FY 1988-89 to nearly \$130 in FY 1993-94.

Table 5 indicates that in FY 1993-94, the greatest usage of interpreters for non-English speaking persons occurred in the general district courts (2,988 cases or 56% of the state total of 5,346). The average cost per case ranged from a low of \$78 in the rural combined district courts to \$184 in the circuit courts. The proportion of total criminal and traffic cases in which foreign language interpreters were used ranged from .0092 (.92%) in the J&DR district courts to .0008 (.08%) in the combined district courts. Overall, three tenths of one percent (.3%) of all criminal and traffic cases involved the use of a foreign language interpreter in fiscal year 1993-94.

As can be seen from table 6, there have been steady increases since 1989 in the proportion of total cases using an interpreter. While foreign language interpreters were used in .1% of the cases in fiscal year 1988-89, "demand" has grown an average of .04 each year to reach the current level of .3%.

Calculation of future demand in civil cases consisted of two steps. First, for each court type, the current demand ratios for criminal and traffic cases were increased by the average annual growth rate to produce projected demand rates for FY 1994-95. See table 6. For example, the FY 1993-94 ratio in circuit courts of .00709 was increased by .00066, the average annual change for circuit courts, to produce a projected civil demand rate for FY 1994-95 of .00774. This ratio was then increased by .00066 to produce a projected civil demand rate for the second year of the biennium, FY 1995-96.

Table 4

**Interpreters for the Non-English Speaking in Criminal and Traffic Cases
Criminal Fund Expenditures Historical Summary**

<i>All Courts</i>	<i>Summary</i>						<i>% Change FY89-FY94</i>
	<i>FY89</i>	<i>FY90</i>	<i>FY91</i>	<i>FY92</i>	<i>FY93</i>	<i>FY94</i>	
Total Expenditures	281,779	381,136	502,598	511,776	660,385	694,075	146.3%
Total Individuals Served	1,738	2,662	3,654	4,127	5,313	5,346	207.6%
Average Cost/Service	\$162.13	\$143.18	\$137.55	\$124.01	\$124.30	\$129.83	-19.9%

<i>Court Type</i>	<i>Expenditure Breakdown by Court Type</i>						<i>% Change FY89-FY94</i>
	<i>FY89</i>	<i>FY90</i>	<i>FY91</i>	<i>FY92</i>	<i>FY93</i>	<i>FY94</i>	
Circuit Courts	\$81,367	\$104,302	\$110,805	\$101,456	\$120,898	\$145,963	79.4%
General District	\$165,938	\$212,640	\$272,719	\$253,997	\$397,607	\$357,523	115.5%
J&DR District	\$32,754	\$56,502	\$105,631	\$140,510	\$125,068	\$173,610	430.0%
Combined District	\$1,720	\$7,692	\$13,443	\$15,813	\$16,812	\$16,979	887.2%
Total	\$281,779	\$381,136	\$502,598	\$511,776	\$660,385	\$694,075	146.3%

Second, estimates of the civil caseload (excluding cases in the circuit and general district courts which are concluded by default judgment) for each of these two years were multiplied by the projected civil demand rates to produce estimated numbers of civil cases in each court in which foreign language interpreters may be needed. (For purposes of this analysis, it was felt that holding the number of civil cases steady at 1994 levels would provide a more reliable estimate of demand). This analysis produced a projected number of interpreter services in civil cases in each court for each year of this biennium. See table 7. In the current year, 1994-95, it is estimated that demand will exist for foreign language interpreters in 4,242 civil cases statewide in all three courts. At the current average cost per case of \$130, providing this level of interpreter services would require \$570,187. In FY 1995-96, the number of services is projected to rise to 4,791 at a cost of \$641,766.

Table 5**Interpreters for the Non-English Speaking in Criminal and Traffic Cases****Fiscal Year 1988-89**

<i>Court</i>	<i>Interpreter Services</i>	<i>Total Cost</i>	<i>Average Cost</i>	<i>Total Cases</i>	<i>Demand Rate</i>
Circuit	312	\$81,367	\$260.79	82,314	0.00379
General District	1,166	\$165,937	\$142.31	1,215,001	0.00096
J&DR District	240	\$32,754	\$136.48	130,532	0.00184
Combined District	20	\$1,720	\$86.00	239,326	0.00008
Total	1,738	\$281,778	\$162.13	1,667,173	0.00104

Fiscal Year 1993-94

<i>Court</i>	<i>Interpreter Services</i>	<i>Total Cost</i>	<i>Average Cost</i>	<i>Total Cases</i>	<i>Demand Rate</i>
Circuit	793	\$145,963	\$184.06	111,917	0.00709
General District	2,988	\$357,523	\$119.65	1,154,986	0.00259
J&DR District	1,348	\$173,610	\$128.79	146,322	0.00921
Combined District	217	\$16,979	\$78.24	254,774	0.00085
Total	5,346	\$694,075	\$129.83	1,667,999	0.00321

Table 6**Projection of Demand Rates for Foreign Language Interpreters in Civil Cases**

<i>Court</i>	<i>Criminal Demand Rates</i>		<i>Average Annual Change</i>	<i>Projected Civil Demand Rates</i>	
	<i>FY89</i>	<i>FY94</i>		<i>FY95</i>	<i>FY96</i>
Circuit	0.00379	0.00709	0.00066	0.00774	0.00840
General District	0.00096	0.00259	0.00033	0.00301	0.00344
J&DR District	0.00184	0.00921	0.00147	0.01069	0.01216
Combined District	0.00008	0.00085	0.00015	0.00101	0.00116
Total	0.00104	0.00321	0.00043	0.00372	0.00423

Table 7

**Projection of Demand and Costs for Providing Interpreters
for the Non-English Speaking in Civil Cases**

Fiscal Year 1994-95

<i>Court</i>	<i>Projected Civil Cases</i>	<i>Projected Demand Rate</i>	<i>Projected Interpreter Services</i>	<i>Average Cost</i>	<i>Projected Total Costs</i>
Circuit	103,523	0.00774	802	\$184.06	\$147,574
General District	594,859	0.00301	1,791	\$119.65	\$214,321
J&DR District	146,720	0.01069	1,568	\$128.79	\$201,950
Combined District	80,625	0.00101	81	\$78.24	\$6,342
Total	925,727	0.00372	4,242	\$129.83	\$570,187

Fiscal Year 1995-96

<i>Court</i>	<i>Projected Civil Cases</i>	<i>Projected Demand Rate</i>	<i>Projected Interpreter Services</i>	<i>Average Cost</i>	<i>Projected Total Costs</i>
Circuit	103,523	0.00840	870	\$184.06	\$160,132
General District	594,859	0.00344	2,043	\$119.65	\$244,505
J&DR District	146,720	0.01216	1,784	\$128.79	\$229,818
Combined District	80,625	0.00116	93	\$78.24	\$7,311
Total	925,727	0.00423	4,791	\$129.83	\$641,766

Recommendation

It is recommended that the *Code of Virginia* be amended to provide that in any civil case in which a non-English speaking person is a party or witness, an interpreter for the non-English speaking person may be appointed by the court and that payment for such interpreters shall be made from the general fund of the state treasury, and further, that the court be given the discretion to assess the amount paid to the interpreter as costs against either party to the case. (See page A-56 of the Appendix for a copy of the draft of this proposed statute.)

Section II - The Need for Certification and Training of Foreign Language Interpreters

In this section, the issues and scope of the research widen to consider the qualifications of persons who serve the courts as foreign language interpreters in any judicial proceedings, civil or criminal. Different from civil cases, where the legal requirements for foreign language interpreters are arguable, in criminal cases, the constitutional requirements of fundamental fairness, equal protection, and the right to cross examination of adverse witnesses compel the use of qualified interpreters.

However, studies conducted recently in states and by the National Center for State Courts have concluded that often interpreters used in the courts are not properly qualified for interpreting in courts and justice system settings. Following extensive research, a report to be published in early 1995 by the National Center for State Courts concludes that "language barriers and barriers erected by cultural misunderstanding can render criminal defendants virtually absent from their own court proceedings, can result in misinterpretation of witness statements made to police or triers of fact during court proceedings, and can deter civil linguistic minority litigants from the justice system as a forum for redress of grievances."

Further, the Center reviewed the results of 22 state task forces and commissions studying the issue of racial and ethnic minorities in the courts. The published reports from such efforts document widespread breakdowns in due process and equal protection for non-English speaking litigants who appear before the courts. These task force reports, other research studies, and media reports also document alarming miscarriages of justice resulting from courts using improperly trained and unqualified interpreters. Examples include the following:

In a case in Washington state, a Laotian man charged with attempted murder was given the Miranda warning that he could remain silent and was entitled to an attorney...[b]ut an interpreter translated it as being the right to remain at peace.

A New Jersey Supreme Court Study of courtroom evaluations of Spanish-English interpreters showed that only 17 percent met or exceeded a proposed minimum standard of proficiency;

one was so inept that the simple statement, "I pronounce you husband and wife" emerged in Spanish as "Now you are hunted".

Although no such reports have been published in the Commonwealth, judges, court officials and lawyers surveyed for this study expressed serious concerns about numerous issues regarding the use of foreign language interpreters in criminal proceedings. Foremost among these was the concern that judges have no formal means at present for evaluating the professional competence of an interpreter. All were concerned about the potential problems that could be experienced in the courts. A Circuit Court case tried in Northern Virginia provides an example of these problems. In Fairfax County, a merchant was brutally beaten and a suspect was arrested. The suspect gave a statement to the police. At trial, two interpreters differed in the content of the statement. One view was that the statement admitted guilt. The other view was that the suspect denied involvement. The jury was hung and the case is being retried. In addition, a number of those surveyed expressed concerns that there is no screening of interpreters and that, out of necessity, family members, police officers, and others who may be unqualified or have a conflict of interest in the case are utilized to provide translation of testimony.

The Center's study concluded that the causes of current problems with foreign language interpreters in courts are fourfold:

- underestimation and misunderstanding by the legal community of the skills required for court interpreting;
- absence of standards for court and legal interpreter qualifications;
- lack of effective and efficient mechanisms for locating qualified interpreters; and
- a shortage of qualified court interpreters.

To address the causes and problems with court interpreting, both the Center and the reports of individual state court systems have recommended that comprehensive, statewide mechanisms and procedures be formalized by statute and implemented in order to ensure that interpreters who possess the appropriate minimum skills for interpreting in

court settings are available and used when they are required.

Court Interpretation - The Requirements

Like interpreting for the deaf and hard of hearing, court interpretation for foreign language speakers is considered a highly specialized form of interpreting that cannot be effectively performed without commensurate specialized training and skills. An analysis of the requirements for court interpreters, prepared by the Center, is summarized below.

Court interpretation for foreign languages is arguably the most difficult form of interpreting, according to the Center's report. Being bi-lingual, even fluently so, is insufficient qualification for court interpreting. Court interpreters must be able to preserve "legal equivalence" while interpreting. Moreover, they must be able to do this in each of three modalities: **simultaneous** interpreting, **consecutive** interpreting or while **sight** translating documents.

Simultaneous translation is employed when the interpreter translates remarks as they are being made by one party to a second party who is not actively participating. When translating simultaneously, the interpreter will be translating while the original speaker is continuing to speak. Generally, the interpretation will lag by one thought. An example of simultaneous translation would be interpretation to the defendant when the judge is giving instructions to the jury, or interpretation for the defendant when the court is advising the defendant of his/her rights.

Consecutive translation occurs, when one party is communicating directly with the second party and the second party is expected to respond. It would be used when a witness is being questioned on the stand or when a plea is being taken. In consecutive translation the interpreter will begin translation once the question has been asked or the answer given. This allows the judge or jury to observe the demeanor of the witness while responding in the native language.

The final mode of translation is **sight** translation when a written document is translated from one language to another. Although sight translation of short documents can be accomplished in the courtroom, it is preferable to have a document of any complexity

translated in written form. If the interpreter has not seen the document before, it may be impossible to render an accurate translation without access to dictionaries and other reference material.

Although **summary** translation has been used in the past, it is not an acceptable form of translation, as it would only convey the gist of what is being said rather than providing a verbatim translation.

Dr. Roseann Gonzalez, Director of the Federal Court Interpreter Certification Project, and her colleagues write that in order to maintain legal equivalence, the interpreter must:

....interpret the original source material without editing, summarizing, deleting, or adding while conserving the language level, style, tone, and intent of the speaker or to render what may be termed the **legal equivalence** of the source message.

Legal equivalence also entails "conservation" of speech style:

It is important to remember that from the beginnings of judicial proceedings triers of fact (the judge or jury) have to determine the veracity of a witness's message on the basis of an impression conveyed through the speaker's demeanor. The true message is often in **how** something is said rather than **what** is said; therefore, the style of a message is as important as its content.

The interpreter is required to render in a **verbatim manner** the form and content of the linguistic and paralinguistic elements of a discourse, including all of the pauses, hedges, self-corrections, hesitations, and emotion as they are conveyed through tone of voice, word choice, and intonation; this concept is called **conservation**.

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*.

[When non-English speakers] tell their stories, it is

more likely than not that significant portions of their testimony will be distorted by the interpreter omitting information present in the original testimony, adding information not present, or by stylistically altering the tone and intent of the speaker. Judges and juries are not given the opportunity to "hear" the testimony as it was originally spoken, and defendants and witnesses cannot fully comprehend the questions asked of them. This linguistic distortion compromises the fact-finding process...

Writing in *The Bilingual Courtroom: Court Interpreters in the Judicial Process*, Dr. Susan Berk-Seligson also describes the ways in which evidence may be distorted by the interpreter:

...an interpreter has the power to make a witness's testimony cast more (or less) blame than it did in the source language...and, alternatively, he/she can remove from the testimony any blame-laying strategies it may have contained. Moreover, an interpreter can make an attorney look more polite and less aggressive to a witness, and a witness more, or alternatively less cooperative to an attorney. Finally...interpreters often introduce an element of coercion in to the examination process when they interpret for witnesses and defendants.

In addition to highly specialized and demanding interpretation skills, court interpreters must adhere to strict codes of appropriate behavior and at times face unusual problems of law and ethics. For example, interpreters are often asked for legal or behavioral advice, which they must decline to give; they may overhear private conversations between foreign language speaking defendants that contain evidence; defendants may even "confess" to an interpreter during private moments.

In most states, there are no qualifications required by law for foreign language court interpreters. In contrast, laws in many states, including Virginia, specify the qualifications that interpreters for deaf or hearing impaired persons must have in order to translate judicial proceedings. In the Commonwealth, such standards are determined and administered by the Virginia Department for the Deaf and Hard of Hearing. The Department maintains a list of qualified individuals from which court interpreters are secured for all assignments when needed in courts or by a magistrate.

According to the Center, in most states, there is no clear policy to guide judges regarding the qualifications of foreign language interpreters, yet it is the responsibility of the trial judge to determine whether a bilingual individual presented to assist them in court proceedings is qualified. The laws in Arizona, Colorado, Illinois, New Jersey and Texas, which simply require that an interpreter take an oath of true translation and "be qualified as an expert", are typical of the language of many state statutes. In many of these same states, however, the law is specific as to what constitutes "qualified" when it comes to interpreting for persons who are deaf or hearing impaired. In Virginia, interpreters for deaf persons must have specific certifications, including qualifications by the National Registry of Interpreters for the Deaf (NRID). Arizona, Colorado, Florida, New Jersey, Texas, and New York also have specific language in the states' laws that provides guidance to a trial judge regarding qualifications that interpreters for deaf persons must possess.

After judges or court administrative staff understand the problems associated with assessing interpreter qualifications and learn how to mitigate some of them, they face still another dilemma: finding qualified interpreters. Qualified interpreters in most languages except Spanish are scarce. Even for Spanish, the task of finding a qualified interpreter is not likely to be simple in many parts of the country. In some cases, qualified interpreters simply may not be available.

Conclusions from National Research

On the basis of its research, the Center concluded that four initiatives are needed to improve court interpretation practices:

- establishment and/or expansion of testing programs to certify the competence of court interpreters, and to serve as the basis for recruiting and training individuals to become court interpreters;
- development of short term basic training for interpreters on procedure and long term training to improve their interpreting skills;
- development of location and referral systems that are accessible and that maintain appropriate standards regarding interpreter qualification; and

- judicial education: sensitizing judges to the issues and providing them with information about standards for recruitment and selection to assure that the most qualified interpreters are used.

Many jurisdictions do not have a demand that is great enough to justify the expense of launching and completing these initiatives locally, or even at the state level. Resource sharing to achieve economics of scale can help make it possible to develop needed resources, however. Resource sharing can be accomplished at several levels, according to the Center.

Local and Statewide Initiatives

The quality and reliability of interpreter services can be improved, and costs can be more effectively controlled, by implementing court interpreter programs that are used by all of the courts within the same circuits/districts or statewide. The pilot project undertaken in the 19th Circuit/District (Fairfax City, Fairfax County and Falls Church) produced such a local plan, which is included on page A-31 of the Appendix.

In addition to establishing local guidelines for employing and paying foreign language interpreters working in the trial courts in the 19th Circuit/District, the report submitted by the Criminal Justice Policy Group of Fairfax County urged other improvements. These include recommendations that the Supreme Court: (1) establish a testing and certification program for Spanish interpreters and that the Court address the need to test interpreters in other languages commonly used in the courts; (2) develop a code of practices and ethics for court interpreters; (3) support the hiring of interpreters as court employees where such employment would be cost justified; (4) establish rates of pay for interpreters; and that (5) foreign language interpreters be provided at public expense in civil cases where the parties or witnesses are indigent and where serious deprivation would result from the inability to understand the court proceeding.

Interstate/Multi-state Initiatives

Few states have the demand, resources or expertise to develop appropriate and reliable tests of competency for court interpreters in any language, much less in several. The National Center for State Courts is now exploring ways that this can be done cooperatively, building on the expertise developed by court interpreter program managers in the states

where high quality testing and certification programs have been implemented.

Finally, telephone interpretation is a strategy that offers a substantial promise for reducing costs and increasing the availability of qualified interpreters in lesser-used languages. Experimentation has occurred in both state and federal trial courts using very different approaches. Valuable lessons have been learned, but additional work is needed to refine courtroom equipment, resolve policy questions and design reliable procedures for reaching qualified interpreters by telephone in a timely manner.

Recommendations

On the basis of the national research conducted for the study, as well as the need as expressed by judges, court officials and others in Virginia, the Council makes the following recommendations are made:

1. It is recommended that the Judicial Council of Virginia develop and implement a statewide interpreter testing and certification program for Spanish language interpreters and should maintain a statewide list of persons certified to provide such services, as well as a location and referral system for such interpreters.
2. It is recommended that the Council also identify and maintain a list of any foreign language interpreters certified by the federal courts who live in Virginia. The list should contain information on the language or languages for which these persons are so certified.
3. It is recommended that, under the auspices of the Council, the Office of the Executive Secretary administer and manage the certification program for foreign language interpreters. Funds should be provided for the Office to carry out the following responsibilities:
 - a. establishing interpreter proficiency standards;
 - b. establishing procedures for the recruitment, testing, evaluation, and certification of interpreters consistent with the proficiency standards;
 - c. designating other languages for certification as the need arises;

- d. establishing standards for the professional conduct of court interpreters;
- e. adopting and disseminating to each court guidelines for the compensation of certified interpreters; and
- f. assisting trial courts in assessing the need for establishing interpreter positions as full-time court employees, where significant cost savings may be achieved as a result.

Section III - The Need for Training Judges and Court Personnel in the Handling of Cases Involving Foreign Language Interpreters

As previously stated, foreign language interpretation in the courts is considered to be the most complex form of interpretation. In addition to creating a need for careful qualification and training of interpreters for the courtroom, the effective use of interpreters in the courtroom requires an understanding of the interpreting process by the judge and others involved in a proceeding. In addition, the judge's leadership is needed to maintain an environment in the courtroom that facilitates the interpretation process. This may entail educating parties and jurors to the role of the interpreter, controlling the pace of the proceedings, or accommodating an interpreter's need to move around. The discussion which follows further explains some of the aspects of court interpretation which must be understood by judges and court personnel.

The Role of the Court Interpreter

An interpreter in the courtroom is not on any "side" of the proceedings. The interpreter is a neutral presence in the courtroom who serves as a conduit of language. Interpreters bridge the language gap, enabling the court to address the non-English speaker, or to understand what the non-English speaking defendant or witness is saying, and enabling the non-English speaker to understand the charges and testimony against him, and to communicate with his attorney so that he can help in his own defense. Thus the interpreter makes it possible for the judge and jury to react to a non-English speaking party or witness as they do to one who speaks English. In effect, the interpreter is a "mechanism" which allows participants in the proceeding to all be part of the same proceeding.

In fulfilling this role, the interpreter will employ different modes of translation at different times during a proceeding. Regardless of the mode employed, the translation is likely to take longer than the source language statement. The Spanish language, for example, uses approximately 30% more syllables than English. A well qualified interpreter will use the appropriate form of translation, while a poorly qualified or overtired interpreter may opt for an inappropriate mode of translation.

The interpreter is never the author of statements he or she makes in the courtroom. Rather the interpreter must translate **everything** that is spoken, in a manner that reflects the way which it was spoken. Thus an interpreter cannot clarify a confusing or poorly worded utterance, nor can he/she summarize a long statement or speech. Judges and attorneys who understand this basic tenet of professional courtroom interpretation will refrain from directing their questions and statements to the interpreter, and focus on the non-English speaking individual to whom their remarks are directed. Remarks such as "Tell him that . . ." or "Ask her . . ." will become part of what is translated, possibly adding confusion to the exchange.

Because the interpreter's role is that of a neutral conduit of language, the interpreter cannot and should not be asked to serve other functions in or out of the courtroom. The interpreter is not an advisor, a confidant, or a source of legal advice.

In creating the record for any proceeding involving an interpreter, only that which is spoken in English will be recorded, unless the recording method is audio or videotape. Thus it is crucial that all utterances in a foreign language be faithfully translated. For this reason, it is not helpful to have bi-lingual participants in the proceeding speak to the foreign language party or witness in their language.

Accommodations to the Presence and Role of the Interpreter

To perform the duties of interpreter in the courtroom, the interpreter must be able to hear what is being said. Recognizing that the acoustic qualities of courtrooms vary, as do the speaking voices of attorneys and witnesses, participants in the proceedings should be advised of the interpreter's role and be reminded to speak so that they can be heard. It may be necessary for the interpreter to move about to better hear attorneys, witnesses or the judge.

As noted above, not only does the interpreter need to hear and convert the spoken word into the designated language, speaking the translated speech may take longer due to the nature of the second language. This process is further complicated when the original speech is delivered at a rapid rate, either as the normal means of delivery or as a result of the nature of the verbal exchange. Add to this the occasional occurrence of two or more people talking at the

same time and you have a situation in which even a skillful interpreter will miss some of what is being said. The difficult situation these factors create can be avoided by reminders from the bench that speech be slowed and that only one person is to talk at a time.

Interpreting is demanding work. An interpreter uses at least 22 cognitive skills when interpreting. For any lengthy proceeding (over an hour), two interpreters are needed. The United Nations conducted a study and found the interpreters start lagging, losing accuracy and concentration after approximately 30 minutes of simultaneous interpretation. An interpreter who does hours of simultaneous interpreting without a break would generally not be able to attest to the accuracy of the record at the end of the day. For this reason, in high-volume courts, interpreters switch every half hour, as they do in the United Nations. Consecutive interpreting is similarly taxing. After about an hour, even an excellent interpreter starts omitting more and more. For this reason, interpreters should be used in tandem, switching an average of every 45 minutes. Having two interpreters in the courtroom also allows the defendant to confer with counsel while he is listening to the interpreted testimony.

The process of interpretation can be facilitated by allowing two types of advanced preparation by the interpreter. First, it may be necessary to provide an opportunity for the interpreter to converse briefly with the individual for whom the interpreter will be interpreting. This will allow the interpreter and that individual to get used to each other's style of speech or dialect. In the event that they have difficulty communicating, or find that their accents are mutually incomprehensible (a rare but possible occurrence), the attorney may request a different interpreter. Second, it may be necessary to provide the interpreter with written material relevant to the case ahead of time. This will allow the interpreter to become familiar with specialized terminology, names, addresses and numbers which may need to be translated.

Although the interpreter is the language expert in the courtroom, it is possible that a challenge may be made to the way something has been translated. Should a challenge be made, the matter should be resolved quietly, out the hearing of the jury. The interpreter should be given a chance to answer the challenge. If two interpreters are in the courtroom, the second interpreter may also be consulted, if

Recognizing the Effects of Cultural Differences on Communication

the initial explanation is not accepted. The judge should make the final determination as to the correct interpretation. If it is determined that an error has been made, and the judge determines the error is substantial or potentially prejudicial, the court should amend the record and advise the jury of the error and its correction.

Communication is a cultural as well as a linguistic phenomenon. Thus the influences of cultural differences must be considered when dealing with non-English speaking individuals in the courtroom. Some of these differences may have a direct impact on the process of interpretation; others may be reflected in demeanor or body language that will be observed by others in the courtroom separate from the linguistic considerations.

For example, Spanish-speaking people are not accustomed to spelling words or names aloud. Thus, when asked to spell their names for the record, many hesitate. Spanish speakers feel they have complied with the request when they say their names; yet to the jury it may seem they cannot spell.

Also, many Hispanics have and habitually use two last names, their paternal surname and their mother's maiden name, in that order. Both surnames comprise their legal name. This has caused many problems in court proceedings, where judges and prosecutors may be under the false impression that a defendant is using different aliases or trying to mislead the court about his "real name." In Asian cultures, people give their last name first, sometimes causing confusion for the American judge or jury.

How a person communicates is influenced by the culture in which the person was raised. Facial expressions, gestures, amount and kinds of emotional expressions which are permitted, intonation, pitch, rhythm, use of space, clothing, amount of eye contact, rate and inflection vary from culture to culture. Thus while not looking someone in the eye signifies to one in the Anglo-American culture that an individual may have something to hide, in many Spanish-speaking cultures similar behavior is a sign of respect. Misinterpretation of such behavior can result in erroneous attributions of guilt by jurors and allegations of untrustworthiness or evasiveness by probation officers writing

presentence reports or supervising clients.

At times, concepts common to one culture are not common, or may even be unknown, in another. For example, a witness may be familiar only with the metric system and not be able to approximate distances in feet. In addition, references to "early summer or late spring" will have no meaning to people coming from countries that have no seasons.

Current Training in Virginia for Judges and Court Personnel

Virginia judges receive regular training during their tenure on the bench. Their training actually begins before they take the bench, with a three week pre-bench program. Two segments of the pre-bench deal with Courtroom Communication and Bias in the Courtroom.

Once on the bench, judges attend annual mandatory judicial conferences. In addition, they may choose to attend voluntary judicial conference once a year, as well as periodic regional conferences. The agendas for these conferences are developed by planning committees of judges. In recent years conference programs have included Cultural Diversity, Communication in the Courtroom, Dealing with Difficult People, and Communicating with Children in the Evidentiary Setting.

Court Clerks and Magistrates also have annual conferences with educational programs. Their recent programs have included Cultural Diversity, Cross-Cultural Communication, Dealing with Difficult People, and Communication and Problem Solving.

These programs underscore the recognized importance of communication in the court, and an awareness of the impact of cultural diversity in the courts. However, no specialized training has been offered on working effectively with court interpreters. The Clerks and Magistrates have had, in their regional meetings, a presentation by the Agency for the Deaf and Hard of Hearing on how to use interpreters for the deaf or hard of hearing. Similar programs for judges on the use on foreign language interpreters would provide a means for highlighting the day to day actions that would enhance the effectiveness of foreign language interpreters in the courts.

Training Approaches Used Elsewhere

Most of the material that has been published concerning training with respect to foreign language interpreters in the courts deals with the training and certification of interpreters themselves. A few of the reports reviewed also addressed the need for training of judges, court personnel or attorneys in dealing with these interpreters.

Washington

The 1990 Interim Report from the Court Interpreter Advisory Committee in Washington indicated that "one of the major problems they regularly encounter is a lack of knowledge on the part of judges and attorneys on how to work with them." The Advisory Committee has recommended that presentations on working appropriately with interpreters in legal proceedings should continue to be offered to judges, administrative law judges, public defenders, prosecutors and Bar Association conventions and/or CLE courses. In addition, they recommend follow-up presentations be offered as needed. Finally, they recommend adding chapters on working with interpreters to the judges' benchbooks.

In response to the Advisory Committee recommendations, the Office of the Administrator for the Courts has offered extensive training opportunities for judges and other court personnel. During the training for new judges each February, a session on working with interpreters is part of the program. The basic goal of this session is to convey an understanding of why it is important to use interpreters and to use them effectively. Additional programs are offered periodically at the fall conferences for Superior Court judges and the spring conference for all judges. The office is extending training to other court personnel, especially those involved in hiring interpreters. And they have just begun talking to the bar association's Access to Justice Committee about possible training for attorneys.

As a part of their commitment to educating judges and others about the use of interpreters, they have produced two videotapes. The first was done about ten years ago, and has been modified several times since with the addition of subtitles and narration. It deals with the ethics issues faced by interpreters. Though vignettes of interpreting situations, the video illustrates unethical interpreter behavior, which on the surface appears to the uninitiated to be acceptable behavior. The second video has just been completed in conjunction with the National Center for State Courts, under a grant from the State Justice Institute. It is designed to inform judges who

supervise interpreters in the courtroom by focusing on the details of the process.

The recommended benchbook material has not yet been written.

New Jersey

In 1985 the Supreme Court of New Jersey received and studied the report of the Task Force on Interpreter and Translation Services. The Task Force recommended that programs be designed to sensitize all employees of the Judiciary who have contact with clients to the dynamics of intercultural communication and the effects of cross-cultural interference on the administration of justice, and to teach individuals how to work effectively with interpreters. The Supreme Court endorsed the Task Force's guiding principle that the courts should be equally accessible to all persons, regardless of their ability to communicate in English. In 1992 the Supreme Court Task Force on Minority Concerns also reported findings about the inadequacy of services for linguistic minorities in the courts.

Starting in 1985, the Administrative Office of the Courts began to address these concerns, in part, through educational programs. An overview of court interpreting policies and procedures has been included in the orientation courses for new Superior Court Judges and for new Municipal Court Judges. Three additional sessions have been given for Superior Court Judges and two for Municipal Court Judges. A similar overview has been given since 1986 for new Municipal Court clerks and other personnel. They have also trained Hearing Officers in all related issues, and conduct ongoing training/consciousness raising of and advocacy with high-level court managers. In addition, they have provided training to other justice system personnel, such as the Public Defenders, the Office of Administrative Law, the Legal Services of New Jersey, and the Association of Law Librarians.

National Center for State Courts

The forthcoming National Center for State Courts' publication *Court Interpretation: Model Guides for Policy and Practice in the State Courts* contains a chapter entitled "Judges Guide to Standards for Interpreted Proceedings." The recommendations in that chapter are based on published rules, administrative policies and articles prepared by experienced judges, lawyers and administrative personnel. In

a systematic manner, the chapter reviews the various points at which the judge confronts issues concerning the use of interpreters, and provides direction in how to deal with these issues. Throughout the chapter cautions are noted in special boxes. At the end of the chapter sample questions for determining the need for an interpreter, the qualifications of an interpreter, oath for an interpreter, and suggested statements for clarifying the role of the interpreter are included. While not designed as a training program, this chapter is clearly an educational resource that can be used by individual judges or court personnel, or serve as the aid for a training program.

Recommendations

1. Information on dealing with non-English speaking individuals and on working with interpreters should be included in the pre-bench programs for all new judges. Similar information should be included in training sessions for new magistrates and clerks.
2. Educational programs on cross cultural communication and on working with interpreters should be presented at mandatory meetings of judges, magistrates, and clerks.
3. A section on interpreted proceedings and working with interpreters should be added to all benchbooks.
4. Efforts should be made to cooperate in planning and delivering educational sessions for the bar on interpreted proceedings and working with interpreters.

Appendix

- 1. Senate Joint Resolution No. 93**
- 2. Virginia Statutes on the Provision of Foreign Language Interpreters in Criminal Cases**
- 3. Virginia Statutes on the Provision of Interpreters for the Deaf and Hearing Impaired in Civil and Criminal Cases**
- 4. Matrix of State Statutes on Foreign Language Interpreters in Civil Cases**
- 5. Report of the Criminal Justice Policy Group by Fairfax County**
- 6. Proposed Language for Additional Section of the Code of Virginia relating to the Provision of Interpreters for Non-English Speaking Persons in Civil Cases**

Appendix 1

Senate Joint Resolution No. 93

**1994 SESSION
ENGROSSED**

1 LD4307196

SENATE JOINT RESOLUTION NO. 93

Senate Amendments in [] — February 14, 1994

3
4 *Requesting the Judicial Council of Virginia to study the use of foreign language*
5 *interpreters in civil cases in the Commonwealth.*

6
7 Patrons—Calhoun and Howell; Delegates: Darner, Mayer, Tata and Van Landingham

8
9 Referred to the Committee on Rules

10
11 WHEREAS, a large number of individuals from foreign countries settle in the
12 Commonwealth each year with hopes of making a better life for themselves and their
13 families; and

14 WHEREAS, one of the greatest handicaps which these foreign-born individuals encounter
15 is their lack of proficiency in English; and

16 WHEREAS, while many individuals wish to learn English, it is a time-consuming process
17 and there are insufficient numbers of language programs to accommodate those in need of
18 services; and

19 WHEREAS, lack of proficiency in English may have an adverse impact on their ability
20 to assimilate into this culture and negotiate our legal system; and

21 WHEREAS, Virginia currently provides foreign language interpreters for those who
22 cannot afford them in criminal cases, based on the theory that when loss of freedom is
23 involved, a person must be able to participate in his own defense; and

24 WHEREAS, most would consider that civil litigation cases, such as housing and domestic
25 relations, involve a loss of rights as injurious as criminal penalties; and

26 WHEREAS, a disproportionate share of foreign-born individuals settle in some areas of
27 the Commonwealth, especially Northern Virginia and, therefore, have a greater impact on
28 the legal system; and

29 WHEREAS, there are potential alternatives to current funding and payment for
30 courtroom interpreters which could effect economies in the current system, thereby
31 creating an opportunity to expand coverage to civil cases; now, therefore, be it

32 RESOLVED by the Senate, the House of Delegates concurring, That the Judicial Council
33 of Virginia be requested to study the use of foreign language interpreters in civil cases in
34 the Commonwealth. The Council shall, in its discretion, include in its deliberations any
35 other individuals such as court clerks and judges from areas of the Commonwealth having
36 large numbers of civil cases involving foreign-born individuals. The Council is requested to
37 evaluate, among other things determined to be appropriate, (i) the need for foreign
38 language interpreters in civil matters; (ii) the training and certification requirements of
39 interpreters; (iii) courtroom training for interpreters, judges, personnel of clerks' offices,
40 and attorneys; (iv) legal issues which may arise from the use of interpreters; and (v) the
41 fiscal impact of such a program.

42 The Council shall complete its study in time to report its findings to the Joint
43 Subcommittee Studying Foreign-Born Individuals in the Commonwealth, the Governor, and
44 the 1995 General Assembly according to the procedures of the Division of Legislative
45 Automated Systems for processing legislative documents.

46 [Implementation of this resolution is contingent upon funding provided from a separate
47 appropriation for the office of the Executive Secretary of the Supreme Court to conduct
48 this study.]

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Appendix 2

Virginia Statutes on the Provision of Foreign Language Interpreters in Criminal Cases

(c) To represent indigent persons who are entitled to be represented by court-appointed counsel in an appeal of their conviction to the Supreme Court of Virginia.

(d) To represent indigent prisoners when a habeas corpus proceeding is brought by such prisoners.

(e) To submit such reports as required by the Commission. (Code 1950, § 19.1-32.4; 1972, c. 800; 1975, c. 495; 1978, c. 698; 1979, c. 194; 1990, c. 734.)

The 1990 amendment deleted "and to assist such persons" following "court not of record" in the courts in verifying the indigent status of subdivision (b).

§ 19.2-163.4. Inapplicability of §§ 14.1-183 and 19.2-163 where public defenders appointed; exception. — In counties and cities in which public defenders are appointed, the provisions of §§ 14.1-183 and 19.2-163 of the Code of Virginia shall not apply unless the public defender is unable to represent the defendant or petitioner by reason of conflict of interest or otherwise, in which case the provisions of §§ 14.1-183 and 19.2-163 shall be in full force and effect. (Code 1950, § 19.1-32.5; 1972, c. 800; 1975, cc. 476, 495.)

§ 19.2-163.5. Legal services to public defenders and/or assistant public defenders. — At the request of a public defender, the Attorney General shall provide legal services to such attorney, his assistants, or members of his staff in any proceeding brought against him, his assistants, or staff for money damages, when the cause of action allegedly arises out of the duties of his office.

Any costs chargeable against the defendant or defendants in any such case shall be paid by the Commonwealth from the appropriation for the payment of criminal charges. (1978, c. 698.)

§ 19.2-163.6. Executive director, consultants and other personnel. — The Commission shall be authorized to appoint and employ and, at pleasure, remove, an executive director, counsel, and such other persons as it may deem necessary; and to determine their duties and fix their salaries or compensation within the amounts appropriated therefor. (1978, c. 698.)

ARTICLE 5.

Interpreters.

§ 19.2-164. Interpreters for non-English-speaking persons. — In any criminal case in which a non-English-speaking person is the accused, an interpreter for the non-English-speaking person shall be appointed. In any criminal case in which a non-English-speaking person is the victim, an interpreter shall be appointed by the judge of the court in which the case is to be heard upon the request of the attorney for the Commonwealth and upon a showing of good cause. An English-speaking person fluent in the language of the country of the accused or the language of the country of the victim shall be appointed by the judge of the court in which the case is to be heard, unless the accused or the victim shall obtain an interpreter of his own choosing who is approved by the court as being competent. In either event the compensation of such interpreter shall be fixed by the court and shall be paid from the general fund of the state treasury as part of the expense of trial. Such fee shall not be assessed as part of the costs. Whenever a person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such person could not be compelled to testify as to the

communications, this privilege shall also apply to the interpreter. The provisions of this section shall apply in both circuit courts and district courts. (Code 1950, § 19.1-246.1; 1966, c. 240; 1974, c. 110; 1975, c. 495; 1978, c. 601; 1982, c. 444; 1985, c. 396.)

Cross references. — As to privileged communications by interpreters for the deaf in civil cases, see § 8.01-400.1. As to the visual electronic recording of the testimony of a deaf individual and the interpretation thereof for use in verification of the official transcript of civil proceedings, see § 8.01-406. As to interpreters for the deaf in criminal cases, see now § 19.2-164.1.

Law Review. — For survey of Virginia criminal law for the year 1973-1974, see 60 Va. L. Rev. 1499 (1974). For survey of Virginia law on evidence for the year 1977-1978, see 64 Va. L. Rev. 1451 (1978).

§ 19.2-164.1. Interpreters for the deaf. — In any criminal case in which a deaf person is the accused, an interpreter for the deaf person shall be appointed. In any criminal case in which a deaf person is the victim, an interpreter for the deaf person shall be appointed upon the request of the attorney for the Commonwealth and a showing of good cause. Such interpreter shall be procured by the judge of the court in which the case is to be heard through the Department for the Deaf and Hard-of-Hearing.

The compensation of an interpreter appointed pursuant to this section shall be fixed by the court and paid from the general fund of the state treasury as part of the expense of trial. Such fee shall not be assessed as part of the costs.

Any person entitled to the services of an interpreter under this section may waive these services for all or a portion of the proceedings. Such a waiver shall be made by the person upon the record after an opportunity to consult with legal counsel. A judicial officer, utilizing an interpreter obtained in accordance with this section, shall explain to the deaf person the nature and effect of any waiver. Any waiver shall be approved in writing by the deaf person's legal counsel. If the person does not have legal counsel, approval shall be made in writing by a judicial officer. A person who waives his right to an interpreter may provide his own interpreter at his own expense without regard to whether the interpreter is qualified under this section.

The provisions of this section shall apply in both circuit courts and district courts.

Whenever a person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such person could not be compelled to testify as to the communications, this privilege shall also apply to the interpreter.

In any judicial proceeding, the judge on his own motion or on the motion of a party to the proceeding may order all of the testimony of a deaf person and the interpretation thereof to be visually electronically recorded for use in verification of the official transcript of the proceedings. (1982, c. 444; 1985, c. 396.)

Cross references. — As to interpreters for the deaf in civil proceedings, see § 8.01-384.1.

Appendix 3

Virginia Statutes on the Provision of Interpreters for the Deaf and Hearing Impaired in Civil and Criminal Cases

tunity to object to the trial court's ruling, and was not precluded from raising the issue on appeal. *Mason v. Commonwealth*, 7 Va. App. 339, 373 S.E.2d 603 (1988).

Motion to set aside verdict did not save failure to object to instructions. — Where the defendant did make a motion to set aside the verdict, this does not save him from his failure to object to the instructions which submitted the issues of contributory negligence and proximate cause to the jury. *Spitzli v. Minson*, 231 Va. 12, 341 S.E.2d 170 (1986).

Counsel's statement held to raise issue of sufficiency of evidence. — Where an issue of sufficiency of evidence was presented to a trial court, sitting without a jury, in a motion to strike at the conclusion of the Commonwealth's evidence, and upon its denial and upon conclusion of the defendant's evidence, the same issue was presented in the defendant's final argument to the court, the defendant had preserved his right to appeal this issue, even though he did not make a motion to strike at the conclusion of his own evidence. *Campbell v. Commonwealth*, 12 Va. App. 476, 405 S.E.2d 1 (1991).

Applied in *McGee v. Commonwealth*, 4 Va. App. 317, 357 S.E.2d 738 (1987); *Zipf v. Zipf*, 8 Va. App. 387, 382 S.E.2d 263 (1989).

§ 8.01-384.1. Interpreters for deaf in civil proceedings. — In any civil proceeding in which a speech-impaired or hearing-impaired person is a party or witness, the court may appoint a qualified interpreter to assist such person in the proceeding. The court shall appoint an interpreter for any speech-impaired or hearing-impaired person who requests this assistance.

Interpreters for the deaf in these proceedings shall be procured through the Department for the Deaf and Hard-of-Hearing.

Any person who is eligible for an interpreter pursuant to this section may waive the use of an interpreter appointed by the court for all or a portion of the proceedings. A person who waives his right to an interpreter may provide his own interpreter at his own expense without regard to whether the interpreter is qualified under this section.

The compensation of interpreters appointed pursuant to this section shall be fixed by the court and paid from the general fund of the state treasury or may, in the discretion of the court, be assessed as a part of the cost of the proceedings.

The provisions of this section shall apply in both circuit courts and district courts. (1982, c. 444.)

Cross references. — As to interpreters for the deaf in criminal cases in which a deaf person is the accused, see § 19.2-164.1.

§ 8.01-384.2. Waiver of discovery time limitations by parties. — Parties involved in any civil litigation may, without court order and upon agreement of all of them or their counsel, waive any time limitations established by the Rules of the Virginia Supreme Court relating to any response to a motion or request for discovery or the scheduling of any

II. DECISIONS UNDER PRIOR LAW.

Complete record sufficient to make error apparent. — Where a record consists of a joint petition for a declaratory judgment together with exhibits, and the judgment of the trial court, error, if there be error, is apparent upon the face of the record, as it stands. There is nothing which can be added to it by a bill of exceptions nor is a motion for a new trial necessary to give the appellate court jurisdiction of an appeal from the declaratory judgment. *American Nat'l Bank & Trust Co. v. Kuahner*, 162 Va. 378, 174 S.E. 777 (1934).

When plaintiff waives right to assign cross-error. — While subsection B provides that a failure to make a motion for a new trial shall not be deemed a waiver of any objection made during the trial, if such objection be properly made a part of the record, when a plaintiff fails to renew its motion, fails to object to the instructions submitting the entire case to the jury, and fails to move the court to set aside the verdict and enter judgment for it, he waives his right to assign cross-error. *Shenandoah Milling Co. v. Phosphate Prods. Corp.*, 161 Va. 642, 171 S.E. 681 (1933).

Applied in *Miles v. Rose*, 162 Va. 572, 175 S.E. 230 (1934); *Virginia Transit Co. v. Tidd*, 194 Va. 418, 73 S.E.2d 405 (1952).

communications, this privilege shall also apply to the interpreter. The provisions of this section shall apply in both circuit courts and district courts. (Code 1950, § 19.1-246.1; 1966, c. 240; 1974, c. 110; 1975, c. 495; 1978, c. 601; 1982, c. 444; 1985, c. 396.)

Cross references. — As to privileged communications by interpreters for the deaf in civil cases, see § 8.01-400.1. As to the visual electronic recording of the testimony of a deaf individual and the interpretation thereof for use in verification of the official transcript of civil proceedings, see § 8.01-406. As to inter-

preters for the deaf in criminal cases, see now § 19.2-164.1.

Law Review. — For survey of Virginia criminal law for the year 1973-1974, see 60 Va. L. Rev. 1499 (1974). For survey of Virginia law on evidence for the year 1977-1978, see 64 Va. L. Rev. 1451 (1978).

§ 19.2-164.1. Interpreters for the deaf. — In any criminal case in which a deaf person is the accused, an interpreter for the deaf person shall be appointed. In any criminal case in which a deaf person is the victim, an interpreter for the deaf person shall be appointed upon the request of the attorney for the Commonwealth and a showing of good cause. Such interpreter shall be procured by the judge of the court in which the case is to be heard through the Department for the Deaf and Hard-of-Hearing.

The compensation of an interpreter appointed pursuant to this section shall be fixed by the court and paid from the general fund of the state treasury as part of the expense of trial. Such fee shall not be assessed as part of the costs.

Any person entitled to the services of an interpreter under this section may waive these services for all or a portion of the proceedings. Such a waiver shall be made by the person upon the record after an opportunity to consult with legal counsel. A judicial officer, utilizing an interpreter obtained in accordance with this section, shall explain to the deaf person the nature and effect of any waiver. Any waiver shall be approved in writing by the deaf person's legal counsel. If the person does not have legal counsel, approval shall be made in writing by a judicial officer. A person who waives his right to an interpreter may provide his own interpreter at his own expense without regard to whether the interpreter is qualified under this section.

The provisions of this section shall apply in both circuit courts and district courts.

Whenever a person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such person could not be compelled to testify as to the communications, this privilege shall also apply to the interpreter.

In any judicial proceeding, the judge on his own motion or on the motion of a party to the proceeding may order all of the testimony of a deaf person and the interpretation thereof to be visually electronically recorded for use in verification of the official transcript of the proceedings. (1982, c. 444; 1985, c. 396.)

Cross references. — As to interpreters for the deaf in civil proceedings, see § 8.01-384.1.

Appendix 4

Matrix of State Statutes on Foreign Language

Court Interpretation Statute Review

NOTE: Data is presented in Alphabetical order by state.

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
1. Ariz. R. Civ. P. 43(c)		Civil cases		Administered in a court by court basis.	The judge may fix the interpreter's reasonable compensation to be paid out of funds provided by law, paid by one or more of the parties, or taxed as costs.	The judge has discretion to appoint an interpreter.
2. Ark. Stat. Ann. § 16-10-127 (1987)				The Executive Secretary of the Judicial Department of the State of Arkansas will establish a program to encourage use of interpreters, and will prescribe qualifications and certify persons as certified interpreters for the deaf or for a foreign language. The Executive Secretary will maintain a master list of all interpreters certified by him or her, and all state courts will keep a copy of this list.		

NOTE: Review compiled by the National Center for State Courts.

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State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
Ark. Stat. Ann. § 16-64-111 (1987)	Non-English speakers or those with difficulty communicating due to impairment.	Civil proceedings	Parties and witnesses have a right to an interpreter during the proceeding. If the person cannot afford an interpreter, the judge may appoint one and determine how the fee will be paid. Any court may examine the qualifications of the interpreter and disqualify the interpreter for cause.			Interpreters must take the oath of true translation printed in this section.
Ark. R. Civ. P. 43(d)					The judge may fix the interpreter's reasonable fee to be paid out of funds provided by law, paid by one or more of the parties, or taxed as costs.	The judge has discretion to appoint an interpreter.
3. Cal. Civ. Proc. § 116.550 (West 1992)	Parties who do not speak or understand English					The court may permit a non-attorney to act as interpreter. Small claims courts must each maintain a list of available interpreters in all languages that require interpretation before the court.

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
Cal. Gov't Code § 68092 (West 1976)					In criminal, coroner's, and cases in which the county is a party, interpreters' fees will be paid from the county treasury. In civil cases, the litigants will pay the fees in proportions directed by the court to be paid as costs.	
Cal. Gov't Code § 26808 (West 1988)					Interpreters assigned to translate documents will receive \$3 per folio for the first folio and \$0.02 per word thereafter.	In counties over 900,000, the county clerk may employ as many foreign language interpreters as necessary to interpret criminal and juvenile cases and to translate civil and criminal documents to be filed.

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State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
Cal. Gov't Code §§ 68560-68565 (West 1992)		The State Personnel Board for designated counties will maintain a list of recommended court interpreters which trial courts must use unless good cause is found. Recommended interpreters will have demonstrated proficiency in a written and oral exam. The Board will also provide and exam and listing for interpreter specialists in medical terminology. The Judicial Council will establish standards for determining the need for a court interpreter and ensuring an interpreter's understanding of technical terminology, court procedure, and professional conduct. (continued on next page)	The Judicial Council will adopt a requirement for periodic review of each recommended interpreter's skills and for removal from the list those who fail requirements.			

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
Cal. Gov't Code §§ 68560-68565 (West 1992) (continued)		(continued) Interpreters in trial courts in the following languages must be certified by the State Personnel Board as qualified interpreters: Spanish, Portuguese, Arabic, Chinese, Vietnamese, Japanese, Korean, Tagalog and other designated languages. Federally certified interpreters are deemed qualified.				
Cal. Gov't Code § 73954 (West 1992)					The interpreters and coordinator will be paid biweekly. The interpreters will be paid at the rate of San Diego Superior Court interpreter and the coordinator at the rate of deputy clerk V.	The court administrator of the Municipal Court of the North County Judicial District may appoint 5 deputy clerk-court interpreters and one deputy clerk-interpreter coordinator.
Cal. Gov't Code §§ 74693-74693.3 (West 1992)					The court interpreters will be paid at a rate specified in range WC of the salary schedule. Certain clerk and interpreter positions in Santa Cruz County are deemed comparable for job and salary level.	The Court-Administrator of the municipal court of Santa Cruz County may appoint two court interpreters.

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
Cal. Gov't Code § 73683 (West 1992)					The interpreters will be paid at salary range 792 and the Coordinator at salary range 871.	The clerk of court for the Consolidated Judicial District, County of Fresno may appoint two Municipal Court Interpreters and one Court Interpreting Services Coordinator.
Cal. Gov't Code § 74192 (West 1992)					The court interpreter will receive a biweekly salary at a rate specified in range 1137. The senior court interpreter will receive a biweekly salary at a rate specified in range 1199.	The Sacramento Municipal Court District will have one court interpreter and one senior court interpreter.
Cal. Evid. Code §§ 750-754 (West 1967 & Supp. 1992)	Witnesses incapable of understanding or expression in English; Deaf persons	Witnesses must receive an interpreter whenever they cannot communicate. Deaf persons must receive a qualified interpreter in any civil or criminal action, including traffic, juvenile, administrative and mental competency proceedings.	A "qualified interpreter" has been certified competent by a testing organization, agency, or educational institution approved by the Judicial Council.		Interpreters for witnesses will be compensated as provided in the preceding chapter. Other interpreters will be paid the prevailing rate plus actual travel costs. The agency involved in the action will pay the interpreter's fee in administrative actions and the county or subdivision will pay incivil criminal cases.	Interpreters must take an oath of true translation. Each Superior Court must maintain a current roster of qualified interpreters. The use of an interpreter does not waive any communicative privileges.

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
Cal. Evid. Code § 755 (West 1992)	Any party who does not proficiently speak or understand English.	In civil actions, including any medical examination, an interpreter must be provided from the list of recommended interpreters unless good cause is shown.			The litigants will pay the interpreter's fees as costs in the promotion directed by the judge.	
Cal. Jud. Admin. § 4.2					The costs of the services of non-staff interpreters and translators should be paid using the receiving county's fee schedule. Costs include actual mileage, per day and lodging expenses.	

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State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
Cal. Misc. R. 984				Each Superior Court will establish a procedure for at least biennial review of the performance and skills of each court interpreter. The Court may designate a review panel which must include at least one person qualified in the interpreter's language. The review may include interviews, observations of courtroom performance, rating forms, and other evaluation techniques. Interpreters whose skills or professional conduct is inadequate must be removed from the list of recommended interpreters.		
4. Colo. R. Civ. P. 43(f)		Civil proceedings			The judge may fix the interpreter's fee, to be paid by legally provided funds, by one or more of the parties, or to be taxed as costs.	The judge has discretion to appoint an interpreter.

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
<p>5. D.C. Code Ann. § 31-2701 to 2712 (1988 & Supp. 1991) (continued on next page)</p>	<p>Non-English speaking or hearing impaired persons</p>	<p>The judge has discretion to appoint a qualified interpreter: for a party, witness, or parent of a juvenile, in any civil, criminal, commissioner, juvenile, child support and paternity, mental health commitment or any other judicial or quasi-judicial hearing; for a party or witness in any administrative hearing; for a witness before a legislative committee.</p> <p>The judge must appoint an interpreter: when the party, witness, or parent requests, in any judicial, legislative, or administrative proceeding; (continued on next page)</p>	<p>A "qualified interpreter" is listed by the Office of Interpreter Services as skilled in the form of communication needed to communicate with the person, and translate, accurately.</p> <p>There must be a preliminary determination, before appointment, that the interpreter and person can communicate well and the interpreter can translate.</p>	<p>The Office of Interpreter Services evaluates the credentials of interpreters for foreign and sign languages.</p> <p>The Office maintains a list of qualified interpreters available to D.C.</p> <p>The Office coordinates requests for interpreter services.</p>	<p>The Office of Interpreter Services keeps a schedule for interpreter fees and rules for methods of payment, and pays interpreter fees.</p> <p>Except for indigents, in civil actions the judge may direct that any interpreter charge be apportioned among the parties or taxed as costs.</p>	<p>The interpreter must take an oath of true translation.</p> <p>Communicative privileges held by the person extend to the interpreter.</p> <p>No statement made by a criminal arrestee is admissible in court unless it was made through a qualified interpreter and was made knowingly, voluntarily, and intelligently, or if the right to an interpreter was waived and the court makes a special finding that the statement was made knowingly, voluntarily, and intelligently. (continued on next page)</p>

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State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
D.C. Code Ann. § 31-2701 to 2712 (1988 & Supp. 1991) (continued)		(continued) when counsel has been appointed for an indigent defendant in any criminal, delinquency, or neglect proceeding, to assist in communicating with counsel during all phases of case preparation and trial; for criminal arrestees, prior to any communication with arresting officials.				(continued) Waiver or the right to an interpreter must be in writing, or orally on the record, by the person after consultation with his or her attorney, or approval by the appointing authority. The judge or appointing authority must tell the person of the right to an interpreter as soon as possible.
D.C. Sup. Ct. R. Civ. P. 43(f)		In civil proceedings, the judge has discretion to appoint an interpreter.			The judges fixes the interpreter's fee. The interpreter is paid from funds provided by law, by one or more of the parties, or from taxed court costs.	Current system under study to determine whether "indigency" status as qualifier should be removed.
D.C. Sup. Ct. R. Juv. P. 28(b)		In juvenile proceedings, the judge has discretion to appoint an interpreter.			The interpreter's fee is fixed by the judge and paid from funds provided by law, by one or more of the parties, or from taxed court costs.	
D.C. Sup. Ct. Dom. R. 43		In domestic court, the judge has discretion to appoint an interpreter.			The interpreter's fee is fixed by the judge and paid from funds provided by law, by one or more of the parties, or from taxed court costs.	

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
D.C. Sup. Ct. Neg. R. 16(c)		In domestic court neglect proceedings, the judge of the Family Division has authority to appoint an interpreter.			The judge fixes the interpreter's fee, to be paid by the government.	
6. Fla. Stat. Ann. § 90.606 (West 1979 & Sup. 1991)	Witnesses	The judge just appoint an interpreter when a witness cannot hear, understand, or communicate in English.	The interpreter must be "duly qualified".			No public appropriation supports provision in civil cases; up to litigants to supply interpreters. The interpreter must take an oath of true translation. The interpreter is subject to evidence rules relating to witnesses.
Fla. Stat. Ann. § 92.53 (West 1991)		Civil or criminal proceedings concerning child abuse				Any party or the judge may request an interpreter to help question and interpret the answers of the child.
7. Haw. R. Civ. P. 43(f)		Civil proceedings			The interpreter will be paid out of funds provided by law, by one or more of the parties, or may be taxed as costs.	The judge has discretion to appoint an interpreter.
8. Idaho Code § 9-205 (1990)	Witnesses and parties who cannot speak, hear, or understand English	Civil and criminal proceedings	The court will appoint a qualified interpreter to interpret the proceedings.		The judge will fix the interpreter's fee, to be paid from county funds.	The interpreter must take an oath of true translation.

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
Idaho Code § 9-1603 (1990)		Civil and criminal proceedings			The judge will fix the interpreter's fee, plus travel expenses at the rate of state employees, to be paid from the county treasury.	
9. Ill. Code Civ. Proc. § 8-1401 (Smith-Hurd 1984)		In civil proceedings, the judge has discretion to swear in necessary "language" interpreters.				
10. Ind. Code Ann. § 34-1-14-3 (Burns 1986)	Parties and witnesses who are deaf or cannot speak or understand English	In civil proceedings, these persons have a right to an interpreter throughout the proceeding. The judge may appoint an interpreter.	Any court may disqualify any person from serving as interpreter.		If the judge appoints an interpreter, the judge will set the interpreter's fee and direct the manner of payment.	All interpreters must take the oath of true translation printed in this section.

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State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
11. Iowa Code Ann. § 622A.1-622A.8 (West 1991)	Parties and witnesses who cannot speak or understand English	<p>In civil, criminal, administrative proceedings these persons are entitled to an interpreter throughout the proceeding. The state will appoint and pay for the interpreter:</p> <p>For witnesses in civil proceedings;</p> <p>For persons who cannot afford an interpreter;</p> <p>For the defendant and witnesses in criminal prosecutions.</p> <p>Any court or agency may disqualify any person from serving as an interpreter.</p>	The Supreme Court will adopt rules governing the qualifications and compensation of interpreters. An administrative agency may adopt different rules.		<p>In all cases, interpreters who are appointed will receive a fee set by the court or administrative agency.</p> <p>In civil cases, the judge will tax the costs of the interpreter the same as costs.</p> <p>In administrative proceedings, the agency will provide the interpreter but require the party to pay the interpreter's fees.</p>	<p>An interpreter will take the same oath as any other witness.</p> <p>Proceedings where non-English testimony is given must be tape-recorded.</p>
12. Kansas Stat. Ann. §§ 75-4351 to 4355 (1989)	Hearing impaired, mute, and persons whose primary language is other than English.	A qualified interpreter must be appointed in any civil proceeding whether the person is plaintiff, defendant, or witness.		Relatives of the person requiring an interpreter are generally disqualified from being appointed interpreter. There must be a preliminary determination that the interpreter can communicate with and interpret accurately the statements of the person requiring an interpreter.	The court or agency will fix the interpreter's fee any arrange for payment by the court or agency, or may assess the costs against the person receiving assistance.	

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
13. Ky. Rev. Stat. Ann. §§ 30A.400-405 (Michie/Bobbs-Merrill 1985)	Any party, witness, or "other appropriate individual"	<p>In any matter before a court the judge may appoint an interpreter. Criminal arrestees or those in police custody must be provided an interpreter prior to interrogation or statement-taking. Statements may be used in court only if made in the presence of a qualified interpreter.</p>	All appointed interpreters must be qualified. The Supreme Court may issue standards for qualification.	The Administrative Office of the Courts will administer the Supreme Court's standards.	The interpreter will be paid from the state treasury.	
Ky. Rev. Stat. Ann. §§ 30A.410-435 (Michie/Bobbs-Merrill 1985)	Parties or witnesses who cannot communicate in English or have difficulty communicating or understand English due to a hearing impairment or disability.	<p>At any stage of any criminal, juvenile, or mental inquest case, or any grand jury, probation, or parole proceeding, qualified interpreters will be court appointed. Interpreters may be appointed in any civil case with the judge's permission. The judge may require the interpreter to interpret document, client-attorney meetings, depositions and oaths, and to perform other duties.</p>	Interpreters may be removed for inability to communicate with the person, or because another or not interpreter is desired. If no qualified interpreter can communicate with the person, the person may select his or her own interpreter without regard to statutory qualification.		<p>In non-civil cases, the interpreter will be paid from the state treasury according to the pay schedule of the judicial personnel system. In civil cases, the interpreter's fees will be taxed as costs against the losing party. The judge has discretion to pay the interpreter out of the state treasury if justice requires. The Supreme Court will issue a schedule of interpreter's fees for civil cases.</p>	<p>In most proceedings, except administrative, the attorney-client privilege covers the attorney, the client, and any interpreters present. The interpreter may use electronic recording, foreign language translation, or other equipment.</p>

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
14. Md. Cts. & Jud. Proc. Code Ann. § 9-114 (1989)	Parties and witnesses who are deaf or cannot understand or communicate in English	All judicial proceedings	The party or witness must apply for appointment of an interpreter. On application, the judge must appoint a qualified interpreter.	The court will maintain a directory of interpreters for the hearing impaired.	The interpreter will be paid a fee within the judge's discretion. The judge has discretion to tax the interpreter's fee as part of the costs of the case. Otherwise, the county where the proceedings began will pay the fee.	
15. Mass. Gen. Laws Ann. ch. 221C, §§ 1-7 (West 1991)	Non-English speakers	A non-English speaker, throughout a legal proceeding, has the right to a qualified interpreter, unless none is available, in which case the right is to a certified interpreter.	There are several grades of qualification: a "certified interpreter" has been trained and certified under the coordinator of interpreter services; an "interpreter" can readily interpret written and spoken language simultaneously and consecutively between English and a second language; a "qualified interpreter" is a certified interpreter who has passed the examination and also has been federally qualified by the US District Court for the District of Massachusetts.	The Coordinator of Court Interpreter Services will maintain a list of qualified and certified interpreters, and establish and conduct a training and certification program for interpreters.	Interpreters will be compensated for their services and actual expenses. The Committee for the Administration of Interpreters for the Trial Court will develop a schedule for interpreter fees.	The interpreter must take an oath of true translation.

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State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
16. Minn. Stat. §§ 546.42-44	Persons "handicapped in communication," (those with a hearing, speech or communication disorder, or with an inability to speak or comprehend English)	Civil proceedings - The judge will appoint a qualified interpreter to assist through the proceedings when a handicapped person is a litigant or witness; Agency proceedings - when a handicapped person is a witness or a "principal party in interest," the interpreter will be available for the "pertinent" proceedings.	An interpreter is qualified if he or she can: communicate readily with the handicapped person, translate the proceedings and repeat accurately the handicapped person's statements.	The judge or presiding official will fix the interpreter's fees, to be paid by the court or agency before which the proceeding occurs.	The interpreter must take an oath of true translation. The interpreter may not, without the consent of the handicapped person, disclose any otherwise privileged communications.	
Minn. R. Civ. P. 43.07		In civil cases, the judge has discretion to appoint an interpreter.			The interpreter's fee will be paid from funds provided by law, by one or more of the parties, or may be taxed as costs.	
17. Neb. Rev. Stat. §§ 25-2401-2406 (1991)	Persons who cannot communicate readily in English	In all legal proceedings, the judge will appoint an interpreter to interpret the trial and help prepare the case.	An interpreter must be readily able to communicate with the person and translate the proceedings.		The judge will fix the interpreter's fee, to be paid by the county in which the proceeding takes place.	The interpreter must take an oath of true translation.

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
18. N.J. Stat. Ann. §§ 2A:11-28 to 30 (West 1987)	Persons who do not speak English, but do speak German, Greek, Hungarian, Italian, Polish, Russian, Slavish, Spanish, or Yiddish.	Any court event			In other than first class counties, the judge (with county approval) will fix the compensation of interpreters of German, Hungarian, Italian, Polish, Russian, Slavish, Spanish, and Yiddish. Greek interpreters will have salary between \$2500 and \$1200 annually.	
N.J. Stat. Ann. § 43:10-93 to 94 (West 1991)			A "court interpreter" is a person appointed by a judge in County Court or acting as interpreter in Superior or County Court.			Second class counties have provisions for interpreter retirement.
N.J. Stat. Ann. § 43:10-18.55(B2)(c) (West 1991)						Count interpreters in second class counties are members of the county employees' retirement system.
19. N.M. Stat. Ann. § 34-1-7 (1990)	Witnesses	In all trials, the judge has discretion to appoint an interpreter or translator.				

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
N.M. Stat. Ann. §§ 38-10-1 to 10-8 (1987)	Non-English speaking persons	<p>A certified interpreter will be appointed for a non-English speaking person who is a "principal Party in interest" or a witness to interpret the proceedings. A non-certified interpreter may be used if a certified one is unavailable.</p> <p>A certified interpreter is permitted whenever a non-English speaking person is "interested" in any judicial proceeding in which an interpreter would be required.</p>	<p>A "certified interpreter" has been certified by the Administrative Office of the Courts.</p> <p>An "interpreter" has sufficient range of language skills to interpret simultaneously and consecutively between a non-English speaking person and other parties.</p>	<p>The Court Interpreters Advisory Committee assists the Administrative Office of the Courts on the development of an interpreters training and certification programs.</p> <p>The Administrative Office of the Courts will develop and administer an interpreter certification program; develop and certify exams, courses and training for interpreters; keep a list of certified interpreters; adopt a fee schedule and rules.</p>	Appointed interpreters are paid by the appointed authority at a fixed rate reflecting a current approved fee schedule established by the Administrative Office of the Courts.	<p>The interpreter must take an oath of true translation.</p> <p>A non-English speaking person may waive the right to an interpreter if the waiver is: approved by the appointing agency after the nature and effect of the waiver is explained through an interpreter, and made on the record after the person has consulted with his or her attorney.</p>
20. N.Y. Jud. Law § 386 (Consul. 1983)		The county judge and the district attorney of the county may appoint one interpreter for the county.			The interpreter will receive a salary to be fixed by the board of supervisors for the county.	The interpreter must take the constitutional oath of office.

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
N.Y. Jud. Law §§ 387-389 (Consol. 1983)		If no official interpreter is available, the court may appoint a temporary interpreter. Erie County must appoint a Polish and an Italian interpreter for criminal and grand jury matters.			The judge will fix the temporary interpreter's fee up to \$25 per day from the county's court fund. Erie interpreters receive an additional salary fixed by the Erie County Board of Supervisors and paid by the County.	
N.Y. County Law § 218(1) (Consol. 1977)		County courts			Interpreters' fees and expenses will be paid by the county of the servicing court.	
N.Y. Civ. Prac. L. & R. 3114 (Consol. 1978)	Witnesses	In civil proceedings, if the witness does not understand English, the examining party must provide a translation of all questions and answers at his or her expense.				
N.Y. Civ. Prac. L.&R. 2309, form 3 (Consol. 1978)		Civil proceedings				This section lists a form for certification or translation of oath or affidavit in a foreign language.
21. Oregon Rev. Stat. § 45.275 (i)		All trials	Set by Statute		Compensation of Interpreters in civil cases, if party is indigent, the state pays for interpreter. If parties are not indigent, they must pay for interpreter.	Interpreter fees charged to the parties as fees or fines go into a court fund used to defray court expenses.

State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
22. Rhode Island						
23. S.D. R. Evid. 19-3-7 to 3-8	Witnesses who cannot communicate in or understand English	In all trials, the judge will appoint a disinterested interpreter or translator.			The judge will fix the interpreter's fee, to be paid as a court cost.	Any person may be subpoenaed to serve as interpreter.
S.D. R. Civ. P. 15-6-43(b)		Rules applying to interpreters in civil proceedings are the same as in criminal proceedings.				
24. Texas R. Civ. P. 183						The judge may fix reasonable compensation for the interpreter. Compensation will be paid out of funds provided by laws, by one or more of the parties, or may be taxed as costs.
Tex. Local Gov't Code Ann. § 152.903 (Vernon 1988 & Sup. 1992)	Non-hearing impaired persons				Interpreters employed by district courts (for other than hearing impaired persons) receive compensation as set by the commissioner's court of the county.	

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State & Citation	Individuals Eligible for Interpreter	Court Events for which Interpreter is Provided	Interpreter Qualifications	Administering Organizations	Compensation of Interpreters	Other
25. Wash. Rev. Code Ann. §§ ____ .010-080 (West 1991)	Non-English speaking persons	Parties, compelled witnesses, and indigents in any legal proceeding, and any person in a state-initiated action, are entitled to a certified interpreter.		The Office of the Administrator for the Courts conducts a testing and certification program for language interpreters and maintains a list of certified interpreters.	The state will pay the interpreter's fee and expenses for parties, compelled witnesses, indigents, and persons in state-initiated actions. In all other cases, the person needing the interpreter will pay the fee.	No case or financial statistics available centrally.
Wash. G.R. 11	Non-English speaking and hearing impaired persons	In all judicial proceedings, the use of a qualified interpreter is authorized.				
26. W. Va. Code § 57-5-7(e) (1991)	Non-English speaking witnesses and parties	In any court proceeding, the judge has discretion to appoint an interpreter.				
Wis. Stat. § 814.67 (1991)		All trials			Interpreters are paid \$10 per half day before municipal judges, arbitrators, officers, boards and committees; attendance before any other court pays \$35 per half day.	

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Appendix 5

Report of the Criminal Justice Policy Group by Fairfax County

**REPORT ON INTERPRETERS
IN THE COURTS OF FAIRFAX COUNTY**

prepared by the

SUBCOMMITTEE ON INTERPRETERS IN THE COURT

A Subcommittee of the

**CRIMINAL JUSTICE POLICY GROUP
OF FAIRFAX COUNTY**

November, 1994

MEMBERS OF THE CRIMINAL JUSTICE POLICY GROUP

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Richard A. King, Deputy County Executive for Public Safety
Verdia L. Haywood, Deputy County Executive for Human Services
The Honorable F. Bruce Bach, Judge, Circuit Court
The Honorable Conrad Waters, Chief Judge, General District Court
The Honorable Kathleen MacKay, Judge, Juvenile and Domestic Relations District Court
The Honorable Robert F. Horan, Commonwealth's Attorney
The Honorable John Frey, Clerk of the Circuit Court
Colonel Michael Young, Chief of Police
R. Dean Kidwell, Public Defender
The Honorable Karen Decker, Chief Magistrate
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I. EXECUTIVE SUMMARY

The Subcommittee on Interpreters in the Court, a subcommittee of the Criminal Justice Policy Group (CJPG), has undertaken the following activities since its formation in January, 1994:

- A review of the practices in all three courts for employing and paying interpreters;
- A visit to the Administrative Office of the Courts of New Jersey, to learn about New Jersey's program for testing interpreters;
- Administration of New Jersey's interpreter testing protocols for the interpreters who regularly work in the Fairfax courts.

As a result of these activities, the guidelines for employing and paying interpreters in General District Court have been modified, and both the Circuit and Juvenile Courts have adopted similar guidelines. In addition, the Subcommittee makes the following recommendations to CJPG:

Recommendation 1.

The Criminal Justice Policy Group should recommend that the Supreme Court of Virginia set up a program for the testing and certification of Spanish interpreters in the courts. If deemed appropriate, the Supreme Court could also address testing of interpreters in other languages commonly used in the courts.

Recommendation 2.

Pending action by the Supreme Court, the Criminal Justice Policy Group should recommend that the three chief judges of the courts in Fairfax County authorize the development of a system for the testing and certification of Spanish interpreters to serve in the Fairfax courts.

Recommendation 3.

The Criminal Justice Policy Group should recommend that the Supreme Court of Virginia establish a code of practices and ethics for interpreters serving the courts of the Commonwealth.

Recommendation 4.

Pending action by the Supreme Court, the Criminal Justice Policy Group should recommend that the chief judges of the three courts in Fairfax authorize the development and presentation of a training seminar on accepted practices and professional ethics for interpreters who work in the courts.

Recommendation 5.

The Criminal Justice Policy Group should recommend that the Supreme Court support the hiring of interpreters as court employees for the most common languages in courts where this approach is justified by current caseload and would cause no additional costs to the Commonwealth.

Recommendation 6.

The Criminal Justice Policy Group should recommend that the Supreme Court establish rates of pay for Spanish interpreters and for the other most common languages used in the courts of the Commonwealth. Such rates should be based on market conditions in the different areas of Virginia.

Recommendation 7.

The Criminal Justice Policy Group should recommend to the Joint Legislative Subcommittee Studying the Needs of the Foreign-Born in the Commonwealth and to the Supreme Court that foreign-language interpreters be paid for by the State in certain civil cases. This should be accomplished by amending Section 19.2-164 of the Code of Virginia to require the provision of interpreter services not only in criminal cases, but also in civil cases meeting the following criteria:

- **Any indigent party or witness is unable to speak English;**
- **Serious deprivation may result from the inability to understand the court proceeding, such as the loss of housing or the loss of parental rights.**

II. BACKGROUND

This report is presented by a Subcommittee of the Criminal Justice Policy Group (CJPG) on Interpreters in the Courts. CJPG was created in 1991 by the Fairfax County Board of Supervisors as an advisory body to review and make recommendations concerning policy and practice throughout the County's Criminal Justice System. CJPG's membership consists of the heads of all the criminal justice agencies in the County, including County and State agencies and elected officials. CJPG is chaired by Carl R. Peed, Fairfax County Sheriff.

Anyone who has attended a criminal trial knows that critical decisions can depend on the precise meaning and understanding of words and phrases, and clear observation of the way testimony is presented – whether it is given confidently and articulately, or hesitantly and ineffectually. It is vitally important to make sure that interpretation reflects accurately both the language and the manner of testimony presented so that meaning and emphasis are not lost. Neither length of service nor educational credits presented can guarantee that a given individual is a highly skilled interpreter.

Similarly, being able to speak two languages does not mean that a person is qualified to be an interpreter – specific skills of interpretation are required. These include:

- ability to interpret statements verbatim;
- ability to provide continuous interpretation for a non-English speaking defendant;
- ability to interpret English questions put by counsel into another language, and to interpret the answers to those questions into English for the court;
- ability to interpret documents;
- ability to interpret slang and idiomatic usage in both languages;
- ability to understand a variety of meanings for words in both languages; and
- ability to interpret legal phrases and explain court processes.

The concern with how, when, and where the Fairfax County Courts use interpreters, and how interpreters are managed and reimbursed by the Courts, has grown gradually over the last few years and has been influenced by other studies and reports which did not initially intend to focus on the interpreter issue. In response to these studies, however, work has been undertaken which has focused directly on interpreters. As a result of these studies a number of changes have been and are being recommended in how the local Fairfax Courts manage their use of interpreter services, and how the Supreme Court of Virginia oversees court use of interpreters. The influential studies include:

- *Report on Access to the Criminal Justice System by Language and Cultural Minorities;*
- The Town Meetings on the Fairness of the Criminal Justice System;
- The work of the State's Joint Legislative Subcommittee on the Needs of the Foreign Born, Chair. Karen L. Damer, Delegate, Arlington.

A. REPORT ON ACCESS TO THE CRIMINAL JUSTICE SYSTEM BY LANGUAGE AND CULTURAL MINORITIES

The *Report on Access to the Criminal Justice System by Language and Cultural Minorities* was submitted to CJPG in March, 1993. The subcommittee assigned to study this issue was formed in response to concerns expressed by the Hispanic community with the way the criminal justice system responded to certain cases involving Hispanics, and to a request from the Honorable Richard J. Jamborsky, Chief Judge of the Circuit Court, for a combined effort by all the criminal justice agencies in looking at this issue. The subcommittee considered the needs of all language and cultural minorities in its review of the criminal justice process. The report and its recommendations were accepted and approved by CJPG; the policy issues expressed in the report were approved by the Fairfax County Board of Supervisors.

One of the areas of concern identified by this subcommittee was the need for improved interpreter services in the courts. The Subcommittee found that at that time there were no State requirements or certification for interpreters hired by the courts, and no monitoring of the conduct or performance of interpreters. There was also no fee schedule for the payment of interpreters. Among the recommendations proposed were the following:

1. Recommendation for Certification of Interpreters for the Courts

The Subcommittee recommended that the Criminal Justice Policy Group urge the Supreme Court of Virginia to set up a uniform code of practice and ethics for interpreters serving the courts, including standards for certification of interpreters and procedures for quality assurance. The subcommittee suggested that if the Supreme Court failed to act on this recommendation, the Fairfax Courts should establish and adopt their own standards.

2. Recommendation for a Modified Payment System

The Subcommittee recommended that CJPG urge the Supreme Court of Virginia to consider changing the payment system for interpreters, in order to allow for the hiring of interpreters as government or contract employees for the most common languages in courts, where services would thereby be improved at no additional cost to the Commonwealth.

3. Recommendation for Coordination Between the Courts

The Subcommittee recommended that the Circuit and General District Courts cooperate in the development of a coordinated Office of Interpreter Services which could maximize the utility of interpreters hired by both courts.

4. Recommendation for Interpreters in Civil Cases

Among the policy issues raised by the subcommittee was concern that the State's statutes which authorize payment of interpreters in criminal cases but not in civil cases could cause severe hardship and unfairness for language minorities, particularly in such areas as child abuse, child custody, and

landlord/tenant cases. It was recommended that these statutes be changed to authorize payment of interpreters in civil cases.

B. TOWN MEETINGS ON THE FAIRNESS OF THE CRIMINAL JUSTICE SYSTEM

During the period from November 1992 to April 1993, CJPG sponsored a number of Town Meetings on the Fairness of the Criminal Justice System, whose aim was to hear from the various minority populations of the County whether or not they perceived the criminal justice system to be fair. One of the issues raised by minorities at the Town Meetings concerned the need for improved interpreter services in the courts.

Among the recommendations from the Town Meetings were included recommendations for accreditation of interpreters by the State, the development of ways to hire interpreters full-time to serve the courts, and the improvement of coordination between the courts in the provision of interpreter services.

C. THE JOINT LEGISLATIVE SUBCOMMITTEE STUDYING THE NEEDS OF THE FOREIGN-BORN IN THE COMMONWEALTH

Shortly after the completion of the Access Report, members of the subcommittee became interested in the work of the General Assembly's Joint Legislative Subcommittee Studying the Needs of the Foreign-Born in the Commonwealth (JLS). JLS was authorized by House Joint Resolution Number 97 in 1992, and continued by House Joint Resolution Number 660 in 1993. After bringing the interpreter issues to the attention of JLS at a JLS meeting in Richmond in July 1993, members of the subcommittee worked with CJPG and its Chair, Sheriff Carl R. Peed, to prepare a luncheon briefing for JLS on September 27, 1993 as part of a visit made by JLS to Northern Virginia to look at various needs of language minorities.

The briefing prepared for JLS included the following issues:

1. Recommendation for Certification of Court Interpreters

The briefing paper asked JLS to request that the Supreme Court of Virginia begin immediately to develop a program for the certification of interpreters for the courts, at least for Spanish interpreters. This program would ensure that interpreters are competent in both Spanish and English, and that they understand court processes and legal terms and the requirements for interpreting in the courtroom. It was suggested that Virginia could model this program on existing state programs such as that of the state of New Jersey, and that one or more of the Virginia colleges and universities might serve as partners with the State in training and certifying interpreters.

2. Recommendation for Modified Payment System for Court Interpreters

The briefing paper recommended that the Supreme Court of Virginia be requested to develop an alternative process for the payment of interpreters, available to courts with documented need for extensive interpreter services, to hire interpreters as court or contract employees full- or part-time, or to contract

with interpreter firms through competitive bidding for interpreter services.

The paper observed that the present Supreme Court system of reimbursing interpreters for services on a case-by-case basis is inefficient, costly, and unregulated, especially for such languages as Spanish where the need of the courts for interpreter services is constant. It was suggested that the Supreme Court establish a committee to:

- Define threshold caseloads or service demands for the adoption of alternate payment methods;
- Develop a basic contract for services for use by the courts in acquiring interpreter services on a competitive basis; and
- Determine which courts could hire interpreters as full-time regular employees.

3. Improving the Availability of Volunteer Interpreters

The briefing paper urged the State to authorize a position of Volunteer Coordinator serving the courts in large urban areas of the State. This position would enable the courts to organize volunteer services which might provide translation and interpretation services in non-courtroom situations.

4. Authorization of Payment of Interpreters in Certain Civil Cases

The briefing paper also requested the General Assembly to modify the Code of Virginia, at § 19.2-164, to require the provision of interpreter services not only in criminal cases, but also in civil cases where:

- any indigent party or witness is unable to speak English, and
- serious deprivation may result from the inability to understand the court proceeding, such as the loss of housing or of parental rights.

At a subsequent meeting of JLS in Richmond, the Honorable Robert L. Calhoun, Senator, a member of JLS, suggested that Fairfax County should prepare a specific proposal on the payment issue for consideration by the Supreme Court. The proposal should be approved by the chief judges of Northern Virginia, and a copy should be forwarded to JLS. The present Subcommittee on Interpreters was formed by CJPG to review the interpreter issues and prepare recommendations.

III. ISSUES CONCERNING LOCAL MANAGEMENT OF INTERPRETERS BY THE COURTS

A. NEW GUIDELINES FOR SPANISH INTERPRETERS

1. Applying Similar Guidelines In All the Fairfax Courts Where Applicable

A major focus of the work of the Subcommittee on Interpreters involved the preparation of guidelines for the payment and availability of Spanish interpreters for the Circuit Court and the Juvenile and Domestic Relations District Court. The General District Court had adopted guidelines for Spanish interpreters in 1992 and revised them in 1994. The Subcommittee wanted to apply similar guidelines in all three Fairfax courts to the extent possible, but recognized the necessity for some differences, because of some different operating procedures among the Courts.

Spanish interpreters were the major focus of this effort because Spanish is by far the most common language other than English which is required in the three local courts. In the first six months of 1994, 85 percent of the money billed to the State for interpreter services in Circuit Court was for Spanish interpreters.

2. General District Court Guidelines

The Guidelines for Spanish Interpreters already adopted by General District Court included, among other issues, the following items:

- a. A maximum rate of \$300 per day for a Spanish interpreter;
- b. A half-day rate of \$210 for the period from 8:30 a.m. through 1:00 p.m. or 9:30 p.m. through 1:30 p.m.
- c. A minimum billing period of two hours per day at the rate of \$70 per hour;
- d. Billing for attorney-client interviews or jail visits after hours, with prior approval, at the rate of \$70 per hour; and
- e. The requirement that interpreters sign in and out and submit a signed Certificate of Interpretation at the conclusion of services each day.

Minor modifications were made to the General District Court Guidelines during the Subcommittee discussions. A copy of these guidelines is provided in Attachment 1.

3. Development of Guidelines for Circuit Court and Juvenile Court

Using the General District Court guidelines as a model, the Subcommittee resolved a number of issues and developed guidelines first for Circuit Court, and then for Juvenile Court, maintaining consistency wherever possible. A copy of these guidelines is provided in Attachments 2 and 3.

a. Rates

The first issue resolved by the Subcommittee was that no Spanish interpreters would be paid more than \$300 for their work in any one given day.

This had been the ceiling adopted by General District Court; fairness required the three courts to apply the same ceiling. Juvenile Court adopted a half-day maximum rate of \$210, for interpreters who worked throughout either the morning or afternoon four-hour session. For lesser periods of time, the hourly rate of \$70 was continued.

It should be noted that the federal courts allow a maximum of \$250 to be earned by an interpreter in one day. The maximum daily rate of pay for interpreters should be the subject of further study to determine an amount which is fair to the interpreters as well as reasonable for the courts.

b. Hours

The work day to which the \$300 ceiling will be applied was deemed to be 7.5 hours in Circuit Court and 8.0 hours in Juvenile Court. Interpreters who work more than these hours will be paid at an hourly rate for the extended hours. The reasons for the different hours, with no reference to specific start and end times, are as follows:

- The County work day, from 8:00 a.m. to 4:30 p.m. with an hour for lunch and no official breaks, is counted as 7.5 hours. Thus, 7.5 hours is a reasonable work period to expect in Circuit Court.
- While court generally begins at 10 a.m. in Circuit Court, when a trial continues after the first day it may begin much earlier. Setting the guidelines to reflect work between specified hours would therefore be inappropriate.
- In Juvenile Court, there are two four-hour sessions of court daily, one in the morning and one in the afternoon. The Committee did not believe it would be appropriate to pay an interpreter additional pay within the limits of these two sessions. Any hours over these eight hours would receive additional pay.

4. Minimum Hours Billed

Most interpreters bill the courts for a two-hour minimum period when their services are required for less than two hours. The subcommittee believes this practice is fair. However, the committee does not believe it is appropriate for an interpreter to work a few minutes in one court, receive a two hour minimum, and then go to work in another court for another two hour minimum. Consequently a rule has been added to the guidelines allowing only one two hour minimum per day, covering all three courts, during normal working hours. If an interpreter is required to return to the court, Adult Detention Center, or attorney's office during the evening to interpret at an attorney conference or other event, a second two-hour minimum will be allowed.

5. Submitting Bills to the Court

To track their billable hours, interpreters in the Circuit and General District courts fill out a Certificate of Interpretation. A copy of this form is included as Attachment 4. The form shows the date and hours; the type of hearing; the language used; the case number, name, and code reference; the person interpreted for (if other than the defendant), and vendor information.

The Certificate of Interpretation must be signed by the judge or court clerk, for interpretation in the courtroom, or by counsel or specified staff, for interpretation outside the courtroom. It must also be signed by the interpreter who did the interpretation. Some interpreters who own or are part of vendor firms providing interpreter services subcontract their work to subordinates; while they formerly signed the forms themselves as payees, all three courts now require that the interpreter who actually did the work must sign the form.

The guidelines also address prompt submission of bills. In the past, bills were sometimes submitted long after a case was heard in court. This practice made auditing and verification more difficult. Circuit and General District Courts now require that the Certificates of Interpretation be submitted within one day of the conclusion of a hearing or interview. Actual bills may be submitted at a later time, as when a vendor firm submits bills covering a number of certificates.

For Juvenile Court, which does not use the Certificate for billing at this time, interpreter bills must be submitted within ten days of the hearing and must contain similar information to that on the Certificate. Juvenile Court expects to adopt the Certificate of Interpretation for reporting and billing for interpreter services in the near future.

6. Availability While Working at the Court

All interpreters for the three courts must sign in and out daily and for lunch breaks. The sign-in log for each court will be maintained as a daily log to support billing audits and provide data on the frequency of demand for interpreter services. (A copy of a sign-in log is included as Attachment 5.)

Throughout the period for which an interpreter is billing the court, the interpreter must be available to the court. If the interpreter finishes a case within a two-hour period of minimum billing, the interpreter is required to report to the assignment clerk of the relevant court for further assignment. If the interpreter is not needed at that point, the interpreter will be released for the day.

In the past, interpreters who worked on a preliminary hearing in General District Court would assume responsibility for the case and follow it through all hearings in Circuit Court. This meant that the General District Court did not always know where its interpreters were and when they would be available. As a result of Subcommittee discussion of this issue, it has been determined that interpreters will no longer follow cases to Circuit Court. Attorneys will be responsible for notifying the criminal docket clerk in Circuit Court that an interpreter is needed, and Circuit Court will hire interpreters from its own roster on a rotating basis.

Once hired, the interpreter will cover all the hearings in that case in Circuit Court. Interpreters are barred from working for or charging any other court or client during the time they are logged in at one court. They must remain available to the court where they have logged in.

7. Interpreter Fatigue

The Subcommittee learned that some courts routinely use two interpreters for long cases, in order to prevent fatigue. Robert Joe Lee, Chief of Interpreter Services in New Jersey, stated that after one hour, even an excellent interpreter begins to omit information. Lee recommends that for consecutive (witness) interpreting, interpreters should trade off every 45 minutes; for simultaneous (continuous) translating, two interpreters should be scheduled for any hearing lasting over 30 minutes. According to Patricia Michelson, the former chief court interpreter for the federal courts in the Southern District of New York, a United Nations study found that after 30-40 minutes of simultaneous interpreting, an interpreter would lose accuracy. Interpreters in federal court switch off every 30 minutes in simultaneous translating. The guidelines adopted in Fairfax do not yet address the issue of interpreter fatigue; however, Circuit Court is now using two interpreters on occasion for cases expected to last for a long period of time. This issue is being handled at this time on a case-by-case basis.

8. Adoption of the Guidelines

Before the guidelines were adopted, they were submitted to the Spanish interpreters who regularly worked in the courts for review and comment. Court administrators called the interpreters to a meeting in July, where they explained the purpose of the guidelines and the details of individual requirements. After discussion with the interpreters, one area of the guidelines was modified: the guidelines had stated that a two-hour minimum billing period would be allowed only for services provided in the court. The change permitted a minimum billing period for out-of-court services, since interpreters reported that they often travelled to the jail or the attorney's office to provide interpreter services.

Once the guidelines were adopted, the interpreters were required to sign a statement acknowledging that they had read and understood the guidelines and would abide by them, and also acknowledging that the penalty for failure to follow the guidelines would be termination.

B. MODIFIED FORMS AND BILLING PRACTICES

1. Using the Certificate of Interpretation as the Bill

In examining procedures, the Subcommittee discovered that it would cut down on paperwork if the Circuit Court were permitted by the Supreme Court to submit the Certificate of Interpretation to the State as a bill for interpreter services. They would not then need to submit copies of the bills turned in to the court by interpreters and vendors. This request required that some information be added to the Certificate. The Supreme Court agreed to this practice and the Certificate was redesigned to meet the needs of both the Court and the administrators at

the Supreme Court. The Certificate is also being printed in multiple carbon forms so that the Court does not have to make copies of it to submit to the Supreme Court.

2. Sharing and Comparing Information Between the Courts

The courts are in the process of developing procedures for a periodic mutual review of interpreter services and billing. This will support the prohibition on billing by interpreters for more than one two-hour minimum during the normal working day, and will facilitate consistency of practice among the courts.

IV. TESTING OF SPANISH INTERPRETERS

A. TRIAL COURT PERFORMANCE STANDARDS

The issue of testing interpreters was first raised in connection with a project to develop Trial Court Performance Standards (TCPS). This project is being coordinated by the National Center for State Courts; the Fairfax County Circuit Court is one of thirteen trial courts nationwide serving as test sites.

1. Trial Court Performance Standards Project

In the TCPS Project, a total of 22 standards of optimal trial court performance have been defined, covering five performance areas:

- access to justice;
- expedition and timeliness;
- equality, fairness, and integrity;
- independence and accountability; and
- public trust and confidence.

The 22 standards are supported by 75 test measures which evaluate all aspects of a court's performance. These measures give trial courts the opportunity for self-evaluation and self-improvement. A grant provided by the State Justice Institute has enabled the Fairfax Circuit Court to work with the Supreme Court of Virginia in conducting tests on all the measures. Information about the test measures is being provided to the national commission which developed the standards, to assist in the modification and improvement of the program before trial courts throughout the country are urged to adopt it.

2. A Standard for Interpreter Quality

Measure 1.3.3 of TCPS measures the quality of the interpreters serving a court. To carry out a test for this measure, the local coordinator for the project recommended administering to local interpreters the simultaneous portion of the screening test for court interpreters used by the Administrative Office of the Courts in New Jersey.

B. NEW JERSEY SCREENING TEST FOR INTERPRETERS

1. The New Jersey Program for Interpreters in the Courts

New Jersey is one of very few states which has any kind of authorized program for the testing and supervision of interpreters serving the criminal courts. The urban area of the state which includes Newark has a large Hispanic population, equalling one-third of the total population. To ensure that interpreters hired are capable of interpreting accurately, the Court screens all applicants using a simultaneous interpreting test.

It should be noted that all three kinds of interpretation – sight, simultaneous (continuous), and consecutive (witness) – can be involved in a trial, and interpreters who are expert at one kind are not necessarily also expert in another.

Persons who score sufficiently high on this test may return to take the two additional sections of the test, involving sight translation and consecutive translation, plus a subjective evaluation by the test administrators scoring the person on English pronunciation and fluency, Spanish pronunciation and fluency, and professionalism. Persons who fail these tests or score in a critical range between failing and acceptable are given suggestions as to the nature of the problems the tests indicate, so that they can work on these problem areas and try the test again at a later time.

In order to pass the New Jersey test, a candidate must achieve a score of 70 percent or higher in each of the test sections, or achieve a score of 70 percent or higher in consecutive and simultaneous translation plus a score of 60 percent or higher in sight translation with an average for the entire test of 70 percent or higher.

A candidate who scores in the critical range is considered to be in a kind of trainee status – that is, showing potential, but not yet performing at a minimum level of proficiency. Such a person might be permitted to interpret on a probationary basis, under supervision. This range includes candidates who do not pass but who:

- Score 60 percent or higher in the objective portion as a whole (all three parts combined);
- Score 50 percent or more on each of the three parts; and
- Receive an evaluation of "Minimally Acceptable" or better on all three variables of the subjective assessment.

Any other outcome of the test is considered failure. Anyone who scores 49 percent or lower on the simultaneous portion of the test does not qualify to take the rest of the test. Anyone who passes one section can retain that passing grade and does not have to retake that portion of the test.

2. Seminar on the New Jersey Test

The Administrative Office of the Courts in New Jersey will permit other jurisdictions to use its testing instruments, but requires that court personnel who will be doing this attend a day-long seminar regarding the philosophy and administration of the test. New Jersey does not charge for this service. Several court personnel representing all three of the Fairfax courts attended this seminar in March, 1994. The Fairfax Circuit Court was then given permission to use the New Jersey test instruments.

C. FIRST TEST EFFORT

The local coordinator for TCPS arranged to give the simultaneous portion of the New Jersey test to Fairfax interpreters. Two Spanish-language experts were hired to administer the test; they were paid using TCPS grant funds. The eleven interpreters who regularly work in one of the three Fairfax courts were contacted; they were told the test was required, but no sanctions were established for those who failed to take

it. On the day of the test, one interpreter was out of the country; one the court had been unable to contact concerning the final details; and eight others failed to show up. Only one interpreter took the test. In the remaining time, the experts met with the judges and court staff.

D. SECOND TEST EFFORT

After considering this first test experience, the Chief Judges of all three courts agreed to schedule another test, this time using all three parts of the New Jersey test. They further stated that any interpreter who wanted to work in the Fairfax courts would be required to take this test, including those who work as subcontractors filling in when one of the regular interpreters is unavailable. **A waiver was offered only to interpreters with proof of certification as interpreters for the federal courts.**

Two days of testing were scheduled in late September. Administration of the test to one person required about 40 minutes, with additional time for review and scoring. Twelve interpreters were scheduled to take the test; three canceled at the last minute.

No standards had been adopted by the Fairfax courts as to what a passing grade on the test would be for Fairfax interpreters; however, each of the interpreters tested was mailed a copy of their own results with an explanation of how New Jersey grades the test. By the New Jersey standards, not all of the Fairfax interpreters would have been in the passing range.

Work is still ongoing in the Fairfax Courts concerning the adoption of local policies which would require testing and training of the Spanish interpreters serving the courts. The screening tests taken by the Spanish interpreters are presently undergoing a more detailed computer analysis by the Administrative Office of the courts in New Jersey, which is providing this assistance at no cost to Fairfax County. The analysis will enable staff to give information to the interpreters who did not achieve a score considered passing by New Jersey standards as to the specific areas in which they need improvement.

V. ISSUES AND RECOMMENDATIONS CONCERNING SUPERVISION OF INTERPRETER SERVICES IN THE COURTS BY THE SUPREME COURT OF VIRGINIA

Section 19.2-164 of the Code of Virginia states that foreign language interpreters in criminal cases shall be paid by the State and that such fees shall not be assessed as part of the court costs. The Subcommittee believes that the findings of its research in Fairfax County, both in the payment of interpreters and in the testing in interpreters, indicate that the Supreme Court should take a stronger oversight role in the provision of interpreters in the courts, to ensure that interpreters are competent and that they are paid at a fair and reasonable rate.

The National Center for State Courts has been conducting a study of the issue of interpreters in the courts (not yet released) and is reported to be considering development of a program of testing and certification which would be available to states or localities.

The Subcommittee therefore makes the following recommendations:

A. CERTIFICATION OF SPANISH INTERPRETERS

Recommendation 1.

The Criminal Justice Policy Group should recommend that the Supreme Court of Virginia adopt a program for the testing and certification of Spanish interpreters in the courts. If deemed appropriate, the Supreme Court could also address testing of interpreters in other languages commonly used in the courts.

The Supreme Court could consider adopting the program used by the Administrative Office of the Courts for the State of New Jersey or one like it. In this program, persons interested in serving as interpreters in the courts are tested, and if they fail to meet the standards established for the courts, are recommended to various private programs of training to address the areas of inadequate performance identified by the test. The New Jersey test has been successfully used in Fairfax County and could be replicated by the Supreme Court. While a program of testing and certification based on the New Jersey model would have some administrative costs, it would involve no development costs, since New Jersey is willing to share the tests with jurisdictions who are willing to attend its free training seminar.

Recommendation 2.

Pending action by the Supreme Court, the Criminal Justice Policy Group should recommend that the three chief judges of the courts in Fairfax County authorize the development of a system for the testing and certification of Spanish interpreters to serve in the Fairfax courts.

The test scores of interpreters in the Fairfax courts suggest that it is appropriate and timely for the courts to take steps to set standards defining what is an acceptable level of proficiency and what requirements will be placed on those who do not achieve that level. The Subcommittee believes that it would be reasonable to charge a testing fee to cover the cost of language specialists who conduct the tests. The Subcommittee could be charged with the development of a proposal on testing and certification for consideration by the Chief Judges.

Recommendation 3.

The Criminal Justice Policy Group should recommend that the Supreme Court of Virginia establish a code of practice and ethics for interpreters serving the courts of the Commonwealth.

There are certain accepted professional practices for court interpreters. These include such things as the following:

- Interpretation must be verbatim, rather than a summary of what was said;
- Interpreters must not add to or embellish what has been said;
- Interpreters must be impartial and unbiased, and refrain from conduct which would give the appearance of bias;
- Interpreters must protect the confidentiality of privileged and confidential information;
- Interpreters must not give legal advice or express personal opinions while serving as interpreters.

The National Center for State Courts has developed a Model Code of Professional Responsibilities for Interpreters in the Judiciary, which includes the above responsibilities and others; this model code could be adopted by the Supreme Court or modified as appropriate. (A copy of the Model Code is included as Attachment 6.)

Recommendation 4.

Pending action by the Supreme Court, the Criminal Justice Policy Group should recommend that the chief judges of the three courts in Fairfax authorize the development and presentation of a training seminar on accepted practices and professional ethics for interpreters who work in the courts.

The Subcommittee on Interpreters could be charged with the development of this training seminar. It is possible that such a seminar could be developed jointly with the other Northern Virginia jurisdictions. If such a training program is developed, all interpreters working in the Fairfax Courts should be requested to attend the seminar, to ensure that they are aware of and understand the accepted professional practices for interpreters, and that they adhere to these practices.

B. ESTABLISHMENT OF ALTERNATE MEANS OF HIRING AND PAY RATES FOR INTERPRETERS, WITH NORTHERN VIRGINIA/URBAN ADJUSTMENT

In jurisdictions where the demand for Spanish interpreters is consistent and daily, the State may discover that it can cut its costs by hiring the interpreters as staff rather than paying them as independent contractors. Provision would be needed for a reasonable pay differential in high-cost jurisdictions. In the General District Court of Fairfax County, a minimum of two Spanish interpreters is required every day; often three are needed. Out-of-court and after-hours work could still be provided on an hourly basis. If the interpreters were hired as court staff, there would be additional costs from paying for benefits, but reduced costs in hourly wages and the preparation and administration of daily billing processes.

If the interpreters were full time employees of the court, they would be available for translation of documents, preparation of materials for public information, and other kinds of translation services, such as assisting the Clerk's office, when not needed in the courtroom. In addition, they could be supervised and paid as regular employees of the court, without having to submit daily Certificates for reimbursement, and without the Court's having to review, copy, file, and transmit these Certificates to the Supreme Court for further review, copying, and filing. It is the expectation of the Subcommittee that with three full-time Spanish interpreters, most of the Spanish interpreter services needed during the regular work day in both General District and Circuit Court could be met, with no need to hire hourly interpreters except for the occasional lengthy Circuit Court Case. This is the way interpreter services are handled in the New Jersey courts.

Furthermore, both the General District and Juvenile Courts could be sure an interpreter would be available when a case needed interpreter services and had given no prior notice of the need – a frequent occurrence in these two courts, and a particular problem in Juvenile Court, where at first hearings and intake hearings; there has been no prior warning of an interpreter need. Instead of rescheduling the case to a time when an interpreter would be available, at great cost to both the parties and the court, the case could go forward as scheduled.

The Supreme Court should determine the number of daytime hours of Spanish interpreter services accrued by a court that would trigger authority to hire an interpreter as a full time court staff member. As will be shown below, it appears that once a court is paying for regular daytime services of a Spanish interpreter for 5 to 6 hours a day, it could get more services for less money by hiring the interpreter full time. If services are needed simultaneously in several courtrooms, several

interpreters hired as half-time court employees would still provide more hours of service at less cost than the present method of payment.

Recommendation 5.

The Criminal Justice Policy Group should recommend that the Supreme Court support the hiring of interpreters as court employees for the most common languages in courts where this approach is justified by current caseload and would cause no additional costs to the Commonwealth.

a. Interpreters as Employees in General District Court

At the present time, the General District Court in Fairfax is likely to use the following Spanish interpreter resources on a daily basis:

1 Interpreter for 7 hours	\$300.
1 Interpreters for 4 hours @ \$210 for half-day	\$210.
1 Interpreter for 2 hours @ \$70 per hour	\$140.
Total per day for 13 hours of work:	\$650

Note: If these interpreters were paid at the rate allowed by the Supreme Court of \$70 or more per hour, instead of being limited by Fairfax County under local guidelines, the total daily cost would come to \$910.

There are additional costs for interpreters in other languages and interpreter services needed outside of normal working hours. It is anticipated that these interpreters will continue to be paid at an hourly rate and will cost the same amount as at present.

For Spanish interpreters, as a reasonable alternative, three interpreters could be hired as full time employees of the Court, available for 8 hours of work per day. One of these should be hired as a Senior Interpreter, at approximately the same level as Fairfax County's Management Analyst III, or an S-26 classification, at \$19.95 per hour.

Twenty-five percent should be added for benefits. Two additional interpreters should be hired at the Management Analyst II level, or an S-23 classification, at \$17.30 per hour plus benefits.

1 Senior Interpreter, S 26		
8 hours at \$19.95	=	\$159.60
Benefits at 25 %	=	39.90
2 Interpreters II, S-23		
2 X 8 hours at \$17.30	=	276.80
Benefits at 25 %	=	69.20
1-Day Total, 24 hours of work	=	\$545.50

Even if all three interpreters were paid a salary of \$20 per hour, the total daily cost for 24 hours of work, with the addition of benefits estimated at 25

percent, would be about \$600, or less than the amount now being paid for 13 hours of work. (Twenty-four hours of work at the allowable rate of \$70 per hour, paid by the Supreme Court, would be \$1,680.) At the end of 13 years, if all interpreters stayed in their positions and received normal step increases, the total cost per day for 24 hours of work would be \$806.10

b. Interpreters as Employees in Juvenile Court

Juvenile Court now schedules criminal cases every weekday morning from 9:00 until 11:00 a.m. in three courtrooms, and from 9:00 a.m. to 12:00 or 12:30 in two courtrooms, plus a judge in chambers. At this time, when the court discovers that an interpreter is needed, an interpreter is called and the case is continued and rescheduled to a time when the interpreter can be present. Since juvenile cases often involve children and families in crisis, this delay can be painful and damaging. Often without an interpreter present, staff cannot even determine what witnesses to call or what other resources will be needed, so that final adjudication of a case is even more delayed.

The court estimates that it regularly needs two interpreters each day between the hours of 9:00 and 12:00 a.m. to cover routine needs for Spanish interpreters. At the allowed cost of \$210 for one half day's work, routine needs for Spanish interpreters cost the court \$420 per day. If these interpreters were hired as court employees, the costs are estimated as follows:

1 Senior Interpreter		
4 hours @ \$19.95 per hour	=	\$79.80
1 Interpreter II		
4 hours @ \$17.30 per hour	=	69.20
Total, 2 Interpreters	=	\$149.00
Benefits, @ 25 %	=	\$37.25
Daily total	=	\$186.25

Occasional costs for cases lasting all day, and requiring the hiring of interpreters at the present daily maximum of \$300, or interpreters in other languages at hourly rates, would continue.

Recommendation 6.

The Criminal Justice Policy Group should recommend that the Supreme Court establish rates of pay for Spanish interpreters and for the other most common languages used in the courts of the Commonwealth. Such rates should be based on market conditions in the different areas of Virginia.

The Supreme Court should undertake a study to determine fair and equitable rates of pay for interpreters in the most commonly used languages. The Supreme Court should incorporate into their system guidelines for daily minimums and ceilings.

C. PROVIDING INTERPRETERS IN CIVIL CASES

Recommendation 7.

The Criminal Justice Policy Group should recommend to the Joint Legislative Subcommittee Studying the Needs of the Foreign-Born in the Commonwealth and to the Supreme Court that foreign-language interpreters be paid for by the State in certain civil cases. This should be accomplished by amending Section 19.2-164 of the Code of Virginia to require the provision of interpreter services not only in criminal cases, but also in civil cases meeting the following criteria:

- ***Any witness or indigent party is unable to speak English;***
- ***Serious deprivation may result from the inability to understand the court proceeding, such as the loss of housing or the loss of parental rights.***

A volunteer task force organized by the Bar Association and supported by a grant from the American Bar Association has been providing interpreter services to the Juvenile Court in Fairfax, because of the high demand for interpreter services there. These volunteer interpreters are not permitted to provide interpreter services in the courtrooms, however. They help people find their courtrooms, or interpret for lawyers interviewing their clients in the halls. The significant help provided by this volunteer corps only underlines the great need for interpreter services in the courtroom in many civil cases, where interpreters are not provided under State law. In family cases such as custody disputes, termination of parental rights, and other matters which are civil issues, persons who do not speak English and cannot afford to hire an interpreter may suffer serious harm and deprivation of rights because they do not understand the proceedings. A similar kind of need is experienced in the General District Court in Landlord-Tenant cases.

At the present time, parties to these cases must often bring a relative or neighbor to translate for them in civil hearings. This practice can present a number of problems. When the issue is a family dispute or problem, the privacy rights of a non-English speaking person may be contravened by having to bring in a neighbor or family member – sometimes even a child – to help the person present arguments and understand the proceedings. In addition, these volunteers often do not understand the role of the interpreter and respond in unprofessional ways. They have been known to report what they think a witness should have said, rather than what was actually said, and even more frequently, to be themselves not really competent to handle the two languages.

The Subcommittee believes that the denial of interpreter resources in these civil cases places a demand for even greater resources on other judicial and social agencies, which must deal with persons evicted from their homes, or families in turmoil because family issues have been inadequately resolved by the court. It is the experience of the Juvenile Court that such cases often are not satisfactorily resolved, and consequently come back to the court again and again.

The Model Court Interpreter Act which is proposed by the National Center for State Courts does not distinguish between civil and criminal proceedings in stating that an interpreter "shall be appointed to secure the rights of non-English speaking persons or for the administration of justice" in "all state legal and administrative proceedings." The commentary on costs of interpreter services goes on to say that "the court should bear the burden of the costs associated with providing an interpreter, as a cost of the court proceeding." However, "This approach does not foreclose subsequent assessments of costs for interpreter services to parties when that is appropriate, according to the same standards or rules that are applied to court costs in other litigation." (See Attachment 7 for a copy of this section of the proposed Model Court Interpreter Act.)

a. Hiring Interpreters in Civil Cases as Court Employees

The Subcommittee believes that in General District Court, the costs of Spanish interpreters in civil cases could be handled within the allotted time of the three interpreters recommended as full-time employees of the court, since landlord-tenant cases are handled only on Friday mornings. An occasional interpreter would be needed in another language, perhaps twice per month, at an estimated annual cost of \$3,360 (24 X \$140, the standard 2-hour minimum charge).

In Juvenile Court, it would probably require about two additional half-time Spanish interpreter positions to handle most of the court's Spanish interpreter needs in civil cases. An occasional interpreter would be needed in other languages for four hours, at \$280. Thus the estimated annual costs for Juvenile Court would be:

1 Interpreter @ S-26 level half-time	=	\$20,744.47
1 Interpreter @ S-23 level half-time	=	17,996.05
Benefits for both @ 25 %	=	9,685.13
Total	=	\$48,425.65

Additional costs are estimated at:

Occasional long case, 2/month, @ \$300 per day	=	7200.00.
Other languages, 4/month @ \$70/hour, 4 hours	=	13,440.00
Total annual cost	=	\$69,065.65.

For the two courts together, the total annual cost of interpreters in civil cases is therefore estimated at about \$72,425.65, if the courts were permitted to hire Spanish interpreters as court employees.

b. Hiring Interpreters in Civil Cases at Present Hourly Rate

If the courts are required to hire interpreters on an hourly basis, the cost of adding interpreters for civil cases is estimated as follows:

General District Court:

1 Spanish Interpreter, 1/2 day per week, 50 weeks per year, @ \$210 per 1/2 day	=	\$10,500.00
2 Other Interpreters per month, @ \$140	=	3,360.00

Juvenile Court

2 Spanish Interpreters per day, 11:00 a.m. to 4:30 p.m. @ \$300, for 240 days	=	\$144,000.00
Occasional long case, 2/month, @ \$300 per day	=	7,200.00
4 Other Interpreters per month @ \$70/hour, for 4 hours	=	13,440.00

Total annual costs for both courts	=	\$178,500.00
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Clearly, the addition of interpreter services in civil cases is a much more reasonable proposal if interpreters can be hired as court employees rather than as hourly contract employees

Appendix 6

Proposed Language for Additional Section of the Code of Virginia relating to the Provision of Interpreters for Non-English Speaking Persons in Civil Cases

**Proposed Language for Additional Section of the Code of Virginia relating
to the Provision of Interpreters for Non-English Speaking Persons in Civil Cases**

In any civil case in which a non-English speaking person is a party or witness, an interpreter for the non-English speaking person may be appointed by the court. A qualified English-speaking person fluent in the language of the non-English-speaking person shall be appointed by the judge of the court in which the case is to be heard unless the non-English-speaking person shall obtain a qualified interpreter of his own choosing who is approved by the court as being competent. In either event the compensation of such interpreter shall be fixed by the court and shall be paid from the general fund of the state treasury as part of the expense of trial. The amount allowed by the court to the interpreter may, in the discretion of the court, be assessed against either party as a part of the cost of the case and, if collected, the same shall be paid to the Commonwealth. Whenever a person communicates through an interpreter to any person under such circumstances that the communications would be privileged, and such persons could not be compelled to testify as to the communications, this privilege shall also apply to the interpreter. The provisions of this section shall apply in both circuit and district courts.