

EQUAL JUSTICE FOR LINGUISTIC MINORITIES

New Jersey has long been populated by persons who speak many languages. Dutch and German were quasi-official languages during the latter part of the Nineteenth Century and successive tides of immigrants, refugees, and migrants have left the state one of the most polyglot states in the nation. According to the 1990 Census, one of every five New Jersey residents speaks a language other than English at home--the seventh highest rate in the country.

Public and private agencies at all levels in New Jersey have responded to this linguistic diversity by developing language policies in many areas. Public policies have mandated services such as bilingual education, bilingual sample ballots, and bilingual documents affecting health and welfare (e.g., domestic violence, hazardous substances). What about the courts?

In court year 1996-1997, the first year for which statistics have been collected, the Superior Court needed interpreters for 45,188 events spread among forty-six languages in the Superior Court. While no such statistics are collected for the Municipal Courts, it is estimated that the volume of interpreted events in the Municipal Courts was around 90,000 for the same time period.

Since May 3, 1889, New Jersey's judges have had statutory permission to appoint interpreters. L. 1889, c. 206. Notwithstanding a long succession of bills, by the time Robert Wilentz became Chief Justice numerous calls for reform in this area had been made.¹ In 1980-81, the Chief Justice received letters alleging absence of interpreters in

¹Note, "The Right to an Interpreter," 25 RUTGERS L. REV. 145 (1970); R.C. Rodriguez, "Presently Existing Situation on Court Interpreter and Bilingual Services in the Newark Municipal Courts" (1972); M.R. Frankenthaler and H.L. McCarter, "A Call for Legislative Action: The Case for a New Jersey Court Interpreter Act," 3 SETON HALL LEG. J. 125 (1978); Frankenthaler, "How to Work with Court

many courts, widespread use of unqualified interpreters, and lack of policy and guidelines regarding interpreters. He responded by appointing the Supreme Court Task Force on Interpreter and Translation Services, which began its work in May 1982 and submitted its final report in May 1985.

Chief Justice Wilentz directed the Task Force to identify and document the ways linguistic barriers inhibit equal access to the courts and their support services. This was the first body of its kind appointed by a Judiciary² and the only one to date that has systematically analyzed all aspects of access to courts for linguistic minorities, focusing on more than the availability and quality of court interpreting services.

After three years of extensive and thorough research, the Task Force reached the following conclusion:

The special needs of linguistic minorities who have sought relief in or been brought before the courts of New Jersey have not been adequately met by the present approach of leaving to each judge, administrator or employee of the court support services at the county or municipal level the responsibility of eliminating the language barrier. at 80

More specifically, the Task Force reported the following findings:

- Persons interpreting in the courts generally do not possess requisite skills, knowledge, and training and, except for sign language interpreters, procedures for qualifying interpreters and translators are either non-existent or inadequate;
- Procedural forms and documents used by the courts are not generally translated accurately and, even if translated, are not universally made available to linguistic minorities;
- Court support services are not sufficiently available from bilingual personnel;
- There are no comprehensive policies regarding interpreting, translating, and bilingual services; and
- There is widespread insensitivity to and unfamiliarity with the importance and

Interpreters," N.J. LAWYER (May 1981); Leonard J. Hippchen, "Development of a Plan for Bilingual Interpreters in the Criminal Courts of New Jersey," 2 JUST. SYS. J. 258 (1977).

²The only similar effort that preceded this study was one conducted for The Judicial Council of California which was mandated and funded by the Legislature in September 1973 (Assembly Concurrent Resolution No. 74).

complexities of communicating with and delivering effective services to persons of diverse linguistic and cultural backgrounds.

Accordingly, the Task Force recommended:

- Certification of interpreters and translators;
- Comprehensive policy (including a code of conduct, legislation, and standards);
- Professional development of interpreters and translators;
- Training for judges, attorneys, and court employees who rely on interpreters to do their jobs;
- The hiring and deployment of sufficient numbers of qualified and adequately compensated interpreters and bilingual support staff;
- Effective administrative support; and
- Education of linguistic minorities about the courts and resources for equal access to them.

The Chief Justice was troubled by the report's findings and he did not shrink back from what the New York Times called "one of the most critical and candid self-examinations ever made of a state service."³ Instead, he made sure that the Supreme Court promptly reviewed and acted on the Task Force's recommendations. By the end of 1985, the Court Interpreting, Legal Translating, and Bilingual Services Section was created at the Administrative Office of the Courts and the Chief Justice directed the office to coordinate a comprehensive program approved by the Supreme Court which would ensure equal access to courts for linguistic minorities.

A leading interpreter and trainer of interpreters issued the following prediction when the report first came out:

The Task Force has been so thorough in its study and findings, that if the Report recommendations are fully implemented by the New Jersey Supreme Court, this state will have set the standards to be followed by every other state, and even the federal system.⁴

³Joseph Deitch, "Translation In Courts Is Called Inadequate" 1 (November 31, 1985).

⁴Letter from Janis Palma to Robert D. Lipscher (September 5, 1985).

The prophecy came true, as will be illustrated below.

The Judiciary has made significant progress toward implementing the Supreme Court's program for ensuring equal access to courts for linguistic minorities. Chief Justice Wilentz led the New Jersey Judiciary to a position of national leadership by slowly but surely seeing that all recommendations approved in concept by the Supreme Court become realities in the daily activities of the Judiciary. Here are some highlights:

Qualifying Interpreters: Since 1987, a valid and reliable test for Spanish court interpreting has been administered. The program started with testing in Spanish, but now includes the following additional languages: Arabic, Cantonese, French, German, Haitian Creole, Italian, Korean, Mandarin, Polish, Portuguese, Russian, Serbian, and Vietnamese.

Tests in additional languages are added each year. About 2,100 examinations have been administered. A full-fledged certification program has been designed, published for comment, and is pending final approval and implementation.

When testing began in 1987, only two of the approximately twenty-two staff court interpreters in the Superior Court at the time were able to pass the test and be approved. As of February 2001, all of the thirty-four positions are filled by staff interpreters who are approved--and eight of them have tested at the Master level. The requirement to use approved interpreters for staff positions was extended to free-lance interpreters in 1995. Hence the overall quality of interpreters working in the Judiciary has improved dramatically since 1985. The only category of interpreters who are not yet approved to go through the established approval process is interpreters provided through agencies.

Over time this program became a national model⁵ and many jurisdictions came to

⁵A national assessment of court interpreting noted, "To find certified interpreters, courts should look to the federal courts, and state courts of California, New Jersey, and Washington." William E. Hewitt, COURT INTERPRETATION: MODEL GUIDES FOR POLICY AND PRACTICE IN THE STATE COURTS

New Jersey for guidance. New Jersey was one of four states that founded the Consortium for State Court Interpreter Certification, a multi-state effort staffed by the National Center for State Courts to certify interpreters and establish national standards for qualifying court interpreters.

Training Interpreters: The Chief Justice helped make possible a collaborative effort between the Judiciary and the Department of Higher Education to develop a model curriculum for training Spanish interpreters at institutions of higher education. That initiative has resulted most notably in the creation of an undergraduate minor for Spanish court interpreters at William Paterson College. Other courses have also been offered at Jersey City State College, Montclair State University, and Rutgers University at New Brunswick. In addition, courses have been developed for speakers of other languages and are regularly offered at Rutgers University at New Brunswick and Union County College.

Other efforts in this area include a tuition reimbursement program for court employees who interpret and the offering of some training by the AOC. For example, about 2,350 persons have completed a one-day seminar on the Code of Professional Conduct for Interpreters, the first step to becoming an approved interpreter.

Training Judges, Attorneys, and Court Employees: Orientation to access issues for linguistic minorities is now integrated into the orientation program for new judges of the Municipal Courts and for new Municipal Court employees. Similar offerings were included in the orientation course for Superior Court judges until 1997. Advanced training for conducting interviews and delivering services via interpreters is available for attorneys, hearing officers, mediators, arbitrators, and court support personnel.

Comprehensive Policy: The Chief Justice has worked diligently to make sure that a

comprehensive set of policies is adopted and maintained that ensure equal access to courts. The first major step was to make the Judiciary understand that discrimination against linguistic minorities is not acceptable within the Judicial Branch. In 1994, the Supreme Court incorporated into the Code of Judicial Conduct, the Rules of Professional Conduct, and the Code of Conduct for Judiciary Employees a **prohibition of discrimination on the basis of language**. The New Jersey Judiciary is the only branch of government in this country known to have such an explicit prohibition, which comports with the Universal Declaration of Human Rights adopted by the United Nations.

The Supreme Court has also approved the **Code of Professional Conduct for Interpreters, Transliterators, and Translators**, which became effective December 1, 1994. It clarifies and establishes the role and responsibilities of interpreters and other professional linguists. The Code heavily influenced the "Model Code of Professional Responsibility for Interpreters in the Judiciary" issued by the National Center for State Courts.⁶

Early in 1995, the Chief Justice and the Assignment Judges adopted **Guidelines for Contracting Free-lance Interpreters in the Superior Court**. That policy established minimum qualifications for free-lance interpreters for the first time.

Lastly, Chief Justice Wilentz requested the expedited completion of the **Standards for Court Interpreting, Legal Translating, and Bilingual Services**. The Standards address all the practical, operational, and administrative issues that are not covered elsewhere. The Standards could not be completed before the end of the Chief Justice's tenure and are still undergoing review. Earlier drafts of these standards have shaped

⁶ibid. at 195.

national policies in the field.⁷

Bilingual Services: For years the AOC has coordinate periodic plans by the Probation Departments to hire sufficient numbers of bilingual personnel, as requested by the Chief Justice and Assignment Judges. The Supreme Court has requested that the efforts to hire sufficient numbers of bilingual employees in the Probation Departments be expanded to all operating units in the Judiciary.

Translation Program: The AOC issues official Spanish translations of many forms, brochures, and other publications. Since the program began in 1986, thirty-four state forms, five state form letters, twenty-three county forms, fifteen county form letters, and many other documents have been translated into Spanish.

Administrative Structures: All of the preceding efforts illustrate different ways of making sure that equal access to courts for linguistic minorities becomes a central and permanent focus of the court system. However, no initiative would succeed without trial court familiarity and local control. The **Committee on Services to Linguistic Minorities**, consisting of one designee by each Trial Court Administrator, meets periodically to review policy and the overall equal access program. The **Vicinage Coordinators of Interpreting Services** manage the day-to-day coordination of interpreting services.

Other activities undertaken by the AOC with field support that help institutionalize and enhance the equal access vision include the following:

- Statistical reporting system that tracks the volume of interpreting services rendered by language.
- Ad hoc research projects aimed at evaluating delivery of services (e.g., time study of interpreting services) and searching for better and more cost effective ways of obtaining interpreting services (e.g., pilot project on telephone interpreting, work-

⁷"Judges' Guide to Standards for Interpreted Proceedings," *supra* note x at 123; C.M. Grabau and L.J. Gibbons, "Protecting the Rights of Linguistic Minorities: Challenges to Court Interpretation," 30 NEW ENG. L. J. 227 (Winter 1996).

load analyses of patterns by which free-lance interpreters are used to determine when it would be more cost effective to create staff positions).

- Provision of technical assistance through field visits and telephone consultations.

It is reported that the Chief Justice once participated in a discussion of situations where interpreters inaccurately interpret for sworn witnesses. He reportedly expressed alarm that this meant the sworn witness' testimony was lost and replaced by someone who produced different evidence, a totally unacceptable practice in a system of justice. That razor-quick identification of anything that inhibited justice for all clearly motivated his administration of the courts.⁸

Chief Justice Wilentz leaves behind a court system that has not only created a new degree of access to courts for linguistic minorities, but has significantly influenced and will continue to influence court systems across the land. There are remaining challenges--lingering reluctance to appoint and pay for interpreters in all situations, the diversity and multiplicity of Municipal Courts, the lack of familiarity with the issues and commitment to the concept of equal access by Bench and Bar--but Chief Justice Wilentz has left a vibrant program that will continue to work on these and other impediments to fully equal access for all persons, regardless of the degree to which they can communicate effectively in the English language.

⁸For evidence of his concerns about equal justice for linguistic minorities, see his dissent in Alfonso v. Board of Review, 89 N.J. 41, 47 et seq. (1982).