



Pennsylvanians for Modern Courts

100 North 17th Street, Suite 700
Philadelphia, Pennsylvania 19103
(215) 569-1150 Fax: (215) 569-9153
email: info@pmconline.org

5600 Munhall Road, #312
Pittsburgh, Pennsylvania 15217
(412) 422-7247 Fax: (412) 422-7228
<http://www.pmconline.org>

Senate Judiciary Committee Public Hearing on Court Interpreters (Senate Bill 669)

May 17, 2004: Harrisburg

Testimony of Lynn A. Marks

Executive Director, Pennsylvanians for Modern Courts
Member, PA Supreme Court Committee on Racial and Gender Bias
in the Justice System

Thank you for holding this hearing and for inviting me to testify. I am the Executive Director of Pennsylvanians for Modern Courts (“PMC”), a statewide nonprofit nonpartisan organization working to improve the justice system in Pennsylvania.

Today, I am speaking on behalf of the PA Supreme Court Committee on Racial and Gender Bias in the Justice System, of which I was a member and co-chair of its Gender Bias Subcommittee. I am also the co-chair of the Philadelphia Bar Association’s Committee to Coordinate the Bar’s Response to the Court’s Bias Report and you will hear more about our efforts from Andy Chirls, Vice Chancellor of the Philadelphia Bar Association.

I will provide a brief background of the Committee’s methodology, findings, and recommendations in general and with respect to litigants with limited English proficiency (“LEP”). Later you will hear more specifics from Art Read and Paul Uyebara who served as members of the Committee’s Work Group on LEP.

SUPREME COURT BIAS COMMITTEE

In late 1999, the Supreme Court of Pennsylvania appointed the Committee on Racial and Gender Bias in the Justice System to undertake a study of the state court system to determine whether racial or gender bias plays a role in the justice system.

The Committee identified what it believed to be the key issues to be studied. These included the needs of litigants with limited English proficiency; the lack of racial and ethnic diversity in the composition of juries; the employment and appointment processes of the courts; the treatment by the court system of survivors of domestic violence and sexual assault; racial, ethnic, and gender bias in the juvenile justice system; disparities in sentencing; the adequacy of

representation of indigent criminal defendants; racial and ethnic disparities in the imposition of the death penalty; and selected issues in civil litigation and family law.

The Committee set up work groups composed of distinguished representatives from across the state, including members of the bench and bar, educators, and advocates with expertise in the topics which the Committee selected for study. The research methods included:

Public Hearings -- The Committee conducted public hearings in six locations across the Commonwealth. The hearings attracted legislators, scholars, advocates, court personnel, attorneys, judges, and members of the general public who offered accounts of their experiences with the justice system. The hearings were well-publicized and generated a total of 2,000 pages of testimony.

Surveys —With the assistance of experts, the Committee drafted and distributed surveys to court administrators, district attorneys, public defenders, community service agencies, and others in order to collect data.

Statistical Studies—The Committee engaged the services of statistical experts to conduct original research for several of the work groups and these reports are included in the Report’s appendices.

Focus Groups and Personal Interviews—The Committee retained two professional research consultants to conduct focus group discussions and personal interviews with individuals who play important roles in the legal system across the Commonwealth.

Roundtable Discussions—The Committee conducted roundtable discussions with experienced attorneys and users of the legal system to discuss bias issues in discrete areas of law.

Existing Statistical Studies—The Committee reviewed several existing studies with wide acceptance in the legal and social sciences arenas, including one on court interpretation services.

Other State and Federal Task Force Reports—In an effort to build upon the extensive study by other state and federal courts, the Committee examined reports published by other state and federal bias task forces. The Committee also conducted extensive literature reviews focusing on law reviews, law journals, and scholarly publications.

COURT BIAS COMMITTEE'S MAJOR FINDINGS

The Committee's findings demonstrate that racial, ethnic, and gender bias does exist and that it infects the justice system at many key points in both overt and subtle ways. Even when controlling for other factors such as economic status, familial status, and geographic diversity, the studies demonstrate that racial, ethnic, and gender bias still emerge as significantly affecting the way an individual (be it a party, witness, litigant, lawyer, court employee, or potential juror) is treated.

As the Court recognized in creating this Committee, any bias is intolerable and must be eliminated. The courts are the institutions in which all citizens should expect to be treated with equality, fairness, and respect. To live up to this ideal, Pennsylvania must undertake reforms.

In formulating the recommendations, the Committee acknowledged that the implementation of some of them is likely to be costly. Nevertheless, the Committee strongly believed that they represent important steps towards achieving a bias-free justice system. It was beyond the scope of the Committee's work to do any fiscal analysis of existing programs or of recommendations.

Although most of the Committee's recommendations were made to the Supreme Court to adopt, the Committee also recognized that other stakeholders in the justice system could take specific measures to improve the system of justice in Pennsylvania. Therefore, the Committee also made recommendations to other entities that can implement some of them and provide leadership, such as the General Assembly, the Governor's office, bar associations, district attorneys and public defenders, law schools and law enforcement agencies.

The Committee also believed that work on these matters should continue. There is an obvious need for additional data on some issues, and in other areas, a more systematic effort should be undertaken to establish a baseline and a system for monitoring progress.

STATUS OF COURT'S RESPONSE TO BIAS REPORT'S RECOMMENDATIONS

Shortly after the Bias Committee submitted its Final Report to the Supreme Court in March 2003, Chief Justice Cappy announced the establishment of two task groups (one with regard to issues of gender bias and the other concerning racial and ethnic bias) to study the Committee's Final Report and recommend to the Supreme Court the means of implementing its provisions. I understand that those task groups have submitted reports to the Court and the Justices will discuss them soon.

In Mr. Justice Castille's prepared testimony before the Appropriations Committees on February 26, 2004, he wrote:

“This budget proposes funding [\$150,000] to create a permanent, interbranch gender, racial, ethnic fairness commission convened under the auspices of the Supreme Court Judicial Council. As presently contemplated, it would have members from all three branches of government and its task will be to further explore and implement solutions in the areas of gender, ethnic, and racial fairness, using as the basis for its work the extensive research and final report of the Supreme Court Committee on Racial and Gender Bias in the Courts.”

“On a similar note, [the Supreme Court] is seeking funding [\$25,000] to join a consortium of states that will assist staff of [the Court's] Administrative Office in improving, in a uniform manner, the availability of interpreter services in our linguistically diverse society. We are aware of legislative efforts in the area of court interpreters but it is also worthy of note that the aforementioned Commission's report emphasized the critical need to address this problem.”

BIAS COMMITTEE'S MAJOR FINDINGS RE: LITIGANTS WITH LIMITED ENGLISH PROFICIENCY (“LEP”)

As immigrant, migrant, and refugee populations grow in many Pennsylvania counties, fair access to the judicial system remains a significant problem for those with language and cultural differences.

Despite the obvious need for culturally sensitive oral interpretation and written translation assistance to LEP persons, Pennsylvania has no statewide system for providing interpreter services in court proceedings. Further, Pennsylvania has no system for certifying the competence of interpreters in any language, including those languages for which court interpreter certification programs have been established in neighboring states and the federal courts. The absence of both undermines the ability of the Pennsylvania court system to determine facts accurately and to dispense justice fairly.

Many Pennsylvania courts provide interpreters only on an *ad hoc* basis, allowing untrained and incompetent interpreters to translate court proceedings. Many individuals are pressed into service, including relatives and friends of people in court proceedings. Their proficiency in a language other than English, however, does not mean they have the skills and training to work as interpreters.

Pennsylvania has no system for training judges, court officials, or attorneys in issues related to utilization of interpreters. Only when an LEP person is a defendant in a criminal case do the

Pennsylvania courts consistently recognize an obligation or duty to provide interpretation services. Many litigants, particularly in civil matters, are unable to obtain language assistance. The inadequacy of the services hinders courts in their ability to adjudicate disputes justly.

BIAS COMMITTEE'S RECOMMENDATIONS FOR PROVIDING EQUAL ACCESS TO JUSTICE FOR LEP INDIVIDUALS

The Committee acknowledged that the implementation of its recommendations is likely to be costly yet it is essential to providing equal access to justice to LEP individuals. The Report recommended that:

1. All courts of the Commonwealth should have a policy that all persons, including parties to judicial proceedings, witnesses appearing therein, victims in criminal proceedings, and members of the public seeking information from offices of the courts, shall have equal access to justice in the judicial system of Pennsylvania without regard to their English language proficiency.
2. All courts should provide qualified interpreters to litigants at no charge, in order that LEP parties and witnesses may fully and fairly participate in court proceedings and obtain reasonable access to the court system.
3. The courts should translate forms and other documents to the extent necessary to provide access to the court system to those unable to read English.
4. All court interpreters should obtain certification pursuant to a recognized statewide certification program, maintain their proficiency through continuing education, and adhere to standards of professional conduct.
5. A code of professional responsibility should be adopted for judicial interpreters together with mechanisms to assure that all interpreters are familiar with the code and are subject to discipline for any violation.
6. There should be a Language Services Office established within the Administrative Office of the Pennsylvania Courts (AOPC) similar to those established by other states, staffed by professional administrative personnel experienced with issues related to court interpretation and translation, and funded sufficiently to carry out its mission.

Thank you for the opportunity to present this testimony. For more information on the Final Report of the PA Supreme Court Committee on Racial and Gender Bias in the Justice System, visit <http://pmconline.org>.

