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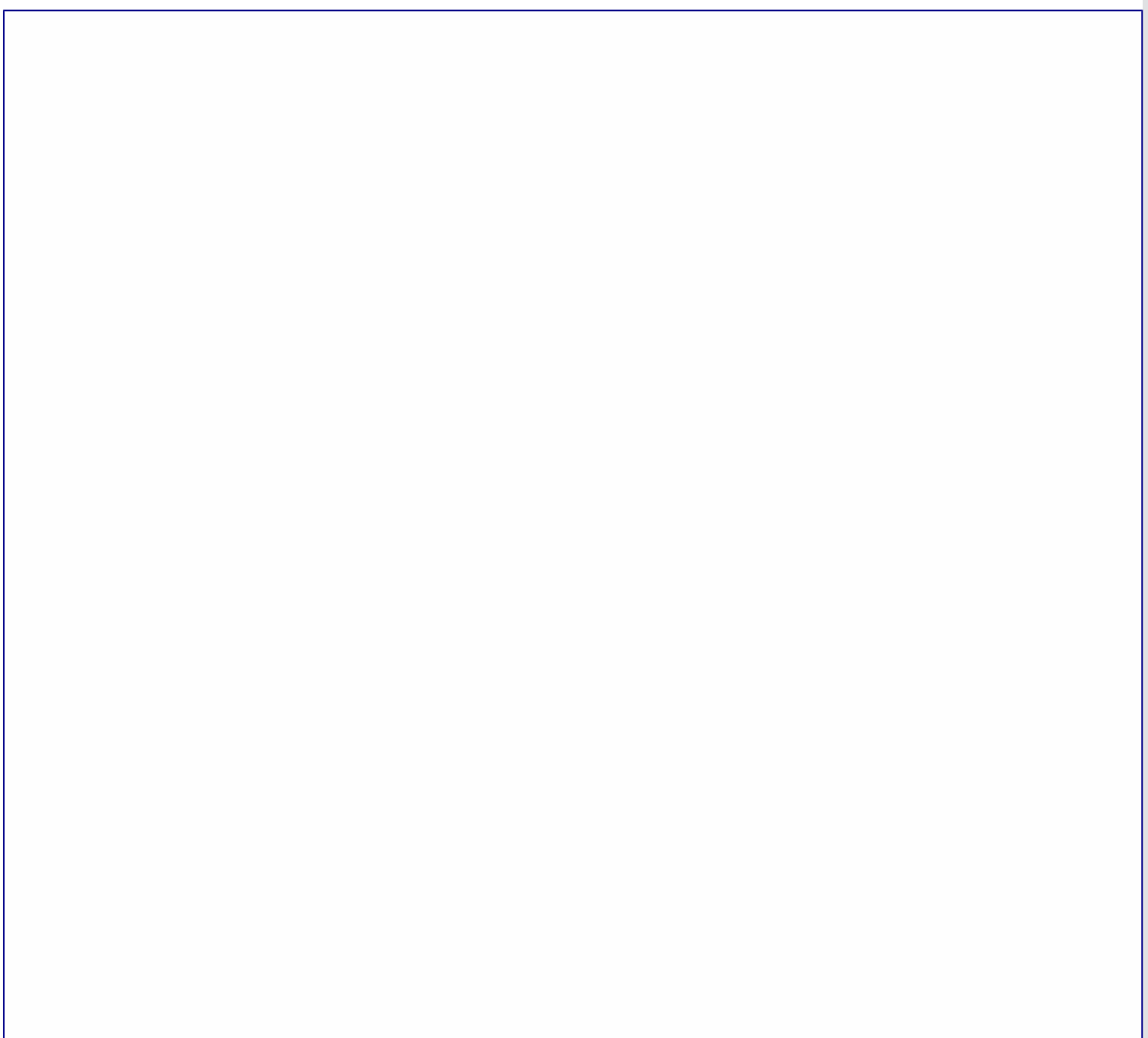
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# The Florida Bar Journal



struggling to cope with a shortage of qualified interpreters.<sup>2</sup> In "Language Use and English-Speaking Ability: 2000," U.S. Census data indicate that the number of people aged five and over who spoke a language other than English at home grew by 38 percent in the 1980s and by 47 percent in the 1990s. In 2000, 18 percent of the total population aged five and over, or 47 million people, reported that they spoke a language other than English at home. Approximately 2,000 unique languages were identified within the borders of the United States. The population of individuals who spoke a language other than English was 29 percent in the West; 20 percent in the Northeast; 15 percent in the South; and nine percent in the Midwest. Generally, the highest concentrations of non-English speakers were in states that border Mexico, the Pacific Ocean, and the Atlantic Ocean.<sup>3</sup>

The number of non-English language speakers at least doubled in six states from 1990 to 2000. Spanish speakers grew by about 60 percent and Spanish continued to be the non-English language most frequently spoken at home in the U.S., followed by Chinese (2 million people), French (1.6 million), and German (1.4 million).

Of the 20 non-English languages most frequently spoken at home, the largest proportional increase was for Russian speakers, who nearly tripled from 242,000 to 706,000. The second largest increase was for French Creole speakers (the language group that includes Haitian Creoles), whose numbers more than doubled from 188,000 to 453,000.<sup>4</sup>

Spanish was spoken more than any other language group in all regions of the country, according to 2000 U.S. Census figures. And although the number of Spanish speakers grew in all regions, more than three-fourths of that growth was in the West and South, which combined had about three times the number of Spanish speakers (21 million) as the Northeast and the Midwest combined (7.1 million). California had the largest percentage of non-English speakers (39 percent), followed by New Mexico (37 percent), Texas (31 percent), New York (28 percent), Hawaii (27 percent), Arizona, and New Jersey (each about 26 percent). The largest percentage increase between 1990 and 2000 in the population who spoke a language other than English at home occurred in Nevada (193 percent), which also had the highest rate of population increase during the decade. The increase in Florida was 65.6 percent. Georgia's non-English-speaking residents increased by 164 percent, followed by North Carolina (151 percent), Utah (110 percent), Arkansas (104 percent), and Oregon (103 percent).<sup>5</sup>

In Florida, 23.1 percent of the population in 2006 was reported to speak a language other than English at home.<sup>6</sup> Hispanics accounted for almost half (1.4 million) of the national population growth of 2.9 million between July 1, 2005, and July 1, 2006. California had the largest Hispanic population of any state as of July 1, 2006 (13.1 million), followed by Texas (8.4 million) and Florida (3.6 million). Texas had the largest numerical increase between 2005 and 2006 (305,000), with California (283,000) and Florida (161,000) following.<sup>7</sup>

**Figure 1**

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**Interpreter Use in U.S. District Courts**

~~Calendar Years 2000-2005~~

Number of Events	Total	Year
<b>Spanish</b>	<b>(All Languages)</b>	
179,271	190,127	2000
171,331	181,303	2001
163,344	174,405	2002
176,704	189,044	2003
212,223	223,996	2004
214,355	227,461	2005

2005. Spanish (214,355 events) remains the language most often interpreted in the courts, accounting for 94 percent of all reported events, followed by Mandarin (1,792 events), Arabic (1250 events), Vietnamese (863 events), Korean (796 events), Cantonese (745 events), Russian (610 events), French (417 events), and Foochow (409 events).

Courts along the Southwest border are in "crisis mode," contending with criminal caseloads that have skyrocketed since the late 1990s.<sup>8</sup> In 2005, "more than one-third of all federal felonies prosecuted in the U.S. came from five of the 94 judicial districts — the southwest border courts of the District of New Mexico, the Southern and Western Districts of Texas, the District of Arizona, and the Southern District of California."<sup>9</sup> In New Mexico's federal district courts, criminal felony cases have climbed 287 percent since 1997. The average felony caseload (felony case per authorized judgeship) nationwide is 87. In the District of New Mexico, which ranks first, the average is 405. The Southern District of Texas ranks third, with an average of 326. That district's Laredo division carries 2,800 felony cases — an average of 1,400 per judge.<sup>10</sup>

### Legal Precedents

In U.S. district courts, the right to sign language and foreign language interpretation is recognized by case law as protected especially by the Fifth, Sixth, and 14th amendments to the U.S. Constitution. The Fifth Amendment, which guarantees fundamental fairness and equal protection under the law, states, in pertinent part: "No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . ." The Sixth Amendment, the major federal source of the right to an interpreter, states: "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense." The 14th Amendment extends the application of these rights to all states. Federal as well as state jurisdictions have affirmed the right to an interpreter in criminal proceedings. Some states — such as California — guarantee the right to an interpreter in their

constitutions, although there is no exae rigd shaoss fct

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The 14th Amendment extends Anot fclanguifallssnst his3 Td (Le3 to an Fihox0re .rim; to hNavarrowTvf Johnd i1.3275 128.493



Witness: *A caballito* ("piggyback").

Interpreter: On a little horse.

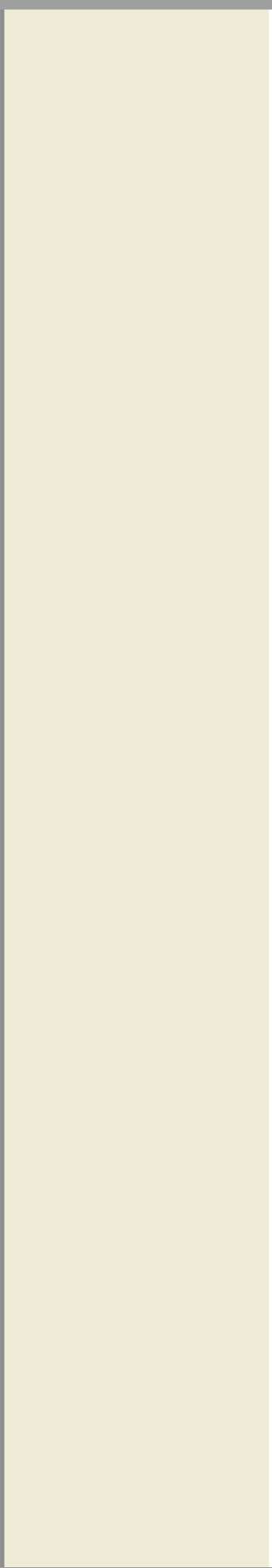
Attorney: (Who, until now, had not heard anything about a little horse in this case): And how was that little horse?

Witness: *Era chaparrito y de bigote*.

Interpreter: He was short and had a moustache.<sup>21</sup>

Common sources of misunderstanding in interpreted testimony include false cognates and tag questions. "False or partly false cognates" may be defined as words that appear similar or identical because they are derived from a common form but whose meanings in certain contexts are often completely different. The words "crime" in English and "*crimen*" in Spanish are examples of false cognates with important implications in the context of criminal law. The words sound the same but mean different things. In Spanish, *crimen* refers to more "serious criminal transgressions, usually penalized by the death sentence or long prison terms."<sup>22</sup> *Crimen* means "*delito muy grave, consistente en matar o herir gravemente a alguien*" [very serious crime, consisting of killing or seriously injuring another],<sup>23</sup> whereas in English "crime" refers to felonies and misdemeanors.<sup>24</sup> Thus, "crime" in English is better translated as "*delito*," meaning any violation of the law — from misdemeanor to murder. The word "criminal" in English should not be interpreted as "*criminal*" in Spanish, which means "murderer."<sup>25</sup> Other potential pitfalls for interpreters include tag questions or "interrogative fragments" added to a statement to elicit agreement or disagreement from the addressee. Tag questions in English require a negative answer to deny an accusation (e.g., "You took the money, didn't you?" "No, I didn't"), whereas in many other languages, including Spanish, tag questions can be answered either negatively or affirmatively with relatively no alteration in the meaning.<sup>26</sup>

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ORIGINAL UTTERANCE	INTERPRETATION	TRANSLATION OF
MR. KWITCHEK: I feel like...	[no interpretation]	
	needed to take a decision	que habia que tomar
	because —	
	THE COURT: To the dump truck?	[no interpretation]
	MR. KWITCHEK: I don't think it...	[no interpretation]
— if looks like a joy ride kind of thing.		llevarlo como para un viaje de disfrute.
THE COURT: In a dump truck?	[no interpretation]	
MR. KWITCHEK: In a dump truck.	[no interpretation]	

After an expert witness determined that the court interpreter in the Alfonzo case provided an incomprehensible interpretation and was not fluent in Spanish, a local circuit judge threw out the sentence and plea. It is worth noting that the interpreter in question had interpreted more than 5,000 times during a period of approximately nine years in that county. As pointed out by María Cecilia Marty, the expert witness, had the State of Florida passed a law earlier requiring interpreter certification, this interpreter “would have had to perfect her trade in order to pass the test or would never have interpreted in court.”<sup>34</sup> Figure three shows excerpts from the October 15, 2004, change of plea hearing in the Alfonzo case taken from the official tape transcript and recordings reviewed and prepared by the expert witness who evaluated and transcribed the interpreter’s rendition of the proceeding.<sup>35</sup> In figure three, omissions are indicated in brackets and mistakes in the interpreted utterances are underlined.

**Figure 3**

ORIGINAL UTTERANCE	INTERPRETED UTTERANCE	TRANSLATION OF INTERPRETED UTTERANCE
THE COURT: State of	INTERPRETER: Okay, la fiscalia	Okay, <u>The State Attorney's Office</u>
473.	Alfenzia, 04-34473.	34-473
		adjudication, hopefully.
Si, Su Señoría, <u>de que</u> eso es un, un <u>pensa</u> de un camioneta peque — <u>de que</u> lo recogieron y las victimas están presente y ... [ ] Sr. y [ ]Sra. Stanley [sic] y el caso de que hay daños y de que y, <u>tene que pagar</u> . Y de que como hemos hablado antes, <u>ellos se sienten muy fuerte de eso, de que se sienta de que han... un conexión</u> aunque no hay evidencia, <u>eh, de los, ah, robos,</u> pero si ellos quieren hablar a la par de...	Yes Your Honor of the that is a, a 'pensa' [sic] of a pick-up [wrong gender] <u>sma...</u> — of that they picked it up and the victims are present [singular conjugation; phonological interference] and ... Mr. and Mrs. Stanley [sic] and the case of that there are damages and of the and, you have to pay. And of the as we have talked about before... they feel [sic] very strong [singular instead of plural] of that, of the he feels of that they have ... a connection [masculine - wrong	MR. MCGLASHAN: That's difficult to hear, Your Honor. This is a co-defendant to the dump truck ring, where this dump truck was — this dump truck was retrieved and recovered. The victims are here; Mr. and Mrs. Linsley. And in this case, I guess, there's some damage and restitution is owed. And as we had a previous discussion at the arraignment of this case, they feel strongly
ah, robos, ask along	direct link between — I have no direct evidence connecting the two thefts. But they would like to address the court.	evidence, um, of the, but if they want to sp with...

Legislative initiatives dating to the 1980s requiring certification for Florida's state court interpreters had met with resistance.<sup>36</sup> Finally, on June 26, 2006, the Florida Legislature authorized the Supreme Court of Florida to "establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training of court interpreters." After many years of hard work and persistence, the Florida Court Interpreter Certification was implemented on May 6, 2008.<sup>37</sup>

Since 2000, there has been a significant increase in the number of states that have enacted legislation to set standards for court interpreters and joined the Consortium of the National Center for the State Courts. Likewise, publications in law review journals, such as the *Harvard Latino Law Review* regarding the impact of court interpreters in the judicial system, reflect a growing awareness of fundamental fairness issues and equal access to justice for linguistic minorities in the legal community.

At the federal district court level, new programs have been established to facilitate the use of certified and otherwise qualified interpreters. The Administrative Office of the United States Courts, for instance, maintains a national court interpreter database to assist federal courts in locating interpreters in a number of languages. At the end of fiscal year 2005, the database contained the names of 880 active certified interpreters and 1,869 "otherwise qualified" interpreters in 103 languages. Additionally, the federal judiciary's Telephone Interpreting Program (TIP) provides remote interpretation in short proceedings where certified or otherwise qualified interpreters are not locally available. In fiscal year 2005, TIP services were used in 3,600 events in 40 languages.<sup>38</sup>

Much still remains to be done to address the shortage of qualified interpreters as the U.S. experiences a significant growth in linguistic pluralism. According to The Federal Court Management Report of July 24, 2006, 72 percent of proceedings interpreted by Spanish language contract interpreters in 2005 were handled by certified interpreters, and many federal courts used certified interpreters at much lower rates. Thus, if court interpreting is to overcome language barriers and cultural misunderstandings, courts must ensure that qualified interpreters are used. For a defendant to be truly present, a linguistically and culturally true and accurate interpretation of statements spoken or read in court must be rendered from the source to the target language and vice versa. In the context of the due process rights of linguistic minorities, an accurate, impartial, and complete interpretation preserves equivalence and allows non-English-speaking defendants to be linguistically present, and thereby meaningfully participate, in our criminal justice system.



<sup>1</sup> Roseanne Dueñas González, Holly Mikkelson & Victoria E. Vásquez, *Fundamentals of Court Interpretation: Theory, Policy, and Practice*. 49-50, 155 (Carolina Academic Press 1991). The authors point out that *Arizona v. Natividad* is the first decision to perceive the issue as one of linguistic presence.

<sup>2</sup> Lynn Davis *et al.*, *The Changing Face of Justice: A Survey of Recent Cases Involving Courtroom Interpretation*, 7 *Harvard Latino L. Rev.* 1 (Spring 2004). The authors reviewed approximately 30 decisions from 1998 to 2003.

<sup>3</sup> U.S. Census Bureau, *Language Use and English-Speaking Ability: 2000* at 2-7, U.S. Department of Commerce, Economic and Statistics Administration, Census 2000 Brief, *available at* [factfinder.census.gov](http://factfinder.census.gov).

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 2-7 and Figure 4 at 6, *available at* [factfinder.census.gov](http://factfinder.census.gov).

<sup>6</sup> U.S. Census Bureau, State and County QuickFacts, [quickfacts.census.gov/qfd/states/12000.html](http://quickfacts.census.gov/qfd/states/12000.html).

<sup>7</sup> *Minority Population Tops 100 Million*, U.S. Census Bureau News, May 17, 2007, [www.census.gov/Press-Release/www/releases/archives/population/010048.html](http://www.census.gov/Press-Release/www/releases/archives/population/010048.html).

<sup>8</sup> *Immigration Crisis Tests Federal Courts on Southwest Border*, 38 *The Third Branch* (June 2006), *available at* [www.uscourts.gov/ttb/06-06/border/index.html](http://www.uscourts.gov/ttb/06-06/border/index.html).

<sup>9</sup> *Id.*

the results of the most recent testing cycle.

- 17 Administrative Office of the U.S. Courts, Office of Public Affairs, *Federal Court Manager Report, AO Makes It Easier to Locate Certified Interpreters* (July 24, 2006).
- 18 Elena M. de Jongh, *An Introduction to Court Interpreting Theory and Practice* 35-49 (1992).
- 19 Barbara Moser-Mercer *et al.*, *Prolonged Turns in Interpreting: Effects on Quality, Physiological and Psychological Stress (Pilot Study)*, 3 *Interpreting* 47-64 (1998).
- 20 Interview with Alberto de la Cerra, U.S. certified court interpreter (May 15, 2008).
- 21 Interview with Guillermo Suquet, U.S. certified court Interpreter (May 21, 2008).
- 22 Guillermo Cabanellas de las Cuevas & Eleanor C. Hoague, *Butterworths Spanish/English Legal Dictionary* 165 (1991).
- 23 María Moliner, *Diccionario del uso del español* 803 (1991).
- 24 *Black's Law Dictionary* 370-372 (6th ed.1990).
- 25 See Marcial Prado, *Spanish False Cognates* (1993). The translator must always determine the context.
- 26 Colleen B. Brennan, *Linguistics and the Law* (Sept. 2001), available at [www.csa.com/discoveryguides/linglaw/overview.php](http://www.csa.com/discoveryguides/linglaw/overview.php).
- 27 Interview with Erlinda Gonzalez-Berry (2006). Ventura Morales learned English and works at a law center in Oregon, committed to helping protect the rights of linguistic minorities.
- 28 H.R. Rep. No. 100-889 at 58 (1988), reprinted in USCCAN 5982, 6012...." (*U.S. v. Bailon Santana*, 429 F.3d 1258 (9th Cir. 2005).
- 29 *Id.*
- 30 Theresa Vargas, *Prisoner Lost in Translation*, *The Washington Post*, August 4, 2006, available at [www.msnbc.msn.com/id/14175549/page/2/print1/displaymode/1098/](http://www.msnbc.msn.com/id/14175549/page/2/print1/displaymode/1098/).
- 31 *U.S. v. Luis Posada Carriles*, Western District of Texas, Case No. EP-07-CR-00087-KC, p. 24/ Order of Dismissal, available at [www.txwd.uscourts.gov/opinions/cases/posadacarriles/default.asp](http://www.txwd.uscourts.gov/opinions/cases/posadacarriles/default.asp). See also Juan A. Lozano, *Judge Throws Out Cuban Militant's Indictment*, *Dallas Morning News*, May 11, 2007, available at [www.dallasnews.com](http://www.dallasnews.com).
- 32 Previous efforts by several interpreters, including the author, with the support of legislators such as Carrie Meek, Ileana Ros-Lehtinen, and Bruce Hoffman, involved the co-authorship and introduction of legislation requiring certification and uniform standards for state court interpreters in Florida. In 1992, for instance, such legislation passed with the unanimous vote of the legislature, but was vetoed by then-Governor Lawton Chiles.
- 33 The case received a great deal of media attention. See Patricio G. Balona & Jim Saunders, *Botched Case Shows Need for Translator Standards, Advocates Say*, *Daytona Beach News- Journal*, January 18, 2006; Patricio G. Balona, *Inmate Happy to See New Court Interpreter Law*, *Federal Court Reporters Association*, FCR Online 7-9 (July/August/September 2006).
- 34 Maria Cecilia Marty, *The Alfonzo Case: The Rationale for State Certification in Florida*, 15 *Proteus* 1, 4-6 (Winter 2007).
- 35 E-mail from M.C. Marty, excerpts are from transcripts, January 2006 (on file with the author).

<sup>36</sup> *Id.*, Patricio Balona at 2.

<sup>37</sup> E-mail from Joelle Haspil, U.S. certified court interpreter, May 6, 2008. According to the 2005 *Annual Report from the Director of the Administrative Office of the U.S. Courts*, Spanish was used for 91 percent of the telephone interpreting events. See also *AO Makes It Easier to Locate Certified Interpreters*, Administrative Office of the U.S. Courts, Federal Court Management Report (July 24, 2006).

**Dr. Elena M. de Jongh** is a two-time Fulbright Fellow and author of three books and numerous articles on Spanish and Cuban literature and court interpreting. She received the Ph.D. in Spanish language and literature from Tulane University. A federally certified court interpreter since 1985, she has interpreted in thousands of proceedings in the United States district courts. Her book, *An Introduction to Court Interpreting: Theory and Practice* (University Press of America, 1992) is widely used in workshops and university courses.

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