

FINAL REPORT

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



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The wisdom of these many individuals and organizations helped produce a report that we hope will serve as a guide to fostering a court system that is as fair and equitable as possible. Without their support, the Committee's work would have been impossible.

INTRODUCTION

On October 15, 1999, the Supreme Court of Pennsylvania appointed the Committee on Racial and Gender Bias in the Justice System,¹ to undertake a study of the state court system to determine whether racial or gender bias plays a role in the justice system. Upon completion of the study, the Committee was instructed to present its findings and recommendations to the Court.

In order to discharge its mission, the Committee identified what it believed to be the key issues in its study. 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 a series of work groups comprised 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. Each of the work groups was assigned the task of examining one of the discrete topics selected for study and implementing the research methodology formulated by the Committee. The methodology was chosen to ensure the broadest level of participation by all sectors of the community. The methods that were employed included the following:

1. **PUBLIC HEARINGS**—The Committee conducted public hearings in six locations across the Commonwealth. The hearings attracted 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.
2. **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 from across the Commonwealth on the topics chosen for study. The response rate for most of the surveys was exceptionally high. The data yielded by the surveys was professionally analyzed and was used as a basis for the findings in the work groups' reports. The data was integral to the Committee's recommendations.

3. **STATISTICAL STUDIES**—The Committee engaged the services of statistical experts to conduct original research for several of the work groups. The topics of these studies included the racial and ethnic diversity of juries across the Commonwealth; the adequacy of indigent criminal defense services provided by public defender offices and court-appointed attorneys; and racial, ethnic, and gender disparities in sentencing. Comprehensive reports were prepared by the consultants which support the findings and recommendations. These reports are included in the appendices to the Committee report.
4. **FOCUS GROUPS AND PERSONAL INTERVIEWS**—The Committee engaged the services of two professional research consultants to conduct a series of focus group discussions and personal interviews with individuals who play important roles in the legal system across the Commonwealth. They helped to frame the issues for discussion and utilized social scientific protocol for these inquiries. The discussions focused on racial, ethnic, and gender bias in the courtroom. A total of 10 focus group sessions were conducted with attorneys and court personnel. Personal interviews were held with 18 judges and 10 litigants. The participants in the interviews and in the focus groups were primarily African American and white, with representation from the Latino and Asian American communities, and included both men and women.
5. **ROUNDTABLE DISCUSSIONS**—The Committee also conducted a series of roundtable discussions with experienced attorneys from around the Commonwealth to discuss bias issues in discrete areas of law, including employment law, family law, the juvenile dependency system, general civil litigation, and criminal sexual assault cases. Roundtable discussions were also held among users of the legal system, including victims of domestic violence. The sessions were led by experienced discussion facilitators. The invited participants came from all areas of the Commonwealth and represented a cross-section of racial and ethnic groups; they included both men and women, as well.
6. **EXISTING STATISTICAL STUDIES**—The Committee also reviewed several existing statistical studies on topics being examined by the work groups. The studies were conducted by distinguished researchers and have found wide acceptance in the legal and social sciences arenas. The topics ranged from the death penalty to court interpretation services.

7. OTHER STATE TASK FORCE REPORTS—In an effort to build upon the extensive research and study by other states and federal courts, the Committee examined reports published by other state and federal racial, ethnic, and gender bias task forces for information and recommendations pertinent to the topics studied by the Committee. The Committee also conducted extensive literature reviews on the topics under study, focusing on law reviews, law journals, and scholarly publications.

The Committee’s task presented a unique challenge: In seeking to determine whether racial and gender bias permeate the court system, the Committee, of necessity, had to seek out and focus upon data and information that address race and gender explicitly. However, in some ways, this focus challenges the notion that “justice is blind.” While the Committee initially struggled with this seeming dichotomy, it recognized that in some contexts a race-conscious or gender-conscious approach is needed, while in others, a race-neutral or gender-neutral approach is the way to eliminate bias. For example, if we are concerned about the racial makeup of jury pools, we need information about the racial makeup of the population summoned, the population responding to summonses, the pool that appears, and the panels that are selected. Yet collecting such information can be characterized as at odds with a “race-neutral” approach. The Committee has concluded that collecting this information, not just in the jury context, but in many others, is necessary to the work of eradicating bias. In other contexts, the Committee has proposed a race-neutral and gender-neutral approach as a means to eliminate bias, for example, in the use of statistical life and work expectancy tables for damages awards. The Committee’s positions in these different settings are not inconsistent; rather, they reflect different modes of analysis for identifying and recommending solutions for eliminating bias present in the court system.

The Committee wishes to emphasize that it heard positive comments about how the Pennsylvania justice system functions. The full report describes these observations and highlights “best practices” by the courts in Pennsylvania and elsewhere. At the same time, 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 Supreme Court itself recognized in commissioning and appointing this Committee, any such 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. In order to live up to this ideal, Pennsylvania’s courts must undertake reforms. Accordingly, the Committee identifies in the report its findings and its recommendations for change. These findings and recommendations are designed to respond to the concerns articulated to the Committee and to highlight areas of the justice system in need of improvement.

In formulating the recommendations, the Committee acknowledges that the implementation of some of them is likely to be costly. Nevertheless, the Committee strongly believes that they represent important steps towards achieving a bias-free justice system.

While the findings and recommendations are responsive to the Court’s charge, the Committee also believes that the work of the Court 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. Data collection should be an ongoing activity of the Court if bias is to be addressed effectively. The Committee, therefore, respectfully recommends that the Court consider appointing an implementation committee to accomplish its goals of fairness and equality in the courts.²

ENDNOTES

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² During the study, the Committee heard concerns regarding bias against those with disabilities and gay, lesbian, bisexual, and transgendered individuals. The Committee determined that bias against people in these categories was beyond the scope of its charge. Nevertheless, the Committee suggests that the Court consider simultaneously addressing the needs of these groups, in light of the similarity of issues and solutions in the context of race, ethnicity, and gender.

1 LITIGANTS WITH LIMITED ENGLISH PROFICIENCY

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INTRODUCTION

Due process is a core value of the American judicial system, ensuring that every litigant and criminal defendant receives a fair hearing that is based on the merits of his or her case and presided over by an impartial judge. No one should be put at a disadvantage in court by reason of race, ethnicity, or gender. Yet due process, along with the basic fairness of the Pennsylvania court system is jeopardized if litigants with limited English proficiency (LEP) are unable to have access to competent interpreters and other language assistance.¹

The Census Bureau estimates that more than 970,000 persons over age 4 in Pennsylvania speak a language other than English at home and that nearly 370,000... do not speak English “very well.”

Every day, LEP persons appear as parties and witnesses in Pennsylvania court proceedings or call upon the courts for help. These persons may not be able to read or comprehend the court papers given to them. They may not be able to engage in more than superficial conversation with court staff. They may struggle to present their claims or defenses without a sound understanding of the English language or, in many cases, American legal culture. While interpreters are generally provided to LEP criminal defendants, the interpreters are not certified by the Commonwealth and may not be qualified to interpret court proceedings. In civil cases, LEP parties often must fend for themselves or rely upon unskilled and untrained friends or relatives who are struggling to understand and explain what is being said.

Increases in the number and proportion of foreign-born U.S. residents in the past two decades suggest that ethnic, cultural, and linguistic diversity will continue to challenge the courts. The Commonwealth now has substantial communities of recent immigrants. Latinos are the largest group of people with limited English proficiency. Puerto Ricans began arriving in the 1920s, followed by people from Mexico, El Salvador, Guatemala, the Dominican Republic, Venezuela, Colombia, and elsewhere. The Census Bureau estimates that more than 970,000 persons over age 4 in Pennsylvania speak a language other than English at home and that nearly 370,000 of these individuals do not speak English “very well.”² As a consequence, Pennsylvania courts in recent years have requested oral

language interpretation services in more than 50 different languages and dialects.³ Upgrading the capacity of the Pennsylvania judicial system to provide justice for all, regardless of English language ability, should be a priority for the Commonwealth.

Focus of Inquiry

The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System (Committee) decided early in its deliberations to focus on several of the following issues involving LEP litigants:

- Examining the scope of responsibility of courts and administrative agencies to provide oral interpretation services to persons in a variety of judicial and administrative proceedings. In addition to providing interpretation services in formal administrative hearings and criminal defense proceedings, the courts must consider whether to provide interpreters to people appearing as witnesses in criminal cases; witnesses in civil cases; parties in civil cases; and jurors. Also, interpretation services may be required by offenders who are ordered into court supervision or court programs.
- Determining the necessity of adopting a system for certification of competency in oral court interpretation.
- Identifying practical procedures for establishing systems for certification of competency in oral court interpretation, including interim transitional procedures.
- Identifying barriers to the availability of qualified oral language interpreters and means for overcoming those barriers.
- Determining the necessity for written translation of documents and establishing procedures for providing accurate translations.
- Identifying other issues to be addressed, including the impact of cultural issues within LEP communities and other immigrant, refugee, and migrant communities.
- Identifying the administrative mechanisms for accomplishing these goals.

Specific Research Methods

The Committee sought data and guidance through four primary avenues of inquiry: 1) surveys of community agencies and court administrators; 2) testimony from the six public hearings it conducted around the Commonwealth; 3) the personal professional experiences of The Litigants Work Group members;⁴ 4) the experiences of other states and published literature and studies;⁵ and 5) an analysis of pertinent law.

SYNOPSIS OF FINDINGS

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 clearly hinders courts in their ability to adjudicate disputes justly.

Pennsylvania's First Judicial District in Philadelphia County has taken a lead role in addressing these problems by initiating a formal court interpreter system. Although Philadelphia County has not yet established certification procedures, it has developed a model that may prove helpful elsewhere in the Commonwealth. Philadelphia's system is described in more detail later in this chapter.

LEGAL ANALYSIS⁶

When people are unable to comprehend or participate fully in court proceedings in which they are parties, fundamental notions of justice and fairness are called into question. Substantial legal authority exists to support the proposition that the U.S. Constitution, and the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.*, obligate the states to provide comprehensive language services to make the court system accessible to LEP persons. This obligation is particularly compelling when LEP individuals are forced to participate in court proceedings.

The well-established rights of a criminal defendant to a fair trial may be compromised when a court conducts proceedings in a language not well-understood by the defendant. The right to an interpreter in criminal matters is based upon the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution. If the state fails to provide an interpreter when one is needed, the situation jeopardizes the broad Fifth Amendment right not to be deprived of life or liberty without due process of law; the more specific Sixth Amendment rights of a criminal defendant to counsel, to a speedy trial, to be informed of the charges against him, and to confront adverse witnesses; and the Fourteenth Amendment rights to due process and equal protection of the law. In concluding that failure to provide an interpreter undermines the rights of a defendant to confront witnesses and to testify on his own behalf, for example, the First Circuit noted that “no defendant should face the Kafkaesque specter of an incomprehensible ritual which may terminate in punishment.” *United States v. Carrion*, 488 F.2d 12, 14 (1st Cir. 1973). Indeed, the Pennsylvania Supreme Court previously has recognized the importance of interpreters. *See Commonwealth v. Pana*, 469 Pa. 43, 364 A.2d 895 (1976). (The conviction was reversed after the trial judge improperly refused to permit the defendant to testify in Spanish through an interpreter, thereby interfering with his right to testify.)

Language issues arise in various ways throughout the criminal process. The right to counsel may be denied when a defendant and his or her counsel cannot communicate clearly and lack an interpreter to bridge language differences. The difficulty may begin at the time that counsel is appointed or retained, and may continue throughout the pretrial, trial, and post-trial process. When a written translation of the charging documents has not been made, the defendant may not be adequately informed of the charges against him and may thus be unable to participate in his own defense. *United States*

v. Mosquera, 816 F.Supp. 168 (E.D.N.Y. 1993). Also, a defendant who is not provided with simultaneous interpretation of witness testimony during trial may lose the right to cross-examine the witness effectively. Whenever language services are needed, the failure to provide interpretation or translation by individuals with sufficient language skills and training may create an issue as to whether the right has been adequately protected.

The Federal Court Interpreters Act, 28 U.S.C. §1827, mandates for all federal criminal proceedings the use of certified or otherwise qualified interpreters for people who primarily speak a language other than English. Many states have enacted similar statutes, rules, or state constitutional amendments mandating the appointment of court interpreters for LEP defendants in criminal cases.

Constitutional principles can also apply to civil and administrative proceedings, although precedent in these areas is less firmly established than in criminal cases. Fundamental due process and equal protection rights grounded in the Fifth and Fourteenth Amendments are implicated when an individual is threatened with loss of property interests in court, or is denied access to court for enforcement of legal rights on the grounds of his or her ability to speak or write well in English. (*See i.e., Gonzalez v. Commonwealth, Unemployment Comp. Bd. of Review*, 39 Pa. Cmwlth. 70, 395 A.2d 292 (1978).) (The dissent found that failure to provide simultaneous interpretation of adverse witness testimony during an administrative hearing deprived claimant of equal protection and due process.) Non-criminal proceedings can adjudicate critical legal matters such as protection from abuse, child custody, support, and divorce; dependency, termination of parental rights, and adoption; eviction and housing or health code enforcement; mortgage foreclosure; and eligibility for unemployment compensation, worker's compensation, mortgage assistance, and welfare benefits. Claims for damages represent potential gain or loss of money, property, and assets. Concerns should be heightened when an LEP defendant is involuntarily summoned to court and may suffer loss of significant property or other interests. Fundamental fairness suggests that when important interests are at stake, the court should level the playing field, at least to the extent of permitting both sides to understand and participate in proceedings without regard to English language ability.

In 1997, the American Bar Association also adopted a resolution that “recommends that all courts be provided with qualified language interpreters in order that parties and witnesses...may fully and fairly participate in court proceedings.”

—ABA Resolution, Rep. No 109 (adopted Aug. 1997)

Some jurisdictions have mandated the provision of interpreters for LEP litigants in civil court proceedings. For example, interpreters are required in federal civil proceedings in which the United States is the plaintiff, including bankruptcy matters. 28 U.S.C. § 1827(d). A growing number of states also mandate by statute or by court rule that interpreters be provided in certain civil cases. Cal. Code Civ. Proc. §116.550; Ind. Code Ann. § 34-1-14-3 (1998); KS ST § 60-243 (2000); Mass. Ann. Laws ch. 221, §92 (2001); Minn. Stat. §546.42 (1996); Or. Rev. Code § 45.275 (1996); Utah Code of Judicial Administration Rule 3-306 §12(A); Va. Code Ann. § 8.01-384.1:1 and Wash. Rev. Code § 2.43.02 (1996). In 1997, the American Bar Association also adopted a resolution that “recommends that all courts be provided with qualified language interpreters in order that parties and witnesses with no or limited command of English...may fully and fairly participate in court proceedings.” ABA Resolution, Rep. No 109 (adopted Aug. 1997). The failure of courts and administrative agencies to provide qualified interpreters to persons with limited English proficiency can also violate federal civil rights laws. Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, states: “No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Language ability has been recognized as a proxy for national origin in discrimination cases. (See i.e., *Gutierrez v. Municipal Court of S.E. Judicial District*, 838 F.2d 1031 (9th Cir. 1988), *vacated as moot*, 490 U.S. 1016 (1989).) Regulations implementing Title VI bar national origin discrimination including the unintended disparate impact of seemingly neutral policies. *Lau v. Nichols*, 414 U.S. 563 (1974) (Failure to provide special language instruction to Chinese students violates Title VI regulations.)

In 2000, all federal departments and agencies were ordered by the President to develop policy guidances to improve access by LEP persons to federally funded services. Executive Order 13166, 65 F.R. 50121 (Aug. 16, 2000).⁷ The guidances, which continue to be published by federal departments and agencies, impose responsibility upon state recipients of federal funds to ensure that LEP persons have meaningful access to services and benefits. Funded entities must develop and implement comprehensive policies for the provision of language assistance at no charge to the LEP individual.

Pennsylvania courts receive from the United States Department of Health and Human Services (HHS) funds relating to the collection of child support, and may also receive funds from the Department of Justice and other federal agencies and programs. Pennsylvania courts receiving such funds are therefore required to comply with the applicable department guidances.⁸

Many state agencies receive federal funds subject to the requirements of Title VI. The agencies also conduct formal hearings which result in decisions that are reviewed by the Commonwealth Court on the record made therein. Among those agencies are the Pennsylvania Department of Labor and Industry, which receives extensive funding from the U.S. Departments of Labor and HHS, including funding that is the basis of operations of the Unemployment Insurance Compensation system, the Employment Service and the Bureau of Disability Determination. Since Unemployment Compensation Insurance administrative appeals are reviewed by the Commonwealth Court on the record made before the Unemployment Insurance Compensation Appeals Board, they too are subject to Title VI requirements.⁹ Similarly, the Department of Public Welfare receives HHS funding and is subject to Title VI requirements.

To the extent that the state courts and agencies that conduct administrative hearings are recipients of federal funds, Title VI mandates that broad policies be instituted to ensure that the proceedings are fully accessible to LEP persons. Considerations regarding language-based discrimination apply equally to questions of providing access to those who are hearing- or vision-impaired. These requirements, however, arise under the Americans with Disabilities Act, 42 U.S.C. §12101 *et. seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794.

RESEARCH METHODOLOGY

The Committee sought quantitative data about the need for interpreter services in Pennsylvania through three survey instruments. The first, the Community Agency Survey, was drafted by the Committee and distributed in 2001 to community service agencies across the Commonwealth. The second survey was prepared and circulated in 2000 among all Court of Common Pleas Judicial District administrators by the Pennsylvania Association of Court Management. The third survey, the Philadelphia Court Interpreter Services Study, was conducted by the National Center for State Courts and distributed to Philadelphia County court administrators and personnel in 1995.

THE COMMUNITY AGENCY SURVEY

The Committee's initial source of survey data was its Community Agency Survey, a questionnaire that asked local community agencies with LEP clients to describe the experiences of their staff and clients concerning the need for interpreters in the Pennsylvania court system. The survey was distributed to 157 agencies, of which 41 responded. A large majority of the respondents were from the central and southeastern part of the Commonwealth, where most of the LEP population is located. The responding community agencies surveyed are located in 13 Pennsylvania counties, but serve at least 24 counties. Many of the agencies are headquartered in either Harrisburg or Philadelphia.

Participants in the Community Agency Survey were asked to address a wide range of language and interpretation issues. The survey requested that they list languages spoken by their clients and the languages for which there was the most frequent need for interpretation. Agencies were then asked to address how the courts meet their clients' interpretation needs; the general availability of language services in their area; and the arrangements they make to address the needs. Questions also covered the role that the participating agencies played in providing interpretation or translation services, and the compensation supplied for those services. Finally, the survey addressed translation services and provided an opportunity for participants to suggest methods of addressing deficiencies in the system.

Respondents reported that Spanish, Vietnamese, and Russian were the languages for which interpreter services were most frequently requested.

Eight other languages were reported by at least 10 percent of the respondents: Cambodian, Korean, Arabic, Cantonese, Haitian Creole, French, Mandarin, and Laotian.¹⁰

The survey demonstrated the extent to which LEP litigants are relying upon informal sources of language services:

TABLE 1
(Q1) Who is meeting the need for interpreter services?
(check all that apply)

Arrangement	Frequency of Response	Percent of Respondents
Court-provided professional interpreter	17	41.5%
Court administrative staff	1	2.4
Litigant-provided professional interpreter	4	9.8
Community agency	25	61.0
Family member or friend	29	70.7

Other arrangements include using an interpreter phone service, volunteers, community people, and a courthouse janitor.

In a related question, the survey asked what arrangements were made when the court did not provide interpreters. The most common arrangement reported was for the community agency to provide interpretation services. The survey found agencies enlisting interpreters from any source available. Only two agencies hired professional interpreters. The majority of respondents did not know how or where to request interpreter services. Nearly 15 percent reported experience with state courts or agencies that refused to provide a court interpreter. Nine of the agencies, or 22 percent, said their clients had had contact with courts or agencies that did not provide translation of key written information.

Among the responses received were general observations that many LEP persons perceive a language bias in the courts and feel intimidated because their English language skills are poor or non-existent. This was reported by MidPenn Legal Services to be “very true at the district justice level and the administrative court level.”¹¹

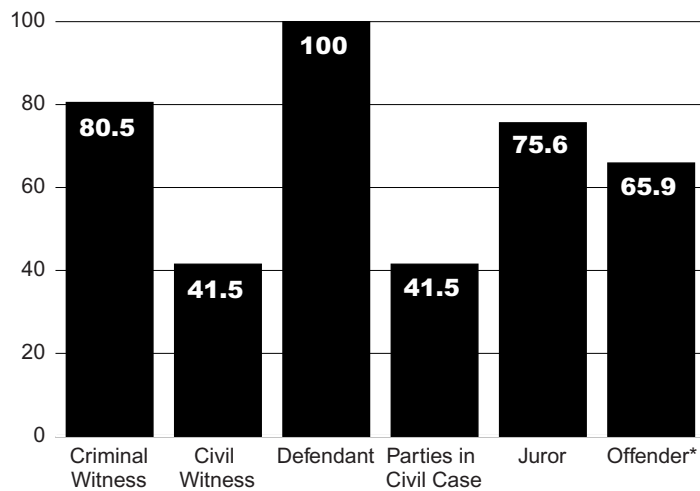
PENNSYLVANIA ASSOCIATION OF COURT
MANAGEMENT RESEARCH, PLANNING &
DEVELOPMENT COMMITTEE COURT INTERPRETER
AND TRANSLATOR SURVEY

In 2000, the Pennsylvania Association of Court Management’s Research, Planning & Development Committee conducted the Court Interpreter and Translator Survey, the results of which were reviewed by the Committee. A total of 41 of the 61 Commonwealth judicial districts responded to this survey. It addressed the following issues: the responsibility of the court to provide language and sign interpreters; the availability of interpreters; interpreter qualifications, including testing and certification; and interpreter compensation.

Participants were also asked to discuss the use of technology in their provision of interpreters, and to voice an opinion on whether Pennsylvania should become a member of the Consortium for State Court Interpreter Certification.

The survey found fairly substantial support among court administrators for the notion that the court should provide interpreter services:

TABLE 2
(Q1) Percent of respondents that believe the court should provide language interpreters by situation



*Ordered to Court Supervision/Programs

Respondents were then asked to indicate the availability of interpreters in their respective judicial districts and their needs for interpreters in 2000. Significantly, nearly 20 percent of the responding court administrators indicated that the availability of interpreters was a “major problem” and an additional 60 percent indicated that it had been at least a “minor problem” for them. While the First Judicial District in Philadelphia indicated that it generally did not have problems except for certain languages, that office noted that problems could arise from an immediate mandate for certified interpreters.

Some respondents indicated the languages for which their court used interpreters in 2000, and some trends did emerge from the data. In general, Spanish was the language generating the greatest need for interpreters (81 percent of the responding districts). The next most frequent need was for sign language interpreters (73 percent). Eleven different languages were cited by at least 10 percent of the court administrators for which interpreters were needed.¹²

A significant percentage, or 32 percent (13 of 41), of the respondents reported that their courts had video conferencing equipment available for video interpreting, while fewer than 15 percent reported use of an audio interpreting service. One additional district had the video conferencing technology, but did not use it for interpretation.

Finally, respondents were asked whether Pennsylvania should join the National Consortium for State Court Interpreter Certification (consortium). Fifty-nine percent of respondents said they needed more information about the consortium before they were able to answer the question, suggesting a lack of expertise among local administrators in issues of interpreting. Thirty-four percent favored joining, while only two respondents said Pennsylvania should not join the consortium.

PHILADELPHIA COURT INTERPRETER SERVICES STUDY

The Committee also reviewed the 1995 Philadelphia Court Interpreter Services Study, conducted by the National Center for State Courts (NCSC). The study addressed the qualifications required for professional interpreters; qualifications for contract interpreters; program management; and whether or not the court would benefit from a review of its rules and practices related to the use of interpreters. Although the focus of the

study was the Philadelphia court interpreter system, the results are relevant to the general issues being examined by the Committee.

The NCSC administered the New Jersey Screening Test for Interpreting Proficiency to nine Spanish staff interpreters in Philadelphia. Seven passed the exam. The test results suggested the strengths and weaknesses of the tests currently in use in Philadelphia. Five of the staff interpreters tested at or above the 98th percentile established among those who have taken the exam in New Jersey, but two of Philadelphia's interpreters failed. The study recommended that Philadelphia consider joining the consortium and using standardized tests for interpreter applicants. The study also found that the pay levels for staff interpreters were inadequate; they were paid far less than Philadelphia court reporters and interpreters working in New Jersey. The NCSC recommended that the court raise interpreter salaries at least to the level of court reporters as soon as possible.

NCSC also found that contracted interpreters for languages other than Spanish were not formally tested, and some agencies did not provide training. According to the study, "Experience in other states and local courts suggests that without a program of testing or other meaningful screening, a majority of the interpreters who are used in courts are not qualified for court interpreting."¹³ NCSC recommended using salaried staff interpreters in languages other than Spanish, depending on the volume of work. Additionally, NCSC recommended screening of agency interpreters to improve their skill levels.

The study also recommended changes in the management of interpreter services, which were found to be fragmented and without adequate coordination, data gathering, and program leadership. To improve operations and streamline services, NCSC proposed the creation of a centralized office covering all divisions of the Philadelphia County court system, led by a senior manager who would oversee the supervising interpreter, formulate policy, and establish data gathering and evaluation systems.

Despite the many suggestions in the report, the study noted that the interpreting services provided to Spanish speakers in Philadelphia County are generally of high quality, especially when compared to many other major metropolitan areas.

In particular, Philadelphia County has conducted training of court interpreters, and has produced training materials for a court interpreter orientation seminar as well as an interpreter's manual for domestic violence cases entitled *Interpreters Manual for Courtroom #3—Abuse Court*. Additionally, in a program called Racial, Ethnic, and Gender Fairness in the Courts, supporting materials addressing the needs of LEP litigants were developed and presented by the Philadelphia Court of Common Pleas to judges and their staffs.

Philadelphia County employs eight interpreters, all of whom work full-time for the court. Of the eight, Family Division employs two full-time interpreters and provides Spanish translations of court documents. Municipal Court employs two interpreters who work exclusively for that division, and there are four full-time interpreters who work for the Criminal Division. Philadelphia County also regularly collects court data that include a listing of the languages for which interpreters are requested each year; the frequency with which interpretation for each language is requested; a log of requests for interpreters; a listing of interpreter agencies used by the court; a listing of costs for hearings for which interpreters are provided; and an annual report submitted by the family court interpreters employed by the court.

PUBLIC HEARING TESTIMONY

The Committee heard about the experiences and concerns of LEP litigants at the six public hearings it conducted in 2000 and 2001 throughout Pennsylvania. Among those testifying at the hearings were academics and experts who have studied the issue; professionals who work with and advocate for these individuals; and average citizens who shared their personal experiences and suggestions for addressing deficiencies in the system. For the most part, the testimony consisted of anecdotal evidence about current deficiencies in interpretation services.

The main issues raised by witnesses included the following:

LACK OF STANDARDIZED MEANS FOR PROVISION OF INTERPRETATION SERVICES

Courts in Pennsylvania have no standardized means for providing interpretation or translation services. Some courts use agencies, some appoint interpreters on an *ad hoc* basis, and some provide no interpretation services at all. Relatives and friends of the parties are sometimes asked to translate court proceedings, and advocates and observers have reported being pressed into service as interpreters by the court. An advocate from Harrisburg testified that she attends spousal abuse hearings with her clients to provide emotional support, and that while present at such hearings, she has been asked to interpret for the accused as well. “I feel very uncomfortable doing this, because my presence at the court is to support my client and to help him or her with his or her needs,” the advocate said, adding that she felt it was both unethical and a conflict of interest for her to perform this service.¹⁴ The problem of access to competent interpreter services is especially pronounced in juvenile court, where the child, who is the defendant, is often placed in the position of interpreting the proceedings for his or her parents. In addition to the obvious potential for a conflict of interest, the use of a bilingual child as an interpreter can be detrimental to both the defendant and to the family as a unit. LEP litigants are also affected by monetary considerations because interpreter services are too expensive for most of them to afford.

LACK OF STANDARDS FOR INTERPRETER QUALIFICATIONS

Pennsylvania courts do not have set standards by which to evaluate interpreters' qualifications.¹⁵ In general, the pay scale in Pennsylvania's court system is inadequate to attract and retain well-trained and qualified people. Further, because the courts do not pay travel expenses, agencies are unable to send experienced interpreters to suburban and rural counties. The practice of using unskilled, poorly qualified, and uncompensated interpreters can easily lead to misinformed juries and judges when the interpreter misstates or misrepresents what the litigant has stated. Such misrepresentations can significantly affect the outcome of a trial. The problem is compounded by the fact that there is no avenue by which LEP litigants can object to the adequacy of the interpretation services.

INTERPRETATION AND BILINGUAL STAFFING NEED TO BE ENHANCED AT THE INITIAL CONTACT WITH THE SYSTEM

Most LEP litigants first come into contact with the court system through court staff, process servers, or, in criminal cases, police. Each of these encounters generally occurs only in English. Indeed, at every stage of the justice system, LEP persons encounter court staff who are able to communicate only in English. The procession of English-speaking intake workers, secretaries, attorneys, and judges may leave LEP participants in the justice system unable to understand the proceedings. The language problems resulting from the predominance of monolingual court staff is most pronounced with Spanish-speaking parties. Given the status of Latinos as the fastest growing population in the U.S., projected to be one-fifth of the population by 2025, the courts should give priority to the hiring of bilingual, bicultural staff. Such staff are able to serve LEP parties efficiently by delivering services in Spanish and other languages without the need for an interpreter.

LEP litigants may need both interpretation and documentary translation, which are distinctly different services. Anna Arias, an advocate in Wilkes-Barre, explained: "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."¹⁶ Arias went on to tell the story of a young adult Latino male

arrested on a drug charge who had no interpreter present during police questioning following his arrest or at the magistrate hearing. Arias, who had been called to interpret but was detained at another hearing, testified:

“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.”¹⁷

District magistrates need information and training about the threats to civil liberties that stem from poor enforcement decisions—and in extreme cases, fatally flawed prosecutions—that end up in their courts. At a minimum, a commitment to providing interpreter service at all levels is a necessary condition for sorting out such cases involving LEP persons.

NEED FOR JUDICIARY TRAINING

“I later heard from another colleague that the judge had a hard time understanding my client...And because he couldn’t understand her, he decided that her claim did not have enough merit to be granted a PFA.”

—Attorney Rebecca Ardoline

As a general rule, judges lack the training necessary to distinguish between litigants who understand rudimentary English and those who are truly proficient in the language. As a result, a judge may conclude that a litigant does not need an interpreter because, for example, she can respond appropriately when asked to state her name and address. At the State College public hearing, an advocate told the story of a Korean client who was denied a protection from abuse (PFA) order against her white, native-born American husband. At her PFA hearing, the woman testified that her husband had threatened to kill her, that she was afraid of him because he had been in the military and had expertise in firearms, and that he controlled the family through his control of their finances. The judge denied the PFA but granted some economic relief consistent with a pending divorce. The advocate remarked:

“I later heard from another colleague that the judge had a hard time understanding my client. During the hearing he did not ask for clarification. He did not suggest that my client testify via a translator. And because he couldn’t understand her, he decided that her claim did not have enough merit to be granted a PFA.”¹⁸

Judges and court staff should receive training in the need for, and effective and proper use of, interpreters who can provide the oral and written assistance that a non-native English speaker may need in order to negotiate the system successfully and fairly. There have been few efforts by the courts to have important legal notices translated into languages other than English. Dauphin County has a few notices available in Spanish. At the time of the survey, Philadelphia County had only one translated document available in Spanish, the guilty plea colloquy.

RAPID GROWTH OF PENNSYLVANIA’S NON-ENGLISH SPEAKING POPULATION

Paul Uyehara of the Language Access Project, operated by Philadelphia Community Legal Services, testified to the recent large increase in the Asian ethnic population in Pennsylvania, many of whom do not speak English proficiently. Uyehara also pointed out that in Pennsylvania, more than half of the Asian American population are not native English speakers.¹⁹ Most social workers and attorneys in Pennsylvania are not familiar with the cultural background of Asian Americans, moreover, so there is a built-in barrier to effective representation.²⁰

Counties in Northeastern Pennsylvania have experienced rapid growth in Latino population, and Latinos overall are the fastest growing ethnic population in the Commonwealth, increasing 69.6 percent between 1990 and 2000, compared with 3.3 percent for the general population.²¹ Each August, a multimillion-dollar tomato harvest draws several hundred Spanish-speaking migrant farmworkers to Northeastern Pennsylvania. According to the latest census, the Latino population in Luzerne County has grown 84 percent since 1990, exceeding the Commonwealth’s rate of increase. Wilkes-Barre’s Latino population has almost doubled while Hazelton’s has increased almost fivefold. Lackawanna, Monroe, and Columbia counties show similar trends. The numbers of Latino immigrants from South and Central America and the Caribbean have all increased, introducing dialects and cultures that differ from those of the established Puerto Rican population.

CULTURAL DIFFERENCES WITHIN MINORITY
COMMUNITIES

“It is not enough for a witness to have their testimony translated, especially if they’re a party in a case. They have to understand what is going on around them.”

—Attorney Arthur Read

Finally, there are substantial cultural differences between different immigrant, migrant, and refugee communities and the dominant culture. These differences can severely interfere with the effectiveness of purely literal interpretation or translation and with an individual’s comprehension of the legal, judicial, or administrative processes at work in his or her case. As Arthur Read, general counsel for Friends of Farmworkers, said at the Philadelphia public hearing, “It is not enough for a witness to have their testimony translated, especially if they’re a party in a case. They have to understand what is going on around them.”²² A related issue is that attorneys and the courts do not provide sufficient time for LEP litigants to comprehend the proceedings, leaving the litigants poorly equipped to make informed decisions.

OTHER STATE SYSTEMS AND THE STATE COURT INTERPRETER CERTIFICATION CONSORTIUM

The scattered and inadequate provision of interpreter services for LEP litigants in Pennsylvania today mirrors the situation of LEP litigants in other states in the early 1990s. As recently as 1994, few states had comprehensive statewide mechanisms for ensuring that interpreters possessed the minimum skills required for interpreting adequately in a legal setting. Due in part to the lack of financial resources, most state court systems did not respond to problems created by inadequate language interpretation.

Since the mid-1990s, this situation has changed markedly. In 1995, after extensively studying the problems of LEP litigants, the National Center for State Courts established the State Court Interpreter Certification Consortium, with initial participation by the states of Minnesota, New Jersey, Oregon, and Washington. The consortium was formed to respond to the findings by many state commissions, studies, and other investigations that the needs of LEP litigants were not being met in state courts and that the litigants' rights to equal justice were being severely limited. The consortium also became a means for states to share expertise and the expense associated with developing and administering testing and certification programs for interpreters.²³ Establishment of the consortium was one of four pressing initiatives identified in the NCSC study, along with interpreter training, referral databases, and judicial education.

A total of 29 states had joined the consortium by September 2002.²⁴ The members have interpreter programs containing some or all of the following components:

- Adoption of the Code of Professional Conduct for Interpreters;
- Creation of a court interpreter advisory committee or task force;
- Consortium membership;
- Employment of state office program personnel;
- Adoption of state supreme court rules or administrative orders governing interpreter qualifications; and
- Implementation of regular statewide orientation and training programs for interpreters.

Philadelphia remains the only Pennsylvania county that attempts to provide interpreter services to courts in a systematic manner. Interpreter certification and training—two key components in an interpreter system—do not exist in the Commonwealth.

Given the clear need for a statewide system of providing certified interpretation services, the multi-state consortium is one avenue for Pennsylvania to pursue in attempting to meet its needs. Although there is a fee for membership in the consortium, the cost is less than the Commonwealth would spend to create its own certification and training program for interpreters. Membership in the consortium provides testing in 11 languages; training for interpreters employed by the state court system; a standard of test validity and reliability to protect the courts from legal challenge; test credibility; reciprocity between states; test administration innovations; and comprehensive interstate networking.

Some states that have yet to implement interpreter certification programs have nonetheless recognized the need for statewide regulations to ensure consistency in interpreter qualifications. For example, while legislation in Florida to create a statewide certification program is still pending, the state adheres to NCSC procedures and administers the NCSC examination.²⁵ Mississippi, which has no program in place, has pending legislation that would provide for interpreters in all state courts, and would regulate the certification of the interpreters.²⁶

GENERAL FINDINGS

After reviewing relevant testimony, research findings, and survey data, the Committee found fundamental statewide deficiencies in the treatment of LEP litigants. These deficiencies undermine the ability of the court system to determine the facts accurately and to dispense justice fairly.

Key findings include:

- Some courts are allowing cases involving LEP parties, including criminal defendants, to proceed without interpreters.
- Some courts routinely allow untrained, non-professional individuals, including relatives and friends, to act as interpreters.
- Paid court interpreters are permitted to interpret without any demonstrated competency, especially when they are working under contract.
- The ability of the court system to determine facts and dispense justice is compromised by inadequate language services.
- The lack of standards in Pennsylvania for the use of interpreters and for determining interpreter competency compounds the problem of providing access to justice for LEP persons.

SOME COURTS ARE ALLOWING CASES INVOLVING LEP PARTIES, INCLUDING CRIMINAL DEFENDANTS, TO PROCEED WITHOUT INTERPRETERS.

Civil and criminal cases are permitted to proceed without interpreters for parties who cannot participate because of their limited English proficiency. Proceedings sometimes go forward even when it is apparent that the LEP party needs or has requested an interpreter. Fifteen percent of community agencies surveyed by the Committee reported clients being refused an interpreter in a court proceeding. Two witnesses recounted instances in juvenile court proceedings in which the parents were forced to rely upon interpretation by the juvenile defendant. Another witness observed an arraignment that was conducted without an interpreter, in which a police officer, following uninterpreted questioning of the defendant, presented inaccurate and prejudicial testimony to which the defendant could not respond. Judges, noting a person's rudimentary English skills, may improperly fail to appoint an interpreter even though the person is unable to understand or participate in the proceeding without an interpreter.

The court system appears to recognize the problem, but often does not provide assistance to language minorities. All of the judicial districts responding to the State Association of Court Management survey agreed that the courts should provide interpreters to criminal defendants, and about 40 percent thought interpreters should also be provided in civil cases. The survey, however, did not determine the extent to which courts actually provide services. In Philadelphia, for example, the courts provide interpreters for criminal defendants and for Family Court matters, but not for civil matters. The community agency and court administrator surveys suggest that interpreters are generally not being provided around the state in civil cases.

Translations of many essential documents, such as complaints and waiver forms, are not available in Pennsylvania, and there are no document translations into languages other than Spanish. Individuals who receive the documents may rely upon family or friends for translation, or upon brief oral summaries that may be incomplete or inaccurate.

SOME COURTS ROUTINELY ALLOW UNTRAINED, NON-PROFESSIONAL INDIVIDUALS, INCLUDING RELATIVES AND FRIENDS, TO ACT AS INTERPRETERS.

Several bilingual advocates who were in court to serve as witnesses complained that judges had drafted them to serve as interpreters, despite their apparent involvement in the case and their lack of specialized training.

Since many courts do not provide professional interpreters, LEP litigants are often forced to rely upon any readily available person as an interpreter. Community agencies responding to the Committee survey reported that family and friends are the most likely source of interpreters, followed by the agencies and the courts. Such people often lack training in interpretation for court hearings, and they may be less than fluent in one or both languages. Several bilingual advocates who were in court to serve as witnesses complained that judges had drafted them to serve as interpreters, despite their apparent involvement in the case and their lack of specialized training.

When unskilled interpreters appear in court, the LEP party is likely to comprehend only a part of what is occurring. The interpreter may fail to interpret some portion of the case, may fail to summarize what is being said, or may interpret erroneously. The interpreter may give legal advice to the litigant, answer on his or her behalf or change the meaning of what he or she has said.

Judges and attorneys who are unfamiliar with the methods used for interpreting are generally unable to identify shortcomings in, or the accuracy of, an interpreter's performance. Interpreting techniques are not difficult to understand, but to most untrained people they are neither natural nor intuitive. Untrained participants in an interpreted dialogue, like untrained interpreters, tend to make the same errors. Untrained judges and attorneys also do not intuitively grasp that even a fully bilingual person cannot interpret well without special training.

PAID COURT INTERPRETERS ARE PERMITTED TO INTERPRET WITHOUT ANY DEMONSTRATED COMPETENCY, ESPECIALLY WHEN THEY ARE WORKING UNDER CONTRACT.

Courts may hire staff interpreters to handle high-volume languages such as Spanish. In Philadelphia, as mentioned above, two of the seven Spanish staff interpreters had less than adequate scores on a screening exam, while the others scored extremely well. The test results reflected both the strength and weakness of Philadelphia's screening process for staff interpreters.

Contracted interpreters are often used in court for less familiar languages or in rural counties. Frequently, these interpreters are subcontractors or employees of interpreting agencies. The interpreters tend to be tested according to what one court interpreter administrator calls the "appearance standard," meaning the court is satisfied when an interpreter: 1) is available; 2) shows up on time; 3) is appropriately dressed and appears professional; 4) appears to be bilingual; and 5) elicits no complaints.²⁷ The NCSC Philadelphia study further noted that the court did not test or screen contract interpreters, but instead relied on the interpreting agencies to assure adequate skills and training. Based on its experience, NCSC staff noted that without careful testing and screening, most agency interpreters are not qualified to interpret. More than one witness testifying before the Committee complained of interpreters lacking the fluency required for

court work, or lacking knowledge of proper techniques. Incompetent interpreters may “lose” or distort important evidence, and they may fail to communicate to an LEP person what is happening in the proceeding.

THE ABILITY OF THE COURT SYSTEM TO DETERMINE
FACTS AND DISPENSE JUSTICE IS COMPROMISED
BY INADEQUATE LANGUAGE SERVICES.

Courts and juries in cases involving untrained interpreters routinely receive inaccurate or incomplete testimonial evidence. In such cases, many litigants and witnesses may fail to comprehend questions fully, and may be unable to communicate fully in English what they know. When parties fail to understand the testimony of a witness, they may be unable to assist counsel in effective cross-examination.

Determining the facts is a critical function of any trial court or administrative hearing, and the current system of interpreting undermines the court’s capability in this area. Whether the factfinder is a judge or jury, inaccurate renditions of testimony threaten the integrity of the proceeding. In this regard, many observers do not understand that poorly interpreted witness testimony is similar to hearsay testimony. Professional interpreters adhere to the standard of consecutive interpreting: add nothing, change nothing, omit nothing. Untrained interpreters, on the other hand, tend to summarize questions and answers, respond for the witness, and gloss over nuances in language that may be critical to the evidence. Interpreters may also make simple errors in phrasing or word choice because of an inadequate command of one or both languages. When the factfinders, in turn, misunderstand the interpreters, a second layer of distortion can occur. On another level, an interpreter’s skill and appearance may influence subtle credibility determinations made by the factfinder. Intonation, hesitation, emotion, eye contact, and deference may all contribute to the appearance of honesty or deceit.

THE LACK OF STANDARDS IN PENNSYLVANIA FOR THE USE OF INTERPRETERS AND FOR DETERMINING INTERPRETER COMPETENCY COMPOUNDS THE PROBLEM OF PROVIDING ACCESS TO JUSTICE FOR LEP PERSONS.

Deficiencies in court language services exist across the Commonwealth. No jurisdiction is adequately meeting the need for interpreters, and the standard of work performed in all jurisdictions reflects the lack of uniform standards, training, and testing. This situation persists despite a growing national consensus on the need for court interpreting that has already placed Pennsylvania in a shrinking minority of states.

The court system would benefit greatly from the development of statewide standards for performance and certification of court interpreters and from training for judges and court staff on working with LEP parties. Standards and protocols and model codes are readily available.

Certification exams, which are extremely expensive to design and validate, are available to members of the State Court Interpreter Certification Consortium, and other states have developed protocols to screen interpreters in languages for which certification exams have not yet been developed.

Court administrators suggested in the survey that they are receptive to the development of uniform standards. More than 50 percent said they preferred statewide testing and certification of interpreters rather than local or regional control. More than 33 percent favored joining the consortium, while 59 percent wanted more information before deciding.

Pennsylvania, unlike many states, has no ethical standards for court interpreters. The Commonwealth could adopt a model ethical code that is in use elsewhere, incorporating sections on testing for interpreters, training in ethics, and rule enforcement.

Training for interpreters and those who work with them is a critical component of a court interpreter system. Judges need to learn how to determine if an interpreter is needed, how to establish the competence of the interpreter, and how to supervise the interpreter in the court system. Lawyers, likewise, can benefit from instruction in working with interpreters. Justice would be served if training were mandatory for the bench and the bar.

RECOMMENDATIONS

In formulating the following recommendations, the Committee acknowledges that the implementation of these recommendations is likely to be costly. Nonetheless, they are essential to providing equal access to justice to LEP individuals.

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:²⁸

1. Establish for all courts of the Commonwealth of Pennsylvania 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.²⁹
2. Require that all courts 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. Require that the courts translate forms and other documents to the extent necessary to provide access to the court system to those unable to read English.
4. Require that all court interpreters obtain certification pursuant to a recognized statewide certification program, maintain their proficiency through continuing education, and adhere to standards of professional conduct.
5. Require the adoption of a code of professional responsibility 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. Establish within the Administrative Office of the Pennsylvania Courts (AOPC) a Language Services Office,³⁰ 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. (Please refer to Endnote 30 at the end of this chapter for a full listing of suggested services to be provided by a Language Services Office.)

ENDNOTES

¹ “Limited English proficient” is a term generally used to encompass persons who are “non-English speaking” as well as persons who do not speak English with sufficient fluency to function effectively in a particular setting without oral interpretation or written translation assistance.

² Of the 368,257 persons age 5 and over who do not speak English very well, 140,502 are Spanish-speaking and 76,183 are Asian and Pacific Islanders, according to Census 2000 figures. Census 2000, Table DP-2. Profile of Selected Social Characteristics, 2000. Geographic area: Pennsylvania.

**DP-2. Profile of Selected Social Characteristics:
2000 Language Spoken At Home: Pop. 5 years and over**

Data Set: Census 2000 Supplementary Survey Summary Tables	Estimate	Percentage
Geographic Area: Pennsylvania: Population 5 years and over	11,555,538	100.0%
English only	10,583,054	91.6%
Language other than English	972,484	8.4%
Speak English less than “very well”	368,257	3.2%
Spanish	356,754	3.1%
Speak English less than “very well”	140,502	1.2%
Other Indo-European languages	428,122	3.7%
Speak English less than “very well”	138,542	1.2%
Asian and Pacific Islander languages	143,955	1.2%
Speak English less than “very well”	76,183	0.7%
Other languages	57,990	0.5%
Speak English less than “very well”	14,041	0.1%

U.S. Census Bureau, Census 2000, (December 2000)

http://factfinder.census.gov/servlet/QTTable?ds_name=DEC_2000_SF3_U&geo_id=04000US42&qr_name=DEC_2000_SF3_U_DP2

³ In the first seven months of calendar year 2001, the First Judicial District of Pennsylvania (Philadelphia County) received requests for language interpretation services in 35 different languages and dialects. In addition to requests for services from eight full-time Spanish language interpreters, the First Judicial District reported that of its remaining requests for interpretation services: 30 percent were for Asian languages and dialects; 25 percent were for Russian and Slavic languages and dialects; 18 percent were for sign language (including American and Spanish sign); 15 percent were for European languages and dialect; 5 percent were for Middle Eastern languages and dialects; up to 2 percent were for African languages; and 5 percent were for other languages or dialects only infrequently requested. Source: First Judicial District of Pennsylvania.

In calendar year 2000, the First Judicial District of Pennsylvania (Philadelphia County) received requests for interpreters in 57 different languages and dialects. These were identified as:

#	Language	#	Language	#	Language
1	Albanian	20	Haitian Creole	39	Romanian
2	Amharic: (Ethiopian)	21	Harbin	40	Russian
3	Arabic	22	Hebrew	41	Sign
4	Bangladesh	23	Hindi	42	Singhalese
5	Beijing	24	Hmong	43	Slovakian
6	Bosnian	25	Indian	44	Somalian
7	Cambodian	26	Italian	45	Sonike
8	Cantonese Chinese	27	Japanese	46	Spanish
9	Czechoslovakian	28	Korean	47	Syrian
10	Creole	29	Laotian	48	Taiwanese
11	Farsi	30	Malayalam	49	Tagalog
12	French	31	Mali-Solinga	50	Tigrina
13	Fuzhou	32	Mandarin Chinese	51	Tinera
14	Fukanese	33	Pakistani	52	Turkish
15	Fulani	34	Pashto	53	Ukrainian
16	Georgian	35	Persian	54	Urdu
17	German	36	Polish	55	Vietnamese
18	Ghandi	37	Portuguese	56	West African
19	Greek	38	Punjabi	57	West Indian

First Judicial District of the Court of Common Pleas response to Pennsylvania Association of Court Management, Court Interpreter and Translator Survey.

Other Judicial Districts of the Court of Common Pleas, responding to Pennsylvania Association Of Court Management, Court Interpreter And Translator Survey indicated the following additional languages not identified by the First Judicial District: Croatian and Serbian (three judicial districts); Egyptian (Arabic) and Thai (Monroe County).

- ⁴ Each of the Work Group members has extensive experience working with litigants with limited English proficiency. Their experiences range from directing an interpreting services agency to providing legal representation on a daily basis to litigants with limited English proficiency.
- ⁵ A bibliography of published material relevant to the issues studied by the Committee can be found at Appendix Vol. I.
- ⁶ The Committee relied heavily upon Kathleen M. Sullivan, *A Judge's Handbook on Immigration Law and Related Materials* (Chicago: American Bar Association 2001), particularly Chapter 14 therein, "Court Interpreters: Appointment, Qualification and Effective Utilization," as updated by Sarah Paoletti, Esq., Friends of Farmworkers, Inc.
- ⁷ Executive Order 13166, 65 FR. 50121 (August 16, 2000) <http://www.usdoj.gov/crt/cor/Pubs/colep>.
- ⁸ 67 FR. 4968 (February 1, 2002) <http://www.hhs.gov/ocr>.

HHS's Office for Civil Rights notes:

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. What constitutes a program or activity covered by Title VI was clarified by Congress in 1988, when the Civil Rights Restoration Act of 1987 (CRRA) was enacted. The CRRA provides that, in most cases, when a recipient/covered entity receives federal financial assistance for a particular program or activity, all operations of the recipient/covered entity are covered by Title VI,

not just the part of the program that uses the federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the federal assistance is used only by one part.

U.S. Department of Health and Human Services, Office for Civil Rights, Policy Guidance Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency, Part C.1. (September 1, 2000). *See* extensive discussion at Part B thereof as to the legal authority under Title VI for the HHS guidance.

Department of Justice Republished Guidance, 67 F.R. 41455 (June 12, 2002).

⁹ The Department of Labor LEP Policy Guidance, 66 F.R. 4596 (January 16, 2001) <<http://www.usdoj.gov/crt/cor/lep/dollep.htm>>.

¹⁰ Other languages identified and the percentage of responding agencies identifying them included:

Language	% of Respondents
Spanish	78%
Vietnamese	44%
Russian	43%
Cambodian	27%
Korean	22%
Arabic	17%
Chinese - Cantonese	17%
Haitian Creole	17%
French	15%
Chinese - Mandarin	12%
Laotian	10%
Chinese – Fuzhou	7%
Amharic (Ethiopian)	7%
Portuguese	7%
Hindi	2%

Some respondents provided other detailed information about language needs identified in their work. Other languages reported: Ukrainian (2), Khmer (1), Serbo-Croat (1), Bosnian (1), Albanian (1), Pashto and Farsi (1), Lingala (1), Swahili (1), Romanian (1), Hmong (1), Tigrina (1), Dinka (1), and Huen

¹¹ MidPenn Legal Services, Lancaster Office, Response to a Community Agency Survey, 8.

¹² The breakdown of the languages for which interpreters were identified as needed is:

Language	% of Respondents
Spanish	81%
Sign	73%
Russian	37%
Vietnamese	29%
Other Asian	24%
Polish	22%
Arabic	15%
Korean	15%
Cantonese – Chinese	15%
French	12%
German	10%
Croatian	7%
Italian	7%
Serbian	7%
Other Eastern European	7%
Haitian Creole	5%
Czechoslovakian	5%
Laotian	2%

¹³ National Center for State Courts, Philadelphia Court Interpreter Services Study, p. 14 (1995).

¹⁴ Testimony of Ho-Thanh Nguyen, Harrisburg Public Hearing Transcript, pp. 121–22.

¹⁵ Pennsylvania Association of Court Management-Research, Planning & Development Committee, Court Interpreter and Translator Survey, Appendix Vol. I.

¹⁶ Written testimony of Anna Arias, Wilkes-Barre Public Hearing Transcript, p. 2.

¹⁷ *Id.*

¹⁸ Testimony of Rebecca Ardoline, State College Public Hearing Transcript, p. 81.

¹⁹ Testimony of Paul Uychara, Philadelphia Public Hearing Transcript, p. 235.

²⁰ Testimony of Im Ja P. Choi, Philadelphia Public Hearing Transcript, p.131.

²¹ U.S. Census Bureau, Census of Population, *Profile of General Demographics for Pennsylvania: (1990) & (2000)*.

²² Testimony of Arthur N. Read, Philadelphia Public Hearing Transcript, p. 139.

²³ Madelyn Herman & William Hewitt, *The National Center for State Courts and The Consortium for State Court Interpreter Certification Program*, American Translator's Association Chronicle, 35–37, October 2001.

²⁴ The states belonging to the consortium are Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois/Cook County, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

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- ²⁵ Louise Story, *Interpreters Balance Scales, Court Interpreters Make Sure Everyone is Heard, and Demand for their Services is Growing*, Osceola Sentinel, July 2, 2001.
- ²⁶ H.R. 718, 2002 Regular Session (Miss. 2002).
- ²⁷ National Center for State Courts, Philadelphia Court Interpreter Services Study, Translating and Bilingual Services Section of the Administrative Office of New Jersey Courts, Robert Joe Lee, Director of Court Interpreting, pp. 16–17.
- ²⁸ In its comments to the proposed Rule of Court Administration relating to Equal Access to Justice in the Courts of the Commonwealth of Pennsylvania, the Supreme Court of Pennsylvania should note that it anticipates that in implementation of that Rule, courts will utilize the guidance which has been provided under Title VI of the Civil Rights Act of 1964 relating to National Origin Discrimination Against Persons With Limited English Proficiency pursuant to United States Presidential Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.”
- ²⁹ The Committee notes that during the study, similar concerns were raised regarding the needs of the hearing impaired. The Committee determined that the needs of the hearing impaired were beyond the scope of its study but urges the Court to consider addressing the needs of the hearing impaired and citizens with limited English proficiency at the same time since they involve similar issues and solutions.
- ³⁰ The Language Services Office shall be responsible for:
- a) Enrolling the Pennsylvania Unified Judicial System as a member of the State Court Interpreter Certification Consortium of the National Center for State Courts;
 - b) Establishing procedures for the employment, training, compensation, qualification, and approval of staff and contracted court interpreters during the transition to statewide certification standards;
 - c) Creating a comprehensive statewide system to assure qualified judicial interpreters, including:
 - i) Adopting standards for the skills and qualifications required for different levels of expertise of interpreters as well as job descriptions for interpreters and supervisors;
 - ii) Assessing the need for and implementing orientation training, certification training, and continuing professional education;
 - iii) Overseeing the administration of consortium certification exams in available languages needed by the courts; and developing testing protocols for languages for which consortium exams are not developed;
 - iv) Determining the advisability of and standards for certifying knowledge of the Code of Professional Responsibility for Judicial Interpreters; and
 - v) Developing guidelines for compensation scales for staff and contracted interpreters at various levels of proficiency and experience.
 - d) Creating and managing a statewide administrative system for interpreting, including:
 - i) Recruiting and hiring staff interpreters and contracted interpreters;
 - ii) Creating a system to assign interpreters efficiently, as needed, to proceedings across the state to assure maximum use of the most qualified interpreters and the avoidance of delay for the courts, the litigants, and the interpreters;
 - iii) Supervising the work of interpreters to maintain quality and professionalism; and
 - iv) Gathering and analyzing data on the need for, use of, and cost of the interpreter program, and making recommendations for improvement of the system.
 - e) Developing protocols for the use of interpreters in courts and courthouses, including:
 - i) Adopting a bench guide for judges to consult in the proper utilization and supervision of interpreters in judicial proceedings, including standard *voir dire* questions for court interpreters and for witnesses and/or litigants to determine whether appointment of an interpreter is necessary;

- ii) Adopting standards for such matters as the techniques to be used by interpreters; the correction of interpreter errors and objecting interpretation; and avoidance of interpreter fatigue;
 - iii) Consistent with published Title VI guidances, identifying those vital written documents, forms, posted notices, and signs utilized by the courts that should be required to be translated to other languages and into which other languages such written materials should be translated;
 - iv) Developing a system to create reviewable interpreting records, including (1) appropriate tape recording of witnesses and interpreters and the proceedings to the extent feasible, so as to have a complete record for judicial review and challenges to the adequacy of interpretation; and (2) video recording of the witness and interpreter where sign language interpretation or other assistance to hearing impaired persons is provided;
 - v) Developing policies and procedures for the use of video telephone conferencing systems for court interpretation when qualified on-site interpreters are not available, assuring with those policies that video interpreters are qualified;
 - vi) Determining means to provide meaningful access to LEP persons who are *pro se* litigants; and
 - vii) Adopting procedures to assure that language services are provided to assist court-appointed counsel in communicating with LEP clients in criminal and other matters.
- f) Promoting increased hiring of bilingual and bicultural court staff able to deliver services to LEP parties without the need for an interpreter, including development of job descriptions for bilingual positions, providing fiscal support for upgrading skills of existing bilingual employees, and recommending practices to facilitate recruitment and retention of bilingual staff.
- g) Working with continuing legal education providers and the administrative office of the Pennsylvania Courts to develop training and educational systems for attorneys, judges, court administrators, and others as to issues relating to the equal access to justice for LEP persons and for the utilization of court interpreters.
- h) Engaging in study of other issues relating to providing equal access to LEP litigants and making further recommendations in such areas as:
- i) Assessing how the cultural norms of immigrant communities may adversely impact their ability to obtain equal justice in the judicial system and what remedial action is appropriate;
 - ii) Determining how foreign-born litigants' immigration status may affect their rights to equal access to justice in Pennsylvania judicial proceedings and how the adverse aspects of such impact may be minimized; and
 - iii) Establishing mechanisms for providing members of LEP immigrant communities with accurate information about their legal rights and options open to them, which could include an explanation of the possibility of free or *pro bono* representation, lists of competent referrals for different kinds of translation or other services, and types of problems which can be addressed through the legal system.
- i) Ensuring that all Pennsylvania courts and Commonwealth administrative departments or agencies which conduct hearings that are subject to judicial review on the record also develop procedures to comply with Title VI of the Civil Rights Act of 1964 and its implementing regulations.