The Noerr-Pennington Slap to the Face of Anti-SLAPP Legislation — A Conflict Between Immunities

By Ralph Kates, Esq.

The SLAPP Context

Usually, litigation is instituted to address a specific problem (or problems), equitable or legal, of a particular client. There are times, though, when the purpose of litigation is not client-specific. Rather, the litigation seeks more comprehensive aims: the change of government policy; reform of hiring and promotion systems within an organization; the end of stereotypical roles; the correction of defective products, medications or medical devices; the suppression of dissent or opposition. These more strategic purposes of litigation raise policy, political and constitutional issues. Many times, litigation is not the first step in this strategy; organizing like-minded individuals to achieve concerted legislative or regulatory action precedes litigation.

This is often the case when developers, residential or commercial, and mining or other extraction industries, for example, seek local zoning approvals and environmental permits. Citizens, often through ad hoc citizen groups, protest the proposed changes through petitioning campaigns, the presentation of testimony to quasi-judicial tribunals, personal contact with elected and appointed officials, and community meetings, among other avenues. Of course, local media outlets cover all of these citizen-initiated efforts.

The applicants seeking the zoning changes or environmental permits are often possessed of significant economic resources, especially when compared with the economic wherewithal of the local citizens. Leveraging this economic disparity is seen as one reasonable approach to success. So, some applicants sue, or threaten to sue, their opponents, usually for disparagement, but really in an effort to silence opposition.

Since even the threat of litigation raises the possibility of burdensome costs to local citizens, regardless of the outcome, vocal opposition could be silenced during the zoning or permit application process merely by the threat of suit. Further, citizens could be deterred from joining a protest group by the rumor of the potential for litigation against...
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them personally.

Obviously, such a strategic use of litigation would deter public participation in government processes. The First Amendment protects “the right of the people peaceably to assemble, and to petition the Government for redress of grievances.” Do the assembly and petition clauses of the First Amendment merely proclaim the rights of citizens or do they establish some limited immunity from liability for the exercise of those rights?

Various states have legislation that is intended to protect citizens and citizen groups from SLAPP suits. Most of this legislation is intended to provide the citizen with a quick, inexpensive determination of immunity. In addition, this legislation provides for counsel fees, costs and damages for the successful anti-SLAPP citizen plaintiff. In the 2013-14 session of the Pennsylvania Legislature, Senator Lawrence Farnese Jr. (D-Phila.) introduced an anti-SLAPP measure. It did not make it to the floor for full consideration. In the 2015-16 legislative session, other anti-SLAPP legislative proposals are expected to be introduced.

CERC’s Interest in anti-SLAPP Legislation

Anti-SLAPP legislation is within the purview of CERC. Various entities have instituted civil litigation against citizens and citizen groups to deter them from opposing a variety of projects that needed local or state agency approvals. Hoping for, and often achieving, significant deterrence of the opposition, these SLAPP suits (Strategic Lawsuits Against Public Participation) deter citizens from organizing and expressing their views to their government. The significant financial burden imposed by such a suit against a citizen makes even the threat of suit sufficient to suppress public participation. Anti-SLAPP legislation does not prevent such suits. However, it can alter the decision-making process for the business applicants for zoning, land use, environmental or other permits to the point where deterring public participation is no longer a viable economic option. Anti-SLAPP legislation promotes constitutional values that CERC has traditionally advocated: free speech, the right of assembly, and the right to petition the government.

The Noerr-Pennington First Amendment Doctrine

Following World War II, a group of 44 railroad leaders combined to pool resources to influence legislation and gubernatorial action against the Pennsylvania Motor Truck Association. The truckers considered this to be a violation of the Sherman anti-trust statute, as did the trial and appellate courts. The United States Supreme Court, in a unanimous opinion by Justice Black, held that the “right to petition the government” clause of the First Amendment immunized the railroad leaders from suit. *E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961).

In 1950, with big coal at its heyday in Pennsylvania, the United Mine Workers union entered into a multi-employer wage agreement with the large coal operators. This agreement established a minimum wage that was much higher than the minimum wage for other workers employed by smaller coal companies. The UM and the large coal companies persuaded the Secretary of Labor to federalize this minimum wage for all coal companies under the Walsh-Healey Act. Small coal companies sued the UM under antitrust statutes to prevent the minimum wage standards adopted by the Secretary of Labor from applying to them. The Supreme Court held that efforts to influence government policy with regard to wages and working conditions were protected against antitrust claims by the First Amendment right to petition clause, even if motivated by an intent to eliminate competition. *United Mine Workers of America v. Pennington*, 382 U.S. 127 (1965).

Together, these cases form the basis of a constitutionally based immunity from liability known as the Noerr-Pennington doctrine. The Noerr-Pennington doctrine originally provided immunity from anti-trust liability against claims based upon organizing and petitioning activities under the First Amendment. The doctrine was born in the context of petitioning the legislative and executive branches of the government. Now, the Noerr-Pennington doctrine applies to the initiation of court proceedings (petitioning the judicial branch of government),
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as well as other forms of petitioning the government, regardless of the subject matter of the dispute. California Motor Transport Company v. Trucking Unlimited, 404 US 508 (1972).3

Over the years, Noerr-Pennington immunity has been expanded from antitrust and other business statutes to encompass all claims arising from conduct related to petitioning activities protected by the First Amendment. Most circuits now apply the Noerr-Pennington doctrine to provide immunity for instituting civil rights and other civil suits. United Artists Theatre v. Township of Warrington, 316 F.3d 392 (3d Cir. 2003). The Noerr-Pennington immunity doctrine has also been applied to claims under the Religious Land Use and Institutionalized Persons Act, the Fair Housing Act, and various state laws. Modos Chofetz Chaim, Inc. v. Village of Wesley Hills, 700 F. Supp. 568 (E. D. N. Y. 2010).

Noerr-Pennington immunity is limited in two ways. First, Noerr-Pennington immunity is not immunity from suit. Rather, it is immunity from liability. We, Inc. v. City of Philadelphia, 174 F.3d 322, 326 (3d Cir.1990.).

Second, Noerr-Pennington immunity, as applied to litigation, is forfeited where the initiation of litigation is merely a “sham.” Barnes Foundation v. Township of Lower Merion, 242 F.3d 151, 162 (3d Cir. 2001.) “Regardless of intent or purpose” behind the conduct, so long as the conduct does not constitute sham activity, Noerr-Pennington immunity applies. Professional Real Estate Inventory v. Columbia Pictures Industries, 508 U.S. 49, 58 (1993.)

The Supreme Court has adopted a two-part definition of sham litigation. First, “the lawsuit must be objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits.” Professional Real Estate Investors, Inc. v. Columbia Pictures, 508 U.S. 49, 60-61 (1993.) A successful outcome in the underlying litigation, even at a preliminary phase, can be sufficient to show that the litigation was not a sham. Cheminor Drugs, Ltd. V. Ethyl Corp., 168 F.3d 119, 124 (3d Cir. 1999); Giles v Phelan, Hallinan & Schmieig, 2013 U.S. DIST. LEXIS 78161, 2013 WL 2444036 (D.N.J. 2013.)

Second, the litigant’s subjective motivation must “conceal an attempt to interfere directly with the business relationships of a competitor ... through the use of the governmental process — as opposed to the outcome of that process — as an anticompetitive weapon.” BE & K Construction Co. v. N.L.R.B., 536 U.S. 516, 526 (2002).

Pennsylvania Law

Pennsylvania has one anti-SLAPP statute. It is the Pennsylvania Environmental Immunity Act, 27 Pa. C.S. §§8301 — 8305. Unfortunately, Pennsylvania appellate courts have interpreted this statute so narrowly as to provide only a limited benefit to Pennsylvania citizens.


In Carlson, the issue of Noerr-Pennington immunity was raised to the court. However, our Commonwealth Court decided to ignore this constitutional issue. Apparently, they decided to compress the appellant’s constitutional question into one of interpretation of state law; namely, the Pennsylvania Environmental Immunity Act. That act provides immunity for someone seeking to enforce or apply an environmental law or regulation. The term “environmental law or regulation” is not defined in the statute. Our appellate courts have decided to define that term as limited to the implementation of a specific environmental law or regulation. In so doing, our appellate courts have decided that zoning laws and regulations are not “environmental,” even though they may contain setback and buffer requirements and seek to protect the “environment” of a particular community. Rather, our appellate courts appear to have limited the applicability of the Environmental Immunity Act to those circumstances where a citizen or citizens’ group is seeking to apply or enforce a statute or regulation under the jurisdiction of the Pennsylvania Department of Environmental Protection.

Individual municipal and countywide zoning ordinances are excluded from the anti-

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SLAPP protections of the statute, regardless of the environmental impact of the particular regulation at issue. It is not clear that the laws and regulations enforced by DCNR (the Department of Conservation and Natural Resources, the state agency responsible for our state parks), the Pennsylvania Fish and Boat Commission or the Pennsylvania Game Commission would be covered by this limited statutory immunity. Absent a direct connection between citizen action and an environmental law or regulation, Pennsylvania offers no anti-SLAPP protection. Of course, this assumes that our courts continue to ignore First Amendment immunities under Noerr-Pennington.5

The Proposed Legislation by Sen. Farnese

In the 2013-14 legislative session, Senator Lawrence Farnese (D-Phila.) proposed anti-SLAPP legislation. This proposed legislation is a good beginning. However, this particular anti-SLAPP legislative proposal has artificial impediments to a citizen’s ability to obtain immunity and recover counsel fees, costs and damages.

The proposed legislation purports to immunize a citizen who asserts opposition to environmental permit applications or the administration or enforcement of environmental laws (27 Pa. C. S. sections 8301, et seq.), and provide this same immunity to people or groups who participate in government activities other than those involving environmental legislation or regulation (42 Pa. C. S. §§8340, et seq.)

Immunity is limited to a “legal proceeding for money damages,” not all civil suits. And, it immunizes only for “civil liability,” a term that is undefined. The statutory immunity is extremely qualified. The citizen’s exercise of her constitutional rights must be “relevant,” “material,” and her statements must not be made in: (1) “reckless disregard for truth or falsity;”; or (2) made for the sole purpose of interfering with existing or proposed business relationships; or (3) be an abuse or misuse of process. These multiple standards combine defamation liability jurisprudence with abuse of process criteria, neither of which is particularly helpful or protective of our citizens in the anti-SLAPP context.

Finally, even when the citizen is granted immunity, she will only be awarded damages if she can show that the SLAPP suit was frivolous or intended to cause unnecessary delay. This proposed legislation is not designed to offer much comfort to citizens who seek to oppose, or organize others to oppose, applications pending before government agencies.

Think about the complexities of the debate over hydraulic fracturing for natural gas, the intense community emotions aroused by a proposal for a “gentleman’s club” in any particular area, or the political ramifications of rezoning a specific plat to benefit a major financial contributor to a township official. These all are the types of situations that have given rise to certain SLAPP suits previously. In each instance, it seems to me that creative lawyering could defeat citizen anti-SLAPP immunity under the Farnese proposal as previously drafted. Needless to say, an award of money damages to compensate the citizen or citizens group for attorney fees, costs and other monetary damages seems beyond the scope of this previously proposed statutory effort.

The criteria for citizen success are insurmountable in the previously proposed legislation. One of the purposes of the citizen opposition group in any of the examples mentioned above is to interfere with the business relationships between the permit applicant and the owner of the property or others. After all, the object of the citizens’ group would be to stop the project. This is an obvious economic objective. On the other hand, it seems extremely difficult for any business to be charged with being frivolous when the permit applicant is merely seeking to maximize the economic potential of the property or business to be situated on the property.

The Noerr-Pennington Impediment to Anti-SLAPP Legislation

The funny thing about First Amendment protections is that they apply equally to the bad guys and the good guys, regardless of which side you are on. In the anti-SLAPP context, this means that Noerr-Pennington immunity applies to the land developers,
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as much as to their opponents. Developers are immune from claims for damages for suits filed against their opponents, unless those suits are sham legal actions.

I am not aware of any decision where a court has analyzed the tension between the anti-SLAPP standard of liability (a standard that varies from state to state) and the standard enunciated in Noerr-Pennington and its progeny (a sham suit.) However, a number of states, Connecticut among them, have robust anti-SLAPP statutes and a significant number of judicial opinions interpreting them. There seems to be little need for Pennsylvania to create a unique path in its effort to address these issues. Simply adapting the solutions already adopted by other states, Connecticut for example, would be a more reasoned approach to this issue, enabling us to protect citizens and citizen groups, while accommodating the development sought by business interests.

An Alternative Justification for a Pennsylvania anti-SLAPP Statute

If Pennsylvania were to pursue an anti-SLAPP approach limited to federal Noerr-Pennington jurisprudence, our statute should limit immunity to liability, not immunity from suit; and, should have the sham litigation standard as the level of proof necessary for success.

However, Pennsylvania has its own assembly and petition clause in our commonwealth’s constitution. Article I, Section 20 is arguably much broader in its protections of our rights than the federal guarantees. Pennsylvania citizens can assemble and petition for the redress of grievances “or any other purposes, by petition, address or remonstrance.” Arguably, our legislature can set its own liability parameters under Pennsylvania’s expanded assembly and petition clause. Of course, whatever standard for liability that is set for the citizen or citizens’ group will also be the standard for the land developer, the driller or the coalmine operator. There is no reason why Pennsylvania cannot provide immunity from suit, not merely from liability, for any organizing or petitioning activity. Pennsylvania could provide for prompt hearings and resolutions of SLAPP suits, with mandatory imposition of counsel fees and costs in favor of its citizens. And, provision could be made for the award of mandatory minimum punitive damages, not merely compensatory damages that may or may not exist. Finally, the legislature could provide for a trial by jury in all anti-SLAPP suits under a state statute.

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(Endnotes)

1 “SLAPP” refers to “strategic lawsuits against public participation.” This is the term applied to the initiation of litigation against citizens or associations of citizens by business interests to deter citizens from opposing any particular application for property development or use.

2 Litigation claims for corporate disparagement or defamation in a SLAPP suit have caused some to discuss the legal standards applicable in Noerr-Pennington litigation in terms of the defamation jurisprudence developed under New York Times v. Sullivan, 376 U.S. 254 (1964), and its progeny. However, I do not view the defamation jurisprudence of our Supreme Court as being of material relevance to the anti-SLAPP issues confronted, or to be confronted, by the Pennsylvania Legislature. Defamation jurisprudence is a highly nuanced and complicated application of a continuum of liability based upon the nature of the actors (public figures versus private figures) and the nature of material under discussion (public issues versus personal or private issues.) Defamation jurisprudence relates more to the applicable standard of proof for liability than to immunity from liability that is at the core of Noerr-Pennington.

3 Litigation activities include “concerted efforts” incident to litigation. Hirschfeld v. Spanako, 104 F.3d 16, 19 (2d Cir. 1997) (in the context of the federal copyright law).

4 Consequently, a pre-trial decision denying Noerr-Pennington immunity at the summary judgment phase is not appealable under the collateral order doctrine. We, Inc v. City of Philadelphia, 174 F.3d 322 (3d Cir. 1999.)

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This extremely narrow interpretation of the Pennsylvania Environmental Immunity Act is made more curious because Pennsylvanians have state constitutional rights to petition the government (Article I, Section 20) and to “clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment.” (Article I, Section 27.)

Just What It Is That We Do

By Bonnie Kift, CERC chair

When finalizing this article, I perused a write-up by Morris Dees of the Southern Poverty Law Center today, Martin Luther King Day. Perhaps today is my own best revered holiday. No mail, no courts, no interruptions and much looking back … and forward. Dees writes: “In his speech of March 25, 1965, King spoke of the nation we could become — a “society of justice where none would prey upon the weakness of others… a society of brotherhood where every man would respect the dignity and worth of human personality.” Of course, Dr. King’s “I Have a Dream” speech had been earlier in August of 1963. Over these many years, I have always sensed that we all so dream together, we CERC members, and, in fact, because no one can be on top of it all these days, we sew dreams together. The many wonderfully active members continue to apprise of threats to our state and federal constitutional rights to speech, to legal representation, to freedom from excessive governmental force, and to the freedom to petition the government, to name but a very few. Per the CERC Mission Statement, we are to monitor developing law, whether legislatively or judicially grounded, that it secures and does not abridge rights under the constitutions.

After many years of membership, I have been gifted the honor of serving now as chair to the PBA Civil and Equal Rights Committee. I have attended the November Hershey meetings at our mid-year mark. CERC had earlier passed the SORNA resolution, which was in November passed by the House. That resolution earlier met with the approval of the Board of Governors at the novel procedural prompting of our own John Bergdoll Jr., its author, who presented it exquisitely before the House despite the challenges presented by the Association of District Attorneys and, in fact, perhaps because of them. Our own Art Read was also on deck to assist, did assist as needed and spoke also to several of the district attorney objections to SORNA. The committee, in its adoption of this Resolution, has chosen that our youth in Pennsylvania should not be made to suffer lifetime Megan Law listings for their activities as children.

So many topical considerations routinely come before us. We’ve entertained, at least in part, issues encompassing many diverse topics, more recently, for instance, parental due process, and children’s rights to counsel. We debated a resolution on the legalization of medicinal marijuana, which was rejected by the committee on a close vote. We had voted, but without a quorum, on a resolution promoted by the Children’s Rights Committee to favor “Normalcy” for foster children. Its sharing by its committee did not apparently grant sufficient time for CERC

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members to consider it fully and most who voted abstained. But, later in discussion with one of its proponents and a few dissenters in November during breaks at the House of Delegates’ meeting, other committees also felt that they needed more time for further consideration of the resolution, which would presumably grant various significant others in the lives of foster children an opportunity to provide consent that the foster children might participate in the activities as do other kids ‘normally’ in terms of extracurricular activities at and/or after school.

CERC’s first Annual Essay Contest is well underway, co-sponsored with the Law-Related Education Committee and the Young Lawyers Division. Pennsylvania college students and college students from Pennsylvania have been invited to enter this contest. Eligible college students will submit an essay or short video documentary analyzing a Pennsylvania state or local law or lawyer or judge implicating civil rights. Contestants’ submissions are due March 15, 2015. During her tenure as CERC’s Chair, our Beth Lyon, who is also a law professor at Villanova University’s School of Law, founded the Essay Contest Committee which she continues to chair. Our PBA liaison, Ursula Marks, has been instrumental at committee meeting brainstorming and has handled all solicitations, advertisements and notifications. The PBA Foundation has undertaken the collection of funds for awarding to individuals or team contestants whose submissions place first or second, whether by written or video presentation, and whether by individuals or teams. Law firms, law schools and private attorneys have given generously to this undertaking — as has CERC — and are listed at the website; we have raised a sum of $4,500 which will be distributed entirely to monetary awards of $1,250 for two first place winners, one for essay and another for video entry, and awards of $500 for the remaining second place winners. Copies of the book, Philadelphia Freedom: Memoir of a Civil Rights Lawyer by David Kairys, DVDs of the movie, “Philadelphia” and tickets to the National Museum of American Jewish History have also been gifted for award winners. Also each entrant will receive a state and U.S. Constitution, compliments of State Senator Kim Ward and U.S. Senator Bob Casey, respectively. We ask all willing members to seek potential contestants at their own colleges or colleges local to their present communities that the colleges may alert their undergraduate students of this wonderful opportunity for recognition and quite sizable monetary prizes. Much more information and fliers for sending out to the schools are available at our website.

Calendared, too, for mid-March is CERC’s seminar on Language Access which will be presented in Philadelphia, but simulcasted to Allentown, Doylestown, Mechanicsburg, New Castle, Pittsburgh and York, on March 16, 2015. Art Read has conferred with many judges, court administrators, language interpreters and other specialists throughout the state to learn of the real need for federal compliance, this seminar and ways to best present it. Recently, he and Dolly Shuster have announced that the faculty is fully selected and very promising.

Also calendared for March is PBA’s Committee/Section Day to be held at the Radisson Hotel in Camp Hill on March 25, 2015. CERC members will meet at 9:15 a.m. – 10:45 a.m. Please come. Please remember to timely register and, if needed, to timely reserve a hotel room to acquire PBA’s special hotel rate.

Our monthly CERC telephone conferences are lively at times, if not contentious. We do urge civility at our conferences. However, I can’t help saying with more than a modicum of certainty, and surely with tongue in cheek, that our members are as passionate as they are bright.

With CERC authorization, several of us drafted a self-nomination of our committee for the PBA Award for Outstanding Leadership in Diversity and Inclusion, as proffered by the PBA Diversity Team, as prompted by our own Dolly Shuster. Related to membership, leadership initiatives, and other diversity and inclusion efforts, this award recognizes efforts by PBA entities for outstanding efforts, contributions, or service in furtherance of the PBA Strategic Diversity and Inclusion Plan. It is a first but annual award and opened to all PBA entities. Dolly assured us that we can self-nominate and CERC attendees unanimously voted that we
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should!

Additionally, per CERC authorization, after reviewing and debating rigorously a Resolution and Supportive Memo in favor of the Automatic Appointment of Counsel for Children as prepared by our Co-Vice Chair Gerry Grimaud, and a Dissent prepared by our Ralph Kates, CERC determined not to adopt the Resolution at this time, perhaps mostly because of its breadth of coverage and impact. However, CERC is willing to form a task force to engage the interest of PBA committees who more specifically address children’s issues and are believed to know more about the many processes involved.

Per CERC authorization, we also approved the presentation of the GLBT’s First Annual David M. Rosenblum Award at the joint reception CERC co-sponsors during the annual PBA Annual Meeting in May, its Jeremy Rosenbaum requesting our approval. [Since this writing, CERC is now also co-sponsoring the Award.]

I have had the joy to preview some of the other articles in this issue, one in particular addresses anti-SLAPP issues, a very difficult area of law to fully embrace but which has nonetheless been fully embraced and eloquently so. Its author, Ralph Kates, addresses Noerr-Pennington doctrine historically and the need for anti-SLAPP. Our own Arline Lotman, calling upon her past extensive experience, also writes and minces no words as she identifies for us the essence of gender reporting and why it is or should be critical to our concerns. Our own Beth Lyon also addresses an earlier undertaking to request your assistance.

Your own review of all articles should prove to be very worthwhile. Perhaps you’ll choose to reply or write something else for the next issue.

Apparently, more than one-half of my one year term is completed. Time is flying and so very much is left for our consideration. But with the help of our members, we will be fully informed as we move forward. Tom Wilkinson has kept us very much on top of speech and other critical issues, and recently suggested that CERC may wish to do an Amicus Brief addressing the cases filed by and/or on behalf of Mumia Abu-Jamal and others, or for news media. The cases were very recently filed and will provide lots of time for an Amicus, should they not be resolved favorably to the satisfaction of CERC. Tom has also guided our consideration to mandatory minimum sentencing issues and others. And, in no way, would I wish to omit the painstaking legal work of Jennifer Brown-Sweeney, and those others of the PBA Legislative Department, in their efforts to follow legislative proposals on issues we’ve identified and to raise our attention to legislative developments potentially relevant to our work.

This has been written mostly from memory and certainly does not intend to forget anyone or any major event in my naming of only a few. Instantly Angus Love, also chair of PBA’s Corrections Committee, comes to mind. Angus had authored the Legalization of Medical Marijuana Resolution and Memorandum and invited us to also attend his Corrections Committee’s meeting at November’s Committees and Sections Day to hear State Senator Daylin Leach address the issue. I did and was pleased to learn much more. One wonders how Angus has had time to do all he has done for CERC!

Together we do form a marketplace of ideas, particularly as they regard or impact individual rights under our constitutions. This newsletter promises to broaden that marketplace and to educate us further for future action. It has been long in its making; Editor Jeremy Samek is also to be congratulated!

A Postscript: Our immediately former CERC Chair Beth Lyon, has recently accepted a position with Cornell U. School of Law where she will shortly teach law. Lucky students and lucky Cornell! Kudos also to Beth!

Bonnie Kift, is a solo practitioner at the Law Office of Bonnie L. Kift in Ligonier, Pennsylvania and is the current chair of the CERC Committee. She is also President of the Western District of Pennsylvania Chapter of the Federal Bar Association. She can be reached at BonnieKiftEsq@aol.com.
CERC and PBA Oppose Lifetime Registration for Juveniles

By John Bergdoll, Esq.

Over a year ago, and well before the Pennsylvania Supreme Court’s recent decision In the Interest of: J.B., A Minor, the Civil and Equal Rights Committee first undertook an effort to oppose and address the state legislature’s changes to the law that required juveniles who had been adjudicated delinquent of certain offenses to report to state, local and federal authorities as sexual offenders. This effort culminated in a position of the Pennsylvania Bar Association encouraging the abolishment of lifetime reporting requirements for juveniles subject to SORNA and ultimately, in In the Interest of: J.B., A Minor, the Supreme Court held that SORNA’s lifetime reporting mandate was unconstitutional as it applied to juveniles.

The Sexual Offender Registration and notification Act (SORNA), is Pennsylvania’s most recent response to the Federal "Megan’s Law" that requires those who are convicted of sex offenses to report to state, federal and local authorities where they live, work and go to school. Until recently children and adolescents in the juvenile system were not subject to Megan’s Law reporting. That all changed when the Adam Walsh Act was passed by Congress. The Adam Walsh Act expanded certain reporting requirements to juveniles.

Perhaps in part to avoid the loss of funding threatened by Congress, or perhaps in agreement with the Adam Walsh Act’s expanded requirements, the Pennsylvania Legislature passed, and Governor Corbett signed SORNA into law on December 20, 2011.

Prior to In the Interest of: J.B., A Minor, SORNA’s mandatory reporting requirements applied retroactively and prospectively. It required juveniles already adjudicated delinquent and those who faced delinquency adjudications for certain offenses in the future to be labeled as sex offenders for their entire lives. Adolescents over the age of 14 who were adjudicated delinquent for rape, involuntary deviate sexual intercourse, aggravated indecent assault or substantially similar offenses were subject to mandatory lifetime reporting.

The challenges to SORNA’s mandatory lifetime reporting came swiftly. Three county court of common pleas judges ruled that SORNA’s requirements are unconstitutional or contrary to the purposes and goals of Pennsylvania laws pertaining to Juveniles. The common pleas judges held SORNA to be unconstitutional as applied to juveniles, both retroactively and prospectively, as a violation of due process, cruel and unusual punishment and/or Pennsylvania’s own enumerated right to reputation found it Article 1 Section 1 of Pennsylvania’s Constitution.

Though the three common pleas judges were not in agreement on all of the reasons SORNA violated the State and Federal Constitutions, they all agreed the law is unconstitutional. The Supreme Court of Pennsylvania eventually agreed and, in its majority opinion, echoed many of the trial court’s reasons in the In the Interest of: J.B., A Minor case.

It was the goal of the Civil and Equal Rights Committee of the Pennsylvania Bar Association to have a position against SORNA’s reporting requirements from the PBA prior to the case before the Supreme Court being decided. CERC has a particular interest in this issue in part because we have a rich tradition of independently, and alongside the Children’s Rights Committee, supporting the rights of children and adolescents and the special considerations due children faced with criminal charges.

In May of 2010, the PBA adopted CERC’s Resolution in Support of eligibility for Parole for Juveniles facing lifetime sentences. Likewise, in May 2001, the PBA adopted a Resolution for the abolition of Capital Punishment for Persons under the age of 18. This Resolution likewise originated from CERC. The SORNA Resolution now adopted by the PBA is in furtherance of the idea and tradition that children and adolescents should be given an opportunity to correct the mistakes...
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of their younger years.

The SORNA Resolution follows this progeny of resolutions but was a hard fought win for CERC. There was modest debate regarding CERC’s resolution before the Board of Governors in June of 2014. When the Resolution made it to the House of Delegates months later in November, the debate had escalated. Only the day before, CERC had been made aware that the District Attorney’s Association (DAA) of Pennsylvania strongly opposed the Resolution. A letter with the DAA’s official position was sent to PBA President Francis X. O’Connor. This was followed by vocal opposition on the House floor at the Delegates meeting the following day. However, numerous House members rose in support of the Resolution and, after avoiding a Motion to table the Resolution, the Resolution was passed by the House of Delegates, thereby becoming the official position of the PBA.

Whether or not the Pennsylvania Supreme Court considered the PBA’s position, SORNA’s mandatory lifetime reporting for juveniles is no longer the law in Pennsylvania and juveniles will no longer be subject to this lifelong stigma and barrier to rehabilitation. These juveniles previously subject to lifetime SORNA registration now have the potential for a successful and productive adulthood without having to relive the mistakes made as a child through the registration process.

The full Report and Resolution proposed by CERC and adopted by the PBA can be found here: http://www.pabar.org/public/committees/civ01/resolutions/cerc%20resol-final.pdf.

John G. Bergdoll IV, is a partner at Bergdoll Law Offices in York Pennsylvania, is a past chair of the CERC Committee, and can be reached at jgbergdoll@bergdolllawoffices.com.

Volunteer Needed for Disability Convention Resolution

By Beth Lyon, Esq.

In 2012, CERC proposed and the PBA adopted a Resolution supporting the U.N. Convention on the Elimination of All Forms of Discrimination against Women. Veteran, law student and CERC Volunteer John Rafferty drafted an excellent proposed resolution and report supporting the U.N. Convention on the Rights of Persons with Disabilities. Lieutenant Rafferty has graduated and accepted a new job as a prosecutor in Chester County, and we are looking for a volunteer or two to update and finalize the resolution and report and propose it to the relevant bodies. If you are able to take on completing this project, please contact Beth Lyon at lyon@law.villanova.edu.

PBA COMMITTEE/SECTION DAY

March 25
Radisson Hotel Harrisburg
9:15 a.m. - 10:45 a.m.
Pennsylvania Bar Association Civil & Equal Rights Essay & Video Documentary Contest for College Students

The PBA Civil & Equal Rights Committee, the PBA Young Lawyers Division, and the PBA Law-Related Education Committee are launching an annual essay and video documentary contest for Pennsylvania college students on the importance of state and local policies to the protection of civil and equal rights. The contest is open to all Pennsylvania residents who attend college. The Pennsylvania Bar Foundation will administer the contest funds. Eligible college students will submit an essay or short video documentary analyzing a Pennsylvania state/local law or lawyer/judge implicating civil rights. Examples of topics include a biography or oral history of a trailblazing individual in the law such as a county’s first African-American judge, or an examination of a law, such as a history of the PA ERA law or a current local housing ordinance disproportionately affecting people of color.

The top entrants will receive monetary prizes and will have their winning entries posted on the PBA website. They also will present their submissions at a future PBA meeting.

- First Place — $1,250 each for the top essay entrant and the top video-documentary entrant.
- Second Place — $500 each for second place essay and video-documentary entries. In addition, the following in-kind prizes will be awarded:
  - Copies of the Commonwealth of Pennsylvania & United States Constitutions
  - Copies of Professor David Kairys’ book, Philadelphia Freedom: Memoir of a Civil Rights Lawyer
  - Copies of the movie “Philadelphia” starring Tom Hanks and Denzel Washington
  - Tickets to the National Museum of American Jewish History

The deadline for entry submissions is March 15, 2015, and winners will be announced on April 15, 2015.

For more information and contest rules, please use the following link:
http://www.pabar.org/public/committees/CIV01/essaycontest.asp

The PBA Civil & Equal Rights Committee, the PBA Young Lawyers Division and the PBA Law-Related Education Committee would like to thank the following sponsors who helped make this contest possible.

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- The Honorable Kim L. Ward, Pennsylvania State Senator
HB 1734 Should Be Defeated!

By Arline Lotman, Esq.

To me, CERC is the guardian committee of the PBA, of our laws and constitution, and of our civil and equal rights. CERC has relied upon its attorneys and other legal experts and entities to diligently review civil and equal rights legislation. What is different and significant about CERC, in addition to its oversight, is its professional scrutiny of laws that are already on the books, but have yet to be implemented. Such is the present case of HB 1734. Our legislature overwhelmingly passed the Equity in Interscholastic Athletics Disclosure Act (“Act 82”), which insures reporting on parity—or a lack thereof—for female athletic opportunities in High School and Jr. High. This is an on-going process that helps young female athletes have the same opportunity young male athletes enjoy and might often lead to scholarship opportunities for college tuition. Keep in mind that we have federal legislation, Title IX, that was passed 40 years ago! Yet participation by girls in interscholastic athletics has been steadily declining because of failure to enforce the state and federal laws. This issue has been impeding the fairness we believed Pennsylvania’s Equal Rights Amendment and the federal law had promised our daughters.

Without the transparency that Act 82 requires, the historic “girls sports are not that important” attitude, embodied in a quote from a Pittsburgh high school coach in an audit by the Women’s Law Project, is sadly still in effect. Why should HB 1734 be defeated? Because it violates State and Federal law by repealing reporting requirements that expose privately raised funds that boys’ teams receive and eliminates the information on the history and on-going practices of expanding girls’ athletic programs. HB 1734 would sunset all reporting after three years so that compliance review would, ipso facto, have no history to evaluate.

Arlene Jolles Lotman is in private practice with Law Offices of Arline Jolles Lotman, Philadelphia. She received her J.D. from Temple U. Law School and MA in Journalism from the Temple U. Graduate School of Communications. She, with the legal arm of the appointed Attorney General’s office, implemented the PIAA adoption of equal rights for the IAA schools ca. 1972-74. She was the executive director of the Governor’s Comm. On Status of Women (“CSW”). She takes special pride in stopping bad legislation affecting gender equality. She can be reached at lotmanlaw@gmail.com.

Privacy Rights of Public School Students at Stake:
Why Reasonable Accommodation is a Better Solution than H.B. 303

By Kathryn Imler, Esq.

Among the bills being considered in Harrisburg this legislative session is a proposal sponsored by Rep. Mark Cohen of Philadelphia which would grant certain privileges to Pennsylvania public school students who identify as transgender. The bill raises serious concerns.

Rep. Cohen’s proposal, House Bill 303, the “Transgender Pupil Educational Rights Act” would functionally eliminate most distinctions based on sex in Pennsylvania school districts. Some provisions, such as the requirement that guidance counselors not offer different vocational advice based on sex, may be salutary responses to the exclusion of one sex or the other from certain professions. However, the most important part of the bill, from which it takes its name, is more deeply flawed.

The bill is named for a provision that states, “a pupil who identifies as a transgender individual may use any facility, including bathrooms and locker rooms, consistent with the pupil’s...”
Privacy Rights of Public School Students at Stake

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gender identity.” This provision raises grave concerns. Under this law a pupil could self-certify that he or she identifies as transgender without medical or parental affirmation. Additionally, the bill states no limiting principle such as age. Therefore, children as young as kindergarteners could self-certify as transgender. Such a decision by a kindergartener would then force the school to permit the child to use personal facilities shared with the opposite sex. This is not an unwarranted prediction, as it has already happened in states such as Colorado where a six year old recently won access to facilities designated for the opposite sex. However, even where an individual is medically diagnosed with gender dysphoria or a gender identity disorder, the flaws remain.

All adults and students have the right to bodily privacy. This right would be clearly violated where children are forced, for instance, to share shower facilities with members of the opposite biological sex. It is reasonable to conclude that students, from elementary through secondary school, would not want to share facilities with the opposite sex due to any number of rational concerns such as privacy, safety, and self-consciousness, not to mention all the normal discomforts that come with growing up and coming to understand one’s body. In fact, the Ninth Circuit has recognized, “[s]hielding one’s unclothed figure from the view of strangers, particularly strangers of the opposite sex is impelled by elementary self-respect and personal dignity.” Michenfelder v. Sumner, 860 F.2d 328, 333 (9th Cir. 1988). House Bill 303 would eviscerate these legitimate concerns.

House Bill 303 places the long-standing and well-protected privacy interest at stake. Even prisoners have the right to use restrooms without continual exposure to the watching eyes of the opposite sex. See, e.g., Arey v. Robinson, 819 F. Supp. 478, 487 (D. Md. 1992) (finding that prison violated prisoners’ right to bodily privacy by forcing them to use bathrooms viewable to members of opposite sex). See, also, Sommers v. Budget Mktg., Inc., 667 F.2d 748, 750 (8th Cir. 1982) (finding that transgender individual’s use of women’s restroom threatened female employees’ privacy interests). Forcing vulnerable school-age children to use bathrooms and other facilities with the opposite sex would result in students being treated with fewer rights than prisoners.

There are undoubtedly some Pennsylvanians who believe in a fluid theory of gender. This is all well and good; intelligent people of honesty and goodwill can disagree about deeply emotional issues such as this. However, this belief should not lead to the conclusion that a small number of students who might identify as transgender should be treated in a way that violates the constitutionally protected rights of others.

The problem that House Bill 303 potentially solves for one person is not only transferred to others, but it forcibly imposes an entirely new and widespread problem for a group of other people. The “solution” imposed by House Bill 303 to address one students’ struggles with gender identity necessarily compromises the bodily privacy rights of every other student.

Rather than the state enshrining in our law one particular and controversial conception of gender, it is better to permit individual districts and localities to make decisions based on the prevailing values of the community in a manner that protects everyone. The law can never be totally morally neutral, but state law can be something close to neutral by refusing to elevate transgender privileges over the bodily privacy or conception of self over others. Reasonable accommodations are a familiar legal method of dealing with comparable situations, and allow families and communities to make these difficult decisions for themselves. One community may choose to accommodate those suffering from gender dysphoria by completely retrofitting schools to include a number of private bathrooms that are open to all students, one at a time. The expense of that option may lead another community to provide a reasonable accommodation for students who believe their gender is different than their biological sex whereby such students are provided access to a single stall bathroom or controlled use of a faculty facility.

It should be mentioned, in closing, that another bill proposed by Rep. Cohen — House Bill 305 — would likely have an ef-

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Privacy Rights of Public School Students at Stake

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fect on personal facilities similar to House Bill 303. House Bill 305 seeks to ban access to school “facilities” based on “gender identity or expression.” This language has been construed in other parts of the country so as to create a right to use facilities congruent with whatever one’s own gender may be, at any particular time, just as House Bill 303 does explicitly. For example, in Maine the state supreme court ruled that separate facilities for transgender students violated the law, and required schools to open girls’ rooms to biological males and vice versa. Furthermore, forcing students to use bathrooms, showers, and changing facilities with the opposite sex violates parents’ fundamental rights to direct their children’s upbringing. See, e.g., Wisconsin v. Yoder, 406 U.S. 205, 233 (1972) (recognizing “the liberty of parents and guardians to direct the upbringing and education of children under their control”).

There may be circumstances when it will be appropriate to enshrine controversial value judgments in state law, but this is not one of them. In the context of gender dysphoria, reasonable accommodations are the only alternative which adequately protects the interests of all persons involved.

Kathryn Imler received her JD and MBA from the University of Pittsburgh. She is active in the National Association of Women MBAs and the Pittsburgh Daughters of the American Revolution.


By Arthur Read

The positive results of 20 years of effective advocacy by the Pennsylvania Bar Association (PBA) and the Philadelphia Bar Association in conjunction with other bar associations and other organizations for full access for limited English proficient (LEP) individuals to courts and administrative agencies in Pennsylvania will be showcased in a half-day Pennsylvania Bar Institute (PBI) CLE on March 16, 2015. “Opening the Courthouse Doors to Limited English Proficient Individuals — Language Access in PA Courts and Administrative Agencies” PBI Course No. 8844, http://catalog.pbi.org/store/seminar/seminar.php?seminar=36720. The CLE is organized by the PBA Civil and Equal Rights Committee (CERC) and co-sponsored by the PBA Minority Bar Committee (MBC), the Hispanic Bar Association of Pennsylvania (HBAPA), Asian Pacific American Bar Association of Pennsylvania (APABA-PA), Pennsylvanians for Modern Courts, the Pennsylvania Inter-
Civil & Equal Rights

PBI CLE Opening the Courthouse Doors to Limited English Proficient Individuals

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branch Commission for Gender, Racial, and Ethnic Fairness, and the Public Interest Section of the Philadelphia Bar Association. The program planners are: Arthur N. Read, Esq., Friends of Farmworkers, Inc., Philadelphia; Beth Shapiro, Esq., Community Legal Services, Philadelphia; Elisabeth S. Shuster, Esq., Manheim; and Sharon R. López, Esq., Triquetra Law, Lancaster. Faculty will include speakers from: the U.S. Department of Justice, Civil Rights Division, Administrative Office of Pennsylvania Courts (AOPC); Pennsylvania Department of Labor and Industry, Office of General Counsel; Court of Common Pleas Judge Marlene Lachman; First Judicial District Deputy Court Administrator Janet Fasey; Agustín S. de la Mora, a court interpretation expert; attorneys with experience in criminal, civil, family, and administrative law. The program will be emanate live from the PBI center in Philadelphia and simulcast to locations in Allentown, Doylestown, Mechanicsburg, New Castle, Pittsburgh, West Chester, and York. It will also be available by live webcast and will be videotaped for potential future use.


However, AOPC in September 2014 required every Pennsylvania Judicial District to develop Language Access Plans effective March 2015, providing that every limited English proficient (LEP) litigant is entitled to court interpreters during judicial and administrative hearings at no expense to the LEP litigant. The size, diversity, and geographical dispersion of LEP individuals throughout much of Pennsylvania increases the need for practicing attorneys to understand the requirements and procedures for effective representation of LEP litigants. Likewise, changes in requirements for the provision of access to courts and courthouses for LEP individuals have major implications for judges, court administrators, and interpreters. Nearly half a million individuals in Pennsylvania speak English less than very well and all of those individuals may require language assistance when interacting with the judicial system and state and local administrative agencies.

The four-hour March 16, 2015, CLE (with one hour of ethics credit) will cover the following topics:

Learn the Impact of Recent Changes to Language Access Requirements

• Get updated on the implementation of the PA Court and Administrative Proceeding Interpreter Certification Law and regulations
• Educate yourself about language access requirements and how to better serve limited English proficient individuals

Explore the Role of the Judge, Interpreter, Court Administrator, and Attorney

Understand the Mechanics of Working With Interpreters

• Know when to ask for an interpreter and what qualifications to seek
• Learn how to conduct a proper voir dire of an interpreter
• Hear tips on how to spot an unqualified interpreter (even if you don’t speak the language)
• Understand appropriate use of simultaneous vs. consecutive modes of interpreting
• How to elicit testimony on direct and cross through an interpreter
• Recognize constraints on professional interpreter conduct

Gain Practical Advice About Effectively Representing LEP Clients

Provide Effective Legal Representation for limited English Proficient Individuals

• Learn tools to successfully communicate with LEP clients
• Rescuing your case when an incompetent interpreter is involved
• Recognizing and addressing cultural differences in your office and on the stand

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PBI CLE Opening the Courthouse Doors to Limited English Proficient Individuals

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- Challenging interpreter error
- Confidentiality and language access
- Inappropriateness of use of jailhouse and family interpreters

Pennsylvania’s LEP populations are linguistically and ethnically diverse and are not limited to merely Spanish speaking individuals.

HISTORY OF LANGUAGE ACCESS ADVOCACY IN PENNSYLVANIA

1994 Resolutions on Interpreter Certification

In May 1994 the PBA House of Delegates adopted a resolution on Pennsylvania Court Interpreters which stated:

Whereas, Pennsylvania has no system to regulate the quality of interpreters used in its courts; and
Whereas, the quality of interpretation is vital to the rights of limited English proficiency litigants in Pennsylvania courts; and
Whereas, the predominantly monolingual trial judges and attorneys in Pennsylvania are ill-equipped to monitor the quality of court interpretation; and
Whereas, the use of interpreters has grown dramatically in the last 10 years with the greater diversity in Pennsylvania’s population; and
Whereas, the vendors who supply interpreters to the courts do not test for linguistic competency; and
Whereas, the Court Interpreters Act of 1978 only certifies federal Court interpreters in three languages, Spanish, Haitian Creole, and Navajo:

Therefore, Be it Resolved that the Pennsylvania Bar Association supports the institution of an independent court-based program to test and certify the linguistic competency of interpreters used in Pennsylvania courts.

Therefore, Be it Resolved that the Pennsylvania Bar Association authorizes its president to take all necessary steps to institute an interpreter certification program in the Pennsylvania courts.

Therefore, Be it Resolved that the Pennsylvania Bar Association authorizes its president to take all necessary steps to expand the list of languages for which certification will be available under the Court Interpreters Act of 1978.

Therefore, Be it Resolved that the Pennsylvania Bar Association supports the institution of an independent court-based program to test and certify the linguistic competency of interpreters used in Pennsylvania courts.

Therefore, Be it Resolved that the Pennsylvania Bar Association authorizes its president to take all necessary steps to institute an independent court-based program to test and certify the linguistic competency of interpreters used in Pennsylvania courts.

Therefore, Be it Resolved that the Pennsylvania Bar Association authorizes its president to take all necessary steps to institute an independent court-based program to test and certify the linguistic competency of interpreters used in Pennsylvania courts.

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WHY THE NEED FOR INTERPRETERS

The Census Bureau’s American Community Survey data indicates that 24 Pennsylvania counties have more than 2,000 limited English proficient individuals.

LANGUAGE SPOKEN AT HOME BY ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OVER

Universe: Population 5 years and over

2007-2011 American Community Survey 5-Year Estimates Table B16001

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authorizes its president to take all necessary steps to urge rule changes in the courts of Pennsylvania to compel the use of audio recording equipment whenever an interpreter’s services are used in order to ensure litigants and the courts an opportunity to verify the accuracy of interpretation.

A similar resolution was adopted the same year by the Philadelphia Bar Association Board of Governors in June 1994. See http://www.philadelphiabar.org/page/BoardResolution93082252000?appNum=2.


In 1994, the Third Circuit Court of Appeals established a "Task Force on Equal Treatment in the Courts." That Task Force established a Commission on Race and Ethnicity co-chaired by Third Circuit Judge Theodore A. McKee which included a Committee on Language Issues ("Language Committee"). Amongst active members of that Language Committee were PBA member Tsiwen Law and attorney L. Felipe Restrepo (now a United States District Court Judge in the Eastern District of Pennsylvania). The report of the Language Committee was included in the 1997 Task Force Report published at 42 Vill. L. Rev. 1355 at 1721-1757 (1997), available at: http://digitalcommons.law.villanova.edu/vlr/vol42/iss5/3. The findings and recommendations of the Third Circuit Language Committee included:

Findings

• Pursuant to the Court Interpreters Act, the Administrative Office (AO) maintains lists of certified interpreters in three languages: Spanish, Haitian Creole, and Navajo. The AO also provides lists of persons who have passed the English portion of a certification examination for the following nine languages: Arabic, Cantonese, Mandarin, Hebrew, Italian, Korean, Polish, Russian, and Mien.

• Spanish is the language for which interpreters are most frequently needed in the courts of the Third Circuit. Other languages or which interpreters are needed on a fairly regular basis are Cantonese, Foochow, French Creole, Haitian Creole, Korean, Mandarin, Portuguese, Russian, and Turkish. Most judges who responded to the Task Force survey, i.e., over 74 percent, have used an interpreter within the last five years.

• In addition to using the AO’s lists of certified interpreters, each district maintains a list of non-certified, but otherwise qualified interpreters; the District of New Jersey also maintains a list of interpreters in a third category, "Language Skilled Interpreters." The districts vary in the criteria applied to determine the level of skill needed for a "qualified interpreter."

• The districts vary considerably in assigning responsibility for selecting an interpreter for a particular case, with the following personnel having this responsibility in one or more districts:
  - Supervisory Interpreter; Financial Administrator; prosecutor or defense counsel; judges; courtroom deputies.
  - The districts' lists of various categories of interpreters and the procedures for finding interpreters in some respects do not conform to the AO's Interim Regulations.
  - Many defense lawyers across the circuit noted that interpreters were not always available when needed. The availability of interpreters has been a particular problem in cases involving clients who speak less common languages, such as some Chinese dialects. Further, availability is a more acute problem for lawyers in offices of the Federal Public Defenders, who represent substantial numbers of non-English-speaking clients.

***

• A scarcity of properly qualified interpreters has occasionally led to the use of substitutes such as prison guards, family members, friends of defendants, probation officers, and lay pro bono interpreters from the community.

• Employees who may be bilingual, particularly Hispanic employees and, to a lesser extent, Asian-American and multiracial employees, report having been called upon to act as interpreters in addition to performing their usual assigned work. Most of those serving as interpreters have also reported that this affects their job performance.

• The scholarly literature on court interpreting, as well as the experience of some state courts and certain provisions of the Court Interpreters Act, support

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the use of sound or video recording of interpreted proceedings where necessary to preserve an adequate record for appeal.

- Of the six districts within the Third Circuit, only the District of Delaware makes its local roster of interpreters available to any lawyers who request it. Only the Western District of Pennsylvania incorporates information regarding the interpreter’s level of experience in the local roster.

- Although most districts have a policy of postponing proceedings if an interpreter is necessary but not available, under such circumstances individual judges have occasionally allowed in-court interpretation to be performed by other court personnel, bilingual counsel, family members or friends of a defendant, a probation officer or even a co-defendant.

- According to testimony presented at the public hearings, the shortage of certified Spanish interpreters is particularly acute in the Eastern District of Pennsylvania, where only two AO-certified interpreters are available, and in the Middle District of Pennsylvania, where only one AO-certified interpreter is available.

- With the exception of the District of New Jersey, where the Supervisory Interpreter encourages all interpreters to attend free seminars on professional responsibility, no district requires or offers any training in confidentiality or professional and ethical issues for interpreters.

- Presently, only the District of Delaware uses bilingual signs in its courthouse. Speakers at the public hearings and some employees responding to the Task Force’s questionnaire recommended the provision of additional bilingual/multilingual signs, as well as bilingual/multilingual instructions for pro se litigants, bilingual/multilingual CSOs and Clerk’s Office staff and cultural awareness training for employees.

**Recommendations**
- The Third Circuit Judicial Council should review whether any additional languages commonly encountered in the courts of the circuit should be included among the languages for which the AO is to establish a certification program. The Court Interpreters Act permits the judicial council of a circuit, with the approval of the Judicial Conference of the United States, to request that the AO certify additional languages. Accordingly, the Judicial Council should institute such a request if needed and should express to the AO its support for completing the certification programs presently in progress.

- The Clerk of each district court should make certain that policies for the qualifications and selection of interpreters conform in all respects to the AO’s Interim Regulations.

- In each district, the selection of interpreters for individual cases should be done by the most knowledgeable personnel available. In districts without a staff interpreter, this selection should be made by a judicial officer, where necessary with consultation of other judges or magistrate judges who have used interpreters for the desired language, and bearing in mind that most judicial officers have limited and indirect knowledge of the skills of particular interpreters. Selection of interpreters should not be left to courtroom deputies or other Clerk’s staff. In particular, each district must assure that prosecutors do not select interpreters for criminal defendants.

- All judicial officers should be reminded of the policy that proceedings for non-English-speaking parties must be postponed if an interpreter is needed, but is not available. Use of untrained court personnel, probation officers, relatives of parties or other laypersons as interpreters should be prohibited, except in emergency situations. Under no circumstances should a lay person, including defense counsel, be used to interpret in trials, sentencings, substantive motions, guilty pleas or other critical proceedings.

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• Assuming that there will sometimes be emergencies requiring the use of non-interpreter employees as interpreters for court proceedings, each district should take steps, whether by testing, continuing education or similar means, to assure that only the most competent bilingual employees are called upon for this function.

• All judicial officers should be apprised of the provisions of the Court Interpreters Act allowing for the recording of interpreted proceedings when the presiding judicial officer may determine such recording is necessary.

• Each district should prepare written guidelines for counsel representing non-English-speaking parties discussing the availability of interpreters from the court’s roster to translate correspondence and attend attorney-client meetings and noting the main features of the certification system established by the Court Interpreters Act and the AO’s Interim Regulations.

• Each district should provide copies of the Model Code of Professional Responsibility for Interpreters in the Judiciary to all persons hired as freelance interpreters; districts which do not now do so should also consider conducting seminars on professional responsibility for freelance interpreters or referring such interpreters to existing seminar programs.

• In those districts where court employees may be called upon frequently to interpret in informal circumstances, i.e., in responding to questions from members of the public in person or by telephone, efforts should be made to eliminate increased burdens on Hispanic, Asian-American or multiracial employees. Repeated use of employees as informal translators should be factored into those employees’ workloads and compensation.

• Each district should maintain a record of complaints about interpreters and establish a system for assessing the frequency of complaints. Districts should ask counsel and defendants to fill out forms evaluating the performance of interpreters. Defendants should be supplied with such forms written in their dominant languages.

• All courts within the circuit should explore the possibility of obtaining bilingual/multilingual signs for courthouses in areas with significant non-English-speaking populations.

• The United States Marshals Service is encouraged to recruit CSOs and Clerks are encouraged to recruit staff who is fluent in those languages other than English which are spoken by a significant percentage of the area’s population.

• Districts should also provide those written materials which are made available to the general public in translations for users of such locally significant languages.

• Districts should consider the need for and availability of cultural-awareness training for court personnel.

42 Vill. L. Rev. at 1752-1757.

Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System 1999 – 2003

On October 15, 1999, the Supreme Court of Pennsylvania appointed the Committee on Racial and Gender Bias in the Justice System to undertake a study of the state court system to determine whether racial or gender bias plays a role in the justice system. That Committee established a Racial and Ethnic Bias Subcommittee which included a series of workgroups including a workgroup on Litigants with Limited English Proficiency. The Committee held numerous public hearings in 2000 and 2001 that elicited testimony establishing severe problems with language access in Pennsylvania. The final March 2003 report by the Committee is available at: http://www.pa-interbranchcommission.com/_pdfs/FinalReport.pdf. Chapter One of the Committee’s Report dealt with the issues of Litigants with Limited English Proficiency at pp. 17-49 of the Final Report. The Committee found severe problems for LEP litigants and made the following recommendations:

1. Establish for all courts of

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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.

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, 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.

The Committee’s report also concluded that the failure to make Pennsylvania courts and administrative agencies accessible to LEP litigants could violate Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, which 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.” See Final Report at p. 23. The report specifically referenced federal policy guidelines to improve access by LEP persons to federally funded services issued pursuant to Executive Order 13166, 65 F.R. 50121 (Aug. 16, 2000).

Adoption of Pennsylvania Interpreter Act of 2006

Following the submission of the Final Report of the Race and Gender Bias Committee in 2003, the Philadelphia and Pennsylvania Bar Associations became active in legislative advocacy for the adoption of the Pennsylvania Interpreter Act, Act No. 172 of 2006, which established procedures to provide certified or otherwise qualified interpreters in judicial and administrative hearings (including local administrative hearings).


Requirements for Compliance with Title VI of the Civil Rights Act of 1964

• In the past decade, increasing numbers of state court systems have sought to improve their capacity to handle cases and other matters involving parties or witnesses who are limited English proficient (LEP). In some instances the progress has been laudable and reflects increased recognition that language access costs must be treated as essential to sound court management. However, the Department of Justice (DOJ) continues to encounter state court language access policies or practices that are inconsistent with federal civil rights requirements.

Through this letter, DOJ intends to provide greater clarity regarding the requirement that courts receiving federal financial assistance provide meaningful access for LEP individuals.

• Dispensing justice fairly, efficiently, and accurately is a cornerstone of the judiciary. Policies and practices that deny LEP persons meaningful access to the courts undermine that cornerstone. They may also place state courts in violation of long-standing civil rights requirements. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(d) et seq. (Title VI), and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789(d)(c) (Safe Streets Act), both prohibit national origin discrimination by recipients of federal financial assistance. Title VI and Safe Streets Act regulations further prohibit recipients from administering programs in a manner that has the effect of subjecting individuals to discrimination based on their national origin. See 28 C.F.R. §§ 42.104(b)(2), 42.203(c).

• The Supreme Court has held that failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI regulations. See Lau v. Nichols, 414 U.S. 563 (1974). Executive Order 13166, which was issued in 2000, further emphasized the point by directing federal agencies to publish LEP guidance for their financial assistance recipients, consistent with initial general guidance from DOJ. See 65 Fed. Reg. 50, 121 (Aug. 16, 2000). In 2002, DOJ issued final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 67 Fed. Reg. 41, 455 (June 18, 2002) (DOJ Guidance). The DOJ Guidance and subsequent technical assistance letters from the Civil Rights Division explained that court systems receiving federal financial assistance, either directly or indirectly, must provide meaningful access to LEP persons in order to comply with Title VI, the Safe Streets Act, and their implementing regulations. The federal requirement to provide language assistance to LEP individuals applies notwithstanding conflicting state or local laws or court rules.

• Despite efforts to bring courts into compliance, some state court system policies and practices significantly and unreasonably impede, hinder, or restrict participation in court proceedings and access to court operations based upon a person’s English language ability. Examples of particular concern include the following:

1. Limiting the types of proceedings for which qualified interpreter services are provided by the court. Some courts only provide competent interpreter assistance in limited categories of cases, such as in criminal, termination of parental rights, or domestic violence proceedings. DOJ, however, views access to all court proceedings as critical. The DOJ Guidance refers to the importance of meaningful access to courts and courtrooms, without distinguishing among civil, criminal, or administrative matters. See DOJ Guidance, 67 Fed. Reg. at 41,462. It states that “every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions,” id. at 41,471 (emphasis added), including administrative court proceedings. Id. at 41,459, n.5.

Courts should also provide language assistance to non-party LEP individuals whose presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime or of juveniles and family members involved in delinquency proceedings. Proceedings handled by officials such as magistrates, masters, commissioners, hearing officers, arbitrators, media-
tors, and other decision-makers should also include professional interpreter coverage. DOJ expects that meaningful access will be provided to LEP persons in all court and court-annexed proceedings, whether civil, criminal, or administrative including those presided over by non-judges.

2. Charging interpreter costs to one or more parties. Many courts that ostensibly provide qualified interpreters for covered court proceedings require or authorize one or more of the persons involved in the case to be charged with the cost of the interpreter. Although the rules or practices vary, and may exempt indigent parties, their common impact is either to subject some individuals to a surcharge based upon a party’s or witness’ English language proficiency, or to discourage parties from requesting or using a competent interpreter. Title VI and its regulations prohibit practices that have the effect of charging parties, impairing their participation in proceedings, or limiting presentation of witnesses based upon national origin. As such, the DOJ Guidance makes clear that court proceedings are among the most important activities conducted by recipients of federal funds, and emphasizes the need to provide interpretation free of cost. Courts that charge interpreter costs to the parties may be arranging for an interpreter’s presence, but they are not “providing” the interpreter. DOJ expects that, when meaningful access requires interpretation, courts will provide interpreters at no cost to the persons involved.

3. Restricting language services to courtrooms. Some states provide language assistance only, for courtroom proceedings, but the meaningful access requirement extends to court functions that are conducted outside the courtroom as well. Examples of such court-managed offices, operations, and programs can include information counters; intake or filing offices; cashiers; records rooms; sheriff’s offices; probation and parole offices; alternative dispute resolution programs; pro se clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs. Access to these points of public contact is essential to the fair administration of justice, especially for unrepresented LEP persons. DOJ expects courts to provide meaningful access for LEP persons to such court operated or managed points of public contact in the judicial process, whether the contact at issue occurs inside or outside the courtroom.

4. Failing to ensure effective communication with court-appointed or supervised personnel. Some recipient court systems have failed to ensure that LEP persons are able to communicate effectively with a variety of individuals involved in a case under a court appointment or order. Criminal defense counsel, child advocates or guardians ad litem, court psychologists, probation officers, doctors, trustees, and other such individuals who are employed, paid, or supervised by the courts, and who are required to communicate with LEP parties or other individuals as part of their case-related functions, must possess demonstrated bilingual skills or have support from professional interpreters. In order for a court to provide meaningful access to LEP persons, it must ensure language access in all such operations and encounters with professionals.

- DOJ continues to interpret Title VI and the Title VI regulations to prohibit, in most circumstances, the practices described above. Nevertheless, DOJ has observed that some court systems continue to operate in apparent violation of federal law. Most court systems have long accepted their legal duty under the Americans with Disabilities Act (ADA) to provide auxiliary aids and services to persons with disabilities, and would not consciously engage in the practices highlighted in this letter in providing an accommodation to a person with a disability. While ADA and Title VI requirements are not the same, existing ADA plans and policy for sign language interpreting may provide an effective template for managing interpreting and translating needs for some state courts.

- Language services expenses should be treated as a basic and essential operating expense, not as an ancillary cost. Court systems have many operating expenses — judges and staff, build-

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ings, utilities, security, filing, data and records systems, insurance, research, and printing costs, to name a few. Court systems in every part of the country serve populations of LEP individuals and most jurisdictions, if not all, have encountered substantial increases in the number of LEP parties and witnesses and the diversity of languages they speak. Budgeting adequate funds to ensure language access is fundamental to the business of the courts.

• We recognize that most state and local courts are struggling with unusual budgetary constraints that have slowed the pace of progress in this area. The DOJ Guidance acknowledges that recipients can consider the costs of the services and the resources available to the court as part of the determination of what language assistance is reasonably required in order to provide meaningful LEP access. See id. at 41,460. Fiscal pressures, however, do not provide an exemption from civil rights requirements. In considering a system’s compliance with language access standards in light of limited resources, DOJ will consider all of the facts and circumstances of a particular court system. Factors to review may include, but are not limited to, the following:

• The extent to which current language access deficiencies reflect the impact of the fiscal crisis as demonstrated by previous success in providing meaningful access;

• The extent to which other essential court operations are being restricted or defunded;

• The extent to which the court system has secured additional revenues from fees, fines, grants, or other sources, and has increased efficiency through collaboration, technology, or other means;

• Whether the court system has adopted an implementation plan to move promptly towards full compliance; and

• The nature and significance of the adverse impact on LEP persons affected by the existing language access deficiencies.

• DOJ acknowledges that it takes time to create systems that ensure competent interpretation in all court proceedings and to build a qualified interpreter corps. Yet nearly a decade has passed since the issuance of Executive Order 13166 and publication of initial general guidance clarifying language access requirements for recipients. Reasonable efforts by now should have resulted in significant and continuing improvements for all recipients. With this passage of time, the need to show progress in providing all LEP persons with meaningful access has increased. DOJ expects that courts that have done well will continue to make progress toward full compliance in policy and practice. At the same time, we expect that court recipients that are furthest behind will take significant steps in order to move promptly toward compliance.

• The DOJ guidance encourages recipients to develop and maintain a periodically-updated written plan on language assistance for LEP persons as an appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Such written plans can provide additional benefits to recipients’ managers in the areas of training, administrating, planning, and budgeting. The DOJ Guidance goes on to note that these benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. In court systems, we have found that meaningful access inside the courtroom is most effectively implemented in states that have adopted a court rule, statute, or administrative order providing for universal, free, and qualified court interpreting. In addition, state court systems that have strong leadership and a designated coordinator of language services in the office of the court administrator, and that have identified personnel in charge of ensuring language access in each courthouse, will more likely be able to provide effective and consistent language access for LEP individuals. Enclosed, for illustrative purposes only, are copies of Administrative Order JB-06-3 of the Supreme Judicial Court of Maine, together with the Septem-
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ber 2008 Memorandum of Understanding between that court and DOJ. Also enclosed for your information is a copy of “Chapter 5: Tips and Tools Specific to Courts” from DOJ, Executive Order 13166 Limited English Proficiency Document: Tips and Tools from the Field (2004).

• The Office of Justice Programs provides Justice Assistance Grant funds to the states to be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and criminal justice information systems that will improve or enhance criminal justice programs including prosecution and court programs. Funding language services in the courts is a permissible use of these funds.

• DOJ has an abiding interest in securing state and local court system compliance with the language access requirements of Title VI and the Safe Streets Act and will continue to review courts for compliance and to investigate complaints. The Civil Rights Division also welcomes requests for technical assistance from state courts and can provide training for court personnel.


Bar Association Support for Adoption of American Bar Association Standards for Language Access (February 2012)

In 2010 the American Bar Association Standing Committee on Legal Aid and Indigent Defendants (SCLAID) convened a national Advisory Group composed of judges, court administrators, interpreters, translators, public defenders, civil legal aid attorneys, members of the private bar, and advocates to undertake a comprehensive approach to the issue of language access for limited English proficient individuals. The Advisory Group reviewed legal requirements, discussed problems encountered and practices followed in different court settings, and consulted with organizations of judges, court administrators, and advocacy groups – all with a view to establishing practical standards with broad support and identifying resources and best practices. SCLAID and the Advisory Group prepared draft standards for the provision of appropriate services to limited English proficient individuals.

The Pennsylvania and Philadelphia Bar Associations were amongst bar associations nationally supporting the adoption in February 2012 of the American Bar Association Standards for Language Access based on the SCLAID draft standards. See http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/language_access.html. Significantly, the ABA resolution adopting these standards was supported by the National Conference of Chief Justices and the Conference of State Court Administrators. See http://www.americanbar.org/content/dam/aba/administra-

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ports with legal requirements.

2.4 Courts should provide language access services in a timely manner.

STANDARD 3: IDENTIFYING LEP PERSONS

Courts should develop procedures to gather comprehensive data on language access needs, identify persons in need of services, and document the need in court records.

3.1 Courts should gather comprehensive language access data as well as individualized language access data at the earliest point of contact.

3.2 Courts should ensure that persons with limited English proficiency may self-identify as needing language access services.

3.3 Courts should establish a process that places an affirmative duty on judges and court personnel to provide language access services if they or the finder of fact may be unable to understand a person or if it appears that the person is not fluent in English.

STANDARD 4: INTERPRETER SERVICES IN LEGAL PROCEEDINGS

Courts should provide competent interpreter services throughout all legal proceedings to persons with limited English proficiency.

4.1 Courts should provide interpreters in legal proceedings conducted within courts and court-annexed proceedings.

4.2 Courts should provide interpreter services to persons with limited English proficiency who are in court as litigants, witnesses, persons with legal decision-making authority, and persons with a significant interest in the matter.

4.3 Courts should provide the most competent interpreter services in a manner that is best suited to the nature of the proceeding.

4.4 Courts should provide interpreter services that are consistent with interpreter codes of professional conduct.

STANDARD 5: LANGUAGE ACCESS IN COURT SERVICES

Courts should provide appropriate language access services to persons with limited English proficiency in all court services with public contact, including court-managed offices, operations, and programs.

5.1 Courts should provide language access services for the full range of court services.

5.2 Courts should determine the most appropriate manner for providing language access for services and programs with public contact and should utilize translated brochures, forms, signs, tape and video recordings, bilingual staff and interpreters, in combination with appropriate technologies.

STANDARD 6: LANGUAGE ACCESS IN COURT-MANDATED AND OFFERED SERVICES

Courts should ensure that persons with limited English proficiency have access to court-mandated services, court-offered alternative services and programs, and court-appointed professionals, to the same extent as persons who are proficient in English.

6.1 Courts should require that language access services are provided to persons with limited English proficiency who are obligated to participate in criminal court-mandated programs, are eligible for alternative adjudication, sentencing, and other optional programs, or who need to access services in order to comply with court orders.

6.2 Courts should require that language access services are provided to persons with limited English proficiency who are ordered to participate in civil court-mandated services or who are otherwise eligible for court-offered programs.

6.3 Courts should require that language access services are provided for all court-appointed or supervised professionals in their interactions with persons with limited English proficiency.

6.4 Courts should require the use of the most appropriate manner for providing language access for the services and programs covered by this Standard and should promote the use of translated signs, brochures, documents, audio and video recordings, bilingual staff, and interpreters.

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STANDARD 7: TRANSLATION
Courts should establish a process for providing access to translated written information to persons with limited English proficiency to ensure meaningful access to all court services.

7.1 Courts should establish a system for prioritizing and translating documents that determines which documents should be translated, selects the languages for translation, includes alternative measures for illiterate and low literacy individuals, and provides a mechanism for regular review of translation priorities.

7.2 To ensure quality in translated documents, courts should establish a translation protocol that includes: review of the document prior to translation for uniformity and plain English usage; selection of translation technology, document formats, and glossaries; and, utilization of both a primary translator and a reviewing translator.

STANDARD 8: QUALIFICATIONS OF LANGUAGE ACCESS PROVIDERS
The court system and individual courts should ensure that interpreters, bilingual staff, and translators used in legal proceedings and in courthouse, court-mandated and court-offered services, are qualified to provide services.

8.1 Courts should ensure that all interpreters providing services to persons with limited English proficiency are competent. Competency includes language fluency, interpreting skills, familiarity with technical terms and courtroom culture and knowledge of codes of professional conduct for court interpreters.

8.2 Courts should ensure that bilingual staff used to provide information directly to persons with limited English proficiency are competent in the language(s) in which they communicate.

8.3 Courts should ensure that translators are competent in the languages which they translate.

8.4 Courts should establish or participate in a comprehensive system for credentialing interpreters, bilingual staff, and translators that includes pre-screening, ethics training, an orientation program, continuing education, and a system to voir dire language services providers’ qualifications in all settings for which they are used.

STANDARD 9: TRAINING
The court system and individual courts should provide all judges, court personnel, and court-appointed professionals with training on the following: legal requirements for language access; court policies and rules; language services provider qualifications; ethics; effective techniques for working with language services providers; appropriate use of translated materials; and cultural competency.

STANDARD 10: STATEWIDE COORDINATION
Each court system should establish a Language Access Services Office to coordinate and facilitate the provision of language access services.

10.1 The office should provide, facilitate, and coordinate state-wide communication regarding the need for and availability of language access services.

10.2 The office should coordinate and facilitate the development of necessary rules and procedures to implement language access services.

10.3 The office should monitor compliance with rules, policies and procedures for providing language access services.

10.4 The office should ensure the statewide development of resources to provide language access.

10.5 The office should coordinate the credentialing, recruitment, and monitoring of language services providers to ensure that interpreters, bilingual staff, and translators possess adequate skills for the setting in which they will be providing services.

10.6 The office should coordinate and facilitate the education and training of providers, judicial officers, court personnel, and the general public on the components of Standard 9.


National Center for State Courts
As a result of the national

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discussions during 2011 of the National Conference of Chief Justices and the Conference of State Court Administrators, the National Center for State Courts reorganized its structure for support of state court systems for language access. This included the formation of the Language Access Services Section (LASS) and a Language Access Advisory Committee (LAAC) and the Council of Language Access Coordinators (CLAC).

In 2011, the National Conference of Chief Justices and the Conference of State Court Administrators adopted a resolution which included a provision that “... as a part of their continuing efforts to ensure equal access to justice for LEP individuals in courts, will convene a national summit in October 2012 in Houston, Texas to bring together chief justice-led state teams comprised of representatives from all three branches of government and the state bar to develop state specific strategies for improving access to justice for limited English proficient individuals.” See http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_ccj_cosca_resolution.authcheckdam.pdf.

Nearly 300 judicial leaders from 49 states (including Pennsylvania), 3 territories and the District of Columbia gathered in Houston, Texas on October 1–3, 2012, for the first National Summit on Language Access in the Courts. The Summit was sponsored by the Conference of Chief Justices (CCJ), the Conference of State Court Administrators (COSCA) and the National Center for State Courts (NCSC). Following the conference NCSC in March 2013 published A National Call to Action to Justice for Limited English Proficient Litigants: Creating Solutions to Language Barriers in State Courts. See http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/A-National-Call-To-Action.aspx. The “National Call to Action” identified a series of “Action Steps” that jurisdictions can follow to improve their LEP services as follows:

**Step 1: Identifying the Need for Language Assistance**
Establish data collection and analysis procedures to assist with the identification of need for language assistance at all points of contact.

**Step 2: Establishing and Maintaining Oversight**
Establish oversight over language access programs through the development of a state or district language access plan, creation of an oversight body, and/or creation of a language access coordinator position.

**Step 3: Implementing Monitoring Procedures**
Implement procedures for monitoring and evaluating language assistance services.

**Step 4: Training and Educating Court Staff and Stakeholders**
Establish programs to train courts, justice partners, and stakeholders on language access services, requirements, and mandates.

**Step 5: Training and Certifying Interpreters**
Develop procedures to enhance the availability of qualified interpreters and bilingual specialists through recruitment, training, credentialing, and utilization efforts.

**Step 6: Enhancing Collaboration and Information Sharing**
Establish procedures to enhance the sharing of information and resources on national and regional levels.

**Step 7: Utilizing Remote Interpreting Technology**
Utilize Remote Interpreting Technology to fulfill LEP needs and ensure quality services.

**Step 8: Ensuring Compliance with Legal Requirements**
Amend procedural rules to ensure compliance with legal requirements.

**Step 9: Exploring Strategies to Obtain Funding**
Develop and implement strategies to secure short-term and long-term funding for language access services.

See A National Call to Action, Chapter Three.

**Pennsylvania 2013-2014 Language Access in Courts**
Despite the 2010 promulgation of AOPC regulations to implement the Pennsylvania Interpreter Act of 2006 and the U.S. DOJ guidance to state courts, the scope of responsibility of courts in the Commonwealth of Pennsylvania to provide court appointed interpreters in judicial hearings was unclear to many courts in the period 2010 to 2013. The failure to provide court in-
Interpreters in Magisterial District Justice hearings in 2013 resulted in the filing of complaints under Title VI of the Civil Rights Act of 1964 by attorneys with the Pennsylvania chapter American Civil Liberties Union.

Following Pennsylvania AOPC and judicial participation in the 2012 national summit on language access, the Pennsylvania AOPC in consultation with the Supreme Court decided during 2013 to work to implement policies to bring Pennsylvania courts into compliance with DOJ expectations under Title VI of the Civil Rights Act of 1964. The February 24, 2014, Pennsylvania Unified Judicial system testimony before Senate and House Appropriation Committees by Chief Justice Castille included the following funding request:

The $1.5 million grant request reflects state and federal law mandating interpreters’ availability while acknowledging that counties can be faced with unexpected and large interpreter expenses for protracted and complex litigation or when an interpreter is not locally available.

Written testimony, Chief Justice Castille, February 24, 2014.

In late 2013, the AOPC undertook to fill a new staff position for an attorney to oversee compliance with both the Americans with Disabilities Act and Title VI of the Civil Rights Act of 1964. In March 2014, attorney Mary Keane Vilter was hired by AOPC as Coordinator, Court Access.

During 2014, AOPC has undertaken a process to require all Pennsylvania Judicial Districts to develop language access plans requiring them to make all courts and courthouses fully available to all limited English proficient individuals. This has included clarifications to President Judges that the 2010 AOPC regulations require interpreters to be provided at no cost to litigants in all cases where the principal parties in interest are LEP individuals. In 2015, AOPC is spearheading the development of an overall Pennsylvania state language access plan.

There is a huge amount of concrete work required to be done in order to make those aspirations a reality, but Pennsylvania courts have launched a process to open the courthouse doors to limited English proficient individuals.

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