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**Pennsylvania Supreme Court  
Committee on Racial and Gender Bias in the Justice System  
STATEMENT ON SPECIAL ISSUES  
AFFECTING NON-ENGLISH SPEAKING LITIGANTS**

By

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Sarah Paoletti, Staff Attorney Friends of Farmworkers

Friends of Farmworkers, Inc. is a statewide legal services program for farmworkers which was founded in 1975 as the Farmworkers Civil Liberties Project of the Pennsylvania ACLU. Throughout the past 25 years the work of Friends of Farmworkers has principally involved the representation of non-English speaking persons in a variety of administrative and judicial forums.

Friends of Farmworkers, Inc. has been requested to submit testimony to this Committee on behalf of a longtime client organization, Comité de Apoyo a los Trabajadores Agrícolas (“CATA”), the Farmworkers Support Committee, a non-profit farmworker membership organization with offices in Pennsylvania and New Jersey and membership in Puerto Rico, Mexico and the Eastern United States. CATA was founded in 1979 and has been represented by Friends of Farmworkers, Inc. General Counsel Arthur N. Read since its founding. CATA’s membership is overwhelmingly non-English speaking and its members have been profoundly affected by issues affecting non-English speaking litigants.

Friends of Farmworkers General Counsel Arthur N. Read has practiced law since 1976 in the states of New York, New Jersey and Pennsylvania and through pro hac vice admission in Puerto Rico and Texas. Since 1979 General Counsel Read has specialized in the representation of farmworkers both in New Jersey (1979-1982) and in Pennsylvania (1981-present). This has included representation of literally thousands of non-English speaking persons. Amongst those non-English speaking persons represented during this legal practice have been Spanish speaking persons from Puerto Rico, Mexico, Cuba, Guatemala, El Salvador, the Dominican Republic, and persons born in the mainland United States for whom Spanish was the native language in which they were raised. Representation through Friends of Farmworkers has included representation of hundreds of Haitian born Creole speaking persons who are non-English speaking persons.

Friends of Farmworkers Staff Attorney Sarah Paoletti is a 1998 law school graduate from the Washington College of Law at the American University. During the period 1996-1998 she worked on a project of the American Bar Association to prepare materials for judges on immigrant's access to the courts, particularly interpreter services. During the period September 1998 through August 1999 as an Independence Foundation Fellow and again since September 2000 as a Skadden Fellow she has principally dealt with non-English speaking client populations.

The migrant farmworker population in the Eastern United States also has included significant numbers of persons from indigenous communities in Latin American countries which are neither English or Spanish native language speakers. This includes Mayan communities from Guatemala and Mexico and Mixtec speakers from Mexico.

Friends of Farmworkers has also made extensive efforts to work with the Southeast Asian immigrant and refugee communities in Pennsylvania who since 1980 have been extensively involved in labor in agricultural and related industries in New Jersey and Pennsylvania. This has included working with non-English speaking communities for whom Cambodian Khmer, Lao, Vietnamese, Hmong, and dialects of Chinese are native languages. Farmworker communities in this region have also included non-English speaking persons of Korean and Philippines national origin.

In addition, Friends of Farmworkers has been involved in representation of English speaking communities with significantly different dialects from United States English dialects from the Caribbean nations included within the former British West Indies, including Jamaica, Barbados, and Guayana.

A very significant portion of the farmworker population also includes persons who are illiterate or functionally illiterate in English and in their own native languages. Education to the equivalent of a third grade level is not uncommon for many foreign born farmworkers populations. Several of the native languages of migrant farmworker communities have no indigenous standardized written linguistic form including Haitian Creole and Hmong.

Within many of the languages of the populations referred to above there are significant differences in dialect and vocabulary that may significantly distinguish for interpretation or translation purposes the linguistic needs of particular persons. This is further complicated in the context of employment disputes by particular technical or common slang vocabulary specific to that type of workforce that in many cases may be linguistic hybrids ("Spanglish") developed to commonly refer to particular tasks in a workplace.

There are also very real cultural differences between different immigrant, migrant and refugee communities which may severely interfere with the effectiveness of purely literal interpretation or translation and with comprehension of the legal, judicial or administrative processes which may affect a particular individual.

It is critically important that parties receive interpretation of proceedings not merely of their own testimony so that they are fully able to participate in and understand proceedings as if they were fully English speaking and English language literate.

It is also important to understand the different functions of oral interpretation and written translation which are often confused, but involve very different skills and functions.

In understanding the interface between non-English speaking communities and the legal and judicial system, it is also critical to acknowledge the role of citizenship and immigration status in the ability and willingness of many persons to participate in legal processes where they are undocumented citizens of other nations. This issue has been confronted directly in the last several years by administrative agencies such as the Equal Employment Opportunity Commission,<sup>1</sup> the United States Department of Labor Wage and Hour Division,<sup>2</sup> and the National Labor Relations Board<sup>3</sup> which have acknowledged the right of undocumented persons to pursue legal claims of violations of employment laws regardless of their undocumented status. This right has also been recognized by the United States government in international forums, including the "Summit of the Americas."<sup>4</sup>

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<sup>1</sup> See, <http://www.eeoc.gov/docs/undoc.html> and <http://www.eeoc.gov/docs/qanda-undoc.html> as to EEOC policies on rights of undocumented workers.

<sup>2</sup> <http://www.dol.gov/dol/esa/public/whatsnew/whd/mou/nov98mou.html>

<sup>3</sup> <http://www.nlr.gov/gcmemo/gc98-15.html>

<sup>4</sup> See the , International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, United Nations General Assembly Resolution 45-158, 69th plenary meeting, 18 December 1990. See also, 1998 Summit of the Americas Santiago Chile Implementation Document committing the United States and countries in North and South America to:

Protect the rights of all migrant workers and their families, consistent, with each country's internal legal framework, by taking steps, in case they do not exist, to: 1) provide, with respect to working conditions, the same legal protection as for national workers; 2) facilitate, as appropriate, the payment of full wages owed when the worker has returned to his/her country, and allow them to arrange the transfer of their personal effects; 3) recognize the rights of citizenship and nationality of the children of all migrant workers who may be entitled to such rights, and any other rights they may have in each country; 4) encourage the negotiation of bilateral or multilateral agreements, regarding the remission of social security benefits accrued by migrant workers; 5) protect all migrant workers and their families, through law enforcement and information campaigns, from becoming victims of exploitation and abuse from alien smuggling; 6) prevent abuse and mistreatment of all migrant workers by employers or any authorities entrusted with the enforcement of migration policies and border control; and 7) encourage and promote respect for the cultural identity of all migrants.

Friends of Farmworkers receives funding both directly through the Pennsylvania Supreme Court Lawyer's Trust Account Board and indirectly through Pennsylvania Legal Services State Support IOLTA funding. Advocacy on behalf of the special legal issues and needs of the Pennsylvania farmworker community which is overwhelmingly non-English speaking is the principal mandated function of Friends of Farmworkers, Inc.

We appreciate this opportunity to provide testimony on issues related to Non-English speaking litigants and would be prepared to continue on-going work with the Committee as to these issues.

### **Interpreters**

Over the past fifteen years the important need for developing standards for court interpretation has come to be widely recognized.

In 1997, the American Bar Association approved the following Resolution:

RESOLVED, That the American Bar Association recommends that all courts be provided with qualified language interpreters, including sign language interpreters, in order that parties and witnesses with no or limited command of English and those who are deaf or hearing-impaired may fully and fairly participate in court proceedings;

FURTHER RESOLVED, That court interpreters should be qualified and should maintain their proficiency through continuing education, and should adhere to standards of professional conduct.

ABA Resolution, Report No. 109 (August 1997).

In its report to the ABA Board of Governors, the Judicial Division and the Senior Lawyers Division noted:

At the last census, nearly 32 million out of the population of the United States do not speak English at home, and it is believed that that number is increasing (citation omitted). Moreover, many participants in proceedings in American courts speak English not at all or to only a limited extent. These language-handicapped persons come to court, often involuntarily, as witnesses, as criminal defendants, and as parties in a whole range of other proceedings, including, for example, domestic relations matters, juvenile and traffic cases and business disputes. Criminal defendants have a constitutional right to understand the charge against them and to be able to use intelligently the assistance of counsel. Important rights to equal justice are also infringed in any other court proceeding in which a language-handicapped person is unable to

participate fully and fairly. There is no place anywhere in the American Courts for unequal treatment because of a language handicap.

In a similar vein, the National Center for State Courts argues there is a need for better and more systematic interpreter services nationwide to serve the increasingly limited-English proficient population:

Millions of non-English-speaking American citizens and residents are being denied equal access to justice because they are unable to comprehend and fully participate in state court proceedings. Numerous state commissions, research studies and media investigations have concluded that the plight of non-English speakers in the state courts is compelling and requires immediate attention. "Improve interpreter services" has been a central recurring theme in published studies of commissions and task forces across the country charged with evaluating the extent of racial and ethnic bias in our courts. Many factors contribute to the miscarriages of justice that are likely to occur when linguistic minorities appear in court as litigants or witnesses. The most fundamental factor is the absence of professional competence standards for court interpreters. Few states have comprehensive, statewide mechanisms for ensuring that interpreters possess the appropriate minimum skills required for interpreting in a legal setting.

Demographic trends as of the last census (1990) suggest that the American judicial system faces mounting difficulties in meeting the challenge of ethnic and linguistic diversity. While the total population of the United States increased by 10% between 1980 and 1990, the nation's Asian and Pacific Islander minority populations increased by 108%; our Hispanic population increased by 53%; and other language minority populations increased by 45%. These trends undoubtedly will continue well into the 21st Century.

See, National Center for State Court Consortium For State Court Interpreter Certification, Briefing Summary Revised – July 24, 1998; December 31, 1999,  
<http://www.ncsc.dni.us/RESEARCH/INTERP/Briefing.htm>.

See also, National Center for State Courts, Court Interpretation,  
<http://www.ncsc.dni.us/RESEARCH/INTERP/>:

*"To a minority for whom English is not the primary language, language barriers only heighten the desperation that justice is simply beyond reach, no matter what the truth or consequences...[The prosecution of a non-English-speaking defendant without the aid of an interpreter] loses its character as a reasoned interaction...and becomes an invective against an insensible object." ~*

*Florida Supreme Court Task Force on Racial and Ethnic Bias*

*"This extremely important and fundamental issue [court interpretation] has been allowed to become a 'stepchild' of the justice system: understudied, underfunded, and in terms of its ultimate impact, little understood." ~*

*Minnesota Supreme Court Task Force on Racial and Ethnic Bias in the Judicial System*

*"Without qualified interpretation of courtroom proceedings, the trial is a 'babble of voices,' the defendant is unable to understand the nature of the testimony against him or her, and the counsel is unable to conduct an effective examination." ~*

*Final Report of the California Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts*

<http://www.ncsc.dni.us/RESEARCH/INTERP/>.<sup>5</sup>

Pennsylvania, as with the rest of the country, is experiencing an increase in non-English proficient residents, and the court system needs to address the issue of interpreter services for these individuals, so as to ensure their equal access to justice.

The right to an interpreter for non- and limited-English speaking defendants and witnesses in criminal cases is implicit in the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution, and has been so recognized by both state and federal courts.<sup>6</sup> The

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<sup>5</sup> See also, National Center for State Courts , Court Interpretation, Publications and Resource Material (updated 11/09/00) <http://www.ncsc.dni.us/RESEARCH/INTERP/Pubs.htm> annexed hereto. Also, annexed hereto are Supplemental Bibliographies on issues relating to court interpreting. : See, <http://www.acebo.com/recref.htm#recreadg> and National Center for State Courts, "State Court Rules for Language Interpreters: Bibliography" <http://www.ncsc.dni.us/is/MEMOS/S99-1242.htm>

<sup>6</sup>See Negron v. New York, 434 F.2d 386 (2d Cir. 1970) (vacating a state homicide conviction, holding the failure to appoint an interpreter to a Spanish-speaking defendant unconstitutional). See also United States v. Carrion, 488 F.2d 12 (1st Cir. 1973), holding:

Clearly, the right to confront witnesses would be meaningless if the accused could not understand their testimony, and the effectiveness of cross-examination would be severely hampered (citations omitted). If the defendant takes the stand in his own behalf, but has an imperfect command of English, there exists the additional danger that he will either misunderstand crucial questions or that the jury will misconstrue crucial responses. The right to an interpreter rests most fundamentally, however, on the notion that no defendant should face the Kafkaesque spectre of an incomprehensible ritual which may terminate in punishment.

Id. at 14. See also, Commonwealth v. Pana, 469 Pa. 43, 364 A.2d 895 (1976).

right to an interpreter in federal courts was extended to all criminal proceedings through the Federal Court Interpreters Act, 28 U.S.C. § 1827. The Act, as amended in 1988, mandates the use of certified or otherwise qualified interpreters in all criminal proceedings for people who primarily speak a language other than English, and it specifically provides for whom that right is accorded, and how that right should be recognized. Several states have enacted similar statutes, and some have even passed state constitutional amendments, guaranteeing the right to an interpreter in criminal proceedings.<sup>7</sup>

A handful of states have extended a general statutory right to the an interpreter in civil cases as well.<sup>8</sup> It is critical to realize that the limited resources available to non-profit legal services organizations representing indigent persons in civil proceedings are far too limited to fund professional court interpretation services even in those cases in which non-English speaking persons are represented by such programs let alone the hundreds of other proceedings in which non-English speaking persons receive no legal representation.<sup>9</sup>

Pennsylvania, however, has failed to address the issue of interpreter services, and other issues relating to providing individuals with limited-English proficiency (“LEP”) equal access to the justice system, leaving them largely to the discretion of the judges.<sup>10</sup>

Many Commonwealth of Pennsylvania state administrative agencies which currently provide limited or inadequate interpreter and translation services may be obligated by Title VI of the Civil Rights Act of 1964.<sup>11</sup>

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<sup>7</sup>See California State Constitution, Article I, § 4; New Mexico State Constitution, Article II, § 14; D.C. Code § 31-2701-12; Utah Code of Judicial Administration, Rule 3-306; Virginia Criminal Code, Chapter 402, § 19.2-164; Washington Code, Chapt. 2.43.

<sup>8</sup>See Rev. Code Wash. § 2.43.010 (1999):

It is hereby declared to be the policy of this state to secure the rights, constitutional or otherwise, of persons who, because of a non-English-speaking cultural background, are unable to readily understand or communicated in the proceedings unless qualified interpreters are available to assist them.

See also Oregon Revised Statute § 45.273 (1999).

<sup>9</sup> Friends of Farmworkers has noted over the past twenty years that the issue of competent translation in District Justice proceedings for summary and traffic offenses have posed particularly severe problems for large numbers of non-English speaking persons who are generally unrepresented in such proceedings. Even indigent persons generally receive neither legal services or public defender services in many such proceedings.

<sup>10</sup>The only provision for interpreters in the Pennsylvania Rules is Pennsylvania Rule of Evidence 604, which provides: “An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.”

Although this Committee does not have the authority to write and pass legislation granting a statutory right to an interpreter in civil and criminal proceedings, it does have the authority to make recommendations regarding the appointment of interpreters, the qualification of interpreters, and the use of interpreters, which would ensure more equal access to the courts for LEPs.

**A. Appointment of Interpreters**

An interpreter should be appointed, or should be permitted, either when an interpreter is requested by the litigant or the witness, or in situations where the judge determines, after conducting a voir dire of the witness, that an interpreter is required. The mere failure of a party to request an interpreter, does not mean that an interpreter should not be appointed, as there are several reasons why a party may fail to request an interpreter. In addition, a judge should not deny witness' request for an interpreter just because the witness appears able to speak some English. It is important to remember that a court proceeding involves language that is not used in every day life, and often involves issues of great significance for the parties involved. A misunderstanding of what is said, or a mispeaking of what is meant, can often have very significant consequences in judicial proceedings.

**B. Qualification of Interpreters**

Pennsylvania does not have an interpreter certification program, nor is it a member of the Consortium of State Court Interpreter Certification. For information regarding the National Center for State Court's Consortium for Interpreter Certification, see <<http://www.ncsc.dni.us/RESEARCH/INTERP/index.html>>. We urge the Pennsylvania Supreme Court to either become a member of the Consortium, or to begin its own certification program. It is a common myth that if a person speaks English and the language of the party or witness, that that person can serve as an interpreter. Being bilingual does not qualify someone as an interpreter. It is critical that the interpreter is able to accurately convey both the exact meaning of the words spoken, as well as the tone.

**C. Use of Interpreters: Training Judges**

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<sup>11</sup> On August 11, 2000 a federal Executive Order was issued requiring federal agencies to review state and federal agencies compliance with Title VI of the Civil Rights Act of 1964 in relationship to persons of Limited English Proficiency (LEP). See, for example Department of Health and Human Services (DHHS) proposed regulations at 65 Fed. Reg. 52762-52774, August 30, 2000. See also, comments of National Employment Law Project (NELP) on proposed regulations by Equal Employment Opportunity Commission (EEOC), <http://www.nelp.org/pub35.pdf> and United States Department of Labor <http://www.nelp.org/pub34.pdf>. and NELP general information on rights of persons of Limited English Proficiency.

It is the judge's role to ensure the fairness and integrity of the judicial proceedings. Therefore it is critical that judges are trained in what is required for someone to be a qualified interpreter, how to recognize when there are problems with an interpretation, and how to better ensure that the interpretation is accurate. For example, if a witness provides a multiple word answer, and the interpreter then answers "yes," it is clear the interpreter has not provided a thorough and accurate translation of what the witness said. In addition, the interpreter should never engage in a colloquy with the witness. If the witness does not understand the question, it is not for the interpreter to rephrase or explain the question. The interpreter is not an attorney. Similarly, if the interpreter thinks the answer provided is not responsive to the question asked, it is not the role of the interpreter to try to elicit a more responsive answer. The interpreter's only job is to interpret.

Furthermore, judges need to be trained in the logistics of using a court interpreter. For example, the placement of an interpreter in the courtroom is important. In addition, it is critical for judges to understand that interpreting is an incredibly demanding job, and interpreters should be allowed frequent breaks. Experts in court interpretation recommend that for a proceeding of any length, two interpreters should be appointed so they may trade off every half hour.

#### **D. Assessing Costs of Court Interpreters**

Many LEPs have limited financial resources, and cannot afford the costs of an interpreter. We urge the Pennsylvania Supreme Court to examine the viability of adopting a provision similar to that in Oregon, which provides:

(2) No fee shall be charged to any person for the appointment of an interpreter to interpret testimony of a non-English speaking party or witness, or to assist the court in performing the duties of the court. No fee shall be charged to an indigent party for the appointment of an interpreter to interpret the proceedings to the indigent non-English speaking party. No fee shall be charged to any person for the appointment of an interpreter if appointment is made to determine whether the person is indigent or non-English speaking person for the purposes of this section.

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(6) A court may allow as costs reasonable expenses incurred by a party in employing the services of an interpreter in civil proceedings . . . .

#### **Immigration Status**

Although not identified by the Committee on Racial and Gender Bias as a topic for consideration, we would also like to raise the issue of the role of a litigants immigration status as noted above

Although laws such as the Fair Labor Standards Act, the Migrant and Seasonal Agricultural Worker Protection Act, the Pennsylvania Wage Payment and Collection Law and the Pennsylvania Seasonal Farm Labor Act do not discriminate between citizens and non-citizens, our clients are often the victims of discriminatory adherence to those laws. Undocumented workers are particularly vulnerable to exploitation by their employers, and in addition to being denied access to the courts to seek redress from said exploitation because of their lack of English language skills, they are denied access because they do not have a social security number.

Attachments to Written Testimony  
**STATEMENT ON SPECIAL ISSUES  
AFFECTING NON-ENGLISH SPEAKING LITIGANTS**

**Friends of Farmworkers, Inc.**

December 2000

**Pennsylvania Supreme Court  
Committee on Racial and Gender Bias in the Judicial System**

\$ National Center for State Courts - Court Interpretation - Publications and Resource Material

\$ State Court Rules for Language Interpreters: Bibliography

\$ Supplemental Bibliography – Interpretation

From: <http://www.acebo.com/recref.htm#recreadg>

\$ Friends of Farmworkers Supplemental Bibliography

\$ Westerman, William, Philadelphia Folklore Project (1994), *Cultural Barriers to Justice in Greater Philadelphia: Background, Bias, and the Law*. Pennsylvania

# Court Interpretation

## *Publications and Resource Material*

*updated 11/09/00*

### **NCSC Publications**

The following National Center Publication can be obtained by contacting the National Center's publications clearinghouse at 1-888-228-NCSC (6272).

#### *Court Interpretation: Model Guides for Policy and Practice in the State Courts*

Chapter 1 - a brief account of why court interpreting is a significant management issue for the courts

Chapter 2 - a guide to interpreting terminology

Chapter 3 - a generic, but highly detailed account of the knowledge and skills interpreters need

Chapter 4 - guides for the design of training workshops for interpreters

Chapter 5 - an overview of standards for court interpreter proficiency testing

Chapter 6 - a judges' guide to recommended standards for the conduct of interpreted proceedings

Chapter 7 - a judges' guide to special issues related to interpretation for the deaf or hearing impaired

Chapter 8 - telephone interpreting

Chapter 9 - a recommended code of professional conduct for court interpreters

*note: This code has been adopted by several states*

Chapter 10 - recommended basic elements that should be considered for inclusion in state policy

The following NCSC publications can be obtained by contacting Dot Bryant at 757-259-1831 or by e-mail at [dbryant@ncsc.dni.us](mailto:dbryant@ncsc.dni.us).

#### *State Court Journal - Overcoming the Language Barrier: Achieving Professionalism in Court Interpreting*

"Court Interpreting: View from the Bench"

"The Courtroom Interpreter: A User's Guide and Checklist"

"Specifically for Judges...Recommended Readings and a Videotape"

"Court Interpreting for Deaf Persons: Culture, Communication, and the Courts"

"Beyond the Language Barrier, or "You Say You Were Eating an Orange?""

"A Court Interpreting Proficiency Test at a Glance: What It Looks Like and How It Is Developed"

"Improving Court Interpreting Services: What the States Are Doing"

#### *Court Interpreting Services in State and Federal Courts: Reasons and Options for Inter-Court Coordination*

The following NCSC videos can be obtained by contacting Bristol Productions LTD, 2401 Bristol Court SW, Olympia, WA 98502, 360-754-4260, 360-754-4240 fax.

Mental Commitment Hearing Interpreting

Working with Interpreters

Interpreters: Their Impact on Legal Proceedings

## Other Important Publications

Astiz, Carlos, *Language Barriers in the Criminal Justice System*, U.S. Department of Justice, National Institute of Justice (Washington, DC: 1993)

Berk-Seligson, Susan, *The Bilingual Courtroom: Court Interpreters in the Judicial Process*, University of Chicago Press (Chicago: 1990)

Davis, Hon. Lynn W., and William E. Hewitt, "Lessons in Administering Justice: What Judges Need to Know About the Requirements, Role, and Professional Responsibilities of the Court Interpreter." *Harvard Latino Law Review* 1 (Fall 1994)

Gonzalez, Vasquez and Mikkelson, *Fundamentals of Court Interpretation*, Carolina Academic Press, (Durham, NC: 1991)

Grabau, Hon. Charles M., and Joseph Gibbons Llewellyn, "Protecting the Rights of Linguistic Minorities: Challenges to Court Interpretation." *New England Law Review* 30, No. 2 (Winter 1996)

Vans Nuys, Hon. Heather, and Joanne Moore, "Using an Interpreter in Court." *Washington State Bar News* 41 (May 1987)

[ACEBO Skills Development for Interpreters](#)

[Return to Court Interpretation Homepage](#)

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