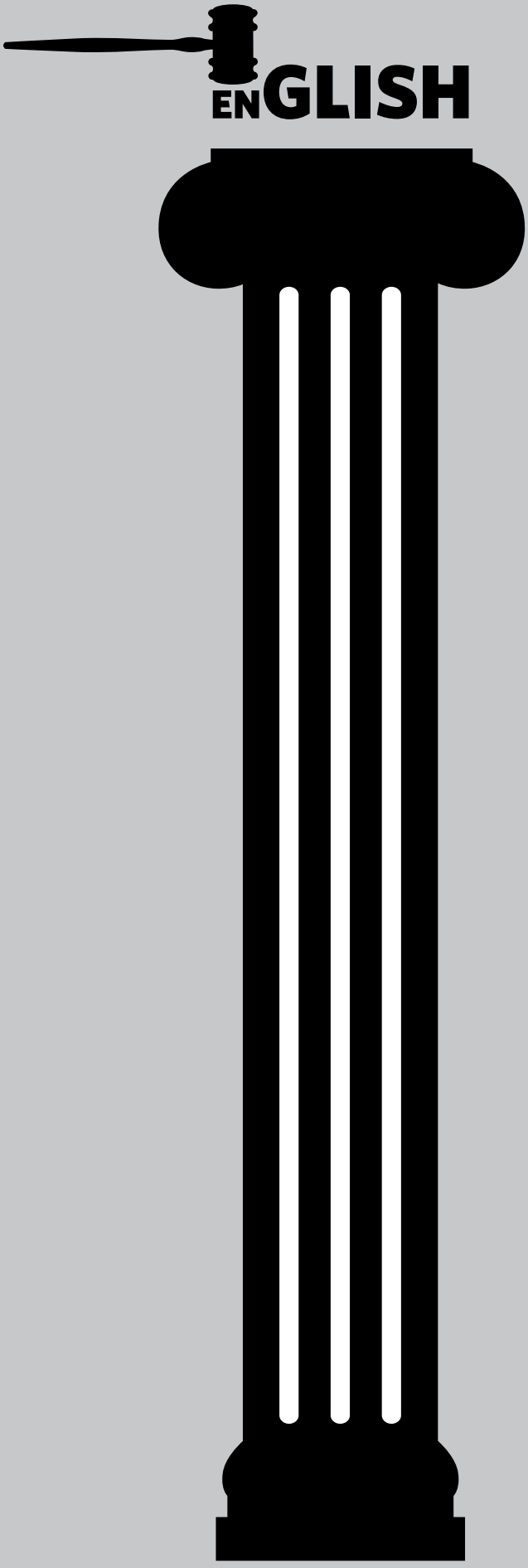
ENGLISH

CENTRO Journal

Volume xx Number 1
spring 2008

THE MANDATORY USE OF ENGLISH IN THE FEDERAL COURT OF PUERTO RICO[1]

Alicia Pousada

ABSTRACT

Although most District Court personnel and jurors in Puerto Rico are native Spanish speakers, they are legally required to be competent in English because the proceedings are in English. The language requirement is implemented through special tests for attorneys and a jury selection process that disqualifies non-English-proficient candidates. The policy has clear constitutional implications since it restricts jury participation to a generally upper-class minority and calls into question the guarantee of "a jury of one's own peers." Efforts to change the practice have been ongoing but unsuccessful. This paper traces the history of the issue and argues that switching to Spanish as the court language would be congruent with prevailing notions of human rights and language planning. [Key words: Puerto Rico, English, federal court, language policy, language planning]

ENGLISH IN PUERTO RICO HAS HAD A DECIDEDLY PECULIAR HISTORY (POUSADA 1999).

Imposed upon the populace via a long series of chaotic language policies beginning with the U.S. military occupation in 1898 at the close of the Spanish-American War (Negrón de Montilla 1990), the language is a mandatory subject at all educational levels, often listed under job requirements in want ads, and omnipresent in commercial signage. In contrast to Spanish, the language of everyday discourse viable in all social domains, English is primarily utilized in rather exclusive domains like business transactions with American firms (which dominate the island's economy), private English-medium schools, some academic conferences, university science classes given by foreigners, the military,[2] the postal system,[3] the tourist industry, and within return migrant communities.

Many efforts have been made over the past 110 years to transform the Spanish-speaking Puerto Rican people into "bilingual citizens" (Fajardo, Albino and Báez 1997), pursuant to the pervasive pro-English stance of the United States government (Baron 1990). Despite the legal status of English as co-official language along with Spanish, only 17.6 percent of the island's population over 18 indicated on the 2000 Census that they spoke it very well. There is a strong statistical correlation between higher social class and superior English proficiency (Gutiérrez 2002a), somewhat complicated by the existence of working class English-proficient return migrants. The highest concentration of English speakers in Puerto Rico is found in Guaynabo, which is also the most affluent municipality, while the least English fluency is found in Las Marias, one of the very poorest towns on the island (Barreto 2001). However, even among professionals and intellectuals who are highly competent English users, there is a pervasive underrating of English competence and a strong preference for Spanish in daily interaction (Pousada 2000; Vélez 2000).

Viewed simultaneously as a tool of economic advancement and an instrument of ideological repression, English is perceived by many Puerto Ricans as a necessary evil that poses a threat to Spanish and to Puerto Rican culture (Rua 1987; Comisión de Educación 2004). Defense of Spanish is on the agenda of all three political parties, regardless of whether they advocate independence, continued Commonwealth status, or statehood.[4] To quote Trías Monge (1997: 183):

Puerto Ricans of all persuasions are principally cultural nationalists. The overwhelming majority consider themselves Puerto Ricans first and Americans second. Should the people of Puerto Rico feel that their native language or sense of identity are threatened by statehood, if for example, a condition to statehood was that English would be the primary language or that public school instruction would be in English, large numbers of statehooders would surely flock to the autonomist and independence options.

This assertion is sustained by the findings of a study carried out by the Ateneo Puertorriqueño (Del Valle 1993), in which 93 percent of the sample stated that they would never give up the Spanish language even if the island became a state and even if English were established as the sole official language; 91 percent considered themselves to be Puerto Ricans first and Americans next; 87 percent claimed to feel strong patriotic attachment to the Puerto Rican flag; and 95 percent felt a strong attachment to the island.

Puerto Rican cultural identity is tightly bound to the use of the Spanish language and only peripherally associated with being "American" (in the U.S. sense of the word), as amply demonstrated by Alvar (1982), Meyn (1983), and Morris (1995). While there is an "identitary" link to the United States (Rivera Ramos 2001: 171), it is primarily legal in foundation, rather than ethnic or linguistic, although as Barreto (2001: 2) points out, from the outset of the U.S. occupation of the island, "proficiency in English became a litmus test for determining one's loyalty to the U.S."

Rivera Ramos affirms the negotiation of multiple identities in Puerto Rico, foremost among them *puertorriqueñidad*.[5] This variability found both among and within individuals is also reflected in language usage and attitudes. The members of the local elite who go to English-only schools, travel extensively in the United States, and work in U.S. enterprises may be admired for their language skills and incomes, but they may also be criticized for being cultural assimilationists, *piti yanquis* (little Yankees), or even outright *gringos*. Occupying the opposite end of the social spectrum (although also constituting an "elite" of sorts) are the return migrants or *nuyoricans*, who can be found all over the island but are clustered in urban neighborhoods around San Juan and Bayamón (Pousada 1994). Often these individuals are not considered to be "real Puerto Ricans" by island residents and may be criticized for their limited Spanish proficiency or their use of non-standard varieties of English.

Identity politics on the island are further complicated by pragmatic considerations. Puerto Ricans are well aware of the economic power of the English language, both locally and globally. All surveys indicate that there is near unanimous support for the teaching of English, although not necessarily for teaching in English.[6] Even staunch hispanophiles do their best (whenever possible) to send their children to schools in which English is emphasized (sometimes to the exclusion of Spanish), so that their economic futures may be assured, and private English institutes do a booming business on the island. Maintaining the seemingly incompatible defense of the two languages is accomplished via compartmentalization. As Barreto (2001: 3) puts it: "Spanish speaks to Puerto Rico's heart, while English speaks to its wallet."

The linguistic dilemma faced by every Puerto Rican on a daily basis (perfectly encapsulated in the title of a 1992 article by Schweers and Vélez—"To be or not to be bilingual") is brought to a climax in the one setting in

which English is absolutely mandatory: the U.S. District Court. Although the federal judges, court personnel, prosecutors, attorneys, and jurors are almost all native Spanish speakers, they are legally required to be competent in English because the proceedings are held in English. The language requirement is implemented through a written, multiple-choice, and essay test for attorneys and a jury application form that automatically disqualifies candidates who are not English-proficient.[7] This has clear constitutional implications given that it restricts jury participation to a small, generally upper-class minority, excluding 91 percent of the population that would otherwise qualify (Gutiérrez 2002b), and calls into question the guarantee of "a jury of one's own peers," particularly in criminal cases where individuals of limited economic resources are often found in disproportionate numbers.[8] It also places the Federal Court in Puerto Rico in violation of its own regulations, which state: "No citizen of the U.S. shall be excluded from services as a grand or petit juror in the Court on account of race, color, religion, political beliefs, sex, national origin or *economic status*" [my emphasis].[9] In Puerto Rico, making participation hinge on English proficiency essentially makes it dependent on economic status.

In addition, plaintiffs, defendants, and witnesses in both criminal and civil cases are almost always Spanish speakers with varying degrees of English proficiency; oral expression is generally their weakest skill. As a result, many are forced to resort to court interpreters to function within the federal court environment on their own native soil, even though all parties present speak Spanish. Typically, the court interpreter provides simultaneous interpretation into Spanish for Spanish-speaking defendants or plaintiffs through headphones and consecutive interpretation into English and Spanish over open mikes when witnesses are responding to questioning. Everyday court proceedings thus become as complex as a session of the United Nations.[10]

In Puerto Rico, making participation hinge on English proficency essentialy makes it dependent on economic status.

The artificiality of this language policy has not escaped the notice of critics who have attempted over the years to challenge it in the interests of equity. Such efforts have been unsuccessful so far, yet periodically the debate is reopened. The importance of the controversy has grown in recent years as the federal court has increasingly taken on cases that go beyond the federal rights and interstate or international interests for which it was presumably created. More Puerto Ricans are bringing cases to the federal court and are thus coming into contact with the English-only policy (Toledo 1980).

This paper briefly traces the history of the language policy from the creation of the District Court of Puerto Rico in 1900 to the present time. Its major objective is to demonstrate why a switch to Spanish as the operating language would be congruent with prevailing notions of civil or human rights, as well as with the basic tenets of good language planning.

The historical development of the District Court of Puerto Rico

Soon after the arrival of the Americans in 1898, the United States Provisional Court for Puerto Rico was established to deal with federal, interstate, and international matters and local civil actions involving more than $50.00 (General Order #88). All Provisional Court officials were Americans, as were many civil plaintiffs, while most defendants were Puerto Ricans. The language of the Provisional Court was English, and Puerto Rican lawyers who did not know English could apply for permission to use their own interpreters during proceedings. The first jury trial was heard on 20 September 1899, and the all-male jury consisted of members of the Puerto Rican, Spanish and American elite that utilized English as a *lingua franca* for their business dealings (Baralt 2004: 97).

The Provisional Court was replaced in 1900 by the U.S. District Court for the "District of Porto Rico" when the U.S. Congress passed the Foraker Act to establish a civil government for Puerto Rico.[11] The federal court would deal with federal rights, constitutional concerns, bankruptcy, U.S. criminal law, maritime law, appeals, writs of error and *certiorari*, and removal of causes. District Court judges, U.S. Attorneys, and District Marshals were to be appointed by the President of the United States for four-year terms. In contrast with other federal district courts, the judges and U.S. attorneys did not have to be residents of the jurisdiction in which they served, and the federal judge was not appointed for life. In addition, federal court expenses and salaries had to be covered with funds from the Puerto Rican Treasury, although fees, fines, costs, and forfeitures would become revenues of Puerto Rico. All court proceedings had to be conducted in English.

The creation of the U.S. District Court (which was modeled after the Provisional Court and inherited all its cases and files) met with protest from the Puerto Rican legal establishment (Tapia Flores 1979). Puerto Ricans were not permitted to become District Court judges, and many of the American political appointees were sorely lacking in local knowledge. In 1909, legislators from the Chamber of Delegates of Puerto Rico presented a resolution stating that "the United States District Court for Puerto Rico has created in the country a feeling of hostility and mistrust; because its judges are totally ignorant of our historic legal traditions, they interpret our laws in a way that is oppressive and unjust to good litigants" (Delgado Cintrón 1980: 13). In 1916, the Puerto Rican Bar Association urged the abolishment or curtailment of the federal court in Puerto Rico for linguistic and legal reasons, arguing (among other things) that the judges' lack of Spanish proficiency increased misunderstandings and legal costs (Baralt 2004: 161). Puerto Rican attorneys were also annoyed with the language requirement since it was difficult to fulfill the conditions of the Foraker Act, which called for a jury pool of at least 300 qualified citizens. More than once, the failure to find enough qualified jurors led the prosecution to petition for an exception (Baralt 2004: 388).

The passage of the Jones Act in 1917[12] brought new contradictions. Puerto Ricans were made U.S. citizens,[13] and Puerto Rico was granted local autonomy in the administration of internal affairs. Nonetheless, the Governor was appointed by the President of the United States, not elected by the Puerto Rican people, and Puerto Ricans could not vote in U.S. presidential or congressional elections. In addition, the Jones Act ratified beyond the shadow of a doubt that as long as the island was under U.S. sovereignty, there would be a Federal District Court to judge:

...all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Puerto Rico, wherein the matter in dispute exceeds, exclusive of interest or cost, the sum or value of $3,000.[14]

The Jones Act further provided that federal court expenses and salaries be paid from federal revenues, as in all other U.S. District Courts, thus removing one of the major objections to the federal courts in Puerto Rico.[15] However, local opposition to the use of the English language was not addressed, and all proceedings continued to be conducted in English.

In 1950, the U.S. Congress approved the Puerto Rico Federal Relations Act (Public Law No. 600), which extended the Jones Act and reinforced it by adding safeguards to protect U.S. mainland citizens from discrimination on the part of Puerto Ricans on the island. At the same time, it authorized the people of Puerto Rico to draw up a constitution for local self-government. With the approval of the Puerto Rico Federal Relations Act, Congress converted the Puerto Rico U.S. District Court into a constitutionally based Article III Court (28 United States Code 119), giving life tenure to judges and permitting appointment of Puerto Ricans to the bench.[16] In 1952, the new Constitution of the Commonwealth of Puerto Rico was ratified by the Puerto Rican citizenry in a public referendum and approved by the U.S. Congress with certain amendments. On 25 July 1952, the Constitution went into effect under the watchful eyes of a locally led federal District Court. President Truman appointed Clemente Ruíz Nazario as the first Puerto Rican Federal District Court judge.[17]

The new Commonwealth status brought into question the applicability of federal laws in Puerto Rico. Since Puerto Rico was no longer officially a territory or possession, nor was it a state, then arguably federal laws and institutions related to territories, possessions and states would not apply to Puerto Rico. The basic argument was that prior to the Puerto Rico Federal Relations Act, the government of Puerto Rico was "an agent of Congress," and thus a state law was implicitly a federal law under the Fifth Amendment (Baralt 2004: 311). Under the new Constitutional system, the federal court should no longer have jurisdiction, and its continued presence in Puerto Rico appeared to signify that Congress was illegally retaining control of the island.[18]

Questions regarding the District Court's function on the island continue to be raised even today, especially given a historical pattern of decisions that served to reinforce U.S. domination of the island and to discourage independentist, nationalist, and trade unionist activism.[19] However, proponents of the District Court feel that:

...if you believe, or claim to believe, in a permanent place for Puerto Rico under the American flag and under the United States Constitution, you should concede happily that this Court's place in the scheme of things is appropriate, necessary and legitimate. (Cabranes 2004: 5)

In the absence of any resolution of Puerto Rico's political status in the direction of independence, this argument would appear unassailable.

Linguistic and cultural issues in the courts of Puerto Rico

In 1902, the Official Languages Act was passed by the Puerto Rican legislative assembly.[20] This law was primarily intended to protect the interests of the English-speaking colonial administrators at a time when very few Puerto Ricans could speak English[21]; however, it supposedly established the legal equality and interchangeability of Spanish and English in insular government functions. It stated that:

> **all State Government departments, all courts on this Island, and all public offices shall use the English and Spanish language indistinctly; and translations and oral interpretations from one language into the other shall be made when necessary such that the parties may understand any proceeding or communication in those languages. (Alfaro 1986: 367)**

Despite this law, in the 1905 *Cruz v. Domínguez* case, the Puerto Rico Supreme Court ruled that when a translation discrepancy arose in the state and local courts, the English version would prevail, begging the question of just how equal the two languages actually were. This practice was sustained until 1965, when the Supreme Court of Puerto Rico ruled in *Pueblo v. Tribunal Superior* that:

> **Spanish being the language of the Puerto Ricans, the judicial proceedings in our courts must be conducted in Spanish, but the judges will take the necessary measures which may be necessary, in the protection of the rights of any accused who does not sufficiently understand our language, so that he as well as his lawyer, an integral part of an effective defense—be informed, through translators or any other means, of everything that transpires during the proceedings, and the record shall so reveal it.[22]**

Again, this provision applies only to the local courts.

In contrast, Rule 10 of the Federal District Court rules for Puerto Rico[23] states: "All documents not in the English language which are presented to or filed in this Court, whether as evidence or otherwise, shall be accompanied at the time of presentation or filing by an English translation thereof, unless the Court shall otherwise order." And later on: "Whenever a case is removed to this Court, there shall be filed with the transcript of record an English translation of all papers."

It should be noted here that the federal court of Puerto Rico is the only court in the federal system which specifies that all defenses and proceedings must be in English. Recognition of the absurdity of the English requirement in a territory where the majority of the people did not speak the language can be seen in the initial rules of proceedings (no longer in force) for the District Court of Puerto Rico when it was created on 15 September 1900. These required that all pleadings had to be in English, but pragmatically permitted the use of Spanish for addressing the Court or the jury with mandatory interpretation of those exchanges into English (Baralt 2004).[24]

According to Géigel (1993: 4), as a result of the Spanish language requirement for the local courts of Puerto Rico, many continental lawyers residing in Puerto Rico do not litigate in local courts, and because of the English language requirement in the District Court, many Puerto Rican lawyers do not bring cases to the federal court. It should be noted that most classes in Puerto Rican law schools are taught in Spanish, and most texts are also in Spanish, with the exception of texts regarding Corporations, Torts and U.S. Constitutional law.

Puerto Rican lawyers can get by with minimal knowledge of English unless they desire to argue cases before the federal court. Many lawyers who seek admission to federal court do it for the status that admission imparts, rather than as part of a genuine plan to argue before the court.

Given the high costs of federal litigation and the English requirement, relatively few of those accepted for admission actually end up practicing before the court. Others may feel genuinely inhibited by a fear that their English is not good enough to argue effectively in federal court. In addition, Géigel (1993: 18) points out, the interaction within the District Court follows U.S. cultural norms in terms of permissible speaking volume, adherence to timetables, level of supervision, etc., and this may be another reason why many Puerto Rican lawyers do not wish to appear before the federal court.[25]

Let us now look at some of the challenges to the English-only policy.

Challenges to the English-only policy

Language imposition often causes ethnic groups to develop an unconscious and universalized imperative against learning the imposed language (Giroux 1983; Resnick 1993; Medina 1994). In other words, Puerto Ricans may consciously or unconsciously resist learning English as a way of maintaining their native language and culture, which they perceive as being under attack by the United States.[26]

This strategy is characterized by Resnick (1993) as "motivated failure." He argues that Puerto Ricans have accurately assessed that language spread may lead to language shift and eventual loss and have naturally resisted this process. What is truly remarkable is the fact that the capacity of Puerto Rican culture to resist the encroachment of English has been more powerful than the ability of language policymakers to bring about the planned spread (Vélez 2000).

Unlike the linguistically heterogeneous nation of Singapore where English (an ethnically neutral variety of no threat to local group identity) was successfully implanted for diplomatic, commercial, and technological communications (Suárez 2005), in Puerto Rico any policies favoring English have always been viewed with suspicion as potential attempts to usurp the vernacular (Medina 1994) and have been thwarted.[27]

What is truly remarkable is the fact that the capacity of Puerto Rican culture to resist the encroachment of English has been more powerful than the ability of language policymakers to bring about the planned spread.

Given this situation, the English requirement in federal court is seen as an a ssault upon the essence of Puerto Rican culture, which is the Spanish language (Delgado Cintrón 1989/1990: 5). The offense has been exacerbated in recent years by the practice of "forum shopping," which has led to increasing numbers of filings in the District Court in order to obtain larger monetary judgments for cases that were traditionally dealt with in Spanish in the local courts. Among the issues brought

to the District Court have been the excarceration of state prisoners, price fixing, abortion, jury verdict by majority vote, removal of squatters, distribution of federal food stamps, use of federal funds in education, rights of minors, civil contempt procedures, firing of university professors, rules for admission to practice law, rules for notarial practice and student regulations of the University of Puerto Rico.

There have been many legal challenges to the English language requirement over the years, especially during the Vietnam War era, when draft resisters argued that the Grand Jury was illegal and unconstitutional, since its members lacked sufficient knowledge of the English language, that the *petit* juries were not representative of the Puerto Rican community and that defendants were unable to assist in the appeals procedures because of their own lack of English competence (Baralt 2004: 357). Numerous bills, resolutions, and testimonies before Congressional committees were presented by members of all three parties in Puerto Rico, as well as key opinions in court cases. None were successful in changing the English-only policy. What follows is a brief presentation of the most notable of these efforts.

After the 1956 general elections, Governor Luis Muñoz Marín and the Popular Democratic Party-controlled Puerto Rican legislature submitted a joint resolution to the U.S. Senate on 25 February 1958, requesting a bill that clarified the nature of the Commonwealth so that Puerto Rico would not be classified as a territory. Paragraph (b) of Article XIII of the bill called for the holding of District Court proceedings in Spanish, with the consent of all parties involved. Unfortunately, there was a lot of resistance in the Congress, and the bill was eventually withdrawn from consideration.

In *United States v. Feliciano-Grafals* (309 Federal Supplement 1292, D. Puerto Rico 1970), the defendant, a conscientious objector, wanted to waive his right to a jury trial since he felt that a Puerto Rican jury would not be capable of following a trial in English as well as they could in Spanish. This motion was denied. At the end of the trial, the defendant was found guilty and sentenced to one year in jail. However, in an act of solidarity, Judge Hiram Cancio reduced his sentence to one hour in jail which was served in the U.S. Marshal's office. Cancio further revealed his sympathies for overturning the English language requirement in 1972 when he testified before a Senate subcommittee. He urged that all trials in Puerto Rico should be conducted in Spanish "unless the use of the English language becomes pertinent" (*El Mundo* 1972: 1A).

By 1977, all three political parties on the Island were insisting on the use of Spanish in the District Court of Puerto Rico. A U.S. Constitutional and Civil Rights subcommittee was involved in discussion of the Court Interpreters Act, which provided interpreters for any person actively participating in federal court who did not speak or understand the English language or had a hearing or visual impairment. Resident Commissioner Baltasar Corrada del Río attached a bill amending Article 42 of the Federal Relations Act to allow the optional use of Spanish in federal court in Puerto Rico. His addition was not accepted as part of the Court Interpreters Act.

In 1978, Corrada del Río submitted H.R. 10228, the Puerto Rico Translator Act, which called for both Spanish and English to be allowed during initial proceedings in Puerto Rico. In later stages, cases would be dealt with in English unless the defendant in a criminal case or both parties in a civil case requested that the proceedings be conducted in Spanish. In support of the bill, he reported 1970 census figures and court statistics indicating that 57.3 percent of the population in Puerto Rico did not know English, and 75 percent of criminal defendants in federal court needed an interpreter.[28]

The bill was approved in the House and sent to the Senate; however, the new Chief District Judge, Hernán G. Pesquera, opposed the use of Spanish since he felt that English-speaking attorneys would be at a disadvantage, the number of cases heard in federal court would increase, and federal criminal laws written in English would have to be translated into Spanish, increasing the cost and the delay. First Circuit Judges Frank M. Coffin and Levin H. Campbell testified that using Spanish would make appeals more difficult since most of the Circuit Court judges were not fluent in Spanish, and visiting judges would not be able to work in Puerto Rico (Baralt 2004: 394). With all of this learned opposition, the bill never made it through the Senate.

It should be noted that some judges have been more flexible regarding the use of Spanish in the courtroom. In the 1989 case of Filiberto Ojeda Ríos (well-known leader of the pro-independence Macheteros),[29] Judge Carmen Cerezo permitted the defendant to represent himself and address the Court and the Jury in Spanish without interruption for interpretation. As a result of his eloquent defense, the jury acquitted him of the charges of using a weapon while resisting arrest.

The basic arguments of the attempts to overturn the English language requirement can be summarized as follows:

1. District Court proceedings should be in Spanish because it is the vernacular of Puerto Rico, and very few Puerto Ricans know English well enough to utilize it in a formal setting such as federal court.
2. Puerto Rico's District Court judges should be bilingual Puerto Ricans in order to address the linguistic and cultural realities of the residents of the island.
3. The English-only policy critically limits jury selection and results in non-representative juries, which is a violation of due process. It also restricts choice of criminal defense attorneys.
4. The English-only policy creates a 40- to 50-percent delay in the proceedings due to the need to interpret everything that is said.
5. The language used in the District Court should be according to the defendant's or plaintiff's preference.

The language used in the Federal District Court is also a matter of simple human rights.

An alternative language policy

The most logical resolution to the problem of language in the U.S. District Court in Puerto Rico would be to permit all proceedings to be carried out in Spanish with mandatory translation into English of all written records for the purposes of later appeals and provision of court interpreters for the few English monolingual speakers who appear before the court. This would be beneficial for Puerto Rican lawyers, since language is their most important weapon in court, and arguing in a foreign language means a loss of verbal agility and nuance, which may adversely affect the success of their client's case.

The language used in the Federal District Court is also a matter of simple human rights. Prohibiting the use of the mother tongue of the great majority of Puerto Ricans runs counter to Article 1 of the United Nations Charter (1945),

which demands respect for fundamental liberties and prohibits discrimination based on race, sex, language, and religion. In addition, Article 2 of the Universal Declaration of Human Rights (1948) states that:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, *language*, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, *no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty*. [emphasis added]

This notion is further developed in the 1996 Universal Declaration of Linguistic Rights approved in Barcelona which explains that:

... invasion, colonization, occupation and other instances of political, economic or social subordination often involve the direct imposition of a foreign language or, at the very least, distort perceptions of the value of languages and give rise to hierarchical linguistic attitudes which undermine the language loyalty of speakers; ...the languages of some peoples which have attained sovereignty are consequently immersed in a process of language substitution as a result of a policy which favours the language of former colonial or imperial powers...

In the words of Puerto Rican jurist Alfonso García Martínez (1985), the existing language policy is a case of "linguistic imperialism" and almost unique in an increasingly decolonized world. Ángel Tapia Flores, former president of the Puerto Rican Bar Association, put it even more bluntly on 22 November 1978, when he pled before the Subcommittee on Civil and Constitutional Rights of House Committee on the Judiciary of the Congress of the United States:

It is really unbelievable that such gross injustice as the outlawing of our Spanish language in the US Court in PR could have lasted so long. Besides the intrinsic injustice of the situation as it is, the use of the English language is contributing to the erosion of the language unity of the Puerto Rican people and has a direct bearing in creating conditions favoring acculturation in the direction of anglicization, all of which can only favor a certain political solution of our status question. (Tapia Flores 1979: 334)

Finally, the current practice in the federal court in Puerto Rico violates Article 20 of the Universal Declaration of Linguistic Rights, which clearly states that:

1. Everyone has the right to use the language historically spoken in a territory, both orally and in writing, in the Courts of Justice located within that territory. The Courts of Justice must use the language proper to the territory in their internal actions and, if on account of the legal system in force within the state, the proceedings continue elsewhere, the use of the original language must be maintained.
2. Everyone has the right, in all cases, to be tried in a language which s/he understands and can speak and to obtain the services of an interpreter free of charge.

In short, there is ample international law that points to an inherent violation of human rights in the federal courts of Puerto Rico.

What arguments have been offered against using Spanish in the federal district court of Puerto Rico? The most often cited argument is that voiced in the 1968 case of *U.S. v. Valentine:* "... no Continental American court, federal or state, has ever conducted its proceedings in any language other than English" (288 Federal Supplement 957: 963).

However, in 1989, the seven judges of the Puerto Rico District Court (most of whom were pro-statehood) drafted what is perhaps the most comprehensive set of objections (U.S. District Court for Puerto Rico 1989). In response to Senate Bill 711 proposing that Congress enact legislation requiring the U.S. District Court of Puerto Rico to conduct proceedings in Spanish with simultaneous interpretation into English for those parties that required it, the judges established their opposition for the following reasons:

1. Introducing Spanish would make the Puerto Rico district court an "isolated entity in an otherwise unified federal system."
2. Instituting a Spanish language option would require hiring 25 to 126 full-time translators, and the cost would be prohibitive ($3 to 4 million for the first year).
3. Processing Spanish language appeals would result in a 4- to 5-month delay.
4. Since the District Court of Puerto Rico is an Article III court, there is a constitutional imperative to use English.
5. Since the seven judges are bilingual, they currently review and correct the consecutive interpretation for non-English speaking individuals on the spot, which could not be done with simultaneous interpretation via headphones.

The resolution was greeted with great uproar in Puerto Rico by all parties, since the island was in the middle of preparing for a plebiscite regarding political status, and using Spanish in the federal court was part of the platform of the Popular Democratic Party. Let us look at the responses to the judges' objections one by one.

1. The issue of the isolation of Puerto Rico was rejected by virtually all analysts who basically stated, as Benítez (1989) put it, "*Viva la diferencia*." Puerto Rico has always been an anomaly in the U.S. system, and it was time that this was recognized and accepted.
2. The costs and personnel needs mentioned by the District Court judges were questioned as being exaggerated, as well as being beside the point when the real issue was justice. Judge Hiram Cancio (1989) argued that only a small percent of cases are appealed to First Circuit Court in Boston, and the appeals court only looks at the material being appealed, and not the entire case, which means that the amount to be translated is actually less. At present, all proceedings are orally interpreted into Spanish because Spanish-speaking defendants and witnesses always require it, so double work is being done. It is a common practice among federal court attorneys in Puerto Rico to have their witnesses and defendants testify in Spanish, since jury members tend to pay most attention when Spanish is used (Gerard-Delfin 2002). Having the proceedings in Spanish would eliminate that double processing, except in the cases of appeals or of English-speakers. It would also save time.

   Currently, seven full-time interpreters provide interpretation into English for Spanish speakers in federal court, supported by a number of bilingual secretaries and court reporters. If the proceedings were done in Spanish, they would no longer have to interpret everything from English to Spanish, but would rather interpret (at a much lower frequency) from Spanish to English for appeals and

English speakers only. There could conceivably even be a savings overall. If more interpreters were needed, they could be obtained. (There are currently more than forty certified Spanish-English court interpreters available to the district court, according to its website.)

3. Delays might occur; however, with modern technology, this could probably be minimized.
4. The fact that the District Court is an Article III court has no bearing on the language used. The cases that go up for appeal to the First Circuit in Boston can be dealt with in much the same way as the appeals from the Spanish-language Puerto Rico Supreme Court to the English-language U.S. Supreme Court.
5. The bilingual judges can just as easily impart justice in Spanish as they can in English. Consecutive or simultaneous interpretation could be done in English for non-Spanish-speaking or English-dominant parties, just as it is currently being done in Spanish.

Conclusions

To conclude, in 1900, the use of English in the Federal District Court of Puerto Rico may have made sense given the employment of non-Spanish speaking American judges. However, today, insistence on the use of English appears to have only one purpose: the reiteration of the sovereignty of the U.S. Congress over the Commonwealth of Puerto Rico.

Two basic criteria utilized in assessing a language policy's outcomes are functional adequacy and popular acceptance (Eastman 1983). A third criterion (Phillipson 1992) is the enhancement of the democracy, equality, autonomy, and overall well-being of the people to avoid "planning inequality" (Tollefson 1991). Mandating the use of English in a court in Puerto Rico violates all three tenets, since it is inefficient and uneconomical, unacceptable to many Puerto Ricans, and does not conform to the basic principles of human rights recognized internationally. It is high time that this linguistic anomaly be corrected.

NOTES

1 An earlier version of this article was presented at the International Linguistics Association conference in New York City on 15–17 April 2005. My thanks to the three anonymous peer reviewers who stimulated me to develop my arguments further.

2 The most bilingual municipalities of Puerto Rico are Bayamón, Carolina, Guaynabo, San Juan, Ceiba, Fajardo, Culebra, and Vieques. All of these are in close proximity to U.S. military bases, where English is the language of interaction. They also tend to be tourist areas, thus drawing outsiders who speak English.

3 Although, as Barreto (2001) notes, U.S. postal workers in Puerto Rico use English primarily for written administrative matters and speak almost exclusively in Spanish to each other and to customers in the post office and on the street, paralleling the situation in India, Nigeria, and Papua New Guinea.

4 Ironically, the Americanization policy intended to replace Spanish with English ended up stimulating more defense of Spanish, especially among local intellectuals (Barreto 2001).

5 *Puertorriqueñidad* (Puerto Rican-ness) refers to the sociocultural attributes and thought processes of Puerto Ricans that serve as a badge of pride and identity carved out in response to five centuries of repression, first by Spain and then by the United States (Barreto 2001).

6 See, for example, Algren de Gutiérrez (1987), López Laguerre (1989), Cuadrado Rodríguez (1993).

7 The jury selection procedure is explained clearly in Gutiérrez (2002c). First, 0.5 percent or about 50,000 names are randomly selected from voter registration lists in a geographically representative sample. Then sets of 2,000 names are selected publicly in a random drawing. The people in the sets are sent a Juror Qualification Form. Returned forms are screened for U.S. citizenship and minimum age, and the people who pass this initial screening are called to a Jury Orientation/Qualification session in which they are "interviewed" to ascertain English proficiency. This interview (as specified by Rule 43) consists of asking each juror to address the court orally as to their name, address, occupation, previous service, and proficiency in the English language. If determined to be English proficient, they become part of the Master Jury Wheel. Certain individuals may be excused for occupational or personal reasons, and those who remain become part of the Qualified Jury Wheel and are eligible for selection for trials. While this procedure guarantees fair geographical representation, the English language requirement (linked as it is in Puerto Rico to income) discriminates against low-income groups.

8 Again, it should be noted that working class return migrants may serve on juries and thus alter the class orientation of the juries. Juries may also contain individuals from the United States or return migrants whose cultural frame of reference is different from that of island-born individuals. There are no available statistics regarding the numbers of such individuals participating in the judicial process.

9 28 U.S.C. Sec. 1862.

10 Gutiérrez (2002c: 4) wryly comments that the "English" [his quotation marks] of some of the lawyers and court officials "lends itself to a greater degree of error and misinterpretation than what would ensue if they were speaking correct Spanish and their statements were being instantaneously interpreted."

11 Organic Act of 1900. Chap. 191, Sec. 33, 31 Statutes, 84. Historical Documents, 43–4.

12 Organic Act of 1917, Ch. 145, Sec. 5. 39 Statutes 955. Historical Documents, 75–7.

13 This was done by the U.S. government primarily to derail independence efforts and bolster pro-statehood Republicans on the island. It is vital to note that the granting of citizenship was statutory and not constitutionally based. It was first prescribed in 1917 by the Organic Act of Puerto Rico (Jones Act, 39 Stat. 461, 2 March 1917), then included in Section 202 of the Nationality Act of 1940, and finally revised in 1952 in Section 302 of the Immigration and Nationality Act (8 U.S.C Sec. 1402). Because of its statutory nature, the granting of American citizenship to persons born in the future in Puerto Rico could also be terminated at the discretion of the U.S. Congress.

14 Organic Act of 1917, Ch. 145, Sec. 41, 126–7.

15 Opposition to the federal court in Puerto Rico was found among many of the influential figures of the era, including the leadership of both the Unionist and Republican parties on the island, the Puerto Rican House of Delegates, and even the U.S. Bureau of Insular Affairs, which favored the abolishment of the federal court and the shift of its jurisdiction to the insular Supreme Court, as was done in the Philippines (Trías Monge 1997: 69).

16 In 1961, when there was an opening for a new federal judge, the Bar Association of Puerto Rico requested that appointments to the federal judiciary in Puerto Rico should give preference to Puerto Rican candidates, bringing the issue of language up for discussion once again. "The inherent difference in the historical background, tradition and culture, would make it desirable to have only bilingual Puerto Ricans nominated for federal judgeship positions" (*El Mundo* 1961: 6).

17 At present, all of the District Court judges are Puerto Rican.

18 It is important to underscore the reality noted by Negrón-Muntaner (2007: 1): "Legal sovereignty over the island rests in the U.S. Congress." All plebiscites or referenda are subject to Congressional approval. As of yet, Congress has not seen fit to activate any local claim for changes in the status of the island.

19 Cases involving independentist, nationalist and trade unionist activism are generally dealt with in the federal court because they involve questioning of the U.S. government and federal laws.

20 In 1991, this law was revoked by the Commonwealth party (Partido Popular Democrático), and Spanish was made the sole official language, a move lauded by the government of Spain, which awarded Puerto Rico the Prince of Asturias medal for defense of the vernacular. In 1993, fulfilling a campaign promise, newly elected governor Pedro Rosselló of the pro-statehood party (Partido Nuevo Progresista) revoked the Spanish-only law and with Public Law 1 returned English to its co-official status. Cintrón García (1998) commented that the repeal of the 1902 law was viewed by the PNP as a way "to rupture social relations or separate Puerto Ricans from Americans" (cited in Barreto 2001: 75).

21 An exact count of English-speaking Puerto Ricans in 1902 is not available. The census carried out by the War Department in Spanish in 1899 (the data sheets of which were lost in a fire) did not ask the 953,243 island residents about their English ability. However, the statistical overview in Gannett (1900) revealed that 77.3 percent of the population over the age of 10 could neither read nor write and only 8.1 percent of the school-aged children were in school (p. 330), strong indicators that very few people would have had the opportunity to learn English. The U.S. Census of 1910 reported that only 3.6 percent of the Puerto Rican people claimed the ability to speak English, and by 1920, the number had only climbed to 9.9 percent.

22 *Pueblo de P.R. v. Tribunal Superior*, 92 D. P.R. 696-7, 1965.

23 Retrieved 15 July 2007 at: http://www.prd.uscourts.gov/usdcpr/docs/rule_10.pdf.

24 A more shocking aspect of federal court procedure in Puerto Rico, recently brought to my attention by Aida Vergne (2007), is the fact that no recordings are made of testimony in Spanish, so the English translation serves as the only record in the case of an appeal. Even if either of the parties were to desire a check on the accuracy of the translation, it would not be possible.

25 My personal observations of federal court proceedings indicate that most of the lawyers feel much more comfortable using Spanish and indeed do so in the hallways, while setting up or waiting for the judge to emerge from chambers, and in private conversations with clients and families.

26 In a similar vein, Mirow (1991: 115) proposes that: "signs of assimilation by a group treated as less powerful than the majority…may indicate subtle acts of resistance and accommodation by people seeking to retain an independent identity without risking conflict or further suppression."

27 Suárez (2005: 461) compares Puerto Rico to two other island nations with similar economic needs for English (Singapore and Ireland) and concludes that "political factors such as the party system, nation-building strategies, and interest groups shape language policy." In the case of Puerto Rico, she feels that the "soft" nationalistic tendencies of the pro-Commonwealth party and the opposition of the teachers' unions to promoting English as a language of instruction have overridden the economic imperatives.

28 Along the same lines, in 1976, in *U.S. v. Ramos Colón*, the court found that 83 percent of the potential jurors who had returned the jury duty questionnaires were disqualified for insufficient English (415 Federal Supplement 459, 462, 1976).

29 Ojeda Ríos was later killed by U.S. agents on 23 September 2005, the anniversary of the Grito de Lares uprising against Spanish colonial rule.

REFERENCES

Alfaro, R A. 1986. Implicaciones del uso del idioma español en el Tribunal Federal. *Revista Jurídica de la Universidad Interamericana* 20(3): 367– 75.

Algren de Gutiérrez, E. 1987. *The Movement Against Teaching English in the Schools of Puerto Rico.* Lanham, MD: University Press of America.

Alvar, Manuel. 1982. Español e inglés: Actitudes lingüísticas en Puerto Rico. *Revista de Filología Española* 62(1-2): 1–38.

Baralt, Guillermo. 2004. *History of the Federal Court in Puerto Rico*. San Juan: Publicaciones Populares.

Baron, Dennis. 1990. *The English-only Question*. New Haven: Yale University Press.

Barreto, Amílcar Antonio. 2001. *The Politics of Language in Puerto Rico*. Gainesville: University Press of Florida.

Benítez, Celeste. 1989. ¡Qué viva la diferencia! *El Nuevo Día* 7 July: 52.

Cabranes, José. A. 2004. Remarks of Judge José A. Cabranes, U.S. Circuit Judge, U.S. Court of Appeals (Second Circuit) on the occasion of the publication of Prof. Guillermo A. Baralt's *History of the District Court of Puerto Rico*. Hato Rey, Puerto Rico, 3 March 2004. Accessed on 24 March 2005 at: http://www.prd.uscourts.gov/USDCPR/afaq-pji.htm.

Cuadrado Rodríguez, Donato. 1993. Bilingualism Among Eastern Professionals in Puerto Rico. M.A. thesis, University of Puerto Rico.

Comisión de Educación, Ciencia y Cultura del Senado de Puerto Rico. 2004. *Informe sobre el idioma en Puerto Rico*. San Juan: Editorial del Instituto de Cultura Puertorriqueña.

Delgado Cintrón, Carmelo. 1980. El Juez Federal Peter J. Hamilton. *Revista del Colegio de Abogados de Puerto Rico* 41: 13.

_____. 1989/1990. Problemas jurídicos y constitucionales del idioma español en Puerto Rico: Estudio preliminar y antología. *Revista del Colegio de Abogados de Puerto Rico* 50(4)/51(1): 1–21.

Del Valle, Sara. 1993. Los boricuas prefieren el español. *Claridad* 15–21 January: 13.

Eastman, Carol. 1983. *Language Planning: An Introduction*. Novato, CA: Chandler & Sharp Publishers.

Fajardo, Víctor, Albino, Isidra, and Báez, Nilda C. et. al. 1997. *Proyecto para formar un ciudadano bilingüe*. San Juan: Departamento de Educación, Gobierno de Puerto Rico.

Fuste, José A. 2004. Por qué el Tribunal. *El Nuevo Día* 4 June. Accessed online on 18 February 2004 at: http://www.prd.uscourts.gov/USDCPR/pdf/ article_01.pdf .

Gannett, Henry. 1900. The Census of Porto Rico. *Journal of the American Geographical Society of New York* 32(4): 328–30.

García Martínez, Alfonso. 1985. Las fuentes jurídicas en la reconstrucción de la historia lingüística de Puerto Rico a partir de 1898. *Revista de Historia* 1(10): 121.

Géigel, Wilfredo A. 1993. A Study on the Effects and Problems of a Foreign Language on the Practice of Law in Puerto Rico. In *Puerto Rican Communication Studies*, ed. J. Fayer, 11–23. San Juan: Fundación Arqueológica, Antropológica e Históricas de Puerto Rico, Inc.

Gerard Delfin, M. 2002. Language Under Scrutiny in Federal Court, *The San Juan Star* 2 September: 5.

Giroux, Henry. 1983. *Theory and Resistance in Education*. South Hadley, MA: Bergin and Garvey Publishers.

Gómez Martínez, F. 1989. Fundamental el uso del español. *El Mundo* 7 July.

Gutiérrez, Elías R. 2002a. Studies Show Federal Jury Selection is Biased Against Island's Majority. *The San Juan Star* 9 September: 24.

_____. 2002b. Income-gender Discrimination Built into Federal Jury Selection Here. *The San Juan Star* 10 September: 51.

_____. 2002c. Discrimination in Federal Court. Unpublished manuscript. Graduate School of Planning, University of Puerto Rico.

López Laguerre, María. 1989. *Bilingüismo en Puerto Rico: Actitudes sociolingüísticas del maestro*. Río Piedras: López Laguerre.

Marino, J. 2002. Puerto Rico Courts on Trial, *The Puerto Rico Herald* 6 September. Accessed on line at: http://www.puertoricoherald.org/issues/2002/vol16n36/ PRR0636-eng

Medina, Luis 1994. The Teaching of English in Puerto Rico: A Cultural and Political Issue. In *Educación en Puerto Rico/Bilingual Education in Puerto Rico*, eds. A. Carrasquillo and R. Baecher, 43–50. Caguas, PR: Puerto Rican Association for Bilingual Education.

Meyn, Marianne. 1983. *Lenguaje e identidad cultural: Un acercamiento teórico al caso de Puerto Rico*. Río Pidras: Editorial Edil.

Mirow, Martha. 1991. Identities. *Yale Journal of Law and Humanities* 3(1): 97–130.

Negrón de Montilla, Aida. 1990. *La americanización en Puerto Rico y el sistema de instrucción pública, 1900-1930*. Río Piedras: University of Puerto Rico Press.

Negrón Muntaner, Frances, editor. 2007. *None of the Above: Puerto Ricans in the Global Era*. New York: Palgrave Macmillan.

Phillipson, Robert. 1992. *Linguistic Imperialism*. Oxford: Oxford University Press.

Pousada, Alicia. 1994. Achieving Linguistic and Communicative Competence in Two Speech Communities: The Puerto Rican Return Migrant Student. In *Educación en Puerto Rico/Bilingual Education in Puerto Rico*, eds. A. Carrasquillo and R. Baecher, 51–9. Caguas, PR: Puerto Rican Association for Bilingual Education (PRABE). [Also available on-line at: http://home.earthlink.net/-apousada/id17.html]

_____. 1996. Puerto Rico: On the Horns of a Language Planning Dilemma. *TESOL Quarterly* 30(3): 499–510.

_____. 1999. The Singularly Strange Story of the English Language in Puerto Rico. *Milenio* 3: 33–60. [Also available on-line at: http://home.earthlink.net/-apousada/id1.html]

_____. 2000. The Competent Bilingual in Puerto Rico. *International Journal of the Sociology of Language* 142(3): 103–18.

Resnick, Melvyn. 1993. ESL and Language Planning in Puerto Rican Education. *TESOL Quarterly* 27(2): 259–75.

Rivera Ramos, Efrán. 2001. *The Legal Construction of Identity: The Judicial and Social Legacy of American Colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association.

Rua, Pedro Juan. 1987. Idioma en Puerto Rico: Hechos y retos. *Diálogo* (Nov-Dec): 32–4.

Schweers, Jr, C. William, and Jorge A. Vélez. 1992. To Be or Not To Be Bilingual in Puerto Rico. *TESOL Journal* 2(1): 13–6.

Tapia Flores, Angel. 1979. The Spanish Language in the Federal Court. Revista *Colegio de Abogados* 40: 333–5.

Toledo, J. V. 1980. Relationship Between the Federal and State Courts. *Revista del Colegio de Abogados de Puerto Rico* 41: 113.

Tollefson, James. 1991. *Planning Language, Planning Inequality*. New York: Longman.

Torres González, Roamé. 2002. *Idioma, bilingüismo y nacionalidad: La presencia del Inglés en Puerto Rico*. San Juan: Editorial de la Universidad de Puerto Rico.

Trías Monge, José. 1997. *Puerto Rico: The Trials of the Oldest Colony in the World*. New Haven: Yale University Press.

United Nations Charter. 1945. Retrieved on 1 March 2005 at: http://www.un.org/aboutun/charter.

Universal Declaration of Human Rights. 1948. Retrieved on 25 July 2007 at: http://www.un.org/Overview/rights.html

Universal Declaration of Linguistic Rights. 1996. Retrieved on 25 July 2007 at: http://www.linguistic-declaration.org/index-gb.htm

U.S. District Court for the District of Puerto Rico. 1989. Resolution in the matter of: Requiring the United States District Court for the District of Puerto Rico to conduct judicial proceedings in the Spanish language. Reprinted in Carmelo Delgado Cintrón. 1990. Problemas jurídicos y constitucionales del idioma español en Puerto Rico: Estudio preliminar y antología. *Revista del Colegio de Abogados de Puerto Rico* 50/51: 167–70.

U.S. War Department, Puerto Rico Census Office. 1900. *Report on the Census of Porto Rico*. 1899. Washington, D.C.: Government Print Office. Summary of report on Quebradillas, PR. Retrieved on 11 July 2007 from: http://www.rootsweb.com/-prhgs/Quebradillas/USWarDept1899CensusQuebradillas.htm

Vélez, Jorge. 2000. Understanding Spanish-language Maintenance in Puerto Rico: Political Will Meets the Demographic Imperative. *International Journal of the Sociology of Languages* 142(3): 5–24.

Vergne, Aida. 2007. For the Record, There Is No Record. Unpublished manuscript prepared for INGL 6466. Studies in Bilingualism, University of Puerto Rico, Río Piedras.