

TABLE OF CONTENTS

Introductory letter to Governor Warner	
Table of Contents _____	1
Executive Summary of top 12 Recommendations in English _____	2-3
Executive Summary of top 12 Recommendations in Spanish _____	4-6
I. Introduction	7
II. Virginia Latino Advisory Commission _____	7-8
A. Commission Members _____	9
III. Commission Activities for 2003-2004 _____	10-11
A. VLAC Public Meetings _____	10
B. Public Forums, Outreach and Publicity _____	10
C. Commission Committees _____	10-11
IV. Part 1 Findings and Recommendations	
A. Business Issues _____	12-13
B. Education Issues _____	14-16
C. Health Issues _____	17-18
D. Identification Issues _____	18-19
E. Language Access Issues _____	19-20
F. Law Enforcement Issues _____	21-22
V. Conclusion _____	22
VI. Part 2 Additional Issues and Supporting Data _____	23
A. Business Issues _____	23-24
B. Education Issues _____	24-28
C. Health Issues _____	28-35
D. Identification Issues _____	35-36
E. Language Access Issues _____	36-41
F. Law Enforcement Issues _____	41-45

EXECUTIVE SUMMARY OF TOP 12 RECOMMENDATIONS

The first task of the Virginia Latino Advisory Commission was to identify and prioritize the most pressing issues confronting the Latino population in the Commonwealth of Virginia. The rapid growth and relatively invisible presence of our community within the Commonwealth, revealed a desire to address a myriad of concerns. We narrowed the areas of discussion to seven, including business, education, health, identification, language access, law enforcement and representation of Latinos in Government. We reviewed the issues, and initially arrived at 74 recommendations. We prioritized those recommendations and present the top 12 issues in alphabetical order.

It was determined that the remainder of the recommendations should be included as a second part of the report. The extensive list of issues and recommendations demonstrate the value of the commission in giving the Governor access to the Latino voice. Furthermore, these additional issues suggest that it is prudent to reauthorize the Virginia Latino Advisory Commission for an additional year. The access to information that was facilitated by the Commission should be further developed to determine whether a more permanent office to address Latino issues should be created.

Recommendations

A. Business Issues

- Provide more training, for business development and access to small business opportunities to the Spanish speaking community.
- Develop and expand vocational skill training in high schools and colleges through partnerships with non-profit and or union groups.

B. Education Issues

- Continue to advocate for access to higher education for all Virginians and veto any efforts designed to limit such access.
- Reinstate funding to provide educational services to children of migrant farm workers.
- Increase funding for Adult Education ESL classes to increase the quality and quantity of classes available to the limited English proficient population seeking to obtain English language proficiency.

C. Health Issues

- Direct the Office of Minority Health (OMH) to develop a comprehensive plan to assess needs, identify resources and recommend policy changes in regards to increasing access to health services and mental health services for Virginia's Latino population.
- Explore new ways to leverage state and local funds with private and federal funds to meet the growing health needs of our communities

D. Identification Issues and the Use of Consular Identification

- Direct all executive agencies to recognize Consular identification for identification purposes only and not for proof of “legal presence” in the Commonwealth of Virginia.

E. Language Access

- Create an Office of Language Access Services to oversee and coordinate policy and services pertaining to provision of language access assistance and compliance.
- Develop an overall language access policy that strives to promote equal opportunity, and ensures Virginia's LEP population full access to government agencies, services, and programs.

F. Law Enforcement

- Reject the MOU between the Department of Homeland Security and the State Police, if it is submitted.
- Create a Citizen Advisory Board to establish a method of reporting abuses of the law.

INDICE

Resumen ejecutivo de las 12 recomendaciones principales (en inglés)

Resumen ejecutivo de las 12 recomendaciones principales (en español)

- I. Introducción
- II. Comisión Asesora sobre Asuntos Latinos de Virginia
 - A. Miembros de la Comisión
- III. Actividades de la Comisión en el año 2003-2004
 - A. Reuniones de la Comisión
 - B. Comunicación, Publicidad y Foros Públicos
 - C. Comités de la Comisión
- IV. Parte I^a: Resultados y Recomendaciones
 - A. Asuntos Comerciales
 - B. Asuntos Educativos
 - C. Asuntos de Salud
 - D. Asuntos de Identificación
 - E. Asuntos de Acceso Lingüístico
 - F. Asuntos Legales y Policiacos
- V. Conclusiones
- VI. Parte II^a: Otros Asuntos, Datos y Documentación
 - A. Asuntos Comerciales
 - B. Asuntos Educativos
 - C. Asuntos de Salud
 - D. Asuntos de Identificación y Uso de Identificación Consular
 - E. Asuntos de Acceso Lingüístico
 - F. Asuntos Legales y Policiacos

RESUMEN EJECUTIVO DE LAS 12 RECOMENDACIONES PRINCIPALES

La primera tarea de la Comisión Asesora sobre Asuntos Latinos de Virginia consistió en identificar y priorizar las cuestiones más urgentes que afectan a los latinos en este Estado. El rápido crecimiento de nuestra comunidad en Virginia, como su relativa invisibilidad, revelaron el deseo de abordar múltiples temas de preocupación. Logramos focalizar nuestra atención sobre siete áreas, a saber: el comercio, la educación, la salud, la identificación, el acceso lingüístico, lo legal-policiaco y la representación política. Tras investigar estos temas, llegamos a 74 recomendaciones. Luego priorizamos estas recomendaciones y así obtuvimos las 12 recomendaciones principales, las cuales presentamos a continuación, en orden alfabético.

Se resolvió que los informes de comité y recomendaciones restantes deberían incluirse como segunda parte del presente informe. La extensa nómina de asuntos y recomendaciones demuestra el valor de esta Comisión para que el Señor Gobernador tenga acceso a la voz de la comunidad latina. El listado completo sugiere, además, la prudencia de que se reautorice a la Comisión por un año más. El acceso a las informaciones facilitado por la Comisión debería desarrollarse aun más, a fin de determinar la conveniencia de establecer una oficina de mayor permanencia para ocuparse de los asuntos latinos.

Recomendaciones

A. Asuntos Comerciales

- Aumentar la capacitación brindada a la comunidad hispanohablante para el desarrollo comercial y el acceso a oportunidades para pequeñas empresas.
- Desarrollar y expandir la capacitación vocacional en escuelas secundarias y universidades, a través de colaboraciones con las organizaciones sin fines de lucro o los sindicatos laborales.

B. Asuntos Educativos

- Seguir abogando por el acceso a la educación superior para todos los habitantes de Virginia y vetar cualquier esfuerzo por limitar tal acceso.
- Reinstaurar el presupuesto para proveer servicios educativos a los hijos de trabajadores agrícolas migratorios.
- Incrementar el presupuesto para clases de inglés como segundo idioma para los adultos (siglas en inglés ESL), a fin de mejorar la calidad y cantidad de clases disponibles para la población latina, que busca obtener un buen dominio del inglés.

C. Asuntos de Salud

- Exigir a la Oficina de Salud de Minorías (OMH) a que elabore un plan comprensivo para evaluar las necesidades, identificar los recursos y formular las recomendaciones de política, en relación con el incremento del acceso de la población latina de Virginia a los servicios de salud y de salud mental.
- Explorar nuevas modalidades de nivelar los fondos del Estado de Virginia y de localidades con fondos privados y del Gobierno Federal, para satisfacer las crecientes necesidades de nuestras comunidades en materia de salud.

D. Asuntos de Identificación y Uso de Identificación Consular

- Exigir a todas las agencias ejecutivas a que reconozcan los documentos de identidad consular solamente como documentos de identificación personal y no como constancia de “presencia legal” en el Estado de Virginia.

E. Asuntos de Acceso Lingüístico

- Crear una Oficina de Servicios de Acceso Lingüístico para supervisar y coordinar las políticas y los servicios en relación con el proveer asistencia de acceso lingüístico y del cumplimiento legal en esta área.
- Elaborar una política comprensiva de acceso lingüístico que busque promover la igualdad de oportunidades y que asegure un pleno acceso de la población de dominio limitado del inglés a las agencias, servicios y programas gubernamentales en Virginia.

F. Asuntos Legales y Policiacos

- Rechazar el Memorándum de Entendimiento (MOU) entre el Departamento de Seguridad Nacional y la Policía Estatal de Virginia, si tal documento se entrega.
- Crear una Comisión Asesora Ciudadana a fin de establecer un mecanismo para denunciar abusos de la ley.

I. INTRODUCTION

The Virginia Latino Advisory Commission (VLAC) was created by executive order of Governor Mark Warner on October 7, 2003, to provide information about the Latino community in the Commonwealth of Virginia.

Latinos are among the fastest growing ethnic groups in Virginia and the nation as a whole. The diversity within the Latino community is vast. Latinos are native-born U.S. citizens, and foreign-born residents. The Commonwealth includes Latinos from all parts of the United States and the world. The community is relatively young with unique needs and skills. In recognition of the growth in the Commonwealth, Governor Warner established the Virginia Latino Advisory Commission.

II. VIRGINIA LATINO ADVISORY COMMISSION (VLAC)

A. Authorizing Executive Order

NUMBER FIFTY-SEVEN (03)

ESTABLISHING THE GOVERNOR'S VIRGINIA-LATINO ADVISORY COMMISSION

By virtue of the authority vested in me by Section 2.2-134 of the Code of Virginia, I hereby establish the Governor's Virginia-Latino Advisory Commission (hereinafter referred to as "the Commission").

The Commission is classified as a gubernatorial advisory commission in accordance with Sections 2.2-134, 2.2-135, and 2.2-2100 of the Code of Virginia. The purpose of this Commission shall be to:

1. Advise the Governor regarding the development of economic, professional, cultural, educational, and governmental links between the Commonwealth of Virginia, the Latino community in Virginia, and Latin America.
2. Undertake studies, symposiums, research, and factual reports to gather information to formulate and present recommendations to the Governor relative to issues of concern and importance to the Latino community in the Commonwealth.
3. Advise the Governor as needed regarding any statutory, regulatory, or other issues of importance to the Latino community in the Commonwealth.

The Commission shall consist of 21 members to be appointed by the Governor and serving at his pleasure. The 21 members of the Commission shall represent business, education, the arts, and government. At least 15 of the 21 members shall be of Latino descent. The Secretaries of Commerce and Trade, Commonwealth, Health and Human Resources, Transportation, and Education, or their

designees, shall serve as ex officio members of the Commission. The Governor shall designate the Chairman and Vice-Chairman of the Commission.

The Commission shall submit an interim report to the Governor by December 15, 2003, and a final report by September 1, 2004. The reports shall detail the activities of the Commission and make such recommendations to the Governor, as the Commission deems appropriate.

The Governor may appoint additional members to the Commission at his discretion. Members of the Commission shall serve without compensation. They may receive reimbursement for expenses incurred in the discharge of their official duties upon approval by the Governor's Chief of Staff or his designee.

Such staff support as is necessary for the conduct of the Commission's work during the term of its existence shall be furnished by the Office of the Governor and such other executive agencies as the Governor may designate. An estimated 500 hours of staff time will be required to support the Commission. An estimated \$10,000 is required to support the work of the Commission. Such funding as is necessary for the term of the Commission's existence shall be provided from sources, including both private and appropriated funds, contributed or appropriated for purposes related to the work of the Commission, as authorized by Section 2.2-135(B) of the Code of Virginia. The Commission shall be able to apply for, accept, and expend gifts, grants, or donations from public, quasi-public, or private sources to enable it to better carry out its purposes for the Commonwealth of Virginia and its community.

This Executive Order shall be effective October 7, 2003 and shall remain in full force and effect until October 6, 2004, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 7th day of October 2003.

Mark R. Warner, Governor

B. Commissioners and Ex Officio Members

Mr. Walter Tejada
Chairperson
Arlington County
Board of Supervisors
Arlington, VA

Ms. Beatriz Amberman
Vice Chairperson
Hispanic Community Dialogue
Virginia Beach, VA

Ms. Lou Arnatt, Ex Officio
Governor's Office
Richmond, VA

Ms. Julia Torres Barden
Hispanic Outreach
Liaison Associates
Richmond, VA

Mr. Ricardo Cabellos
Vienna, VA

Ms. Dannah Card
Beans and Rice, Inc.
Pulaski, VA

Mr. Ricardo Castaneda
Harrisonburg City Schools
Harrisonburg, VA

Mr. George Crespo
Virginia State Police
Powhatan, VA

Mr. Pablo Julian Davis
South Atlantic
Humanities Center
Virginia. Foundation
for the Humanities
Charlottesville, VA

Ms. Veronica Donahue
Nelson Migrant Education
Program
Amherst, VA

Ms. Cecelia M. Espenoza
United States DOJ
Executive Office for
Immigration Review
Arlington, VA

Mr. Jorge E. Figueredo
Executive Director
Hispanic Committee of Virginia
Springfield, VA

Ms. Leni Gonzalez, Ex Officio
Sec. of Education
Representative
Arlington, VA

Ms. Tanya M. Gonzalez
City of Richmond
Hispanic Liaison Office
Richmond, VA

Ms. Mary Littreal
Galax, VA

Maricel Quintana-Baker, PhD
Ex Officio
Secretary of Commerce and
Trade Representative
Richmond, VA

Ms. Indira N. Moran
Northern Virginia Family
Service
Woodbridge, VA

Ms. Jenifer H. Nalli, Ex Officio
Sec. of Health & Human
Services Representative
Fairfax, VA

Mr. Esteban Nieto
Cargill Turkey Products
Dayton, VA

Ms. Maribel Ramos, Ex Officio
Latino Liaison for Governor
Warner
Richmond, VA

Ms. Gloria E. Ponce Rodríguez
Norfolk State University
Norfolk, VA

Mr. Craig Schwartz
Philip Morris USA
Richmond, VA

Mr. Andres Tobar
Executive Director
Shirlington Employment and
Education Center Arlington, VA

Mr. Philip Vasquez, Ex Officio
Deputy Commissioner
Department of Motor Vehicles
Sec. of Transportation
Representative
Richmond, VA

Mr. Michel Zajur
President
Virginia Hispanic Chamber of
Commerce
Richmond, VA

III. COMMISSION ACTIVITIES FOR 2003-2004

A. VLAC Public Meetings

The Commission held public meetings on October 7, 2003 (Richmond), November 14, 2003 (Richmond), December 7, 2003 (Arlington), February 6, 2004 (Richmond), April 2, 2004 (Richmond), June 4, 2004 (Virginia Beach), August 6, 2004 (Charlottesville) and September 10, 2004 (Prince William). In addition, Public Forums accompanied the meetings in Virginia Beach and Prince William and the Business subcommittee hosted forums in Richmond, Newport News and Arlington, the Law Enforcement subcommittee hosted a meeting in Arlington, and the Language Access Subcommittee held a public hearing on Selecta 1320 AM in Richmond. Participants in these meetings were as diverse as the Latino population itself, from different countries of origin, gender, age, educational and financial background. Concerns from our community helped commissioners shape this report and provided a basis for discussions by each commissioner to his or her own community. Commissioners acted as a resource to the community by gathering information from constituents and sharing the work of the commission.

The following speakers addressed the commission. Linda Ford, Chief Legislative Analyst of the Joint Legislative Audit and Review Commission (JLARC) reported to the Commission on a study that JLARC conducted on the needs of the foreign-born in the Commonwealth. Claire Guthrie Gastañaga, lobbyist for the Virginia Coalition of Latino Organizations addressed the Commission with a legislative update. Colleen Miller, Executive Director of the Virginia Office for Protection and Advocacy, addressed the Commission on their work with the disabled community and their new initiative to outreach to Spanish speaking individuals. Lt. Colonel John B. Scott, Deputy Superintendent of the Virginia State Police addressed the Commission in regards to the Memorandum of Understanding that the Commonwealth of Virginia is currently negotiating with the Bureau of Citizenship and Immigration Services, Department of Homeland Security.

B. Public Forums, Outreach and Publicity

The Latino Advisory Commission has held seven public meetings and seven public hearings throughout Virginia, in Virginia Beach, Newport News, Richmond, Arlington (3 forums), and Prince William. Participants were as diverse as the Latino population itself, from different countries of origin, gender, age, educational and financial background. Concerns from our community were also heard through several radio call-in programs and through individual outreach efforts of each Commission member.

C. Commission Committees

The VLAC created the following seven committees, which were tasked with addressing the top issues identified by the Commission in its initial meeting. Each of these committees had several Commission members assigned, to carry out its duties in a more efficient manner: They are listed and reported in alphabetical order: Business Issues, Education Issues, Health Issues, Identification Issues, Language Access Issues, Law Enforcement Issues and Representation of Latinos in Government.

Final reports were received from each committee, and over 75 recommendations were made, addressing issues, which surfaced from the Latino community. The Commission evaluated these issues and recommendations and chose the top twelve which are listed as the priorities presented in Part 1 of this report.

After reviewing and refining the top priorities, the Commission determined that the remainder was too significant to leave out of this report. Many people from across the spectrum in the Latino community participated in the work of the Commission through the public hearing process. The hearing process was promoted as an opportunity to be heard which was embraced by the community. The ability to testify in English or Spanish ignited a passion, which is embedded in every issue raised in the committee reports. Therefore, aside from issues, which are purely Federal in nature, or outside, the purview in the Governor's office, we voted to include the additional issues and recommendations in part 2 of this report.

The extensive list of issues and recommendations demonstrate the value of the Commission in giving voice to the Latino community. Furthermore, these additional issues suggest that it is prudent to reauthorize the existence of the VLAC for an additional year. During this time the Commission could develop the issues in part 2, and evaluate alternative methods of ensuring access to the Latino community.

IV Part 1 Findings and Recommendations

A. BUSINESS ISSUES

Work and economic development relies on business development and workers. The Business Issues Committee held public forums in Richmond, Newport News and Arlington to address business and labor issues. At these forums, the Committee heard from Latino businessmen and women and the Latino workers who addressed some of the underlying problems that affect the ability of Latinos to do business with and in the Commonwealth of Virginia.

1. Barriers to Entrepreneurship

The Committee began its work by meeting with Edward L. Hamm, Jr., Director of the Department of Minority Business Enterprise, Commonwealth of Virginia. At this meeting, there was discussion about the low participation of Latino entrepreneurs doing business with the Commonwealth of Virginia agencies and departments. Mr. Hamm briefed the committee members on the findings of a report commissioned by his office entitled “A Procurement Disparity Study of the Commonwealth of Virginia – Final Report” which was completed in January 2004. The study included a review of state contracts awarded in procurement areas of construction, architecture, and engineering services, professional and other services, as well as goods and supplies.¹

The scope of the study focused on contracting practices of the Commonwealth over a five-year period from July 1, 1997 through June 30, 2002, and included an analysis entitled “Summary of Disparity Analysis of Each Business Category by Race/Ethnicity/Gender Classifications.” This summary reveals that the Commonwealth awarded only 1.27 percent of its total funding during the study period to contractors with Minority or Women Owned Business Enterprises (M/WBE), of which Latinos businesses would be included. Of all state funding awarded in this study, Latinos received merely 0.29 percent of those state contract dollars.

The following suggestions will enhance Latino business opportunities, promoting awareness of opportunities, providing access to capital and promoting international trade. First, becoming more competitive in getting contracts from the Commonwealth requires additional state services to assist Latino entrepreneurs. These services should be offered by highly qualified and experienced staff that is both bilingual and bicultural. Currently, among the list of states with the highest number of Latino businesses, Virginia ranks tenth. Latinos contributed an estimated \$6 billion to the Virginia economy in the year 2000 alone, a figure that could rise significantly in the right business environment.

While the Virginia Hispanic Chamber of Commerce and the IberoAmerican Chamber of Commerce’s partnership with BizLaunch of the Arlington Economic Development Office were established to specifically assist the Latino population in various areas, many of those who need help are unaware of these services. Improvements are needed to reach the Spanish speaking Latino population and inform them of the services and assistance these entities offer. Spanish language media campaigns,

¹ Contracts relating to VDOT projects were excluded from the review.

² Testimony presented by Raul Cano-Rogers, President, Greater Washington Ibero American Chamber of Commerce

advertisements, and targeted outreach campaigns are needed to increase Latino community awareness of resources.²

Second, Latinos often need assistance in understanding and obtaining access to diverse markets, available capital, valuable contracts, and bonding. The Commonwealth should develop an initiative that will promote greater access to current and future opportunities for federal and state government contracts available on a competitive or sole source basis to Virginia Hispanic entrepreneurs. In addition, technical assistance to Hispanic entrepreneurs for the development the competitive bids should be encouraged.

Developing an understanding and promotion of the attributes of Latino business will benefit the economy of Virginia and Latino entrepreneurs.

Recommendation

- **Provide more business development training and access to small business contracts and opportunities within the commonwealth for Hispanic entrepreneurs.**

2. Lack of Vocational Skills Training

According to testimony by workforce experts, there is a lack of access for Latinos to vocational training programs and placement. Programs such as those offered to mainstream job and career seekers, whether funded by Federal, State and Local Governments tend to target an audience who has a full understanding of the American way of life, and not those who are recent immigrants. Policy and program delivery systems in place lack empathy for, and the ability to integrate needed offerings in vocational, low skill and industry-specific opportunities such as those offered by non-profit and union or associations. To address this need, relationships with nonprofit groups and unions, as well as major employers, should be developed. The Commission determined that skill training for adults and youth are necessary. Further the untapped resources in community colleges need to be developed.³

Expansion of vocational training would fit well with the Governor's planned initiative to make senior year in high school meaningful. It is essential to meet the needs of our youth who will not or cannot pursue higher education to increase vocational and technical training in high school programs and to offer certification of industry-specific skills. Resources for these programs are not subject to the limitations that exist in funding adults and offering these skills industry certifications creates a work force that benefits Virginia's economy. The development of incentive programs that offer a collaborative approach among high schools and nonprofit groups will fill the future specialized workforce needs.

Recommendation:

- **Develop and expand vocational skill training in high schools and colleges through partnerships with non-profit and or union groups.**

³ Rick Gonzalez, Vice President for Development, VA Hispanic Chamber of Commerce.

B. EDUCATION ISSUES

To thrive today all children and adults need to have access to educational opportunities. While the state of Virginia provides many excellent avenues to obtain an education, not all members of the state receive the necessary tools to ensure their present and future success. The imposition of out of state tuition for higher education, the under funding of programs that guarantee access to education for those with limited English proficiency, and high mobility, present unique problems for the Latino community in the Commonwealth.

1. Barriers to Higher Education Adversely Impact the Latino Community and Reduce Future Earning Potential.

The changing demands of the U.S. economy make it imperative that Latinos enroll in and graduate from institutions of higher learning if they intend to influence and participate in the future of this nation. The success of Hispanics in education benefits and meets the needs of business, industry, and government in the Commonwealth of Virginia.

Efforts to provide access to higher education must target a wide range of Latinos. Latino college students include first generation U.S. citizens and foreign-born students who may be completely educated in Virginia public schools who are the first in their family to seek a college education. Often they lack understanding about the process or available resources when applying for college. The gaps in knowledge that exists for these potential students can be filled by more effective recruitment programs, which include the whole family in the process.

Foreign-born students include those who are undocumented and those with legal immigrant status. They are permitted to enroll in our public colleges and universities, but in many instances they are unfairly required to pay out-of-state tuition rates. By vetoing HB 2339 (Office of the Governor, Press Release April 30, 2003), which would have severely limited access to higher education, the Governor asserted the value of education for all Virginians. Indeed, increased college opportunity reduces dropout rates, and saves costs in criminal justice and public benefit expenditures. Improving access to and the quality of post secondary educational opportunities for Latinos in the State of Virginia will help fill the gaps in the workforce as baby-boomers begin to retire (2005 through 2032).

Education facilitates the integration of immigrants into the society, and is a good investment. The Joint Legislative Audit and Review Commission (JLARC) found that immigrants need additional information on how to operate within the “American system,”¹ and educational opportunities provide this information. Efforts to maximize the opportunities must be pursued and decisions about access need to recognize the short and long-term benefits. Merging from poverty and pursuing business and professional jobs comes with a college education, which generates a greater net benefit to the Commonwealth. Thus, barriers, such as selectively imposing higher costs, should be removed. Education is a good investment. A study of Illinois found the net fiscal impact of providing access to education negligible in the short term,³ and a study of California found that every dollar invested in closing the education gap generated \$2.60 in public benefits.⁴

Despite the benefits of education and educational opportunities, the Commission heard numerous anecdotes that illustrate how the Latino community in Virginia encounters barriers when seeking access

to higher education. Stories from the community recounted decisions by students to “give up” rather than face being told that despite academic success the dream they had to attend college is not going to happen. Without access to state or federal financial assistance these individuals already faced overwhelming odds as they attempt to go to college. For some the death of this dream leads to anti-social or criminal behavior, which would not exist if the dream could be pursued.²

We also heard stories of students who met the legal requirements for admission to school but were turned away by over zealous school personnel, who failed to understand that the evidence presented was sufficient to demonstrate a legal presence in the United States. Others recounted difficulties in presenting adequate documentation because school records did not match their immigration documents. University personnel must receive training in proper screening of immigration status because the absence of such training wrongly denies students opportunities or leaves the Commonwealth vulnerable to discrimination lawsuits.

We must strive to garner the support to overturn forces that would deny access or create barriers to higher education for Latinos in Virginia. This must be pursued to give hope back to undocumented students. Many of these students have been lifelong residents of Virginia. They were minors when they came to the United States. They should not be punished and denied access to affordable higher education.

Recommendation:

- **Continue to advocate for access to higher education for all Virginians and veto any efforts designed to limit such access.**

2. Migrant Education

Migrant students are often U.S. citizens who face barriers to educational achievement because they move with their parents from harvest to harvest. The migrant and seasonal farm workers (MSFW); in the Commonwealth are 98 percent Latino in origin. The agricultural market benefits by their willingness to work in Virginia, creating a net economic benefit of 600 million dollars.³ From 1986, until 2004 the state has provided \$300,000 in additional funding for MSFW children. This amount supplemented the federal funding. When the funds were cut in 2004, the overall education budget increased from \$9,552,865,699 to \$9,958,084,152. The result was that many programs shifted or reduced the personnel who had been assigned to migrant education. The loss of this relatively small amount of money, less than 0.004% of the budget had a tremendously negative effect on migrant education programs. Thus, Virginia should provide resources to assure their success and reinstate the migrant education funds into the budget.

Recommendation:

² In recognition of the dreams that are being crushed by federal barriers, support in growing for the DREAM Act, see, Senate Judiciary Committee's overwhelming favorable report by a 16-3 vote on the DREAM Act (Floor Statement of Sen. Richard J. Durbin, *Development, Relief & Education for Alien Minors Act*, 7/22/04).

³ See, *The Impact of Migrant, Seasonal and H-2A Farmworkers on the Virginia Economy*, by Virginia Tech's Department of Agricultural and Applied Economics, January 1998.

- **Reinstate funding to provide educational services to children of migrant farm workers.**
- 3. Educational Success for Children is Enhanced when Adults Receive English as a Second Language Assistance.**

As discussed more fully in the JLARC study cited earlier and in the language access portion of this report, the need to obtain English instruction is a high priority for adults with limited English proficiency (LEP). Funding for adult ESL programs comes from the Adult Education program, which receives money from the state and federal government. Recently a small portion of the federal funding was specifically designated for ESL, but there is talk of re-designating those funds as part of the larger Adult Education budget.

Additionally, Virginia's Department of Education Office of Adult Education and Literacy has been working with LEP adults, serving many through English as a Second Language (ESL) classes. There are currently approximately 15 EL/Civics grantees across the state of Virginia and the private and nonprofit service providers cannot meet the demand. This clearly does not provide enough services for the number of adults wishing to enroll in Adult Education ESL. With such a high demand for ESL classes, many jurisdictions report that they have had to turn away interested students. Many programs have long waiting lists, also resulting in adults being turned away. According to Nancy Faux, the ESOL Program Specialist for the Virginia Adult Learning Resource Center, the Fairfax County Public Schools Adult Education Program turned away 300 people on two occasions: once at the start of the Fall and again at the start of the Spring semester during the 2003-2004 academic year. Winchester County Public Schools Adult Education Program similarly turned away 120 people during the fall 2003 semester.

The quantity, quality and location of adult education ESL classes must be systemically analyzed. Clearly there are not enough classes. Likewise the locations that are chosen for providing adult education ESL limit the times that classes can be offered. Many adult education ESL classes are held in elementary schools and thus are scheduled for evening hours. This precludes access for many Latino adults who work varied schedules and in many instances multiple jobs.

The DOE must better evaluate adult education ESL programs. Even though there are intensive recruitment efforts, many ESL sites are staffed by volunteers, who are often untrained. One provider of services told us that "Not everyone can teach English." Providers want to ensure that quality delivery occurs, but this requires recognition of the field, adequate compensation, and training. Standards need to be set so that adult education ESL teachers are very well trained and equipped to do their jobs.

Recommendation:

- **Increase funding for Adult Education ESL classes so that not only adequate funding is provided to increase the quantity of classes needed, but also to fund teachers to provide diverse class options more available to the Latino community.**

C. HEALTH ISSUES

Our health is a precious gift and is a fundamental need in order to provide for our families, live full lives, and be productive citizens in our communities. In the state of Virginia, there are currently approximately 265,000 uninsured Latinos. Nationally, one third of Latinos are uninsured, even if employed.⁴ Additionally, another 40% are underinsured, which increases the risk that critical care will not be received until it is too late. One in three Latino children in poverty level families is uninsured, even though most are eligible for Medicaid and FAMIS.⁵ For many Latinos who are new arrivals or speak minimal English, language barriers and cultural issues present serious obstacles in the delivery of care when it is sought. Of the Latinos that are primarily Spanish-speaking, 61% are uninsured.

These statistics provide a very narrow lens about the status of Latinos in the state of Virginia. To fully understand and address the issues, VLAC believes that the Commonwealth must implement a comprehensive system-wide effort to collect, collate, organize, aggregate and analyze data in order to ascertain the extent of the deficiencies in services.⁶ VLAC believes that the result of understanding the costs of alternatives could lead to a reduction in overall expenses to the Commonwealth. We know for example, that the provision of prenatal care substantially reduces problems at birth, yet many Latinos forgo prenatal care because the only available medical care they can access is emergency room services. This leads to a heightened number of premature births, which could be avoided, with expanded prenatal services. Similarly, when communities have no access to basic care, they utilize emergency rooms or forgo the care. These costs could also be substantially reduced if alternative basic care were provided.

Virginia's State Health Commissioner created the Office of Minority Health (OMH) in 1992, with a mission to enhance the health status of minorities in the Commonwealth through leadership, advocacy, education and proactive outreach for special programs and projects to improve access to health care and ultimately eliminate health disparities in Virginia.⁷ The OMH's recent Strategic Plan outlines as its primary outcome to improve the overall health status of minorities and ultimately eliminate health disparities in the Commonwealth's minority and other disparity populations.⁸ OMH accepts and promotes its leadership role in identifying and addressing issues related to the health status of and adequate health care access for minorities of Virginia, and states as one of its objectives to, "Expand the knowledge base of information on minority health issues, communicate current information to relevant audiences and identify and advocate for public policies that aid in closing the health status gap."⁹

Even though OMH worked closely with the Health Issues Subcommittee, requests for information revealed that little data exists that specifically address the health concerns and needs of Latinos in Virginia. Fostering research and studies that provide more information about Latinos and their specific health needs will provide a more accurate reality that can affect program and policy

⁴ Ann Morse, A Language Access: Helping Non-English Speakers Navigate Health and Human Services, *National Conference of State Legislatures* (January 2003) 5.

⁵ Morse 5.

⁶ This recommendation includes an endorsement of the similar recommendations made by the Joint Legislative Audit and Review Commission (JLARC) < 2003 and the Virginia Asian Advisory Board.

⁷ Virginia Office of Minority Health, A Strategic Plan for the Office of Minority Health (April 2004) 4.

⁸ Virginia Office of Minority Health 2.

⁹ Virginia Office of Minority Health 9.

changes. In fact, it is critical to assess opportunities for minority participation in clinical studies and trials across the state.

Recommendations:

- **Direct the Office of Minority Health (OMH), to develop a comprehensive plan that would assess needs, identify resources and recommend policy changes in regards to increasing access to health services and mental health services for Virginia's Latino population**
- **Explore new ways to leverage state and local funds with private and federal funds to meet the growing health needs of our communities**

D. IDENTIFICATION ISSUES AND THE USE OF CONSULAR IDENTIFICATION

Recognition of a legally valid identification substitute, such as those issued by Consulates will help prevent the knowing *and* unknowing use of fraudulent documents of identification. Use of Consular identification facilitates identification and business transactions such as banking.¹⁰ It allows the fundamental right to have a name, to have an identity and to prove that you are who you say you are. Sovereign nations facilitate issuance of these documents for citizens abroad through the Consular offices. The governments of Mexico and Guatemala issue a high security Consular Registration Document to Mexican and Guatemalan nationals registered at a Consulate. The embassies of El Salvador, Bolivia and Peru, are considering enacting a registry card, and currently Argentina provides Consular identification for their nationals in California.¹¹

For more than 133 years, since 1871, Mexico has been carrying out the practice of consular registration around the world, based on international law, consular practice, and in accordance to the Vienna Convention on Consular Relations. Consular Offices from every country in the world have the responsibility of having a registry of their nationals living abroad. This registration facilitates access to protection and consular services as well as providing help to relatives and authorities in locating their nationals. Consular identification also facilitates compliance by law enforcement on provisions on consular notification as required under the Vienna Convention (Article 36).

It is also a system used by the United States as Robert S. Jacobson, Acting Deputy Assistant Secretary of State for the Bureau of Western Hemisphere Affairs, recognized, when testifying before the US Subcommittee on Immigration, Border Security and Claims on June 26, 2003.¹²

These documents are secure, and when accepted, reduce fraud by and against foreign nationals. Consular identification in many instances is more secure than locally issued driver's licenses or State ID's. It incorporates cutting edge technology, holograms, and other embedded designs, to prevent forgery. It applies the same security standards utilized by the United States Government in several high

¹⁰ See, GAO-04-881, *Border Security Consular Identification Cards Accepted Within United States....* Available on line at: www.gao.gov/cgi-bin/getrpt?GAO-04-881 August 2004.

¹¹ GAO at 5.

¹² "The U.S. Government must also carefully avoid taking action against Consular identification cards that foreclose our options to document or assist American citizens abroad. The Department itself issues documentation other than a passport for U.S. citizens abroad and at times occasionally issues similar identity cards or travel documents".

security documents such as FBI badges. Consular identification is currently accepted as a valid identification document in 363 cities, 153 counties, as well as 160 financial institutions and 1159 police departments, and 11 states currently accept Consular identification as one of the proofs of identity required to obtain a driver's license.¹³

The local governments of 80 cities accept Consular identification for obtaining a library card, a business license, or for entering public buildings, registering children for school, and accessing some public services. The document assists law enforcement officials' communication with migrant communities by ensuring that people are not afraid to come forward as witnesses and report crimes. Consular identification's save resources and time for both the police and those detained (with legitimate identification one is more likely to get a ticket instead of an arrest). Because it is government issued it reduces the need for nationals of other countries to become victims of those who would fill the identification void with false documents, which in turn enhances the security of the identification process in the United States.

Crime is also reduced because in many communities Consular identification enables immigrants to open bank accounts and avoids carrying or keeping large sums of cash. Currently, Consular identification is accepted in 3 financial institutions in the Commonwealth of Virginia (Bank of America, Wachovia, and Wells Fargo). The access to the banks provides a safe place to keep money and generates economic benefits. On May 10, 2003, the Treasury Department favorably ruled on the acceptance of Consular identification as a valid ID card for banking and financial services and in September 2004, Congress defeated attempts to limit the use of the Consular identification. Acceptance of Consular identification provides U.S. authorities with an instrument to comply with section 312 of the Patriot Act.

Consular identification does not constitute a form of "immigration status regulation," and it does not affect any kind of change in the migratory status of the holder but it does contribute to homeland security. Consular identification serves to prove the identity of Mexican and Guatemalan nationals for re-entry into their respective countries. Almost 4 million Mexicans in the United States have a Consular identification and they are aware that this is only an identification card, which has no bearing upon their immigration or visa status.

Recommendation:

- **Direct all executive agencies to recognize Consular identification for identification purposes only and not for proof of "legal presence" in the Commonwealth of Virginia.**

E. LANGUAGE ACCESS

In each location the size of the Latino population and the size of the locality affect not only the needs of its Spanish-speaking population, but also the resources available within the community to satisfy the needs. For instance, in the most densely populated Northern Virginia counties, there are many different occupations and educational levels among Latino residents and a greater absolute and

¹³ GAO 7-8.

relative number of bilinguals.¹⁴ There are also a greater overall number of persons seeking services, which requires a larger workforce to assist in the delivery of access to services. In contrast, in small towns and rural districts, the demand is lower but the access to skilled people to provide assistance is also more difficult.

When balancing the cost of providing appropriate language assistance services it is also important to examine the consequences of providing no services or inadequate services. Even in small jurisdictions with limited resources, the failure to provide language access services creates harmful situations for limited English speakers seeking health care. Additionally, there are economic costs and foregone business opportunities in environments where there are significant numbers of such speakers. In order to adopt a consistent responsive program there must be state level analysis of the issues and state level coordination.¹⁵ A statewide agency can effectively evaluate competing models and act as a clearinghouse to reduce the repetition caused when smaller jurisdictions create their own material. Finally, a statewide coordinator could facilitate a pooling of resources, which could be leveraged to enhance and promote contracts and access telephonic services.¹⁶

Language access is not a luxury or favor the Commonwealth extends to some of its residents. It is a necessity to safeguard the safety, health, liberty, and dignity of those residents of the Commonwealth who do not yet have strong command of English. To meet these needs interpreting and translation services the tools that provide *language access* or *language assistance*, must exist. Limited-English speakers' need for (and difficulties in obtaining) linguistic access to crucial services, consistently ranks as one of the two or three most important issues for the Latino community, and it is imperative that systemic approaches to provide assistance be developed.

Recommendations:

- **Create an Office of Language Access Services to oversee and coordinate policy and services pertaining to provision of language access assistance and compliance.**
- **Develop an overall language access policy that strives to promote equal opportunity, and ensures Virginia's LEP population full access to government agencies, services, and programs.**

F. LAW ENFORCEMENT

¹⁴ The categorization that we suggest here is similar in some ways to that proposed by Roberto Suro of the Pew Hispanic Center and Audrey Singer of the Brookings Institution in their report on Latinos in urban communities across the USA. Roberto Suro and Audrey Singer, *Latino Growth in Metropolitan America: Changing Patterns, New Locations* (Washington DC: Brookings Institution Survey Series, July 2002).

¹⁵ In supporting the development of a statewide agency we support the recommendation advanced in the JLARC report at page 80.

¹⁶ This would be consistent with HB 302, which authorized such a contract, but would also require an evaluation about the level of proficiency and costs associated with such a contract.

The State Police Negotiations Regarding Entry into a Memorandum of Understanding (MOU) with Department of Homeland Security Bureau of Immigration and Customs Enforcement (DHS/BICE) creates fear in the Latino Community.

The State police are pursuing authority to enforce federal immigration laws as immigration officers. To obtain this authority the State police intend to enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security (DHS), which will provide training to approximately 30 officers in the State police. Upon completion of the training these officers will be deputized to enforce federal civil immigration laws. The use of law enforcement officers to enforce federal civil immigration law is an impediment to cultivating a relationship of trust between immigrant communities and law enforcement.

Virginia would be the third state to enter into this type of an agreement. In each of the other states the MOU has been signed by the governor of the state. For the foregoing reasons we urge you to exercise your authority to reject the MOU and to communicate your intent the reject it to the State police. First, the fear and mistrust caused by the misleading press releases and poorly managed implementation of HB 570/SB 493, if compounded by a decision to formalize the pending MOU, would far outweigh any benefits to be derived from such initiatives. Second, we believe the MOU is itself unnecessary. In public hearings the officers indicated that the authority was desired because there are cases where there is not enough evidence to criminally prosecute defendants and they regarded the ability to deport as an additional tool. Using civil immigration law to go after offenders instead of amassing evidence necessary for criminal prosecution is an inappropriate and ineffective use of state police power. Further, the power of the State Police to use civil violations instead of proving criminal acts merely diverts resources from crime prevention and criminal prosecution. Deportation does nothing to ensure that victims of crime obtain justice.

Second, under HB570/SB 943, officers already have additional tools to use against the most dangerous criminal immigrants. Third, unlike HB570/SB493, if the power articulated in the MOU is extended, immigrants cannot be advised to continue to trust and work with the police. This would jeopardize public safety. Even if the rationale for signing the MOU is to give police an additional tool to fight gang activity and terrorism, the cost of implementing the MOU would far outweigh any law enforcement benefits. Individuals who pose those types of threats are already subject to laws, which allow for higher scrutiny. Moreover, federal immigration officials face more lawsuits than any other individuals in federal courts. The state of Virginia would receive no resources from the federal government to cover the expenses incurred in defending the actions of our officers. Therefore we will need to hire additional legal experts in immigration law to defend the state. If we act to enforce the immigration law the state and not the federal government will become liable for the costs of detention. At present individuals with immigration detainees are the financial responsibility of the federal government. Since the DHS itself has had to release detainees for lack of federal funding it is unlikely that any additional funds will come from the federal government.

Virginia should spend its resources on time-tested, community policing efforts and solving problems within Virginia's control. This proactive approach benefits all residents of the Commonwealth, and unlike the proposal to enforce immigration law creates trust.

Recommendation:

- **Reject the MOU between the Department of Homeland Security and the State Police if it is submitted.**

Community involvement as a method to increase public safety is a desired goal of most police departments. Law enforcement officials and the citizens they serve share an interest in eliminating criminal activity which undermines public safety. Cooperation and mutual respect occur in immigrant communities only if there is an understanding that local and state law enforcement officers do not target law-abiding undocumented individuals. The undocumented Latino population in Virginia is estimated at 100,000. The majority of these individuals do not violate criminal laws and like the rest of society they only interact with the police when they commit a traffic violation or have been the victim of crime.

The increase in enforcement in areas involving immigration, the legal presence law, and gang activity can all result in misuse of police power. To ensure that the power is not misused, the community must have access to, and be given knowledge about, the methods of reporting abuse. Furthermore, systems that are developed must be cognizant of the vulnerability that exists for those in the community who are undocumented. They have a legitimate fear of law enforcement. Many escaped regimes that were brutal and untrustworthy. Therefore the development of a community based advisory board should recognize the special needs in the Latino community.

Recommendation:

- **Create a Citizen Advisory Board to establish a method of reporting abuses of the law.**

V. CONCLUSION

These twelve issues are the most pressing to the Latino community. They are meant to address concerns in the six substantive areas identified by the Commission. However, they are not the exclusive issues facing the Latino community. The immigration status and lack of ability to change that status means that portions of the Latino community live in a shadow society, fearful of detection, yet ever present to generate economic benefits and contribute to the society in meaningful ways. We ask that you continue to welcome each person into the Commonwealth and develop opportunities for success.

VI. Part 2 Additional Issues and Supporting Data

A. BUSINESS ISSUES

In addition to the two issues presented in part 1, the committee addresses the following issues: expansion of international entrepreneurship, barriers in State licensing and barriers in accessing jobs.

1. Encourage the expansion of international commerce with Spanish speaking countries.

The state should focus on the unique relationships that Latino business owners bring to the state. With international ties, this segment of the business community is poised to move Virginia into International Commerce. The opportunities for international commerce with Central and South America, as well as the Caribbean, and increasing imports and exports between Latin American countries and the United States should be a primary goal. With the passage of the North America Free Trade Agreement, there are excellent opportunities to export Latino products from Virginia into Mexico and Canada. In addition, there are bilateral agreements, such as those between Colombia and the United States, which eliminate taxes on imports and exports.

Recommendation:

- **Promote International development with Latin America and eliminate barriers in the procurement process.**

2. Explore ways to Reduce Barriers in State Licensing

As workers obtain competency, they often move from employee to employer. Licensing examinations are offered in English only, which precludes skilled non-English speaking workers from moving into the roles of contractors or small business owners. An individual is precluded from cosmetology, plumbing and contracting services without a license. There are many service related businesses that require passing state license requirements that could be taken and passed by Latinos who are limited English proficient, if they were offered in Spanish. With the additional language skill they also fill a valuable role in servicing the Spanish speaking community.

Recommendation:

- **Evaluate the feasibility of offering state licensing examinations in Spanish.**

3. Address Issues of Latino workers in Accessing Jobs, Healthcare, Decent Wages and Driver's Licenses

A large segment of Latino workers in Virginia are working in the service industry, construction and short-term labor. A significant number of this population's immigrant status is in limbo, awaiting a decision on their status, meanwhile, they are undocumented. These individuals work in a variety of tasks, filling needs that keep the economy strong. It was reported in northern Virginia that upon the completion of jobs many are not being paid, or are being underpaid. At times, employers pay them with checks from bank accounts that have insufficient funds, thus denying the workers from receiving their

compensation. Employers avoid being charged with a felony for the bad checks, even though the amount may exceed \$200, because the check was for payment for services rendered instead of for merchandise. The current oversight on the employers is often inadequate. The workers are advised that they can go to Small Claims Court, but this is not always a viable alternative. Language barriers and the lack of a written contract, or the inability to obtain service on the employer because the employer lies about where he lives, all pose significant barriers. Even if the employees go through the process and win, collection often fails because the employers cannot be found, refuse to pay, or threaten the employee with deportation.

In addition to the difficulties faced by Latino workers to get paid for their work, many face challenges in getting fair wages, health care benefits and reliable transportation because they can't prove that they are legal residents, thus they're denied access to a driver's license. To resolve these problems and address the lack of healthcare for Latino workers, some method of providing bonding should be evaluated, as well as obtaining a driver's license to get to work legally and safely. For immigrants who cannot prove legal residency in Virginia, the driver's license issue was settled by legislation, denying them access to obtain one. It is recommended that this issue be revisited because it has created a severe hardship on hard working people whose only crime is not being able to prove legal residence. They want to drive legally, by learning our laws, getting a license and getting car insurance.

Recommendations:

- **Evaluate the elimination of the exclusionary clause for checks issued for payment for services, so that penalties for bounced checks are uniform.**
- **Investigate the Feasibility of Statewide Bonding to Cover Wages and Healthcare for Latino Workers.**

B. EDUCATION ISSUES

In addition to the three priority issues in part 1, the education committee addresses the following issues.

1. Designation as “Hispanic/Latino” Should Not Create a Presumption of Limited English Proficiency.

The diversity in the Latino student population in Virginia means that not all children with Spanish surnames, or who self-designate as Hispanic are Limited English Proficient (LEP). Both over-inclusion and under-inclusion can result when presumptions are based on the designation or surname. To meet the No Child Left Behind Act (NCLB) requirements, some schools sent notices about how to obtain remediation to all children who were designated as Hispanic. It is unclear whether the notification was actually based on empirical data. Even if it was, the manner in which the schools dealt with the notification furthered a perception that a child from a Latino background has deficiencies, which must be overcome. While it is essential to provide support to students who need it, it is equally important that roadblocks to success are not needlessly put in place simply because a student comes from a Latino background. In fact, even though some homes lack parental involvement, (mainly due to a lack of understanding about the school system), many Latino children do have support systems, which

encourage and reward educational success.

One benefit that can come from testing is that students, who are demonstrating success, can be identified and not left behind because they are ignored. Those students who are demonstrating skills should be given access to gifted and talented programs in their local school divisions. In addition, monitoring testing data to correlate success and an invitation to gifted and talented programs should occur and these students should be recognized as models of success at the state level. It is also imperative that parents are equipped with the resources to prepare and attain a quality education for their children. If parents are inadequately advised of the opportunities for their children, they cannot ensure that those opportunities will be pursued. We all have a stake in the development and economic future of all our children and we encourage recognition of those who are excelling.

Recommendations:

- **Create an annual “Governor’s Award of Merit” to positively reinforce successes of Latino students.**
 - **Implement a monitoring system to ensure that surnames or self-designation as a Hispanic is not improperly used to track students.**
 - **Evaluate reports by school divisions about programs, which promote outreach efforts to parents in their own language.**
 - **Implement a system to monitor the notification of placement in an English language acquisition programs.**
2. **Excessive testing of English as a Second Language Learners Adversely Affects Student Performance.**

Success in education today is measured through multiple tests, including the Standards of Learning, (SOL). These tests are now being used under the No Child Left Behind Act (NCLB) in a manner which disaggregates scores into six categories, black, white, Hispanic, disabled, Limited English Proficient, (LEP), and economically disadvantaged. Each group must meet the federal requirements in order for the school to meet the federal definition of adequate yearly progress. Unfortunately for the Latino population many of these subgroups intersect and Latino children are often counted multiple times in each school report. This magnifies the impact of every failure or success. Where staff is available, the use of alternative testing for this population is allowed and needs to be expanded. Specifically, in 2004, the same Stanford English Language Proficiency (SELP) assessment was used for children in grades K-2 grade. Clearly, children at the younger end of that spectrum do not have the same skills as children in second grade. Even if they are competent for their age group, using complex tests undermines their confidence and may lead to a cycle of failure, a result that could be avoided with better assessment tools.

Many school divisions are responding to the increase in testing by providing additional test preparation for the students. Because the consequences of doing poorly on these tests are substantial this is a seemingly justifiable expenditure of resources. However, even at this early stage we found that

often the additional test preparation occurs in lieu of substantive English as a Second Language (ESL) instruction. The latest data provided by the Virginia DOE shows 836 licensed ESL teachers and over 50,000 ESL students. That is a ratio of almost one teacher for every sixty students. When teachers are testing a group, or providing the testing accommodations for a few individuals, the rest of the students are not receiving instruction. Hence, ESL teachers from many divisions report dedicating the last six weeks of school just for testing, which reduces the thirty-six weeks of classroom instruction to, at most, twenty-four.

Further, well-intentioned diversion of resources reinforces the remediation requirements without addressing the need for substantive content delivery. This loss of services is exacerbated with the ESL teacher shortage. The disparity is also seen in the differences in funding by school divisions. Some districts such as Fairfax and Arlington County substantially underwrite the per pupil cost of providing ESL instruction, while others only provide the minimum required match to the State funds at a ratio of 1.7 teachers for every 100 students. The Virginia School Board Association LEP Caucus reports the following numbers of LEP students as a percentage of the total population: Alexandria, 2412 students (22.4%), Arlington 4,678 (28.0%), Fairfax 22,868 (13.7%), Harrisburg 1,285 (31.9%), Manassas 1,011 (14.9%) and Prince William 4939 (8.4%).

Acquisition of English skills is hampered when students are not provided access to ESL instruction. In many parts of Virginia teachers assigned to ESL education classes do not spend most of their time providing instruction. They become the liaison between school and parents and provide translation and testing services. While translation and testing services satisfy legal requirements, it does so at the expense of the teacher's primary mission, which is to provide classroom instruction.

Best practices for ESL delivery to LEP students can only be developed if the Department of Education (DOE) collects and disseminates the information to impacted school divisions. The collection of specific data on the various approaches to meeting LEP needs, would improve DOE's ability to provide technical support to school divisions wishing to develop or strengthen ESL delivery for their LEP students.

Recommendations:

- **Implement measures to assure that additional funding provided for LEP students under Title III is used for the provision of endorsed classroom teachers who are assigned to teaching and not testing or interpretation.**
- **Support and increase the development of alternative assessment tools appropriate to the age of the students.**
- **Support the collection of information on the structure and operation of each school division's approach to LEP needs.**
- **Require each school division to report the ESL student to teacher ratio (including the use of non endorsed individuals) and indicate the program delivery methods adopted to ensure English competency.**

- **Increase the collaboration between DOE and Virginia Universities to prepare more ESL teachers.**
 - **Maximize the use of Department of Housing and Urban Development (HUD), The College Assistance Migrant Program (CAMP), (TRIO), (UPWARD BOUND), and (GEAR UP) grants.**
 - **Encourage universities and community colleges to partner with national Hispanic serving organizations to better serve eligible Hispanic youth and allow access to college, scholarships, and internships.**
 - **Lobby for the right of Virginia residents without documentation but who meet residency and/or graduation requirements to have access to higher education at in-state tuition rates.**
 - **Create a task force to evaluate the feasibility of developing private funding sources to subsidize the difference between in state and out of state tuition for Virginians, who cannot meet the legal presence requirements, but who demonstrate educational promise and ties to Virginia.**
- 3. Data Collection must be completed in ways that honor the cultural differences in order to assure the accuracy of the data collected.**

The commission received information about the projects that are underway to enhance data collection and management at the state level. We applaud the efforts of the State Department of Education to collect this information in a manner, which will allow the Commonwealth to more readily apply for funding. However, we encourage the appointment of an individual within the DOE to oversee and assist with grant applications. This individual needs authority to coordinate the effort across state agencies including the DOE, DOL and the Virginia Employment Commission, which currently collect data that is often needed to complete a federal grant application.

Further we are also mindful of the difficulties that face many students who have had misinformation coded into the permanent records because the person collecting data is unaware of, or unwilling to accept names that differ from what they perceive as the standard. In fact, we have seen that different secretaries in the same school division may each use a different way to list the same child. Some tell students or parents, to delete the second last name because “it doesn’t fit.” Some tell them to hyphenate it and others just decide that the first last name will become the middle name so the records “will match.” As databases are created, it is imperative that the programs are designed to accept different naming systems. In addition, persons charged with collecting the data, must be trained to understand that they must not alter names. This is an area where the choice should be based on the information provided by the parents. Furthermore, to facilitate accurate data capture, the persons charged with developing databases should be required to design systems, which will easily accommodate the different ways of presenting legally valid names.

Recommendation:

- **Designate a grant coordinator who will work from the DOE with authority to gather data**

across state agencies.

- **Ensure that the Department of Education reviews proposed data collection systems to provide compatibility with varying ways of presenting legal names.**

4. Barriers for migrant preschoolers and Head Start programs

The majority of Migrant Education funding is spent on services to children enrolled in grades K-12, even though migrant education funds are available to serve ages 3-21. As a result, migrant preschool children are not adequately served. Many of these preschool children live in communities where the migrant children are a small percentage of the total school population. Often these communities lack a sophisticated infrastructure to meet the ESL needs of these children. However, the Commonwealth should not wait until they start school to identify their needs. Early assistance and access to preschool is essential but difficult to obtain. Regular head start and preschool centers are in high demand and they rarely grant migrant preschoolers a place because they know the children will be moving. Many who might provide services do not or cannot meet the transportation needs of migrant children.

Head Start Federal regulations adopted in January 1, 2004 proscribe the transportation of children without restraints and an adult monitor in each bus. These restrictions have created an additional barrier to the provision of migrant education for pre school children. Even though many schools have requested a waiver, which allows them to transport without restraints or a monitor until 2006, this temporary measure will soon expire. Without a commitment to planning and funding now even the limited services that are available will cease when the waivers expire.

Recommendations

- **Create a task force to explore and recommend solutions to the transportation needs of migrant students.**
- **Establish a program to promote short-term participation in Head start programs.**

C. Health Issues

The Health Issues Subcommittee identified issues, including: language access in health care settings; effective use of state resources; development of bilingual services directories; promotion of cultural competence; the lack of bilingual and bicultural professionals; and the lack of knowledge about the United States' health system and programs.¹⁷

1. Language Access in Health Care Settings

Not everyone in the public at large, or even in government agencies, is aware that the provision of language-access services in health care is mandated by a range of laws, regulations, and standards at both federal and state levels. The Office of Minority Health of the U.S. Department of Health and

¹⁷ The Commission is indebted, for its understanding of language-access issues involving health care, to the following study: Maricel Quintana-Baker, PhD. (Consultant to AIR), *Health Care Language Services: An Environmental Scan*, under contract to the Office of Minority Health: Contract No. 282-98-0029, Task Order No. 48 (Washington, DC: American Institutes for Research, 2003).

Human Services issued *National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health Care* in March 2001. Four of the 14 CLAS standards address the issue of language assistance services in the health care setting.

National Standards for Culturally and Linguistically Appropriate Services (CLAS): Standards on Language Access Services (Nos. 4B7)

4. Health care organizations must offer and provide language assistance services, including bilingual staff and interpreter services, at no cost to each patient/consumer with limited English proficiency at all points of contact, in a timely manner during all hours of operation.
5. Health care organizations must provide to patients/consumers in their preferred language both verbal offers and written notices informing them of their right to receive language assistance services.
6. Health care organizations must assure the competence of language assistance provided to limited English proficient patients/consumers by interpreters and bilingual staff. Family and friends should not be used to provide interpretation services (except on request by the patient/consumer).
7. Health care organizations must make available easily understood patient-related materials and post signage in the languages of the commonly encountered groups and/or groups represented in the service area.¹⁸

In Virginia, according to the recently published second edition of *Ensuring Linguistic Access*,¹⁹ the only two provisions addressing linguistic access are in abortion counseling (Virginia Stat. ' 18.2-76) and vaccination services, (12 Virginia Administrative Code ' 30-10-50). In contrast a number of states including California, New York, Maryland, Massachusetts, and the District of Columbia have addressed the need to provide language assistance for health care services to LEP persons.²⁰

The Office for Civil Rights (OCR) of the US Department of Health and Human Services regards health care providers who fail to provide language assistance to LEP persons as being in violation of Title VI on the basis of national origin. OCR recommendations indicate that appropriate language assistance efforts in the health care setting should include: (1) An assessment of the language needs of the population to be served; (2) development and implementation of a language assistance program that includes interpretation and translation; (3) training of interpreters and translators, as well as of medical service providers on how to deal with interpreters and translators; and (4) monitoring and oversight.²¹

¹⁸ *Final Report, National Standards for Culturally and Linguistically Appropriate Services in Health Care, March 2001*, Office of Minority Health, U.S. Department of Health and Human Services, Washington, DC.

¹⁹ Jane Perkins, Mara Youdelman and Doreena Wong, *Ensuring Linguistic Access: Legal Rights and Responsibilities*, 2nd ed. (Washington DC: National Health Law Program, 2003).

²⁰ Examples of language- access legislation in neighboring jurisdictions include Maryland ' 10-1101 and the District of Columbia A-15-414-Language Access Act of 2004, which both require departments, agencies, and programs, to provide equal access to public services for individuals with limited English proficiency.

²¹ See, OCR Policy Guidance, Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency, <http://www.hhs.gov/ocr/lep/guide.html>.

A self-designation of bilingualism does not necessarily mean that an individual has the ability to perform as an interpreter – especially in the health care context, where understanding the medical information being conveyed is crucial. Ad-hoc solutions (use of patient’s family or friends, Spanish-speaking employees, doctor’s own limited Spanish) are fraught with risks to privacy, not to mention what can be at stake when errors or omissions occur. Using children as interpreters is particularly ill advised, placing a young son or daughter as it does in the role of “power broker” within the family (as the interpreter is the only person who knows *all* the information) and burdening her with conveying messages whose emotional implications may far exceed a child’s capabilities.

For interpreter programs to be effective, providers and other health care staff must be trained to work effectively with interpreters. For example, providers should build extra time in the schedule, they need to know they should address the patient not the interpreter, they should speak in a natural tone of voice—it is not necessary to shout. Furthermore, the provider should be able to tell the interpreter how they wish to conduct the medical encounter, and should be aware of the conduct and demeanor expected of a professional interpreter.

Recommendations:

- **Provide training to healthcare providers about the importance of using competent medical interpreters, as well as, training on how to work with an interpreter while serving those with limited English proficiency.**
- **Conduct a survey to gather available patient related material and signage form medical providers throughout the state.**

2. Effective Use of State Resources

In addition to the Office of Minority Health discussed in part 1 of this report, the Northern Virginia Area Health Education Center (AHEC), and local hospitals, free clinics, and other safety net providers are all excellent resources for health care information in the State of Virginia. In order to obtain benefits from these services however, the community must become aware of their existence.

a. The Northern Virginia Area Health Education Center (AHEC)

Based in Northern Virginia, where 60 per cent of the State’s Latino population resides, AHEC is a community-based organization that has addressed the need for language assistance in its area by creating its own interpretation program. AHEC manages the program, recruits and trains interpreters, and trains providers to work with them. The program can provide assistance in 20 languages and is funded by fees from providers, grants, and organizational funds.

The Department of Medical Assistance Services is exploring a pilot program to expand Medicaid coverage to include translator and interpreter services. Expanding coverage through the Federal match program would allow health care providers, to provide these much-needed interpreter services. Currently, nine states draw the 50% Federal Match for Interpreter services and DMAS is in discussions with the Northern Virginia AHEC and also with the Northern Virginia local health departments in preparation for this pilot program.

b. Local hospitals, free clinics and other safety net providers.

Under the constant strain of smaller budgets, much more demand has been placed on local hospitals, free clinics, and other safety net providers. According to a study done by, The Commonwealth Fund in 2003, 20% of Latinos rely on community health centers or free clinics as their source of primary care, and more than half of uninsured Latinos do not have a regular doctor.²² The remainders either forgo treatment or rely on hospital emergency rooms to fill the need. These choices are ultimately more costly, both because they lack efficiency and an ability to respond to public health needs.

Recommendations:

- **Continue to support and expand the northern Virginia AHEC model to other parts of the state.**
- **Develop a plan to ensure increased participation of Virginia’s Latino community in research studies so as to accurately document health disparities and needs.**
- **Create a coordinating entity in regards to interpretation and translation which would greatly improve communication across providers**

3. Development of Bilingual Services Directories

A review of several health insurance directories revealed that the directories are all written in English. Very few have any mechanisms, which would help a person seeking treatment to discern the language capacities of their providers, and the level of language competency is not reflected. Finally, these directories are not readily available to those without health insurance and do not provide a centralized listing of all providers in Virginia.

The Virginia Board of Medicine’s Practitioner Information website provides Internet access to the self-reported profiles of over 31,000 Doctors of Medicine, Osteopathic Medicine, and Podiatry who are either currently or previously licensed in Virginia.²³ The parameters available for conducting a search using this system include the physician’s last name, location, and specialty. Each profile, once pulled up, includes information about “Non-English Languages spoken in the Office” and “Non-English Languages spoken by Practitioner.” However, specifically locating a Spanish-speaking practitioner can be a tedious process of opening the profile for each practitioner identified for the very broad search criteria. In addition this system is in English and does not provide a centralized listing of Spanish speaking health care providers. The absence of this type of data needs to be addressed to ensure that Latinos with limited English proficiency can find providers who may better meet their needs.

²² Doty Chart 3-1.

²³ Virginia Board of Medicine, A Virginia Board of Medicine Practitioner Information, © 2002 <<http://www.vahealthprovider.com>>.

Recommendations:

- **Add “Non-English Languages Spoken” as an additional search criterion to the Virginia Board of Medicine’s Practitioner Information website.**
- **Provide a Spanish language version of this website to facilitate access to Virginia’s Spanish-speaking communities.**
- **Provide this same information in Spanish in printed media that can be distributed in schools, libraries, and other community centers.**

4. Promotion of Cultural Competence and Sensitivity

Cultural competence involves continual assessment of services, with the goal of providing equal quality care for all patients. The Office of Minority Health of the U.S. Department of Health and Human Services issued the CLAS Standards to “respond to the need to ensure that all people entering the health care system receive equitable and effective treatment in a culturally and linguistically appropriate manner.”²⁴ Four of the 14 Standards address the importance of planning and assessments to assure cultural competence in health care delivery.

National Standards for Culturally and Linguistically Appropriate Services (CLAS): Standards on Language Access Services (Nos. 1, 3, 8 and 9)

1. Health care organizations should ensure that patients/consumers receive from all staff members’ effective, understandable, and respectful care that is provided in a manner compatible with their cultural health beliefs and practices and preferred language.
3. Health care organizations should ensure that staff at all levels and across all disciplines receive ongoing education and training in culturally and linguistically appropriate service delivery.
8. Health care organizations should develop, implement, and promote a written strategic plan that outlines clear goals, policies, operational plans, and management accountability/oversight mechanisms to provide culturally and linguistically appropriate services.
9. Health care organizations should conduct initial and ongoing organizational self-assessments of CLAS-related activities and are encouraged to integrate cultural and linguistic competence-related measures into their internal audits, performance improvement programs, patient satisfaction assessments, and outcomes-based valuations.²⁵

There is a lack of access to affordable, high quality health care, and to doctors who understand Latinos’ unique cultural concerns. It is important for medical professionals and researchers to realize

²⁴ Office of Minority Health, U.S. Department of Health and Human Services, ANational Standards for Culturally and Linguistically Appropriate Services in Health Care@ (Washington, DC: March 2001) 3.

²⁵ Source: Final Report, National Standards for Culturally and Linguistically Appropriate Services in Health Care, March 2001, Office of Minority Health, U.S. Department of Health and Human Services, Washington, DC.

that not all minority groups have the same health concerns or respond to medications in the same way. For example, African-American women have higher infant mortality rates than Mexican-American women, but both may lack prenatal care.

Within the primarily Spanish-speaking Latino community, 35% report having difficulties understanding information from their doctor, and 52% report difficulties in understanding prescription instructions.²⁶ These difficulties extend beyond language barriers into the realm of cultural understanding. According to the same study, 50% of primarily English-speaking Latinos report having difficulties understanding information from their doctor, while 27% report problems in understanding prescription instructions.²⁷

Virginia's Latino community is diverse in its cultural practices and beliefs; especially in relation to health and mental health issues. It is of the utmost importance that medical professionals approach their patients equipped with sufficient knowledge and awareness to be able to communicate across cultures, thus ensuring effective and safe diagnosis and treatment, without disrespecting or belittling the patient's belief and value system.

Recommendations:

- **Adopt Cultural Competency and Sensitivity - Education, Training and Standards that are modeled closely after those issued by the federal government's CLAS Standards.**
- **Communicate to health care organizations, providers, and associations, at the state and local levels, the importance of cultural competency as a priority for effective delivery of services.**
- **Provide educational and training opportunities on culturally appropriate service delivery at the state and local level.**
- **Compile existing resources and develop any needed new resources on culturally appropriate care that health care providers can independently access via the Internet.²⁸**

5. Lack of Bilingual and Bicultural Professionals

Culturally competent health care services cannot be provided unless there is a commitment to the recruitment of bilingual and bicultural health providers. Standard Number 2 of the CLAS Standards states, "Health care organizations should implement strategies to recruit, retain, and promote at all levels of the organization a diverse staff and leadership that are representative of the demographic characteristics of the service area."²⁹ On the whole, certain professions within the medical field, such as

²⁶ Doty Chart 6-4 B 6-5.

²⁷ Doty Chart 6-4 B 6-5.

²⁸ See, e.g., National Center for Cultural Competence at www.georgetown.edu/research/gucdc/nccc and University of Washington's website on AEthnic medicine information from Harborview Medical Center@ at www.ethnomed.org.

²⁹ Office of Minority Health, U.S. Department of Health and Human Services, ANational Standards for Culturally and Linguistically Appropriate Services in Health Care@ (Washington, DC: March 2001) 8.

nursing, are experiencing shortages; however, targeted minority recruitment efforts and workforce development, as well as state support and guidance to local health providers in their recruitment efforts, are part of the solution to this problem.

Treating bilingualism as an important, valued skill by acknowledgment through additional pay, title, or specific assignments would highlight the significance of being bilingual. Too often bilingual staff who work in health organizations are asked to interpret or translate in addition to their set duties without additional pay, alleviation of their normal tasks, or official acknowledgement of their skills. Furthermore, a search of employment opportunities, such as emergency personnel, nurses, mental health physicians, and human services workers at the state level, indicated that none of the job descriptions listed a preference or need for bilingual professionals. If the skill is not a required or desired skill, the ability to meet the needs of monolingual patients will not be met. In short, workforce development for English language learners is an area in need of more resources, programs, and providers.

Recommendations:

- **Develop a Minority Recruitment Guide that would help local health care providers recruit minority health professionals.**
 - **Promote the recruitment of bilingual and bicultural health care staff by acknowledging the value and skill that they bring to their jobs**
 - **Include, “bilingual skills preferred or appreciated” on state health care employment announcements.**
 - **Assess state recruitment websites and provide a mechanism to accurately reflect language skills.**
 - **Explore best practices and other states’ workforce development programs that have focused on training foreign-born health care professionals**
- 6. Lack of Knowledge About the United States’ Health System and Programs**

When families move to Virginia from other countries, or even other states, it is difficult for them to find information about accessing health care, especially if their native language is not English. Understanding the United States’ health care system can be a significant obstacle, since the health care systems around the world are very different. The result is that families who are eligible for programs such as Medicaid and FAMIS do not enroll. Parents, depending on their educational levels and background, may not realize the importance of dental care and immunizations for their children; and adults may not seek preventative care, such as mammograms or prostate screenings. An increase in effective community based education would improve health care access and disease prevention in the Latino community.

To facilitate access, the Department of Social Services should continually provide training to case managers in regards to eligibility requirements for health insurance programs. Citizens and non-citizens are eligible for certain health care. Generally, universal programs are available when the public

health is impacted. Therefore, it is critical that as policies and regulations change, case managers, must be educated on how to access and deliver these services to the Latino community.

Recommendations:

- **Conduct bilingual outreach awareness and educational campaigns across the state, in partnership with local health departments and school districts, to increase community awareness about health care services, programs, and Virginia’s health care system.**
- **Develop a cadre of community workers to educate Spanish-speaking families across Virginia about the concept of health insurance and how state public health programs work.**

D. IDENTIFICATION COMMITTEE ISSUES

In addition to the Consular identification issue presented in Part 1, the Identification Issues committee addressed the impact of the legal presence law on the members of the Latino community in the Commonwealth.

Virginia’s 2003 General Assembly passed legislation known as the “Legal Presence Law” SB1058 and HB1954 that requires applicants to show proof that they are legally present in the United States in order to obtain a Virginia original drivers license, permit or special identity card. The provisions of this Act became effective on January 1, 2004. As a result of this law many in the Latino community have lost the ability to legally drive or prove their identity.

In the public hearings, members of our community voiced the hardship that the legal presence law has exerted amongst the working immigrant community in our state. The requirements of the law add another bureaucratic complexity to the drivers licensing process. The law establishes new procedure, which requires an applicant for a license, or permit to provide evidence that he or she is a U.S. citizen, legal permanent resident of the U.S., or a conditional resident alien of the U.S. It allows temporary licenses to be issued to persons who have temporary, lawful visas to be in the United States.

As a result, lines and wait times at the Department of Motor Vehicles (DMV) have increased. These are visible signs. Less visible is the anti-immigrant feelings especially towards Latinos and Middle Easterners that were reported to the Commission. We were told of egregious cases of denial of services to many Latino DMV customers including members of the military who were born in Puerto Rico and who hold United States citizenship.

Cognizant of the political realities in a post 9-11 world, especially in Virginia the site of one of the attacks, it is unlikely that the law will change. Moreover, it is clear that the adoption of this law was directed at improving security, which included eliminating the long-held practice of allowing driver’s license applicants to demonstrate their legal status through simple affidavits. While we endeavor to support measures to improve security, those measures should not eliminate the freedoms, which are at the foundation of our community. Freedom to travel, freedom to work, and freedom from discrimination or unfair and degrading treatment must also be maintained. In balancing these concerns it is essential that protections and checks on the system are in place to prevent abuses and ensure that the law is administered equally across all segments of the population.

In addition to concerns about the implementation, there were concerns about economic losses, which result from the legal presence law. Lack of access to driver's licenses prohibits individuals from legally performing daily activities such as driving to work, meeting with teachers at school, taking children to the doctor, and opening up bank accounts. A sector that is particularly hard hit is the Virginia agricultural work force, which is largely comprised of immigrants. The seasonal nature of their time in Virginia makes it difficult to meet requirements of the law.

In response to the law, there is a rise of entities offering Latino and other immigrant groups "documentation." These groups prey on the community, by charging high amounts of money for "documentation" which is a not a legitimate substitute or a legal form of identification. Disclaimers about the validity of the documents may exist in the fine print, but to those who have been turned away by the state, these sources deliver a product that they often believe is a valid substitute. Even those who understand that the value of the documents is limited, desire some form of identification, which will validate their existence. It is in recognition of this fundamental need for identity that the committee addresses the use of Consular identification in Part 1 as one of the top 12 issues facing the Latino community.

Recommendations:

- **Ensure that Implementation of the Legal Presence law continues to be *applied equally*.**
- **Establish a bilingual hotline through which individuals can report any form of abuse or discrimination, which results from enforcement of the legal presence law.**
- **Monitor whether public safety concerns emerge due to an increase in drivers, who continue to drive without a license.**

E. LANGUAGE ACCESS

The Joint Legislative Audit and Review Commission's (JLARC) report on the *Acclimation of Virginia's Foreign-Born Population* acknowledges that language barriers are one of the major barriers for foreign-born residing in the Commonwealth. Furthermore, the majority of people want to acquire language proficiency. However, language acquisition is a long-term process, and not everyone who enters Virginia, as a non-English speaker will master English. Therefore, it is vitally important to ensure that appropriate measures exist to provide equal access and full participation *during* their language acquisition process. The lack of English proficiency limits access to general information, health services, transportation, employment, education, and adequate representation in legal proceedings. Language access issues affect all language minorities in the Commonwealth. Spanish, however, is the largest non-English language spoken in Virginia. Of Virginia's census-counted foreign-born population, one-third is from Latin America.³⁰ Virginia's Department of Education figures indicate that 60 per cent of the Commonwealth's ESL students are native Spanish speakers.

³⁰ In contrast, 41 per cent come from Asian countries, but that population is divided among several language groups.

During the acquisition period, interpreting and translation services, the tools that help provide *language access* or *language assistance*, are essential. The Language Access committee report sets forth standards and requirements, and issues surrounding the delivery of services to LEP individuals. The report concludes with a discussion of legal access issues in the court system. Similar discussions can be found in the Business, Health care and law enforcement sections of this report.

1. Different Types of Interpretation

There are three different types of interpretation: simultaneous, consecutive, and sight translation. In simultaneous interpretation, the interpreter converts the message into another language while the speaker continues to speak. In consecutive interpretation, the interpreter waits until one speaker is finished before converting the message into the target language. The job of the interpreter is to convert spoken information from the original language into the target language in a way that correctly conveys the meaning. Depending on the context, situation, and the skills of the interpreter, he or she can simply convert the words from one language into the other or become a cultural broker, a role that takes into consideration not just the conversion of text but its interpretation within the cultural context.

The interpreted message can be delivered either in person or from an off-site location using either telephonic or video equipment. The most cost effective and accessible type of interpretation is telephonic. Although not as ideal as in-person interpretation (because of the obvious lack of visual contact) telephonic interpretation services are readily available, offer a multitude of languages at a moment's notice, and can be accessed by communities with few or no trained local interpreters. As technology continues to advance, the possibilities of using video teleconferencing, cellular videophone communication, and other advanced technological communication devices will likely increase availability and decrease the cost of remote interpretation services. In addition, the increase use of telemedicine, especially to reach rural and remote areas, may also have a similar impact.

Recommendations:

- **Designate an individual at the state level to serve as an *advocate* for limited-English speakers as to rights and resources.**
- **Promote the availability of the state-wide telephone contract for bulk-rate interpretation and translation services to be used by any and all agencies throughout the Commonwealth and explore less expensive ways of providing these services.**

2. Misunderstanding of translation and interpretation professions.

One widespread obstacle to the provision of adequate language-access services (an obstacle we might think of as cultural) is the lack of understanding of what translation and interpretation are all about as activities, and what is required of an effective practitioner. There is a deeply rooted and unexamined belief that any one who speaks two languages is naturally equipped to translate or interpret between them. This leads to the far too commonplace practice of pressing of an employee of a given agency “who happens to speak Spanish” into duty as an interpreter regardless of training, certification, or regular job duties. Another mistaken perception is that translation or interpretation between two

languages is a mechanical, one-to-one process wherein each word in the original is transformed into the equivalent word in the target language.³¹ One of the consequences of this sort of thinking is the use of computer or other forms of machine translation, which, if uncorrected by a skilled human translator, often yields text that is clumsy and unclear, or misleading or unintelligible.³²

When institutions make substantial use of volunteer interpreters and translators; the result is often a fragmented approach with frequent duplication of translation work, sometimes even within various offices of the same agency. When agencies depend on bilingual employees to provide ad hoc language-access services to LEP clients the quality will be inadequate.³³

An additional concern exists when depending on children of foreign-language speakers to translate for their parents, especially in legal or medical settings. The awkwardness, confidentiality problems, and detrimental psychological effects pose a burden on the youth of our community and force them to accept roles that they are not prepared to handle. Finally, if services are not provided individuals are often faced with exploitive pricing and uneven quality on the part of some non-professional providers of interpreting and translation services.

Recommendation:

- **Educate the public at large on the challenges and professional skills involved in interpretation and translation.**

3. Standards and Requirements

The protections of Title VI of the Civil Rights Act of 1964 extend to persons of limited English proficiency (LEP) and provide that persons of limited ability in English must have meaningful and equal access to services and benefits.³⁴ With regard to Title VI obligations, awareness and compliance on the part of providers are uneven and in some cases nonexistent. Even when compliance is attempted, the quality ranges widely.

Other legal provisions include: *Executive Order 13166* issued in 2000, which states that LEP persons should have meaningful access to federally conducted and funded programs and activities. A

³¹ Some interesting reflections on this can be found at the Northwest Translators and Interpreters Society's Web site, <http://www.notisnet.org/cliented/aboutt+i.html>. A top ten list of public misperceptions by Caitlin Walsh appeared in the Aug. 1994 issue of the American Translators Association's *ATA Chronicle*. The list included these items: #10, "Anybody with two years of high school language (or a foreign-tongued grandmother) can translate." #6, "Translators don't need to understand what they're translating."

³² Spanish-speaking restaurant employees at various facilities, for instance, have been given the printout of a power-point presentation on safe food handling which includes such nonsense phrases as: "Recorte sus clavos" (meaning "trim hardware nails" instead of "fingernails"), "Amantener del alimento comovedor" (almost unintelligible phrase meaning something like "keep the food heartwarming" instead of _____).

³³ Joint Legislative Audit and Review Commission, Virginia General Assembly, *Acclimation of Virginia's Foreign-Born Population*, Commission Draft Not for Public Release, Nov. 10, 2003, p. 43.

³⁴ Office for Civil Rights, US Department of Health and Human Services, Fact Sheet on Language Assistance to Persons with Limited English Proficiency, <http://www.hhs.gov/ocr/lep/fact.html>.

2001 Department of Justice policy document, *Enforcement of Title VI of the Civil Rights Act of 1964-- National Origin Discrimination Against Persons with Limited English Proficiency*, also supports a National commitment to improve access to services for LEP persons. In addition, a numerous other Federal and state laws and regulations dictate language assistance to LEP persons. For example, Federal regulations requiring language assistance include the Voting Rights Act, the Food Stamp Act of 1977, the Older Americans Act, the Equal Educational Opportunities Act of 1974, and the Disadvantaged Minority Health Improvement Act. State provisions are limited. As noted in the health section, there are only two provisions regarding native language services to LEP clients, and as noted below, language assistance in the courts is uneven at best.

Recommendations:

- **Conduct an assessment/survey to learn how Virginia state agencies and employees are removing language barriers in the provision of their services, and how they are addressing the requirements of Title VI language access regulations in serving our LEP population.**
 - **Conduct a public information campaign about Title VI requirements and compliance, including available resources, best practices, and available cost reimbursement for language interpretation services.**
 - **Require each department, agency, office, or program to designate an office to coordinate its language services and LEP implementation; and that each entity develop the policies and procedures needed to ensure timely availability of service to all LEP Virginia residents.**
- 4. Language Access in the Courts**

We turn our attention now to language-access issues in the legal setting, in particular as the lack of language access concerns the courts. Court interpretation first became regulated in the United States with passage into law of the Federal Court Interpreters Act in 1978. This legislation required that Spanish interpreters successfully complete a certification exam in order to work in federal courts. Subsequently, individual states began to impose their own certification requirements. In 1995, the National Center for State Courts (a private foundation) established a consortium, pooling resources for interpreter training and testing.³⁵ Virginia is now one of a dozen states with a certification mechanism.³⁶; the process involves four steps: (1) agreeing to adhere to the Code of Professional Responsibility for Foreign Language Interpreters Serving Virginia Courts; (2) passing a written test on general English-language vocabulary; (3) completing orientation training; and (4) passing the Spanish-language interpreter certification oral examination (Spanish is the only language the Virginia courts are currently certifying.)

The Administrative Office of the U.S. Courts has issued a *Code of Professional Responsibility of the Official Interpreters of the United States Courts*, governing all interpreters who work in the federal

³⁵ Holly Mikkelson, *ACourt Interpreting at a Crossroads*, @ <http://www.acebo.com/papers/crossr~1.htm>.

³⁶ Information on the voluntary certification process in Virginia can be found at http://www.courts.state.va.us/text/fli_spanish_cert.html.

courts. Some states have issued their own regulations or guidelines, such as the Standards of Professional Conduct for Court Interpreters section of the *Standards of Judicial Administration of the California Rules of Court*.³⁷

In Nov. 2003, the Supreme Court of Virginia issued a document intended as a resource manual, entitled *Serving Non-English Speakers in the Virginia Court System: Guidelines for Policy and Best Practice*.³⁸ This 136-page document draws on the law and practices of states and jurisdictions throughout the United States, and attempts to provide courts across the Commonwealth with standards, information, and tools to improve the level of service to the LEP population.

Virginia law requires that an interpreter be provided in any criminal case where the accused does not speak English. There is also a statute relating to civil cases, stating that if a party or witness to such a suit is non-English-speaking, “an interpreter for the non-English-speaking person may be appointed by the court.”

The actual experience of LEP persons in the courts often falls short of the ideal. The tragic consequence of language-access failures in the justice system was illustrated in an April 2004 front-page story in the Charlottesville *Daily Progress*.³⁹ The life of a 26-year-old Mexican-born man changed forever when he was convicted of forcible sodomy in Albemarle County court, even though another man confessed to the act in the proceeding. Review of the trial transcript by a certified interpreter from another part of the Commonwealth found that the court-appointed interpreter in the case (an individual not certified to do such work) repeatedly mistranslated the testimony of a key witness. In jail at the time of the *Daily Progress* article, being held for federal authorities pending deportation, the man convicted on the sodomy charge said, “I feel so bad because I lost everything here. Now they are going to deport me to Mexico. . . . I have a son here and I have to fight for him.”

Among the barriers to adequate service to LEP persons in Virginia courts is that interpreter certification is voluntary, and, while the State Supreme Court encourages judges to use certified interpreters this does not always occur. Furthermore, the statute regarding criminal cases requires the appointment “of an interpreter for the non-English-speaking person” but does not specify any level of competency. In contrast, in civil cases the appointment is permissive; an interpreter “may be assigned,” but if assigned the individual should be “qualified.” The Virginia Supreme Court’s *Serving Non-English Speakers* includes an appendix suggesting some dozen questions judges can ask prospective interpreters to determine their qualifications. This guide is helpful, but only if it is used.

Mary Bauer, the former legal director of the Virginia Justice Center for Farm and Immigrant Workers in Charlottesville, believes that there are many good efforts to serve the LEP population but that overall, the level of this service is “nascent.” Her broad assessment is that, in central Virginia; “We

³⁷ Holly Mikkelson, AToward a Redefinition of the Role of the Court Interpreter,@ <http://www.acebo.com/papers/rolintrp.htm>.

³⁸ Office of the Executive Secretary, Supreme Court of Virginia, *Serving Non-English Speakers in the Virginia Court System* (Supreme Court of Virginia, Nov. 1, 2003). Available online at <http://www.courts.state.va.us/interpreters/guidelines.pdf>.

³⁹ Liesel Nowak, AMisinterpreting Justice? Advocates of Virginia's Growing Spanish-Speaking Population Say Its Needs Are Not Being Met in the Courts, Where Miscommunication Can Have Life-Changing Consequences,@ *The Daily Progress* (Charlottesville VA), Apr. 25, 2004, p. A1, A8.

just haven't figured out as a community the legal and moral obligations we have to the immigrant community."

Language barriers will continue to limit equal access to LEP Virginians unless the state takes measures to change the status quo in the provision of interpretation and translation services. Current efforts are hindered by a general lack of awareness of relevant regulations and, in some cases, a reluctance to enforce them, as well as insufficient funding to cover the level of demand for services. Virginia should pursue efforts to replicate best practices from other states, adopt methods of cost and quality control, and publicize existing cost recovery methods.

The Latino population continues to increase in Virginia, and Census Bureau statistics continue to show that a large number of Latinos (as well as other immigrants) are of limited English proficiency (LEP). In order to serve and provide equal access to services and opportunities for its LEP population, Virginia must take the necessary steps to remove the language barriers that affect these residents.

Recommendation:

- **Replicate best practices from other states and adopt cost and quality control measures.**

F. LAW ENFORCEMENT

The Law enforcement committee's work includes discussion on: the impact of HB 570/SB493 on the Latino community, the inadequate number of Spanish speaking police officers and the rise in gang activity and its impact on perceptions about Latinos.

1. Issues Caused by the Implementation of HB 570/SB493

The General Assembly passed HB 570/SB493 (§19.2-81.6), which went into effect July 1, 2004. The law and its implementation, has created a climate of fear and mistrust of the police among Latino and other immigrant communities. Prior to the effective date of the legislation, press releases were issued which confused the public about the scope of the provision. Because HB570/SB493 was discussed in conjunction with a proposed memorandum of understanding (MOU), between the state police and the Department of Homeland Security (DHS), a fear emerged that all undocumented individuals who were contacted by any law enforcement personnel, in every circumstance, would be turned over for deportation.

In short, there was inadequate education about the limitations that exist in the law and the implementation strategy that would be used by each agency. As we engaged in public forums we invited representatives of the State Police, the Association of Chiefs of Police, and the Department of Criminal Justice to join us. Through the education process, members of the community understood that the law was narrow in its scope. In fact the law only applies to a person who: 1) was previously convicted of a felony, 2) is currently suspected of engaging in criminal activity, 3) confirmed by the Department of Homeland Security (DHS), to have a prior deportation or departure after a deportation order was entered and, 4) has returned to the United States without permission. If these conditions are met the individuals may be held without a warrant for up to 72 hours.

Despite the limited nature of the law, in some places the law has forced people to stay in their homes because they are afraid if they are in any public space they will be arrested by local police and deported or imprisoned.⁴⁰ In a publicized outreach endeavor, the Fairfax police encountered the community fear when people failed to show up for a Spanish-language child safety seat demonstration in Herndon.⁴¹ When people were asked why they didn't come to the training they indicated that they believed that the demonstration was "a ploy" and that they feared they would be arrested if they went.

Even police agencies that understand the limits of this new law, present misinformation and encourage people to give up civil liberties. The Latino community has been told that they must cooperate with the police and answer all questions, and that they have an obligation to identify themselves. This is not true. Unless there is a reasonable suspicion that an individual is committing a crime, there is no constitutional law that requires a person in the United States to identify himself/herself to a police officer.

Police assurances that there will not be adverse consequences are inaccurate. There is nothing in place to determine whether cooperation is safe. There is no guarantee that undocumented individuals will not be detained for DHS. As Rockingham County Sheriff Don Farley said, "if we start questioning someone and find out he's illegal, our hands are tied. We will go through proper channels."⁴² The result could be an increase in deportation and possible abuses might arise due to the adoption of the law. Latinos are particularly concerned about racial and immigration sweeps.

An information campaign and clear articulation by the police about the policy they will adopt in the enforcement of this law can reduce the fear in the community and provide a mechanism to reopen communication between the police and the community. Several police departments, including Arlington, Alexandria, and Fairfax, have taken positive steps to preserve the trust of immigrant communities by issuing policy statements regarding the implementation of HB 570/SB 493. The statements set forth a commitment not to use the law to target the undocumented.

In addition, many in the community report that they are afraid to report crime, access police services or cooperate with crime prevention and enforcement activities. To address these concerns, a citizen advisory board should be established. This board should include immigrant community members. Statewide guidelines should be issued which would describe measures that can be taken to ensure appropriate implementation of HB 570/SB 493 and encourage the development of a model, statewide training program to educate local and state police officers regarding this new law's scope and use. This training program should include clear instructions that emphasize the need to treat immigrant crime victims and witnesses with respect and dignity.

⁴⁰ See, *New Virginia Law Scaring Immigrants*, Jon Ward, The Washington Times July 12, 2004.

⁴¹ See, *Law Raises Immigrants' Suspicions Va. Arrests Possible without Warrants* David Cho and Tom Jackman, Sunday July 11, 2004 page C01.

⁴² See, *Some Immigrants Can be Held For Up to Three Days*, by Will Morris Daily News Record.

Recommendations

- **Request that each local law enforcement agency publish procedures for implementing HB 570/SB493.**
 - **Provide public education about the limitations of HB570/SB493.**
- 2. Lack of Trained Spanish Speaking Officers or Interpreters**

Police departments are strained in their efforts to provide language-access services to assist officers and the public in communicating with one another. As with other areas of interpretation and translation, the experiences of communities vary widely, and are dependent on the level of resources available. In a city with smaller Latino population but rapid growth, the police chief describes his department as having one or two officers per shift with what he calls “functional” Spanish. This is enough command of the language to get through a routine traffic stop, ask for driver’s license and vehicle registration papers, and other basic questions. The department has a single service employee (non-officer) with good Spanish command. When interpretation is needed at a crime or incident scene, the department cooperates with police in neighboring jurisdictions to try to obtain an officer with adequate language skills.

In other, larger communities, departments have more resources but the demand for language access outpaces the ability to provide it. The Richmond Police Department only has four bilingual officers. Recognizing a growing need, Richmond supplements the work of these officers through the recently established telephone line equipped with Spanish-English speakers to receive crime tips. In the past, the Department has used volunteer interpreters, as is the case in many other communities, but increasingly turned to a telephonic interpretation service.

Richmond established a Hispanic Citizens Academy, providing nine weekly sessions to local residents on police procedures, graduating its first class in April 2002.⁴³ With four weeks of additional training, the graduates can become Neighborhood Assistance Officers. These individuals assist in police-community relations, and assist the Department in improving the basic Spanish-language skills of officers. The comparatively (though not yet sufficiently) well-developed level of language-access services in Richmond is part of a general context of service in a metropolitan area. These examples are only part of the picture. As law enforcement efforts to fight gangs and drugs increase, many of these same officers who had been providing services are being moved into the specialized task forces, making them less available to serve the community.

In order to address needs across the state, a comprehensive survey of available resources needs to be undertaken. Based on the findings, options tailored to the needs of the police must be developed. This could include pooling resources or contracting for language assistance on a statewide basis, which would reduce the overall costs.

Recommendations:

- **Conduct a survey of police departments to determine the number of qualified Spanish trained officers.**

⁴³ The “citizens academy” model has been in use since the mid 1990s.

- **Explore alternative methods of providing language assistance to communities throughout the state.**

3. Efforts to Fighting Gangs Should Not Target Non Gang members.

Immigrant community leaders and advocates urged the commission to address the gang violence and the impact that enforcement against it is having in the community. Reasonable and responsible efforts to prevent such activities in our neighborhoods and to punish those who engage in criminal behavior are desired. But the approach taken must not overreach. The approach should not be to target every gathering of teenagers as a gang gathering.

Recent news articles have documented the rise of MS-13 (Mara Salvatrucha) in Virginia.⁴⁴ This is a gang with roots in the Salvadoran community. Spreading from Los Angeles it appears that the gang is targeting Virginia communities for drug trade. Turf battles are accompanying these efforts and the majority of the activity is being imported from outside the state. It is important to recognize that the gang's origin does not mean that all El Salvadorans are gang members. However, the long working hours, of many parents, and lack of after school programs leave some children open to recruitment by gangs. To resist this, children must have alternatives to gang activity. Parents must become aware of the warning signs that point a child toward gang involvement. While early intervention is important it must be balanced against a desire to label all gatherings of children from the same racial or ethnic group as engaging in gang activity. Therefore, efforts to address the criminal element must be tailored toward those who are the problem without needlessly destroying the integrity of the community. As noted throughout this report, effective policing requires the trust and cooperation of the community.

The General Assembly has passed laws to address gang recruitment and violence. The laws that took effect on July 1, 2004 made it a misdemeanor for anyone of any age to recruit someone into a gang. The laws make it a felony to coerce someone into becoming a gang member. Finally, the new provisions provide that three gang related convictions within 10 years is now a felony carrying a prison term of five to 20 years.

Task forces and new federal initiatives and funding, including the \$2.5million demonstration grant that was secured for Richmond, will result in demonstrable improvement in the ability and authority of local and state police to combat gang activity, drug trafficking, and terrorism. These federal initiatives are complemented by the four-pronged effort, announced on May 24, 2004 by the Governor, to reduce gang violence and related criminal activity throughout Virginia.

In these times of heightened national security and increased gang activity, Virginia's law enforcement officers need the trust of the communities they serve to keep the Commonwealth safe for all its residents, and therefore all efforts to reduce and eliminate gangs should be focused to only target those who pose a threat. Toward that end, efforts to educate parents about the signs of gang activity and options for youth are essential.

Recommendations

- **Develop materials to educate parents and children about signs of gang activity.**

⁴⁴ See *Hillbangers*, Matthew Brzezinski, New York Times Magazine, August 15, 2004.

- **Develop alternative after school programs to reduce gang related activity.**
- **Measure and report on the projects adopted to combat gang activity.**