

Access to Justice:

Can Domestic Violence Courts Better Address the Needs of Non-English Speaking Victims of Domestic Violence?

by Nancy K. D. Lemon†

INTRODUCTION

“Communication is, perhaps, an immigrant woman’s most immediate barrier to leaving an abusive relationship.”¹

This article looks at the need for free professional interpreters in civil domestic violence cases in the United States. It argues that states or counties which do not provide this service are in fact denying victims of domestic violence access to the courts.² It also explores the possibility that domestic violence courts would be more able and likely than conventional civil courts working with domestic violence victims to provide qualified interpreters in non-criminal cases. This article also emphasizes the importance of certification and specialized training for all civil court translators who interpret for victims of domestic violence. Finally, it highlights the way in which advocates may frame the need for interpreters so that fiscal resources may be secured to effect these changes for all non-English speaking victims of domestic violence.

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1. Alison Auerbach, *Slipping Through the Cracks*, 1 (May-June 2000) (on file with author) (quoting Lori Humphreys of Ayuda, Inc. in Washington, D.C.).
2. The term “victim of domestic violence,” rather than “domestic violence survivor,” will be used throughout this article to denote those who are abused by their intimate partners. Those who are requesting court intervention are likely to be in the initial stages of stopping the violence, and therefore may think of themselves as “victims,” rather than “survivors.”

I. DESCRIPTION OF THE PROBLEM

A. Extent of Domestic Violence Among Women Who Are Not English-Speaking

Domestic violence is a huge problem in the United States. While we will never know the exact figures due to the significant underreporting of this crime, estimates are that between two and four million women are abused by intimate partners each year in this country.³ This equates to one in four women in the U.S. being abused in their lifetime.⁴

A significant percentage of such victims do not speak English, either because they are deaf or hearing impaired, or because they come from non-English speaking countries or from subgroups within the U.S. in which English is not spoken.⁵ For example, a survey conducted in the San Francisco Bay Area in 1990 with over 400 undocumented women found that 34% of the respondents had experienced some form of domestic violence.⁶ Only six of these women had ever called the police for help.⁷ This study showed what advocates had been saying for years— there is a major abuse problem in immigrant communities, in which victims seldom access the legal system. One of the barriers to accessing this system is that few workers in the U.S. legal system speak any language other than English.⁸ As a domestic violence advocate in North Carolina put it,

The sad thing is that often these [non-English speaking] battered women do not take advantage of the services offered by the court system because they don't understand how the courts work. But even when they do go to the courts to get a . . . protective order, they have no idea what's going on because they don't speak the language . . . Having an interpreter available will help the victim and the defendant understand the process and understand what a [protective] order can do for them.⁹

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3. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PREVENTING DOMESTIC VIOLENCE AGAINST WOMEN 3 (Aug. 1986); U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NAT'L CRIME VICTIMIZATION SURVEY (1994) (estimating number at 2.1 million); Jill Smolowe, *What the Doctor Should Do*, TIME, June 29, 1992, at 57.
 4. Sarah Glaser, *Violence Against Women*, 3 THE CQ RESEARCHER 4 (Feb. 26, 1993), available at <http://library.cqpress.com/cqresearcher/cqresrre1993022600> (estimating number at four million).
 5. DEEANA JANG, ET AL., FAMILY VIOLENCE PREVENTION FUND, DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN 7 (1997).
 6. *Id.* at 7.
 7. *Id.*
 8. The wording used here is deliberate: the problem could be characterized as the lack of English capacity among immigrants to the U.S., or as the almost universal monolingualism of workers in the U.S. legal system, who rarely speak languages other than English.
 9. Christy Hardee, *Help Now Available for Hispanics Involved in Domestic Violence Cases*, A BRIEF RECESS: NEWSLETTER OF THE N.C. JUD. BRANCH (N.C. Jud. Branch) Sept. 2000, at 7, available at http://www.nccourts.org/_Courts/CRS/AOCAdmin/Documents/sep00.pdf

Also, many victims of domestic violence are deaf or hearing-impaired. American Sign Language interpreters are often needed in the courts to assist this group.¹⁰ In fact, federal codes and some state statutes provide for free certified interpreters during court proceedings for this group of victims.¹¹ Additionally, the interpretation system for deaf people is generally better organized than non-English language interpretation, with national and state certification and registries.¹² The system created for deaf people often serves as a model for these other non-English speaking interpretation programs.¹³ Because these interpretation problems are more pressing for victims of domestic violence who speak a language other than English, these problems will be the focus of this article.

During the last decade, the number of non-English speaking victims of domestic violence in this country has risen, as immigration from non-English speaking countries to the U.S. has increased nationwide. The U.S. Census Bureau predicts that in 2010, the Hispanic population will have increased by 34.1% from 2000.¹⁴ The Census also predicts that by 2020, this group will comprise 17.8% of the population, and by 2050, will make up almost one quarter of the total U.S. population.¹⁵ In some areas, people of Hispanic heritage will become a majority.¹⁶

Similarly, according to the latest Census, California's Hispanic population rose by three million over the past ten years to compose one-third of the state's population; and the Asian population rose by one million, now composing one-

(quoting Patty Dorian, Executive Director of the North Carolina Coalition Against Domestic Violence).

10. See, e.g., MINN. STATE FUNDING COMM., COURT INTERPRETER SUBCOMM. REPORT 8 (2000) [hereinafter MINN. REPORT] (stating that ASL is one of the most frequently requested languages for court interpretation in that state).
11. See Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 (2005); 28 C.F.R. § 35.160(b)(2005); CAL. EVID. CODE § 754 (2006). Additionally, it should be noted that not all deaf or hearing-impaired victims of domestic violence can use American Sign Language. Interviews with Julie Rems-Smario, founder and former Executive Director, Deaf Women Against Violence, Hayward, Ca. Some victims need multiple interpreters. *Id.* These victims include immigrants and developmentally disabled people, who may need one interpreter to communicate between the litigant and the ASL interpreter, in addition to the ASL interpreter who then communicates with the attorneys and the judge. *Id.*
12. See, e.g., Court Interpretation, National Center for State Courts, http://www.ncsconline.org/D_Research/CourtInterp.html (last visited February 15, 2006) (listing a link to the Registry of Interpreters for the Deaf).
13. However, the ADA does not guarantee that courts will provide competent interpreters for deaf victims. See, e.g., *In re V.C. v. H.C., Sr.*, 689 N.Y.S.2d 449, 451 (N.Y. Ct. App. 1999) (deaf victim of domestic violence waited eighteen months for her restraining order hearing, due in part to the court's inability to locate an ASL interpreter).
14. U.S. CENSUS BUREAU, U.S. INTERIM PROJECTIONS BY AGE, SEX, RACE, AND HISPANIC ORIGIN Table 1b (2004) available at <http://www.census.gov/ipc/www/usinterimproj/>. Note that the term Hispanic is used in the U.S. Census. This term will be used throughout the paper for consistency.
15. *Id.* at Table 1a.
16. MADELYNN HERMAN & DOROTHY BRYANT, NAT'L CTR. FOR STATE COURTS, LANGUAGE INTERPRETING IN THE COURTS 3 (2000), http://www.ncsconline.org/WC/Publications/KIS_CtInte_Trends99-00_Pub.pdf.

tenth of the state's population.¹⁷ The Census also indicates that whites are no longer a majority of the state's population, that a quarter of all residents of California are foreign born, and that 30% of all adults in the state speak a language other than English at home.¹⁸

These trends are also found in other states. For example, between 1990 and 1996, five of the thirty counties in the U.S. registering the largest increases in the Hispanic population were located in North Carolina.¹⁹ Additionally, the Asian and Pacific Islander population almost doubled between 1990 and 1998, with Hmong now the second most frequently spoken foreign language in North Carolina after Spanish.²⁰

Likewise, in Minnesota, the last decade has seen a growing number of non-English speaking immigrants. The Asian population increased by 56% and the Hispanic population by 60% from 1990 to 1998 in that state.²¹ The number of public school children speaking a foreign language at home doubled during this period, and continues to rise.²²

With a growing number of non-English speakers in the United States, and thus a growing number of non-English speaking domestic violence victims, there is consequently an increasing need for translators in the country's court system. However, when non-English speakers need to access the courts or find themselves involved in a court proceeding, they face two main barriers to accessing interpreter services. First, there is a shortage of certified or registered²³ interpreters in many parts of the U.S., especially in rural areas.²⁴ Second, the cost of professional interpreters can range from \$25 to \$100 per hour.²⁵ These two barriers prove to be a significant hurdle to gaining access to the courts.

17. Don Will, *Custody Mediation and Diversity in California*, CENTER FOR FAMILIES, CHILD. & THE COURTS UPDATE (Aug. 2001) available at <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/update801.pdf>.

18. *Id.*

19. Deborah Weissman, *Between Principles and Practice: The Need for Certified Court Interpreters in North Carolina*, 78 N.C. L. REV. 1899, 1907 (2000).

20. *Id.* at n. 28.

21. MINN. REPORT, *supra* note 10, at 8.

22. *Id.*

23. In order to be certified, interpreters must pass a standard examination. When this examination is not given in a particular language, the interpreter may instead be designated as "registered," meaning that they are professionally trained and qualified to interpret in a court. Interview with Mary Lou Aranguren, Bay Area Interpreter's Association and California Federation of Interpreters, March 26, 2001. *See also* MINN. REPORT, *supra* note 11, at 4 (referring to the State Roster for languages in which no certification has been developed).

24. STATE OF CAL., SENATE JUDICIARY COMM., BILL ANALYSIS— S.B. 927 (ESCUTIA) 8-9 (Apr. 17, 2001) [hereinafter BILL ANALYSIS— S.B. 927] available at <http://www.leginfo.ca.gov/bilinfo> (enter Session 2001-2002, then search by Bill Number 927)(referring to opposition by the Cal. Court Interpreter's Association, which stated that this bill might exacerbate an already existing shortage of interpreters). *Id.* *See also* MINN. REPORT, *supra* note 11, at 5 (referring to a scarcity of qualified interpreters in certain [i.e., rural] areas).

25. BILL ANALYSIS— S.B. 927, *supra* note 24, at 7 (\$65-100 per hour for private sector certified court interpreters); MINN. REPORT, *supra* note 11, at 4 (\$25-50 per hour).

While domestic violence occurs in all socioeconomic classes, many recipients of welfare are presently or formerly victims of domestic violence.²⁶ This is especially the case when victims have just fled from their abuser, perhaps leaving with only the clothes on their backs.²⁷ Moreover, immigrant communities face higher rates of poverty than non-immigrant communities.²⁸ Thus, many domestic violence victims who do not speak English are not able to pay professional interpreters to help them access the courts.²⁹

B. The Importance of Civil Court Remedies for Victims of Domestic Violence

Interpreters are a critical link for victims of domestic violence who need access to the civil court system and the crucial remedies it provides. Victims may be required to utilize the civil courts in order to obtain freedom from the abusers for themselves and their children. Statutes providing protective orders have been enacted in all jurisdictions in this country.³⁰ Statutes requiring courts to take domestic violence into account when awarding custody are now in effect in almost all states.³¹ In addition to protective orders and custody cases, litigants facing violence in the home commonly go through divorce, child visitation, and child support cases in the civil courts.

Protective orders (also referred to as restraining orders, orders of protection, and temporary restraining orders) are used to help victims and their children safely leave abusers by criminalizing contact by the batterer. These orders may mandate that the batterer refrain from harassing or assaulting the victim, or may require that the batterer have no contact with the victim whatsoever. They may also protect the victim's children in the same ways. No longer does the victim have to wait until she is beaten again to obtain help from the criminal justice system.³² In many jurisdictions, violation of such an order is probable cause for arrest.³³ In other jurisdictions, officers are required to arrest if

26. Joan Meier, *Domestic Violence, Character, and Social Change in the Welfare Reform Debate*, 19 LAW & POL'Y 205-06 (1997).

27. *See id.*

28. *See* JANG, ET AL., *supra* note 5, at 137 (describing the dramatic difference in earning power between immigrant women and women generally).

29. BILL ANALYSIS—S.B. 927, *supra* note 24, at 2, 5.

30. Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 815 (1993).

31. Linda D. Elrod & Robert G. Spector, *A Review of the Year in Family Law: Redefining Families, Reforming Custody Jurisdiction, and Refining Support Issues*, 34 FAM. L.Q. 607, 654 (2001). *See also* Nancy K. D. Lemon, *Statutes Creating a Rebuttable Presumption Against Custody to Batterers: How Effective Are They?*, 28 WM. MITCHELL L. REV. 601, 610-17 (2001).

32. While there are some victims of domestic violence who are male, the overwhelming majority are female; therefore, this article will refer to a victim as "she." *See* Joanne Belknap & Heather Melton, *Are Heterosexual Men Also Victims of Intimate Partner Abuse?*, in DOMESTIC VIOLENCE LAW 82, 90 (Nancy K.D. Lemon ed., 2d ed. 2005).

33. Klein & Orloff, *supra* note 30, at 1151-53.

they believe an order has been violated.³⁴ Additionally, protective orders are often taken into consideration by courts making custody decisions, and as evidence in other cases that domestic violence has taken place— e.g., when an allegedly battered woman is charged with a crime, or when a suspect is being charged with killing his former partner. They are also used as evidence of domestic violence when victims self-petition for legal residency under the Violence Against Women Act.³⁵

A large percentage of civil cases involve domestic violence.³⁶ These are primarily found in the family law³⁷ and protective order³⁸ context. In two studies, litigants in half of all cases in California's court-based mediation system, which is mandated in any family law case where custody or visitation is in dispute, had a current or previous domestic violence restraining order.³⁹ In a third California study, the rate was 60%.⁴⁰ If the question is broadened from restraining orders alone to whether there has been any history of domestic violence, the rate is much higher, with litigants reporting this in up to 90% of cases coming through Family Court Services.⁴¹

Other studies have shown that civil court intervention in the lives of victims of domestic violence has been effective in stopping the abuse in a high percentage of cases. For example, a study of 285 battered women who had obtained civil restraining orders in three different U.S. cities found that two thirds of the orders were not violated within six months of being issued.⁴² Moreover, 80.5% of the women who responded stated that they felt safer, 92.7% felt better about themselves, and 95% stated that they would seek an order again.⁴³

34. *Id.*; See also CAL. PENAL CODE § 836 (2006).

35. See Immigration and Nationality Act (INA) §§ 204(a)(1), 8 CFR §§ 103.2(b), 240.1(f), 204.2(c) (2000) (VAWA I).

36. See generally Jessica Pearson, *Mediating When Domestic Violence is a Factor: Policies and Practices in Court-Based Divorce Mediation Programs*, 14 MEDIATION Q. 319, 332 (1997); STATEWIDE OFFICE OF FAMILY COURT SERVS., JUDICIAL COUNCIL OF CAL., REPORT 6: FUTURE DIRECTIONS FOR MANDATORY CHILD-CUSTODY MEDIATION SERVICES: CONSIDERATIONS FROM TWO STATEWIDE REPRESENTATIVE STUDIES OF COURT USERS 6 (1996), available at <http://www.courtinfo.ca.gov/programs/cfcc/pdf/files/r06rpt.pdf> [hereinafter FUTURE DIRECTIONS]; Telephone Interview with Robin Fielding, Director of Family Court Services of Napa County, Cal. (Apr. 7, 1997).

37. See Pearson, *supra* note 36, at 332 (stating that 50-80% of court-based mediation caseloads were found to involve domestic violence).

38. In this article, the terms "protective order" and "restraining order" are used interchangeably to refer to orders issued in domestic violence cases by civil courts.

39. FUTURE DIRECTIONS, *supra* note 36, at 6.

40. JUDICIAL COUNCIL OF CAL., STATE COURT OUTLOOK: CAL. COURTS IN CRISIS 18 (1996).

41. Telephone Interview with Robin Fielding, *supra* note 36.

42. SUSAN L. KEILITZ, ET AL., NAT'L CTR. FOR STATE COURTS, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE x (1997).

43. *Id.* at ix.

C. Courts' Historic Approaches to Addressing the Need for Interpreters

This extremely important and fundamental issue [court interpretation] has been allowed to become a “stepchild” of the justice system: understudied, underfunded, and in terms of its ultimate impact, little understood.⁴⁴

Given the critical need for victims of domestic violence to have access to the civil court system, the current lack of any system of certification for interpreters in many states is indeed a crisis. This is a direct result of lack of legislation regulating the use of court interpreters.⁴⁵ This lack of regulation calls into question the quality of professional interpreters: “Even in the instances when interpreters are available, there are no guarantees with respect to the level of the interpretation skills provided, as there usually is no certification process or procedural guidelines to ensure accurate translations or compatibility of regional colloquialisms.”⁴⁶

Although no court has determined the existence of a constitutional right to an interpreter in civil proceedings,⁴⁷ the right of a defendant to a professional interpreter, paid by the court, is generally recognized throughout the proceedings in criminal cases.⁴⁸ This right is based in the Fifth and Fourteenth Amendment Due Process Clauses, as well as the Sixth Amendment right to confront and cross-examine witnesses and to have effective assistance of counsel.⁴⁹ It may also be based in state constitutional provisions.⁵⁰

In contrast, courts have explicitly held that there is no right to a free interpreter in a civil case.⁵¹ The absence of a right to an interpreter in the civil courts is due in part to the fact that the rights guaranteed by the relevant clauses of the Fifth, Sixth, and Fourteenth Amendments are generally seen as triggered only in criminal cases. Additionally, the American legal system tends to characterize civil cases as something one has a choice to engage in, as opposed

44. MINN. SUPREME COURT TASK FORCE, FINAL REPORT ON RACIAL BIAS IN THE JUDICIAL SYSTEM 69 (May 1993).
45. Miguel A. Mendez, *Lawyers, Linguists, Story-Tellers, and Limited English-Speaking Witnesses*, 27 N.M. L. REV. 77, 95 (1997). See also Weissman, *supra* note 19, at 1922-23 (stating that as of 2000, North Carolina had no state constitutional, statutory, or other regulatory entitlement to a foreign language interpreter, and no certification system for interpreters); *Id.* at 1931 (noting that some scholars have argued that Title VI of the Civil Rights Act of 1964 may create the right to an interpreter in all legal proceedings). *But see* Mendez at 99 n.134 (describing progress in fourteen states toward setting standards for interpreters).
46. Berta Esperanza Hernandez-Truyol, *Las Olvidadas – Gendered In Justice/Gendered Injustice: Latinas, Fronteras, and the Law*, 1 J. GENDER RACE & JUST. 354, 375 (1998).
47. Weissman, *supra* note 19, at 1927.
48. See, e.g., *United States v. Carrion*, 488 F.2d 12, 15 (1st Cir. 1973); *United States ex rel Negron v. New York*, 434 F.2d 386, 389 (2nd Cir. 1970).
49. *Id.*
50. See, e.g., CAL. CONST., art I, § 14 (providing that “a person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.”).
51. See, e.g., *Jara v. Mun. Ct.*, 21 Cal. 3d 181, 183 (1978) (en banc).

to the involuntary nature of criminal cases, whether as a victim, witness, or defendant.

However, victims of domestic violence often have no choice but to utilize the civil courts in order to secure their own safety and the safety of their children. One commentator noted, “Civil domestic violence proceedings . . . implicate an individual’s life, liberty, and property.”⁵² Given the central importance of restraining orders in stopping domestic violence, this subcategory of civil suits should be designated “quasi-criminal” for purposes of court-paid interpreters.⁵³ The right to an interpreter could also be based on the premise that fundamental family interests are at stake in domestic violence civil proceedings, including protective orders, divorce, custody, and termination of parental rights cases.⁵⁴ Some courts have adopted this approach, providing free certified interpreters in any restraining order case where one or both of the parties do not speak English.⁵⁵

The failure of the courts to provide free professional interpreters in most civil cases creates serious problems, especially in domestic violence cases. Frequently, the parties are forced to resort to the use of unqualified interpreters: “In the absence of [interpreter] services, [non-English speaking] litigants are forced to seek the aid of a friend or family member— persons who have no knowledge of either the legal system, process, or substantive rights being discussed— to translate court proceedings and testimony.”⁵⁶ Lay interpretation in court is also sometimes provided by court clerks, bailiffs, other litigants, prisoners from the local jail, and even children.⁵⁷

What is wrong with this practice? The use of non-professionals as interpreters almost guarantees that communication between the parties and the court will be inaccurate and incomplete. In one such case, a Massachusetts

52. Weissman, *supra* note 19, at 1928.

53. *Id.* at 1930.

54. *Id.* (discussing and citing court decisions which support this argument).

55. This has been the practice since the 1980’s in Alameda County, Cal., where free certified interpreters are provided by the court whenever requested in restraining order cases. This was the author’s experience in the 1980’s as a staff attorney at the Family Violence Law Center, Berkeley, Cal., and continues to be the practice. However, the court provides only one interpreter even when both parties do not speak English; this is inconsistent with interpreter’s standards of practice and is problematic. Telephone Interview with Kimberly Wesley Parker, Staff Attorney at Family Violence Law center, Cal. (Mar. 22, 2006).

56. Hernandez-Truyol, *supra* note 46, at 375.

57. See Weissman, *supra* note 19, at 1923 (“Courts often improvise and rely on whoever is available, including family members or unknown persons who happen to be present, to interpret.”); *Id.* at 1964 n.129 (citing her own experience as an attorney and informal written and telephone surveys of interpreter issues conducted with Legal Services of North Carolina; these revealed that children and prisoners from the jail had been used to interpret court proceedings). See also BARBARA NIESS, ARK. COMM. ON CHILD ABUSE, RAPE, & DOMESTIC VIOLENCE, OVERCOMING CHALLENGES OF LANGUAGE BARRIERS (Oct. 2004), <http://www.ag.state.ar.us/outreach/108/108news1000.html> (relating a story in which a non-English speaking battered woman petitioned for an order of protection but dropped it; shortly thereafter, the husband claimed that he was abused by the wife and during the investigation the husband was asked to act as an interpreter for his wife).

attorney, who was also a certified Chinese interpreter, overheard a significant translation error in a domestic violence case. The interpreter translated a woman's statement as "He scolded me." But the woman's actual statement, according to the attorney, was "I want you dead."⁵⁸ Since the purpose of interpreters is to communicate the court proceedings back and forth, use of unqualified interpreters undermines the entire process. "It results in a denial of access to the courts, which disenfranchises non-English speakers, diminishes respect for the judiciary, and undermines the rule of law."⁵⁹

When children are used as interpreters for their parents' domestic violence hearings, the result is further trauma to the children. They cannot help feeling they are being forced to take sides. Additionally, as they interpret their parents' statements, these children are also forced to relive the details of the abuse, or are exposed to more details of the abuse than they had already known about. The courts should not allow either of these scenarios to occur.

An additional problem presented by non-professional interpreters is that they may try to persuade the victim to drop the request for a protective order, or otherwise interject their own opinions about the case. If no one else in the courtroom speaks the victim's language, the judge may have no idea that this is taking place. For example, in one Los Angeles case, a Korean interpreter was overheard by a Korean-speaking advocate not only incorrectly translating in court, but also adding his own opinion.⁶⁰ In essence, he was taking the abuser's side and encouraging the victim to forgive the abuser and return home.⁶¹ While it is unknown whether or not he was a professional interpreter, this behavior exemplifies the consequences of having unqualified interpreters and is contrary to the most basic codes of ethics by which professional interpreters are required to abide.⁶²

Another scenario, often played out in the civil courts, is that litigants may simply attempt to manage without interpreters. This also frequently results in inaccurate and incomplete communication with the court and misunderstandings about what orders have been made and the specific requirements of those orders. As with the use of non-professional interpreters, lack of an interpreter becomes a denial of the fundamental right of access to the courts, undermining the overall commitment within the U.S. to making courts the preferred avenue for dispute resolution, rather than self-help, vendettas, or other non-legal methods.

58. Auerbach, *supra* note 1, at 1-2.

59. Weissman, *supra* note 19, at 1903.

60. E-mail from Nancy Marquis Rodriguez, domestic violence advocate, to author (Mar. 27, 2001).

61. *Id.*

62. See WILLIAM E. HEWITT, NAT'L CTR. FOR STATE COURTS, MODEL CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE JUDICIARY. Canon 1 of the Code provides: "Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation." *Id.*

II. RECENT ATTEMPTS BY LEGISLATURES AND COURTS TO ADDRESS THIS PROBLEM

A. Statutes Authorizing the Use of Interpreters in Civil Cases

Legislatures and courts have started to address this problem. In many states, statutes provide that qualified interpreters must be utilized in all types of legal proceedings, which would include civil cases.⁶³ Some of these statutes go farther, stating that the court must or may pay for the interpreter.⁶⁴ At least two states have statutes addressing interpreters in civil domestic violence cases in particular.⁶⁵ In addition, the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System recommended that interpreters be provided, if needed, in all court proceedings.⁶⁶

B. Who Qualifies for a Free Interpreter?

However, even with such enabling legislation, professional interpreters are often not appointed by courts due to lack of funding. Ideally, every indigent litigant who does not speak English would be provided a free professional interpreter as a basic aspect of access to the court. This has been statutorily required but not implemented in some states,⁶⁷ and has become actual practice in some jurisdictions.⁶⁸ However, given the perennial shortage of resources, policy makers and judges are usually faced with having to decide where to draw the line

63. See, e.g., ARK. CODE ANN. § 16-64-111 (2005); CAL. EVID. CODE § 755 (West 1995 & Supp. 2006); IND. CODE ANN. §§ 34-45-1-3 and 34-45-1-4 (West 2005); IOWA CODE ANN. § 622A (West 2003); KAN. STAT. ANN. §§ 75-4351, 75-4352 (1997); KY. REV. STAT. ANN. §§ 30A.410, 30A.415 (LexisNexis 1999); ME. REV. STAT. ANN. tit. 5, § 51 (2002); MASS. GEN. LAWS ANN. ch. 221C, §§ 1-7 (West 2005); MINN. STAT. §§ 546.42, 546.43 (2000); NEB. REV. STAT. §§ 25-2401-06 (1995); OR. REV. STAT. §§ 45.273, 45.275 (2003); TEX. CIV. PRAC. & REM. CODE ANN. §§ 21.021, 21.022 (Vernon 1997); VA. CODE ANN. § 8.01-384.1:1 (West 1995 & Supp. 2006); WASH. REV. CODE ANN. §§ 2.43.010, 2.43.020 (West 2004).

64. *Id.*

65. See CAL. EVID. CODE § 755 (West 1995 & Supp. 2006) (providing that interpreters must be provided for indigent victims of domestic violence in restraining order proceedings). See also Christy Hardee, *supra* note 9, at 1 (describing new N.C. statute providing for free interpreters to indigent victims of domestic violence in restraining order proceedings, known as Chapter 50B matters).

66. OR. SUPREME COURT TASK FORCE ON RACIAL/ETHNIC ISSUES IN THE JUDICIAL SYSTEM, OR. JUDICIAL DEP'T, REPORT OF THE OREGON SUPREME COURT TASK FORCE ON RACIAL/ETHNIC ISSUES IN THE JUDICIAL SYSTEM 19 (1994) [hereinafter OREGON REPORT].

67. See, e.g., ARK. CODE ANN. § 16-64-111 (2005); CAL. EVID. CODE § 755 (West 1995 & Supp. 2006); IND. CODE ANN. §§ 34-45-1-3, 34-45-1-4 (West 2005); IOWA CODE ANN. § 622A (West 2003); KAN. STAT. ANN. §§ 75-4351 to -52 (1997); KY. REV. STAT. ANN. §§ 30A.410, .415 (LexisNexis 1999); NEB. REV. STAT. §§ 25-2401 to 2406 (1995); OR. REV. STAT. §§ 45.273, .275 (2003); TEX. CIV. PRAC. & REM. CODE ANN. §§ 21.021, 21.022 (Vernon 1997); VA. CODE ANN. § 8.01-384.1:1 (West 1995 & Supp. 2006).

68. Telephone Interview with Steve Davis, Director of the Interpreter Program for Kings County (Seattle), Washington (Mar. 2000). Mr. Davis stated, "Everyone who needs an interpreter gets one." *Id.*

in terms of which litigants are offered free professional interpreters and thus employ means tests in order to determine the cut-off. In some areas, anyone below the federal poverty level qualifies for this service.⁶⁹ In others, the state periodically adjusts its income guidelines for fee waivers and may set the bar significantly below the federal poverty level.⁷⁰

It might appear at first glance that this type of approach should be sufficient in solving the interpreter problem in the civil courts. Isn't providing free interpreters only to indigent litigants enough? The answer is that this solution is not adequate. When distinctions are drawn between qualifying and non-qualifying victims by employing means tests, many victims of domestic violence do not qualify for a free interpreter, especially if they have any type of employment. This is because the income guidelines are generally set for extremely poor people, such as those on welfare or the unemployed. But the working poor are usually not able to afford interpreter fees of \$25-\$100 per hour either.⁷¹

Additionally, in order to qualify for a fee waiver, the litigant must know that such a procedure exists. In many cases, no one informs the victim of domestic violence that she might qualify for a free interpreter from the court and, consequently, the victim does not request one.⁷² In other cases, courts may not actually comply with the fee waiver procedure, denying requests which they should be granting.⁷³ Alternatively, court clerks may not pass on to the judge the paperwork requesting such waivers, instead summarily telling the litigant that they do not qualify rather than leaving this determination up to the judge.⁷⁴

C. Solutions to the Shortage of Professional Interpreters

As stated previously, there is also a shortage of professional, qualified interpreters to work in the courts. There have been several attempts to address this problem. First, administrative offices of many courts are seeking to increase the numbers of qualified certified or registered interpreters, through recruitment

69. *Id.* The federal poverty guidelines for 2000 were gross monthly incomes of \$8,350 for a single person, \$11,250 for two people, and \$14,150 for three. 2000 Health & Human Services Poverty Guidelines, 65 Fed. Reg. 7555-7557 (Feb. 15, 2000).

70. For example, see CALIFORNIA'S INFORMATION SHEET ON WAIVER OF COURT FEES AND COSTS (Cal. Gov't Code § 68511.3 (2005); Cal. Rules of Court, rule 985, Judicial Council of Cal. form 982(a)(17)(A)). The Sheet provides that interpreter fees, along with other court fees, can be waived if the litigant is receiving government assistance such as TANF, SSI, food stamps, or General Assistance. *Id.* Such fees can also be waived if the litigant's gross monthly income was less than \$935.42 for one person, \$1,262.50 for two, \$1,589.58 for three, etc. *Id.* Note that these figures are significantly lower than the federal poverty guidelines, *supra* note 70.

71. MINN. REPORT, *supra* note 10, at 4.

72. Interview with Nancy Marquis Rodriguez and Guadalupe Vidales, California domestic violence advocates (Spring 2001).

73. *Id.*

74. *Id.*

and training of more interpreters.⁷⁵

Additionally, in some areas, courts are utilizing telephonic interpreters who are placed on conference call with the judge and litigant when the judge calls in to a central telephonic interpreter line.⁷⁶ The telephonic interpreter is then placed on speaker phone. This practice began in the federal courts in 1989 and is currently authorized by state court administrative offices in Florida, Idaho, New Jersey, and Washington.⁷⁷ One of the main goals of such programs is to make qualified interpreters in metropolitan areas available to rural counties.⁷⁸ In Alaska, a federal grant is paying for telephonic interpreters specifically for domestic violence restraining order proceedings.⁷⁹

Not all telephonic interpreters are certified or trained to work in the courts however.⁸⁰ This can create additional problems when the interpreter consequently does not understand critical legal procedures or terminology necessary to serve the litigant. Yet while the use of telephonic interpreters in lieu of in-person interpreters is not ideal, this practice can increase the availability of professional interpreters, especially in languages which are rarer. If only certified interpreters were used to do telephonic interpretation, many concerns about this practice would be resolved.

Another partial solution to the shortage of court interpreters is hiring interpreters as court employees rather than as independent contractors.⁸¹ According to proponents of this solution, having employee status would increase the numbers of professional interpreters who are interested in working in the court system, as they would then be paid a salary, have security of employment, be eligible for benefits, and be able to organize into unions in order to improve their working conditions.⁸² Courts in some areas have taken this step, and others are considering it.⁸³

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75. Interview with Kathleen Howard, lobbyist for the California Judicial Council (Spring 2001).
76. This is the practice in Sacramento, California, where the court often uses the "Language Line." See also MINN. REPORT, *supra* note 10, at 17-18; HERMAN & BRYANT, *supra* note 17, at 2.
77. HERMAN & BRYANT, *supra* note 16, at 2.
78. *Id.*
79. Alaska Network on Domestic Violence and Sexual Assault, Court Interpreter Project, Telephonic Interpreter Service, http://andvsa.org/Legal/court_interpreter/court.htm (follow "Language Line" hyperlink)(last visited Mar. 16, 2006). This program uses "Language Line," which is available 24 hours a day, seven days a week. *Id.* However, ironically, it does not include Alaska Native languages. *Id.*
80. Minn. Report, *supra* note 10, at 17-18.
81. See, e.g., CAL. GOV'T CODE § 71802 (2005) (providing that courts will generally hire interpreters as employees rather than independent contractors).
82. Interview with Mary Lou Aranguren, Bay Area Interpreter's Association and California Federation of Interpreters (Mar. 26, 2001).
83. See, e.g., MINN. REPORT. *supra* note 10, at 20 (discussing hiring interpreters as employees as opposed to using free lance interpreters). See also Cal. Gov. Code § 71802 (2005).

III. WOULD COMBINING DOMESTIC VIOLENCE CIVIL AND CRIMINAL COURTS MORE EFFECTIVELY ADDRESS THIS PROBLEM?

A. A New Trend Toward Domestic Violence Courts

At the same time that there is an increasing need for foreign-language interpreters in courts throughout the country, there is also a trend toward creating domestic violence courts.⁸⁴ There have been studies published on this topic on the national level,⁸⁵ by state court systems,⁸⁶ and by local jurisdictions.⁸⁷ The California Legislature has also addressed the topic of domestic violence courts.⁸⁸

The term “domestic violence courts” can encompass many different types of courts, from merely designating a few hours a week for restraining order cases, to a court which is dedicated to handling only domestic violence cases.⁸⁹ Furthermore, judges sitting in domestic violence courts may be assigned only civil cases, only criminal cases, or both types of cases.⁹⁰ While combining the actual civil and criminal cases into one case may be quite problematic,⁹¹ given proper guidelines and procedures it is possible for one judge, or perhaps one court, to hear both a civil case and a criminal case involving the same family without conflating the cases.⁹² National experts suggest that “[t]his dilemma

84. Judge Amy Karan, Susan Keilitz, & Sharon Denaro, *Domestic Violence Courts: What Are They and How Should We Manage Them?* 50 JUV. & FAM. CT. J. 75 (1999); Randal B. Fritzler & Leonore M.J. Simon, *Creating a Domestic Violence Court: Combat in the Trenches*, CT. REV. 28 (Spring 2000); Eve Buzawa, Gerald Hotaling, & Andrew Klein, *The Response to Domestic Violence in a Model Court: Some Initial Findings and Implications*, 16 BEHAV. SCI. & LAW 185 (1998); Billie Lee Dunford-Jackson, Loretta Frederick, Barbara Hart, & Meredith Hofford, *Unified Family Courts: How Will They Serve Victims of Domestic Violence?* 32 FAM. L.Q. 131 (1998); Katie Ryan, *Domestic Violence Gets Court of Its Own*, (ABC News broadcast May, 17, 2000), available at http://www.apbnews.com/safetycenter/family/2000/05/17/dv_courts0517_01.html (describing court in Westchester County, New York).
85. KEILITZ ET AL., NAT’L CTR. FOR STATE COURTS, SPECIALIZATION OF DOMESTIC VIOLENCE CASE MANAGEMENT IN THE COURTS: A NATIONAL SURVEY (2000).
86. Julia Weber, *Domestic Violence Courts: Components and Considerations*, JOURNAL OF THE CENTER FOR FAMILIES, CHILD., & THE COURTS 23 (2000).
87. STATE JUSTICE INST., DOMESTIC VIOLENCE COURT: EVALUATION REPORT FOR THE SAN DIEGO COUNTY DOMESTIC VIOLENCE COURTS 12 (Sept. 2000) (this report deals only with criminal court cases). See also Lynn S. Levey, Martha Wade Steketee, & Susan L. Keilitz, *Lessons Learned in Implementing an Integrated Domestic Violence Court: The District of Columbia Experience*, National Center for State Courts (2001).
88. See, e.g. A.B. 1705, 1999-2000 Assemb., Reg. Sess. (Cal. 2000). A.B. 1754, 1999-2000 Assemb., Reg. Sess. (Cal. 2000); S.B. 1340, 1999-2000 S., Reg. Sess. (Cal. 2000) (domestic violence bills introduced in the California legislature in the 2000 session, but never enacted).
89. See generally articles cited *supra* notes 84-87.
90. Keilitz et al., *supra* note 85, at 23-24; Weber, *supra* note 86, at 23.
91. See Letter from Stacey Geis and Joanne Schulman, San Francisco Women Lawyers’ Alliance, to Senator Solis in opposition to California SB 1340 (Solis) (Feb. 8, 2000) (on file with the Berkeley Journal of Gender, Law & Justice). This bill would have provided funding for domestic violence courts in which criminal and civil cases might be joined. The letter states that the heart of the opposition is that, “This joinder serves to ‘decriminalize’ domestic violence.” *Id.*
92. Karan et al, *supra* note 84, at 83.

[potential conflation of civil and criminal cases] can best be addressed through an integrated case processing system designed to optimize the flow of information about related cases while it safeguards the confidentiality of information that would compromise due process and victim safety.”⁹³

Furthermore, in some counties, judges may handle juvenile court cases as well as civil and criminal cases involving domestic violence – a true example of “one family, one judge.”⁹⁴ In the most rural parts of the U.S., there is only one judge for the entire jurisdiction, in which case she or he hears all the cases: civil, criminal, and juvenile.

B. Interpreters in Domestic Violence Courts

Studies and articles about domestic violence courts rarely mention the issue of interpreters, and when they do, it is usually only in passing.⁹⁵ However, creation of civil courts which specialize in domestic violence or combined civil and criminal domestic violence courts could go a long way toward solving the interpreter problem described above.

Given the constitutional right of criminal defendants to free professional interpreters⁹⁶ and the usual extension of this right to witnesses in criminal courts,⁹⁷ combining civil and criminal courts into a domestic violence court could result in greater availability of interpreters for civil cases, as civil litigants would then have the benefit of these enhanced rights and resources.⁹⁸ Even though procedures need to be set up so that one family’s criminal case and civil case are not legally joined, having courts which deal with both types of cases may foster the concept that all civil domestic violence cases are “quasi-criminal.” Given that many states have criminalized violations of civil domestic violence restraining orders,⁹⁹ it is logical to treat the issuance of such orders differently from the usual civil case.

Another reason why domestic violence courts may increase the use of interpreters in civil cases is connected to one of the benefits of domestic violence

93. *Id.*

94. *Id.* at 80; Fritzler & Simon, *supra* note 84, at 36.

95. Notably, none of the articles about domestic violence courts cited *supra* mention the issue of interpreters except very briefly. Conversely, most of the articles on use of court interpreters do not mention the issue of domestic violence. *See, e.g.*, Mendez, *supra* note 45; OREGON REPORT, *supra* note 66.

96. *See* United States v. Carrion, 488 F.2d 12, 15 (1st Cir. 1973); United States *ex rel.* Negron v. New York, 434 F.2d 386, 389 (2nd Cir. 1970).

97. *See, e.g.*, IOWA CODE ANN. § 622A.2-622A.8 (West 2003); KY. REV. STAT. ANN. §§ 30A.410, 30A.415 (LexisNexis 1999); OR. REV. STAT. § 45.275 (2003); TEX. CODE CRIM. PROC. ANN. art.38.30 (Vernon 2005); VA. CODE ANN. § 19.2-164 (2000 & Supp. 2005); WASH. REV. CODE ANN. § 2.43.040 (West 2004).

98. Note that this part of the argument is limited to those domestic violence courts dealing with both criminal and civil cases.

99. David M. Zlotnick, *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders*, 56 OHIO ST. L.J. 1153, 1189-90, 1194-97 (1995).

courts – their ability to offer the litigants “one-stop shopping.”¹⁰⁰ This term can mean having one judge handle all the family’s legal issues.¹⁰¹ It can also refer to having all the legal and social services needed by domestic violence victims, perpetrators, and their children available in one place and at one time.¹⁰² Such services would generally include probation officers, batterers’ treatment providers, domestic violence advocates, family court services personnel, and substance abuse counselors.¹⁰³ It would be logical to add to this list certified interpreters in the primary languages used in the local area.

An additional benefit of domestic violence courts is specialization of professionals. Judges who sit on these benches become experts at working with victims and perpetrators; they become familiar with the applicable laws and the local resources.¹⁰⁴ This also occurs with the attorneys who practice in such courts, where prosecutors and defense attorneys are more likely to handle a case “vertically,” meaning that only one attorney deals with the case from start to finish.¹⁰⁵ This same concept could also be applied to interpreters. If there were one domestic violence court, one interpreter could work with a litigant throughout all of his or her civil and criminal cases. As a result, the litigant may feel more trusting of the interpreter, and therefore become more forthcoming. Consequently, more accurate information could be transmitted to the court.

In the ideal domestic violence court, there would not be a means test to determine which litigants qualified for a free, professional interpreter. Instead, this service would be provided to anyone who needed to access the court, just as the court provides judges, bailiffs, court clerks, and court reporters. This concept may be gaining acceptance. Commenting on a pilot program in which free professional interpreters were provided in family law proceedings to litigants who qualified for fee waivers, one California judge stated, “Having interpreters equates to having a bailiff or a record of the proceedings, it is just that basic. The service needs to be provided.”¹⁰⁶ Because of the central importance of interpretation services to the administration of justice, interpreters should be provided to all litigants in domestic violence cases without subjecting them to the current strict means test found in many courts.

100. Fritzler & Simon *supra* note 84, at 37-38; Karan et al., *supra* note 84, at 79-80.

101. *Id.*

102. Karan et al., *supra* note 84, at 79-80.

103. *Id.*

104. *Id.* at 76.

105. *Id.* at 81.

106. JUDICIAL COUNCIL OF CAL., FAMILY LAW INTERPRETER PILOT PROGRAM: REPORT TO THE LEGISLATURE 2 (2001) [hereinafter PILOT PROGRAM].

IV. GENERAL RECOMMENDATIONS FOR ADDRESSING INTERPRETER PROBLEMS IN ALL CIVIL COURTS HANDLING DOMESTIC VIOLENCE CASES

A. Need for Training of Interpreters

Finally, even when professional interpreters are provided by the court, it is still necessary that the interpreters receive training on working with people in crisis generally, and on working with victims and perpetrators of domestic violence specifically.¹⁰⁷ In spite of the perception that interpreters merely interpret the words of a litigant, in order to fully represent what a victim of domestic violence is trying to communicate to the court and to avoid undermining her efforts to obtain court protection, an interpreter should understand the dynamics of domestic violence as well as key terminology.

The interpreters hold the key to the woman's voice—to her opportunity in obtaining a permanent restraining order, to her probability of keeping her children. But, most court interpreters are men with absolutely no training on the issues relating to domestic violence. They often approach the batterer in the waiting room and discuss the case with him before entering the courtroom . . . Often, the interpreters themselves offer the women legal assistance without being qualified to do so.¹⁰⁸

The Alaska court system has provided training for potential court interpreters on the topic of domestic violence, presented by a domestic violence advocate.¹⁰⁹ At least one state legislature has considered mandating such training for interpreters.¹¹⁰

While the interpreter is not an advocate and should not play this role, domestic violence training will contribute to the interpreter's ability to communicate with both abusers and victims. An advocate who has trained court interpreters commented that one reason such training is needed is because

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107. Of course, interpreters who follow the Codes of Ethics for interpreters would not offer legal assistance to a litigant, as this is not appropriate.
 108. Deanna Jang, *Linguistic Accessibility and Cultural Competency Issues Affecting Battered Women of Color in Family Court*, SYNERGY (National Council of Juvenile and Family Court Judges) Summer 1999 at 4.
 109. The Alaska Court System did not have certified interpreters as of Jan. 2003. Telephone interview with Ami Cecil, Alaska Network on Domestic Violence and Sexual Assault (Jan. 13, 2003). However, they helped produce a Court Interpreter Workshop in Sept. 2000 and another in Dec. 2002, sponsored by the Alaska Network on Domestic and Sexual Assault. *Id.* These trainings included general domestic violence and sexual assault information provided by ANDVSA, the Alaska Women's Resource Center, or a visiting trainer from Vancouver, BC, invited by ANDVSA. *Id.* See also Alaska Network on Domestic Violence and Sexual Assault, Court Interpreter Project, <http://www.andvsa.org/court.htm> (last visited on Mar. 17, 2006).
 110. BILL ANALYSIS – S.B. 927, *supra* note 24, at 6 (noting that the legislation would mandate such training for the first time). It should also be noted that since interpreters for the deaf and hearing-impaired litigants are trained and certified separately from interpreters for hearing non-English speakers, any such training requirements must be incorporated into both types of certification.

interpreters may be so shocked by the words they are asked to interpret in domestic violence and sexual assault cases that they are unable to continue.¹¹¹ Training in advance of these situations thus helps interpreters determine ahead of time whether they will be able to cope with such highly sensitive matters in the cases they are translating, or if they should decline a case.¹¹² Developing a panel of court interpreters prepared to work in domestic violence courts would entail training them on basic domestic violence dynamics, applicable legal terminology which may be used, a short outline of the jurisdiction's civil and criminal domestic violence laws, and local community resources (e.g., batterer's intervention programs, shelters, restraining order clinics).

Such training could also include educating interpreters about the fact that immigrants may be expecting a very different court system from the one used in the U.S. If victims are not aware that their oral testimony will be considered, they may assume that there is no point in appearing in court, or speaking. For example, in describing the basic court process to a Latin American immigrant, the interpreter may want to explain that while in some Latin American countries oral testimony is not taken, in the U.S., the court will listen to her tell her story at the court hearing and will consider this as evidence.¹¹³ Such points of clarification go toward the goal of allowing victims meaningful access to the court and should not be seen as interpreters interjecting their own opinions or advocating for the victims.

B. Increased Resources Needed

Providing interpreters to all litigants in domestic violence courts would require a commitment of more resources. Depending on the jurisdiction, this funding could come either from an appropriation by the state legislature¹¹⁴ or from the county in which the court operated.¹¹⁵ Part of the funding should be earmarked for recruiting, training, and certifying more interpreters in a variety of languages. Additionally, more resources will be required for the development of new tests for interpreter certification in languages which are becoming more prevalent in each state.¹¹⁶

The bulk of the funding should go toward paying the hourly wages or

111. Telephone interview with Ami Cecil, *supra* note 109.

112. *Id.*

113. Jang, *supra* note 108, at 4.

114. See BILL ANALYSIS – S.B. 927, *supra* note 24, at 3 (outlining how expensive the program might be and describing the bill's provision that such funding would come from the state budget).

115. In some jurisdictions, all court funding comes from the state. In others, counties are the fiscal agents.

116. As of 2001, the California Judicial Council certified interpreters in Arabic, Cantonese, Japanese, Korean, Portuguese, Spanish, Tagalog, Vietnamese, Armenian, Cambodian, Mandarin, Punjabi, and Russian. There was also a provision for registration of interpreters for many of the 224 languages and dialects spoken in the state for which certification is not yet available. *Pilot Program supra* note 106, at 2.

salaries of professional interpreters. The estimated cost of providing interpreters in all civil domestic violence cases varies greatly from state to state. In California, this has been estimated at approximately \$3 million per year.¹¹⁷ In other states, the estimated cost may be much lower. For example, in Washington State, only \$61,000 was needed for 2000.¹¹⁸ In North Carolina, only \$76,000 was designated by the legislature for interpretation for the first year.¹¹⁹ The Washington and North Carolina figures did not cover free interpreters in all domestic violence civil cases, but only in cases where the parties fell below the federal poverty guidelines. However, even if this means test were done away with, as this article argues it should be, the total cost would still be relatively low.¹²⁰ These costs are indeed minimal compared to the overall court costs for a state, the total state budget, and to the benefits that could be obtained.

Cost estimates should also take into account the increased efficiency of having qualified interpreters present whenever needed. Having interpreters available on call can save the court a great deal of time, since it then would not have to try to explain issues to non-English speakers or to spend time rescheduling cases so that an interpreter can be found. In the study of the family court interpreter pilot program in California mentioned above, evaluators reported that the judges involved were very enthusiastic about the increased availability of interpreters and found their use very cost-effective:

A majority (60%) of the judicial officers reported that the services of court interpreters reduced the amount of courtroom time needed for hearings. Most (66%) thought that non-English-speaking litigants who received interpreting services from the court appeared more consistently at subsequent hearings than did non-English speakers who did not receive this service from the court . . . Nearly all (93%) of the judicial officers reported that interpreting had a moderate or substantial effect on avoiding continuances.¹²¹

Furthermore, using qualified interpreters results in greater understanding and compliance with orders, and provides the time necessary for courts to attend to all pertinent matters. The same study went on to state:

75% [of the judicial officers] believed that interpreting would improve the ability of litigants to understand orders, and 53% predicted that interpreting would have a great or moderate impact on compliance with orders. 75% of those who reported backlogs in custody cases believed that providing funding for interpreting was very helpful in reducing the backlog.¹²²

While saving the court time and money is an admirable goal, from an

117. STATE OF CAL., SENATE APPROPRIATIONS COMM., FISCAL SUMMARY – S.B. 927 (ESCUTIA) (May 14, 2001) available at <http://www.leginfo.ca.gov/bilinfo> (enter Session 2001-2002, then search by Bill Number 927).

118. Telephone Interview with Steve Davis, *supra* note 68.

119. Hardee, *supra* note 9, at 7. Some of these funds also are going to translate restraining order forms and to publish an English/Spanish Glossary for Court Clerks in North Carolina. *Id.*

120. See *infra* note 129.

121. PILOT PROGRAM, *supra* note 106, at 3.

122. *Id.*

advocate's perspective the benefit to victims of domestic violence from this increased understanding and efficiency is a far greater goal. We have known for many years that the more quickly courts can resolve domestic violence cases, the less emotional trauma, expense, and danger victims of domestic violence and their children face.¹²³ In fact, in many family law cases, batterers win by dragging out the court proceedings until the victim is emotionally and financially exhausted.¹²⁴ Thus, timely resolution of family law cases involving domestic violence is essential to both justice and safety. Moreover, having interpreters available, for both the victim and the batterer, provides that the terms of restraining orders and other civil court orders are clearly understood, better ensuring the compliance of both parties and the resulting safety of the victim. In short, having interpreters available in family law cases, most of which involve domestic violence, appears to make a significant and positive difference.

What then is the likelihood that state legislatures, governors, and court systems will commit more resources to funding interpreters in civil domestic violence cases? While the right to a qualified interpreter can be seen as a basic tenet of access to the courts, ultimately the decision to fund this service is a political one.

Strong anti-immigrant sentiment in the U.S., reflected in "English-only" initiatives and denials of basic services to non-citizens, such as California's Proposition 187, poses an obstacle for non-English speakers who need access to the courts.¹²⁵ National experts relate harrowing stories of the impact of such statutes on battered immigrants. These include paramedics telling one victim that they did not think they could help her due to the prohibitions in Proposition 187, and reports of some battered women's shelters turning away undocumented women, purportedly because of this law.¹²⁶

However, recent history has shown that when an issue is framed as key in the fight to stop domestic violence, both the public and legislators have been more open to new policies. The prime example of this framing and acceptance was the formulation and passage of all three versions of the federal Violence Against Women Act (VAWA). VAWA I, passed in 1994, VAWA II, passed in 2000, and VAWA III, passed in 2005, each contained significant provisions helping battered immigrant victims of domestic violence to stay in the U.S. legally, even when their abusers were unwilling to file the necessary paperwork and follow through on the sponsorship of their partners.¹²⁷ This was quite an

123. Janet M. Bowermaster, *Relocation Custody Disputes Involving Domestic Violence*, 46 U. KAN. L. REV. 433, 433-37 (1998); Zlotnick, *supra* note 99, at 1201-02.

124. *See* Bowermaster, *supra* note 123, at 433-37.

125. Proposition 187 was passed by California voters and championed by Governor Pete Wilson in 1994. It provided that non-citizens had no right to many of the state's services. It was overturned by a federal court in 1998.

126. JANG ET AL., *supra* note 5, at 3.

127. *See The Violence Against Women Act of 1994 and 2000: Immigration Protections for Battered Immigrants*, DOMESTIC VIOLENCE REP. (Civic Research Inst., Kingston, N.J.), Feb./Mar. 2001, at 33 (summarizing various protections for immigrant victims of domestic

accomplishment, especially given other recent anti-immigrant legislation passed at both the federal and state levels.¹²⁸

Thus, if the right to an interpreter in civil domestic violence cases is presented as necessary in order for victims and their children to leave abusers, it is possible that it would be politically feasible to obtain the necessary support to fund such a provision.¹²⁹

V. CONCLUSION

In the U.S., all residents are supposedly entitled to access to the courts as a basic civil right. Advocates for victims of domestic violence have fought hard for decades to expand the legal remedies available to victims of domestic violence. However, the powerful tool of a protective order is not available to many victims of domestic violence. Such victims do not speak English, and therefore do not have actual access to the courts which issue such orders. When courts do not provide free professional interpreters for such victims, victims cannot communicate with the court, and these hard-won statutes become meaningless for whole groups of victims. It is clear that “[s]uch inability to communicate in the context of the legal system effects invisibility, isolation, and injustice.”¹³⁰

Interpreters must be available to all victims of domestic violence who need language assistance in order to access the civil court system. Creation of domestic violence courts with free, specialized professional interpreters offers an especially creative and efficient way to effect this change. Additionally, specialized training and certification for all interpreters who work with the sensitive matters of domestic violence cases, in both conventional civil courts and domestic violence courts, is essential to assist victims in effectively obtaining the court’s assistance. By employing the approaches of advocates who

violence in both VAWA I and VAWA II); JOANNE LIN & LESLYE ORLOFF, LEGAL MOMENTUM, VAWA 2005 IMMIGRATION PROVISIONS (Jan. 5, 2006) available at http://www.legalmomentum.org/issues/vio/vawa_immigration_provisions.pdf (summarizing provisions in VAWA III that offer new or enhanced protection for immigrant victims of domestic violence).

128. See, e.g., Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 735, 110 Stat. 1214 (1996). This Law had little to do with terrorism but made it harder for undocumented immigrants to stay in the U.S., and this made it harder for battered immigrants to have their deportation suspended. *Contra id.* See also, Tien-Li Loke, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 6 B.U. Pub. Int. L.J. 589 (1997).
129. For example, S.B. 927, 2001-02 S., Reg. Sess. (Cal. 2002), sponsored three years in a row by the Cal. Alliance Against Domestic Violence, was not passed by the California legislature, due to the state’s economic problems in 2000-2002. However, early in 2002, the Cal. Judicial Council earmarked \$1.6 million of its own budget for paying court-certified or registered interpreters in civil domestic violence cases during 2002-2003. This funding was apparently so designated in response to SB 927 and provided over 50% of the cost estimated in S.B. 927.
130. Hernandez-Truyol, *supra* note 46, at 375 (discussing the problems Hispanic women encounter when unable to receive services from effective interpreters).

have framed funding needs as crucial for the safety of women and children and have thereby secured the successes of VAWA I, II, and III, we may procure the fiscal resources needed to provide interpreters for all non-English speaking victims of domestic violence who need help. Only then can we ensure actual access to the court system and protection for victims of domestic violence and their children.