

INTERIM RECOMMENDATION

OF

THE INDIANA SUPREME COURT

COMMISSION

ON RACE AND GENDER FAIRNESS

June 21, 2002

Respectfully Submitted by:

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OVERVIEW

The Indiana Supreme Court Commission on Race and Gender Fairness conducted public hearings throughout Indiana during the summer of 2001. While citizens voiced numerous race and gender-related concerns at these hearings, the issue raised most frequently was the lack of a court interpreter system in Indiana. The Commission heard reports of fraudulent conduct by existing interpreters, trial courts' frequent reliance upon litigants in recruiting their own interpreters, and trial courts' routine use of litigant's relatives and other individuals untrained in the law as interpreters. Of even greater concern were reports of police officers serving as interpreters in criminal court proceedings, despite their obvious conflict of interest.

Census figures show ethnic populations in Indiana have increased dramatically in the last decade, with the most significant increase occurring in the Hispanic/Latino population. Indiana's Hispanic/Latino population grew from about 99,000 in 1990 to nearly 215,000 in 2000. Appendix A. The Hispanic/Latino population represented 3.5 percent of the total Indiana population in 2000, up from 1.8 percent in 1990. *Id.* Numerous citizens attending the Commission's public forums expressed the belief that substantial numbers of Hispanics went uncounted in the Census and that the Hispanic population may be as much as twice that size.

Even by Census figures, the Hispanic/Latino population in the state's most populated county, Marion, nearly tripled – from 8,454 in 1990 to 33,290 in 2000. Elkhart County experienced a 456 percent growth in Hispanic/Latino residents, who as of 2000 represented close to 10 percent of the county's total population. Fifty-five other counties at least doubled their Hispanic/Latino populations during that decade.

Many of the Hispanics/Latinos who have moved to Indiana in recent years have

immigrated from other states or from Mexico in search of better pay and an overall better quality of life. Appendix B and C. These individuals often speak little English and face significant cultural differences here in the United States for which they are ill prepared. *Id.* The United Way Indianapolis Area Hispanic Survey conducted in January of 2000 showed that 90 percent of the Hispanic/Latino respondents were born outside of the United States. Many of the survey respondents had limited English-speaking skills. Based on that survey and other data, the Indiana Commission on Hispanic/Latino Affairs has concluded that many, if not most, of the Hispanic/Latino individuals who have moved to Indiana in recent years are first generation immigrants with little English-speaking abilities and modest educational credentials. Appendix C.

The Indiana state judicial system is ill prepared to deal with persons who do not speak English or have limited understanding of English, whether these persons appear in court as victims of crime, witnesses, civil litigants, or criminal defendants. Indiana has no centralized court interpreter system, but interpreters frequently are needed in the state trial courts. A survey of judges conducted by the Indiana University Public Opinion Laboratory on behalf of the Indiana Supreme Court Commission on Race and Gender Fairness during the past year shows that about 90 percent of the respondents had used foreign language translators in their courtrooms during the past six months. The survey also showed some of those judges used interpreters more than 100 times during that six-month period. Eighty-five percent of the interpreters used by those judges translated between Spanish and English. Most compelling was the survey finding that thirty percent of the judges who responded had been unable to find an interpreter when one was needed.

The Indiana judicial system lacks any standards with regard to court interpreters, provides no training, and tracks no data with regard to court interpreters' use or credentials.

Judges presiding over cases in which a court interpreter is needed have few resources available to them, leading occasionally to the situations reported above where a family member or a court employee or a police officer serve as an interpreter during court proceedings. A limited, random survey of 11 state courts conducted by Commission staff showed that interpreter rates varied from \$0 to \$60 per hour for foreign language interpretation and that most of the courts contacted needed a Spanish interpreter at least once weekly. Appendix D.

The Commission is not the first to call for change in this context. The Indiana Commission on Hispanic/Latino Affairs already has recommended to Governor Frank O'Bannon the creation of a centralized system of expert interpretation in courtrooms for Hispanic/Latino individuals with limited English-speaking abilities. Appendix C.

In light of these circumstances, the Race and Gender Fairness Commission respectfully recommends the Indiana Supreme Court create, implement and supervise a comprehensive state-wide court interpreter system with the following components:

I. Membership in Court Interpreter Consortium

The Commission recommends the Court join the State Court Interpreter Certification Consortium through the National Center for State Courts. The Consortium was founded in 1995 to develop court interpreter proficiency tests, make them available to member states, and regulate the use of the test.

With the Court's approval, the Commission will pay from its budget the one-time membership fee of \$25,000 to join the Consortium. Upon such payment, the Consortium will provide the Court assistance in all aspects of court interpretation. However, the greatest benefit it provides is access to exams which objectively and reliably test court interpreters for certification purposes in 11 different languages – Spanish, Russian, Vietnamese, Korean,

Hmong, Polish, Cantonese, Laotian, Haitian-Creole, Arabic and Mandarin. These exams are extremely difficult and expensive to create and are considered one of the major motivations for joining the Consortium. Twenty-five states, including Kentucky, Illinois, and Michigan, have joined the Consortium to date.

As a member of the Consortium, the Court would have access to the National Center for State Court's staff for assistance in implementing and administering a court interpreter system.¹ The Court also would have the benefit of information the National Center routinely collects from Consortium members. For a more complete assessment of the responsibilities and benefits of Consortium membership, please refer to Appendix E.

II. Scope of Court Interpreter Program

Census figures, as well as anecdotal information collected by the Commission, establish that in this state the largest pool of individuals who do not speak English or speak only limited English are Hispanic/Latino. Thus, the Commission believes that Spanish language interpreters are in greatest demand within the state court system. That belief is confirmed by the informal survey conducted by the Commission. Appendix D.

Given the complexities of testing and certifying interpreters in multiple languages, the Commission recommends the Court initially implement a court interpreter system testing only in Spanish. Once that system is established, the Court could proceed to test and certify interpreters in other foreign languages as the need arises. The Consortium has developed certification tests for 11 languages and continues to develop tests in other languages as the demand increases.

¹ The National Center for State Courts charges Consortium members separately for some consulting services, such as coordination of court interpreter testing or training.

III. Administrative Structure

On the basis of advice from other Consortium states, as well as its own assessment, the Commission recommends the hiring of a full-time administrator for the court interpreter program. A bilingual person with both administrative experience and a legal or interpreter background would be ideal. The Commission further recommends placement of the court interpreter program under the auspices of the Division of State Court Administration.

The Commission further recommends creation of an Advisory Board composed of 12 individuals, including:

- 1) the Chief Justice or his designee from the Indiana Supreme Court;
- 2) one Indiana Court of Appeals judge;
- 3) one state legislator;
- 4) two trial court judges;
- 5) one prosecutor;
- 6) one public defender;
- 7) three court interpreters;
- 8) one academic with expertise in linguistics or related subjects; and
- 9) one community representative.

The Advisory Board would be responsible for supervising generally the operations of the court interpreter system and making recommendations to the Court for appropriate changes within it. In this sense, the Board would function much like the Indiana CLEO Advisory Board or the Indiana Public Defender Commission.

Most Consortium states have created an Advisory Board to oversee court interpreter services within their locales. Georgia, for instance, has a somewhat larger advisory board consisting of many of the same representatives listed here. Appendix F.

IV. Court Interpreter Code of Ethics

The Commission recommends initial adoption of the Consortium's Model Code of Ethics without revision. Appendix G. That model code, which forms the basis for all of the code of ethics adopted in other Consortium states, sets forth the circumstances under which court interpreters may or may not interpret. The Advisory Board could recommend to the Court changes in this code of ethics as needed once the court interpreter system is launched.

V. Certification Standards

The Commission recommends the Court adopt the Consortium's certification standards – specifically, a 70 percent passing score on the tests provided by the Consortium. The certification requirement of a 70 percent score on the exams is an ideal which some states have found realistic and others impractical, depending on the pool of available interpreters, because less than 20 percent of the people who take the Spanish tests score 70 percent or higher. Where the pool of Consortium-qualified interpreters has been too small to meet the needs of a Consortium state, several tiers of certification have been created. Delaware, for instance, pays the highest hourly rate to “certified” court interpreters who have scored at least 70 percent on the Consortium exams; however, that state also allows court interpreting, albeit at a lower hourly rate, by individuals who received only a 60 percent passing score on Consortium exams. Delaware even allows those who have undergone the court interpreter orientation but not the testing to serve as interpreters, although they are paid the lowest rate of all.

The Commission does not recommend such an approach. Instead, the Commission recommends the Court establish a court interpreter system with the goal of using only

Consortium-certified interpreters and adjust the certification standards only if that bar appears too high to yield a sufficient number of interpreters for Indiana state courts.

As part of the certification process, the Commission further recommends all prospective court interpreters be required to be at least 18 years of age, hold at least a high school degree, be subjected to criminal history background checks, and be required to list all current and prior employment to avoid potential conflicts in the courtroom.

VI. Salary Scale

The Commission recommends the Court approve a standard pay scale for all certified interpreters. The pay scales vary among the various Consortium states. Appendix H. Given limited funding in this state, the Commission recommends the Court initiate an hourly rate of approximately \$35 for a Consortium-certified court interpreter but actively seek court interpreters who will serve on a *pro bono* basis (similar to the volunteers in the CASA program). The Commission suggests the Court assign the Court Interpreter Advisory Board the task of drafting a comprehensive pay schedule for the Court's review.

VII. Funding

Currently, payment for court interpreter services in this state is made in a variety of ways – through trial court budgets, by the parties to the litigation (most commonly, the prosecutor or public defender in a criminal case), or not at all (as where relatives of the litigants or members of law enforcement or court staff serve as interpreters). *See, e.g.*, Appendix D. The Commission recommends centralized state funding of court interpreter services so that trial courts will be able

to hire certified court interpreters when needed without using funding designated for other court programs. If full funding of local costs is not possible immediately, the Commission recommends a partial reimbursement system similar to that used in death penalty cases by the Indiana Public Defender Commission. Under such a system, courts which hire certified interpreters would be reimbursed for a portion of the certified interpreter's fees. Such an approach would encourage use of certified court interpreters while minimizing the financial impact of doing so.

The Commission is willing to devote a large portion of its fiscal year 2002/2003 budget toward establishing and operating a court interpreter system. Given the state's economic situation, the Commission recommends that private grants be sought to fund the remainder of administrative and operational costs of the court interpreter system, at least on a preliminary basis, if legislative funding is not available. Once the system is established and proves successful, permanent governmental funding sources may be more readily available. Also, the Court may wish to consider a licensing fee for court interpreters if such a fee would not deter court interpreter recruitment efforts.

VIII. Orientation and Training

The experience of other Consortium states establishes that orientation and training of interpreters, judges and court staff are critical to the success of a court interpreter program. The Commission recommends that before testing, all court interpreters be required to participate in a two- to three-day orientation program which instructs them as to the nature of court proceedings, legal terminology, ethical standards for court interpreters, payment arrangements, and other subjects important to their success in the courtroom. (Materials from an orientation workshop

for Delaware Court Interpreters is found in Appendix I.) If possible, the orientation sessions should be conducted in several parts of the state to ensure the largest number of participants.

The Commission recommends that the Court contract with Dr. Nancy Schweda Nicholson, a linguistics professor at the University of Delaware and a national expert on court interpreter systems, to conduct the first court interpreter orientation programs. She and her colleague, Maria Perez-Chambers, have conducted such orientations for the State of Delaware for five years. Moreover, Dr. Nicholson has provided invaluable assistance and guidance to the Commission as it has studied court interpreter issues.

Ongoing training for certified interpreters, perhaps in the form of mandatory minimum continuing legal education credits, is recommended, too. Such a system would ensure that those who are certified maintain the minimum level of necessary skills.

Mandatory training for judges, perhaps in conjunction with a judicial conference, also is recommended. Such training is critical for full participation in the court interpreter system, as some judges may prefer to use a non-certified court interpreter with whom they are familiar. Court staff also need training because they likely will serve as the coordinators of court interpreter services and must be informed of the applicable procedures, as well as the available resources. Moreover, diversity training may be helpful for judges, court staff, prosecutors, public defenders and perhaps even attorneys in private practice as they increase their contacts with persons whose first language is not English.

IX. Certification of Interpreters

The Commission recommends that the Court adopt the testing methods of the Consortium. Under the Consortium approach, the interpreter applicants would undergo testing within a “reasonable” period after participating in the orientation. As noted previously, the Consortium would provide the exams. The exams could be coordinated by the Court Interpreter

System Administrator and conducted at least once a year. Ideally, the Court could contract with the National Center for State Courts to conduct the first round of testing for about \$15,000 – an expense which the Commission believes it can fund during fiscal year 2002/2003. Initial testing should be scheduled in Indianapolis, but the Commission recommends that subsequent testing occur in areas in or near Evansville, Lake County, and South Bend.

The Consortium testing is two-prong: one exam tests simultaneous interpreting and the other tests various other interpreter skills. As the passage rate is lower on the simultaneous interpreting test, the Commission recommends that the Court follow the lead of other Consortium states and administer the simultaneous interpreting exam first. Only those who receive a 70 percent score or higher on that exam would proceed to take the second exam.

The Court may wish to impose additional restrictions on court interpreters other than success on orientation and testing requirements. For instance, the Court may wish to create minimum qualifications, such as a high school degree or lack of a criminal record, as noted in Recommendation V. The Commission recommends the Court establish certain minimum qualifications (age, education, lack of criminal history, etc.) and assign to the Advisory Board the task of considering and possibly recommending any further minimum qualifications for court interpreters.

X. List of Interpreters

Once interpreters have been certified, the Commission recommends that the Administrator maintain a list of those interpreters and their contact addresses and phone numbers. To the extent possible, such information should be placed on the Indiana Supreme Court website to allow review by all trial court judges and court staff. A sample of similar lists maintained on other courts' websites is found in Appendix J.

Under this proposal, the Administrator would assist trial courts in procuring court interpreter services, although trial court staff would be primarily responsible for making such arrangements. Moreover, the final choice as to the interpreter would remain with the judge presiding over the matter, within certain constraints established by the Court.

XI. Miscellaneous Recommendations

The Commission recommends the Court attempt to partner with an academic institution in recruiting and training court interpreters. Some universities offer court interpreter training programs within their foreign language schools. For instance, William Paterson University and Union County Community College in New Jersey offer courses in court interpretation. The Monterey Institute of International Studies in Monterey, California, offers a certificate in court interpreting, and the College of Charleston in Charleston, S.C., offers a masters degree in court interpreting – the first in United States. The Indiana University Purdue University Indianapolis campus offers an American Sign Language Interpreter training program but no spoken language interpreter training.

Individuals completing such an academic program still would need to pass the Consortium tests to become certified interpreters, but the likelihood of passage seemingly would increase with this additional specialized training. Also, partnership with an academic institution would be advantageous if the Court were to conduct an orientation program with specific skills training. In such a circumstance, a language laboratory similar to that found on university campuses would be necessary.

The Commission further recommends that the Court vigorously publicize the new court interpreter program. Explanation of the court interpreter system at bar association meetings and community centers serving groups for whom English is a second language should help the court interpreter system work more smoothly and enable it to reach a greater number of people. As part of this effort, the Commission recommends that flyers written in Spanish be posted in courthouses, as well as other public facilities. Meeting with leaders of the Hispanic community before implementation of the court interpreter system may be helpful, too.

The Commission believes the Court, through its inherent authority, could establish a centralized court interpreter system for Indiana courts through Court rule or administrative policy. However, if the Court believes legislative enactments are necessary, the Commission recommends consideration of the Model Court Interpreter Act. Appendix K.