

PUBLIC HEARING TRANSCRIPTS

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TRANSCRIPTS OF THE
PENNSYLVANIA SUPREME
COURT COMMITTEE ON
RACIAL AND GENDER BIAS
IN THE JUSTICE SYSTEM

PHILADELPHIA
WILKES-BARRE
HARRISBURG



**Philadelphia
Public Hearing
Transcript**

ORIGINAL

IN RE:

SUPREME COURT OF PENNSYLVANIA
COMMITTEE ON RACIAL AND GENDER BIAS
IN THE JUSTICE SYSTEM

- - -
WEDNESDAY, DECEMBER 6, 2000
- - -

Second Regional Public Hearing in the above-captioned matter held in the Free Library of Philadelphia, 19th and Vine Street, Philadelphia, Pennsylvania, commencing at 1:10 p.m., on the above date, before Kimberly A. Hussey, Certified Shorthand Reporter.

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A P P E A R A N C E S:

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HONORABLE NELSON DIAZ
PROFESSOR PHOEBE A. HADDON
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ATTORNEY LYNN MARKS
ATTORNEY ANDRE DENNIS
LISETTE M. McCORMICK, EXECUTIVE DIRECTOR
JANE LOUIK, ASSOCIATE DIRECTOR

B & R SERVICES FOR PROFESSIONALS, INC.

Public Hearing Witnesses
Philadelphia Hearing December 6, 2000
TESTIMONY REGARDING LANGUAGE ACCESS ISSUES

Hearing Philadelphia 12/6/00

Page Nos. 91-113

1. Witness: **Iraida Afanador**

2. Organization: Lighthouse

Type organization:

Serving children in youth in the North Kensington area,
providing all aspects of social and legal services.

Hearing Philadelphia 12/6/00

Page Nos. 125-134

1. Witness: **Im Ja P. Choi**

2. Organization: Women's Development Institute International

Type organization:

Provide cultural educational programs for the community.

Hearing Philadelphia 12/6/00

Page Nos. 135-149 & Written

1. Witness: **Arthur Read**

2. Organization: Friends of Farmworkers, Inc.

Type organization:

A statewide legal services program for farmworkers,
providing representation of non-English speaking persons
in a variety of administrative and judicial forums.

Hearing Philadelphia 12/6/00

Page Nos. 233-243

1. Witness: **Paul Uyehara**

2. Organization: Community Legal Services

Type organization:

A nonprofit legal service provider for low-
income residents of the Philadelphia region.

Hearing Philadelphia 12/6/00

Page Nos. 311-313

1. Witness: **Ellen Greenlee**

2. Organization: Public Defender

Type organization: represent indigent criminal defendants

1 JUDGE NELSON DIAZ: And if you were
2 to qualify someone through interpreters, do
3 you need to qualify them for each one of
4 those languages?

5 IM JA P. CHOI: Not one person has to
6 be qualified. All this is each one of the
7 languages, but at least one should be
8 qualified in one of the languages.

9 JUDGE NELSON DIAZ: Is there enough
10 of a population to have people --

11 IM JA P. CHOI: I'm sure.

12 JUDGE NELSON DIAZ: -- from each one
13 of those different languages?

14 IM JA P. CHOI: Oh, yes, yes.

15 CHAIRMAN NICHOLAS CAFARDI: Thank
16 you. Any more questions? Miss Choi, thank
17 you so much for testifying.

18 - - -

19 (Witness excused.)

20 - - -

21 CHAIRMAN NICHOLAS CAFARDI: Our next
22 person who will testify will be Arthur Read,
23 Esquire, Friends of Farm Workers. Good
24 afternoon, Mr. Read.

1 ARTHUR READ, ESQUIRE: Good
2 afternoon.

3 CHAIRMAN NICHOLAS CAFARDI: I'm sorry
4 we're running late. I'm glad you can stay
5 with us.

6 ARTHUR READ, ESQUIRE: I'm going to
7 hand up one copy with a bunch of attachments.

8 I don't know if the Commission
9 members have had an opportunity to see the
10 written testimony in advance, but given the
11 time, I'm not going to give testimony. I
12 would rather sort of summarize quickly and
13 address any questions the committee might
14 have.

15 The other thing I would reiterate is
16 an offer we've made to the staff that we'd be
17 happy to assign a staff to work with the
18 Commission to try to deal with this issue.
19 It's an issue that's very important to us and
20 the communities we serve.

21 CHAIRMAN NICHOLAS CAFARDI: Thank you
22 for that offer. We appreciate that.

23 ARTHUR READ, ESQUIRE: Specifically,
24 let me just respond by one question by Judge

1 Diaz to note in addition to the Asian
2 languages that were just mentioned, there's
3 also the Cambodian languages, Khmer, there's
4 Lao, there's Hmong. There is, of course,
5 Vietnamese as was mentioned. But I think
6 it's important to realize that there are a
7 number of linguistic groups. And, in fact,
8 part of what's mentioned in our testimony is
9 although we have not seen large numbers in
10 Pennsylvania, the Latin American population
11 coming into the U.S. include non-Spanish
12 speaking persons, persons of indigenous
13 communities in Mexico, Guatemala, other
14 communities. There are a significant number
15 of Mixtec speakers from Mexico in the farm
16 worker's stream in the Eastern United States,
17 and it is important to realize that also many
18 of these languages are non-standardized in
19 any written sense as well, so that there may
20 not be easy means of communication in any
21 written forms.

22 Our fundamental view here is that,
23 first of all, we're very grateful to the
24 Supreme Court and to this mission for

1 addressing this issue.

2 I think it's important to note that
3 we're very far beyond close to half the
4 states in the country. I think there have
5 been 22 commissions like this appointed by
6 the Supreme Courts in other states. I don't
7 know if that makes us 23 or 22.

8 JUDGE NELSON DIAZ: 46.

9 DIRECTOR LISETTE McCORMICK: We're
10 46.

11 ARTHUR READ, ESQUIRE: 46, okay. But
12 I think it's important to realize -- well,
13 that's about right, about halfway through,
14 right?

15 JUDGE NELSON DIAZ: We're usually on
16 the bottom.

17 ARTHUR READ, ESQUIRE: It is
18 important to realize that there is a great
19 deal of expertise that has been developed
20 from the reports from the other states. And
21 part of what we have attempted to do for the
22 Commission was pull together some extensive
23 bibliographic materials that take you to some
24 of that other work. You're not starting from

1 scratch.

2 One of the things that we've given
3 one copy of in the written testimony is
4 actually a very interesting study done by the
5 Philadelphia Folklore Project from a totally
6 different perspective, from a cultural
7 perspective as well. It actually includes
8 meetings with community groups. And part of
9 what the report indicates is that they
10 actually kept tapes of many of those meetings
11 as well.

12 I know Debra Kodish who's the
13 director of the Folklore Project, who also
14 happens to be my next-door neighbor, would be
15 happy and willing to cooperate with the
16 Commission. They had a fairly distinguished
17 advisory panel working with them including
18 Jermaine Ingram who's also on our board. And
19 I would encourage people to look at that
20 report because it raises many of the cultural
21 issues, not just the legal issues.

22 Speaking from a personal perspective
23 of close to 25 years of representing
24 non-English-speaking persons, I would point

1 out to the committee something that I think
2 is fundamental and that really -- Justice
3 Wilentz from the New Jersey Supreme Court is
4 one of the people that has written on it to
5 some degree, and that's what I think I
6 mentioned in passing in the written testimony
7 is proceedings interpretation. It is not
8 enough for a witness to have their testimony
9 translated, especially if they're a party in
10 a case. They have to understand what is
11 going on around them. And I would have to
12 say that this is an issue which strikes
13 people as novel.

14 JUDGE NELSON DIAZ: Could I interrupt
15 you now?

16 ERNEST READ, ESQUIRE: Sure, please.

17 JUDGE NELSON DIAZ: I don't know if
18 people understand what -- but I do because I
19 had a lawsuit in my courtroom on that. When
20 you say translate, do you mean that everyone
21 should be hearing the translation, even when
22 there is no person on the witness stand, who
23 is of another language other than English?

24 ERNEST READ, ESQUIRE: Yes, and

1 actually I should correct myself because I
2 made a mistake that I've made many times over
3 the years. The literature on the subject
4 makes the distinction between translation and
5 interpretation. So to use the terminology
6 correctly, it would be interpret.

7 Translation is the written
8 translation as opposed to interpretation is
9 the oral. And it's a mistake I often make,
10 but I think it's helpful to realize that
11 there are certain useful terminology here. I
12 believe the National Commission on State
13 Courts refers to what we're talking about
14 here as proceedings interpreting.

15 But, for example, if a witness is
16 testifying and counsel from the other side
17 presumably objects to a question, it is
18 normal for the non-English-speaking person to
19 have no idea what's going on during that
20 process. Now, it may be completely
21 appropriate under certain circumstances for
22 counsel to approach and have a bench
23 conference about an issue in which the
24 objection might be inappropriate for the

1 witness to be hearing, but that's not the
2 context in which it occurs. It occurs in the
3 context in which an English-speaking person
4 would fully understand something at least,
5 even if it's legalese, about what's going on
6 around them. The non-English-speaking person
7 has absolutely no idea, and, in fact,
8 frequently is suddenly brought back into the
9 conversation in a place in which everybody
10 else thinks they understand something that
11 the witness does not.

12 The competency issues are also
13 consequential, but competency not just to
14 speak the language, competency to perform
15 translation services. And some of this is
16 just basic training. But, for example, it is
17 very common in unemployment compensation
18 hearings, and many other less-formal
19 proceeding, for interpreters not to be
20 trained into the most basic kind of notion of
21 if the witness is speaking, the interpreter
22 says I, not he. It is the party who is
23 speaking, not the -- someone else speaking
24 about what they're saying. That represents

1 just short of basic fundamental kind of
2 knowledge and instruction on how to be an
3 interpreter.

4 What I have seen is that many
5 interpretation services, which bring
6 perfectly competent people linguistically,
7 don't necessarily have that capacity.

8 Another very concrete issue that
9 we've dealt with is how do you object to
10 interpretation. One of the recommendations
11 in many of the reports is tape recording the
12 main proceedings in which there is
13 translation so that there is a record of what
14 was actually said. There is a record of what
15 was actually translated, not just a
16 stenographic record.

17 In those cases in which we've dealt
18 with court interpreting services that
19 actually have a tape recorder as well as a
20 recording, it is sometimes possible to play
21 back a disputed statement by a witness,
22 listen to what was said, have the interpreter
23 review whether their translation of what was
24 said was or was not a correct interpretation.

1 Interpretation is a human function.
2 People are not perfect. And one of the
3 things that I would also say is that I've
4 never seen in Pennsylvania judicial officials
5 recognize is that it's a very trying task.
6 We recognize that stenographers need breaks
7 now and then, but very few proceedings ever
8 appoint dual interpreters when you have
9 proceedings that may go on for a period of
10 days.

11 I have had proceedings, for example,
12 in which there have been as many as 10 or 15
13 days of continuous testimony by non-English
14 speaking persons in which there has only been
15 one interpreter available. That is an
16 inhumanly possible function for anyone over
17 any extended period of time. And those who
18 have looked at this extensively recommend
19 essentially that there are time limits, and
20 in complex cases you have two people.

21 Costs I'll just mention from the
22 civil perspective in particular. One of the
23 reasons why interpretation is not up to
24 standards is people can't afford it. And

1 certainly as a judicial system, we have to
2 grapple with that issue and not expect it to
3 pass.

4 I'm going to stop and let you address
5 any questions you have.

6 CHAIRMAN NICHOLAS CAFARDI: Any
7 questions? Mr. Dennis.

8 ATTORNEY ANDRE DENNIS: Are there
9 standards in a state whose practices are such
10 that you would recommend us to take a closer
11 look at?

12 ARTHUR READ, ESQUIRE: In all
13 honesty, I haven't personally looked
14 carefully enough at this; however, I will say
15 the National Center for State Courts has done
16 a great deal of work -- including work to
17 address, for example, the languages in which
18 there may not be large numbers of people in a
19 particular community -- on interstate
20 cooperation.

21 New Jersey certainly in this region
22 is far advanced over where we are. New
23 Jersey and California are among those states
24 that have really made some major advances.

1 If you do look at the bibliography we
2 provided and the trends and resources they
3 provide, I think you'll find a great deal of
4 work has been done.

5 I know Community Legal Services and
6 Paul Uyehara also presented testimony, some
7 of it written and some of it oral. Their
8 reports, I believe, reference one of the ones
9 we looked at, a 1995 study from the Center
10 for State Courts with a number of very good
11 recommendations.

12 There is a lot out there, but I think
13 that -- let me actually just mention a major
14 issue that is not dealt with anyplace else,
15 and that is the citizenship issue and the
16 immigration status issue.

17 We attached to our bibliography and
18 other things references to Equal Employment
19 Opportunity Commission, the NRLB, the
20 Department of Labor's fairly recent position
21 papers on rights of undocumented persons in
22 judicial proceedings. This is an issue which
23 we've dealt with at the national level since
24 at least the mid 1990s and, in reality, for a

1 lot longer than that.

2 Most of the population that I have
3 served over the last 20 years are persons who
4 are not U.S. citizens. A very high
5 percentage of those are persons who are not
6 documented. And it is important to realize
7 that people consciously exploit those
8 populations.

9 We had clients who were beaten when
10 they asked for their wages and their
11 employer, when we called them, said, well,
12 you know they are undocumented. And that,
13 from his point of view, was complete
14 justification for whatever he wanted to do.

15 CHAIRMAN NICHOLAS CAFARDI: Any other
16 questions? Thank you. Oh, I'm sorry.

17 JUDGE IDA CHEN: I wonder if you
18 could comment on this possible situation:
19 Lots of times you'll have an individual who
20 wants to testify and you know they need an
21 interpreter. And as the judge, you've
22 screened it in such a way, you've asked the
23 appropriate questions that you're supposed to
24 ask to determine if they need an interpreter.

1 And you do have an interpreter sometimes
2 because you have advanced notice, but you
3 don't always have advanced notice that you
4 need an interpreter. But there you are with
5 the interpreter and when the litigant begins
6 to speak, because he or she wants to make an
7 impression on the Court, he wants to say as
8 much as he can in English; however, most of
9 the literature suggests that you shouldn't
10 mix it up between what he's going to say in
11 his own language as well as in English when
12 he wants to speak in English. Can you
13 comment on that situation and how it should
14 be handled?

15 ARTHUR READ, ESQUIRE: I think it's a
16 difficult situation and it goes to people's
17 dignity. So it's difficult from both
18 perspectives. And the literature may not
19 always be right in terms of dealing with
20 people as people.

21 I've had many clients who are
22 believed by their employers -- the context in
23 which I'm operating -- to be able to
24 communicate in English and can answer and

1 respond to questions and answers in English,
2 and yet I have found their ability to totally
3 comprehend, particularly on
4 cross-examination, questions that may be
5 trick questions on a certain level can be
6 very limited or can be subject to
7 misinterpretation.

8 I actually think there are times in
9 which having a witness instructed to listen
10 to an interpretation of what was the question
11 and still allowing the witness to respond in
12 English, if they are comfortable with that,
13 is not necessarily inappropriate. And it is
14 important that the person is instructed to
15 make sure, even if they think they understand
16 the question, that they listen to the
17 interpretation.

18 And I've actually had witnesses who
19 have argued with the interpreter about how
20 the question was interpreted which is
21 appropriate. I mean, there are times in
22 which -- and, again, let me just say, one of
23 the things that I try to explain to
24 interpreters is that if we object to an

1 interpretation, it is not challenging their
2 professionalism. It is, in fact, recognized
3 that it is a difficult task and that people
4 may misunderstand nuances, words, vocabulary,
5 lots of different things. So my answer would
6 be I think that what you want to be sure of
7 as a judge is that the witness understands
8 what they are being asked and that the
9 responses they're giving are responsive. How
10 that works and the specifics, I think for
11 many people that may require some combination
12 of languages, in fact, as a way to allow them
13 to fully participate in the process.

14 CHAIRMAN NICHOLAS CAFARDI: Thank
15 you.

16 ARTHUR READ, ESQUIRE: Thank you
17 again.

18 - - -

19 (Witness excused.)

20 - - -

21 CHAIRMAN NICHOLAS CAFARDI: Our next
22 person then to present testimony is the
23 Honorable John Young from the Court of Common
24 Pleas.