

APPENDIX

APPENDIX TO THE
FINAL REPORT OF THE
PENNSYLVANIA SUPREME
COURT COMMITTEE ON
RACIAL AND GENDER BIAS
IN THE JUSTICE SYSTEM

VOLUME I



CHAPTER 1

LITIGANTS WITH LIMITED ENGLISH PROFICIENCY

**WRITTEN TESTIMONY
OF
ANNA ARIAS**

Supreme Court of Pennsylvania
Committee on Racial and Gender Bias
In the Justice System

Public Hearing
Wednesday, June 13, 2001
Wilkes-Barre, Pennsylvania

Testimony By
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Buenas Tardes, Comisionados.

Mi nombre es Anna Arias. Yo soy la representante hispana para la Comisión de Oportunidad Económica (CEO) en el condado de Luzerne. La CEO es una organización sin lucros la cual ha operado por 30 años y cuya misión es de asistir a las familias de bajos ingresos. Además yo soy una voluntaria activa con la parroquia de San Gabriel en Hazleton, la cual cuenta con una congregación hispana que aumenta cada día más.

Antes de comenzar a trabajar para CEO, Yo asistía de manera voluntaria a las familias hispanas del condado de Luzerne y prestaba servicios de traducción para el Magistrado del distrito, y abogados defensores públicos.

Good afternoon, Commissioners. My introduction was in Spanish – my native language. Perhaps it gave those of you who do not speak or understand my native language some sense of how it feels for a non-English speaking person to appear in court. I will now repeat for you what I said.

My name is Anna Arias. I am a community liaison to Hazleton's low-income Hispanic residents for the Commission on Economic Opportunity (CEO.) CEO is a nonprofit organization that serves low-income people throughout Luzerne County with a wide range of programs. I am also an active volunteer at the Church of St. Gabriel, a busy Hazleton congregation with growing numbers of Hispanic parishioners. I am sometimes engaged as a court interpreter by district magistrate and, in the past, occasionally interpreted for the public defender.

I offer these comments in hope they will assist our shared commitment to equal justice for all Pennsylvania residents, regardless of race, ethnicity or gender.

Luzerne County's population is changing, particularly in the Hazleton area. Recent census data reports 1,200 residents of Hispanic origin in Hazleton and almost 700 in Wilkes-Barre. As with other census reporting of immigrants, these figures are probably a significant undercount.

Hazleton's Hispanic community is not monolithic. We come from 14 different countries, many cultures and different family structures. Some are males working here while their families are back home; many are families living together with children; growing numbers are children who assimilate more quickly than their parents.

Most of us have come here because of jobs, less expensive housing and a safer environment in which to raise our children than the big cities. Most – but not all – are struggling financially. Despite our difference, we are united by our language.

These population changes bring new challenges to the court system.

My first set of comments relates to court interpreters for non-English speaking people brought before the district magistrate in criminal matters. This is not a scientific evaluation, but is based on situations of which I am aware.

In Pennsylvania, the role of district magistrate is especially important because it is the entry point in what can become a long, confusing and sometimes terrifying journey through the criminal justice system for recent immigrants who are unfamiliar with American laws.

Low-income people charged with misdemeanors, felonies or matters that may eventually involve jail are entitled to representation by the Public Defender's Office. In Luzerne County, the public defenders speak English only. This means the Public Defenders must rely occasionally on interpreters.

At the district magistrate level, it seems that interpreters are engaged in some cases, but not in others. This means the public defender and defendant are left to communicate on their own, sometimes resulting in mistakes with serious consequences.

A young adult Hispanic male was recently arrested for possession of controlled substance and attempt to distribute. The magistrate office called me to act as an interpreter, but unfortunately I was detained at another court hearing and did not arrive in time for this man's hearing. There had been no interpreter present during police questioning following this man's arrest.

At the hearing, the testifying police officer stated that the defendant had no family locally, and that the defendant did not know where his girlfriend's whereabouts. Yet the courtroom was full of immediate relatives and his girlfriend, with whom he has children. Clearly, the defendant had not understood the questions of the arresting officer, nor had the officer understood the defendant.

A request for diversion by a Court Appointed Advocate staff was denied, because the magistrate stated there was insufficient information about the defendant's employment and local family support. The young man was employed and living with his family, but he had no opportunity to explain because he did not understand the proceedings.

I arrived during the hearing. As the defendant was being led out of the courtroom, he asked me in Spanish to explain what had just happened. The police officer told me not to speak to the defendant. I told the police officer that the defendant didn't know what was going on, and I wanted merely to explain why he was being taken back to jail. The policeman said "Let his attorney explain." His attorney does not speak Spanish.

I understand there is no binding precedent or state law in Pennsylvania that requires an interpreter in a criminal magistrate's proceeding. Further, I am told that

state legislation is required to make interpretation mandatory for non-English speaking criminal defendants.

In cases where the courts do not engage interpreters, Hazleton's Hispanic residents often call me themselves. Minor traffic violations are a constant source of confusion for newcomers who must appear before a magistrate. Going to court for any reason is stressful enough. Not understanding what is going on there can be terrifying.

Beyond the issue of court interpreting, I also have concerns about harsh sentencing and high bail arrangements --- practices that our community feels are tougher on Hispanics than on others.

A 19 year old Hispanic male given 4 beers by a neighbor. He began arguing with his mother, when a Hispanic deaf mute male intervened. Both began chasing each other. The defendant fell down stairs, and got a bad cut on his forehead. Neighbors called police. Communication difficulties were obvious -- a deaf mute and Spanish-only speaker answering questions by a policeman who spoke English only. The young man with the cut forehead was arrested even though there was no victim besides himself. He was detained at County jail for two months before this hearing. At the hearing, the testifying policeman offered to drop some charges. This was declined by magistrate. The 19 year old was convicted of public drunkenness and disorderly conduct, fined more than \$600 and served 2 months in County Jail.

I am convinced that this entire incident was a victimless misunderstanding, not a cause for criminal prosecution.

In another case:

Two migrant workers came home at the end of a day of field work. They had nothing to eat at home, so they began walking to a store to buy food. They got lost, it got dark, they kept walking. They went to a house with lights on to get help. The resident told them to wait, and made a phone call. The police arrived and drove the men home. Two days later, the police returned and arrested the men for attempted robbery. An interpreter was present at their hearing, but the men did not understand what was going on. They were in county prison for 5 months before being assigned a public defender. They were released after 7 months and deported.

Perhaps there should be an examination of sentencing and bail issues at the magisterial level to make sure they are applied equitably and without regard to race, ethnicity or English-speaking capacity. I am aware of a recent case of 3 robbers, including 1 juvenile. Of the two adults, the Hispanic defendant was charged with 6 counts with bail set at \$30,000, and he served 16 days before his release. The non-Hispanic defendant was charged with 3 counts, bail was set at \$5,000 and he was detained for 20 minutes. This is for the same offense.

I also believe that police officials must be familiar with racial, ethnic and language diversity in order to avoid false arrests.

Recently a man was sitting quietly in a bar where there was a serious altercation that he was not involved in. The men who had been fighting left the bar. As this man exited the bar some time later, the police arrested him for the altercation, based on his Hispanic identity. He was taken to the police station and was confused by the nature of his arrest. There was no interpreter. This type of mistaken identity based on race, ethnicity or language can lead to false arrests that result in community conflict on a broader basis.

District magistrates need information and training about the threats to civil liberties that stem from poor enforcement decisions that end up in their courts. It seems we need a partnership between law enforcement and the courts and – at minimum – a commitment to provide interpreting service at all levels to sort this all out. Otherwise there will be increasing pressure and continued inequities at the district magistrate level. We will all miss opportunities to help communities adjust smoothly to growing numbers of non- English speaking immigrants. By all accounts, numbers of immigrants will continue to grow here and elsewhere.

We can't solve all these problems at once. But bilingual interpretation is one thing we can do something about relatively quickly if it is mandated.

I strongly urge the Committee to recommend changes in state judicial rules or state laws to require an interpreter in all criminal proceedings at any level in the State court system. Perhaps just as the Miranda statement informs people of their rights, they should have a "right" to an interpreter if they do not speak English and the authorities do not speak the language of the accused.

Thank you for this opportunity to share my experiences with you. Gracias.