

**PENNSYLVANIA SENATE JUDICIARY COMMITTEE
HEARING ON SB 669, COURT INTERPRETERS**

**Testimony of
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May 17, 2004

Mr. Chairman and members of the committee:

I appreciate this opportunity to talk to you about SB 669, a bill which is long overdue. My name is Paul Uyehara and I am an attorney with the Language Access Project of Community Legal Services in Philadelphia. In addition to handling consumer and housing cases, primarily for immigrant and refugee clients, I have specialized for the past few years in seeking to provide equal access for clients with Limited English Proficiency (LEP). In 2001-2002, I served on the work group focused on language issues under the auspices of the state Supreme Court Committee on Racial and Gender Bias in the State Courts.

I represented a group of Cambodian refugees involved in a dispute regarding the sale and management of their Buddhist temple. When we attended a recent hearing, I requested and was provided an interpreter through the office supervised by Janet Fasy. The request was made by faxing a form to the court interpreter office. The interpreter came to court and simultaneously interpreted during the hearing for my elderly clients, who understand only very simple English. This is all as it should be.

A few months ago, I appeared in the criminal court in Philadelphia on a day busy with civil forfeiture cases. The DA's were taking time to speak to each of the petitioners to try to settle the case or figure out how to handle it. One petitioner spoke little English. I was startled to witness the DA step to the bar of the court and direct a question to everyone waiting: "does anyone here speak Spanish?" No one answered, and the DA told the lady to sit and wait. This is how it is.

In court houses all across our state, on a daily basis, people with important business to conduct in court are denied equal access to the judicial system on the basis of their English language ability. They might be seeking to obtain child support, collect a claim, defend a criminal charge, or contest a ticket. They are confronted by court staff who seem to think that linguistic barriers can be surmounted by speaking more loudly. They are told to fill out forms that they cannot read. If they are able on the witness stand to state their name, address and

occupation in English, the judge may suspect them of linguistic malingering if they seek the assistance of an interpreter for more complicated testimony.

I commend to you strongly the Chapter on LEP Litigants in the report of the Supreme Court race and gender bias committee. The report comprehensively describes the problem and the solution. The committee makes it clear that we should all be concerned about language issues for two very different reasons.

The first I have alluded to, which is that the lack of language support services in the courts is a civil rights issue. In neglecting the issue, the courts are tacitly dividing litigants into two groups and treating them differently. The LEP group is denied the chance to fully participate in court proceedings and may be penalized with the loss of liberty or property as a result. We cannot tolerate a judicial system which fosters disparate treatment of litigants based upon their nationality. The legislature is wise to take up the issue before the courts and administrative agencies are found to be in violation of federal civil rights laws.

The second is that the court system cannot carry out its core function by ignoring the language ability of those who enter its doors seeking justice. How is a judge to hear the evidence and determine the facts when she cannot understand what a witness is saying? How can justice be achieved when one party understands everything that is being said and the other can neither understand all that is said nor state his case? The Racial and Gender Bias Committee concluded that the courts' failure to provide competent interpreter services "undermines the ability of the Pennsylvania court system to determine the facts accurately and to dispense justice fairly." We all suffer when the courts can't deliver justice.

And let me be clear that problems are not confined to those cases in which no interpreter is present. In some ways, the situation is more difficult when an interpreter is present but lacks the skills to perform an exceedingly difficult task. Some problems are visible, such as an interpreter who says so little that it is obvious that he is only summarizing the proceeding rather than interpreting all that is said. Others are not. Linguistic errors in interpreting are difficult to notice if you don't speak the language, and will not show up in the English only stenographic record. The truth is that most people who are acting as interpreters in our courts lack the skills and training to perform at a minimally adequate level. This is true not only with informal interpreters such as friends or relatives of the LEP party, but also in connection with many paid interpreters. Justice should not be a random occurrence in these cases.

SB 669 represents the hope and potential for bringing the state courts and agencies in line with standards commonly accepted by most states for many years. The bill will mark a major advance in two specific areas.

First, the bill authorizes and directs the court administrator and the executive branch to create a system for certifying the competence of interpreters and mandating ethical standards to which they must adhere. Establishing a certification system will provide, at least for certain languages, an objective system to ascertain the ability of interpreters to do their job. A majority of interpreters are likely to fail the exams. Assignments and fees paid to interpreters should be stratified according to skill to help create market incentives for providers and individuals to

upgrade their skills in order to pass the exams and obtain better pay and more work. The certification system will provide the mechanism to dramatically increase the accuracy of in-court interpreting. It will also ensure that interpreters practice under standards defined in an ethical code, which will greatly increase their ability to function as neutral adjuncts to the court.

Second, the bill suggests that interpreters be provided whenever they are needed, not only in court, but significantly in administrative hearings as well. I say suggest because § 4413(A) contains ambiguities by including the terms such as “defendant” and “in a criminal case,” arguably supporting an interpretation that interpreters are mandated only in criminal cases. Some editing would clarify that the intent of the law is to cover all types of court hearings.

While on the topic of drafting ambiguities, let me mention another in connection with § 4417 relating to the important question of who pays the interpreters. This section divides criminal cases into two categories and provides that the county must bear the interpreting costs in either type of criminal case. Civil cases are divided into two categories, based on whether the LEP party is indigent or not. If the LEP party is indigent, section 4417(D) provides that the county pays, although the judge is vested with the authority to order reimbursement to the county. If the LEP person is not indigent, costs are left to the discretion of the trial judge.

My first thought was that the drafters intended that the state court administrator would pay interpreting costs in all cases in which the county did not. After all, the court administrator is charged with responsibility for creation and supervision of the program statewide. But while this view is consistent with the language of the section and the scheme created by the bill, I wondered how the trial judge was to exercise his discretion to choose between the county and the AOPC as the source of funds. If the costs are to be carried by either the county or the court administrator, the bill should say so clearly.

An alternative construction is suggested by comparison with the parallel provision for costs in a proceeding involving a deaf litigant, § 4438(B), which contains express language that a deaf party shall never be charged the cost of a sign interpreter. The deaf provision suggests that the drafters may have intended that the interpreting costs can be charged to the parties in civil cases in which the LEP person is not indigent. If that is the intent, I would urge the committee to reconsider.

Permitting the trial judge to charge the LEP party for the costs of an interpreter is essentially a litigation surcharge based on English language ability. I believe that it would be a violation of the 14th Amendment equal protection clause. It would, in addition, constitute national origin discrimination prohibited by Title VI of the Civil Rights Act of 1964, at least in those counties in which the courts receive federal funding. The state ought not to create this important new system and then force litigants to balance the risk of paying the costs against the danger of not understanding the proceedings.

Finally, there are a number of unambiguous problems with the bill. Let me mention two major ones. With your permission, I will later submit supplemental written comments to explain my other concerns.

First, the bill sets up a system which virtually guarantees the delay of justice for those who need language services. Sections 563 and 4413 both authorize only judges and administrative law judges to appoint interpreters. Significantly, neither the court administrators nor administrative agencies are authorized or directed to appoint interpreters. My point is that interpreters should be appointed as early in the process as is practicable, not when the case is called for a hearing. If the issue can't be decided except by the judge, the LEP party will be forced to expend the cost of an additional pre-trial motion, in those cases which even permit such an action, or to await the hearing and then face a relisting or long delay before the case can proceed. The result is that LEP parties and their opponents will be required to appear at least twice in most cases, while English speaking parties only need appear once. It would be simpler and cheaper, for the court and the parties, if an interpreter request could be submitted to the local court administrator or administrative agency in advance of the hearing.

The second major problem with the bill is that it makes no reference to court operations outside of the court room that are essential to the administration of justice. A large proportion of litigation is done on a pro se basis, particularly in district justice and municipal courts and in domestic relations matters. LEP parties need to get language services when they come in to court offices to obtain information like a child support print out. They may need help to file complaints to obtain protection from abuse or to file simple appeal papers. Many will need help when they appear at proceedings presided over by masters, arbitrators or court personnel rather than judges. In our family court, divorce, custody and child support cases involve a series of conferences and hearings before court officials and masters; many parties in these cases never actually go in front of a judge. In Common Pleas Court, civil cases involving claims less than \$50,000 are routed to an arbitration panel for disposition. Only a small percentage of arbitration awards are appealed for a trial in front of a judge. Restricting the scope of the bill to cases which are tried before a judge will offer no help to the majority of LEP litigants. I urge you to consider making it clear that court offices and proceedings not presided over by judges should be covered by the interpreting system.

SB 669 will permit vital improvements to the administration of justice in Pennsylvania that will benefit the court system as well as those who rely upon it. I commend Sen. Costa and all those who are supporting this bill and I hope you will seriously consider clarifying and strengthening the bill. Thank you for providing me with the opportunity to testify.

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