THE BILINGUAL COURTS ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

S. 1724

A BILL TO AMEND TITLE 28, UNITED STATES CODE, TO PROVIDE MORE EFFECTIVELY FOR BILINGUAL PROCEEDINGS IN CERTAIN DISTRICT COURTS OF THE UNITED STATES, AND FOR OTHER PURPOSES

WEDNESDAY, OCTOBER 10, 1973

TUESDAY, FEBRUARY 5, 1974

WASHINGTON, D.C.

U.S. GOVERNMENT PRINTING OFFICE
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S. 1724—THE BILINGUAL COURTS ACT

WEDNESDAY, OCTOBER 10, 1973

U.S. SENATE,
SUBCOMMITTEE ON IMPROVEMENTS IN
JUDICIAL MACHINERY OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 2228, Dirksen Senate Office Building, Senator Quentin N. Burdick (chairman of the subcommittee) presiding.

Present: Senator Burdick.

Also present: William P. Westphal, chief counsel; Miss Kathryn M. Coulter, chief clerk; Diane Elliott, research assistant.

Senator BURDICK. We have scheduled for today the commencement of hearings on S. 1724, The Bilingual Courts Act, which is sponsored by Senator Tunney and several other Senators.

We have scheduled 2 days of hearings, but because the second day will conflict with a hearing to be held by the full Judiciary Committee on another matter, tomorrow's session has been cancelled, and will be rescheduled for another date, yet to be determined.

It is my understanding that the need for this legislation is based upon a decision of the U.S. Court of Appeals for the Second Circuit in *U.S. ex rel Negron* v. *New York*, 434 F. 2d 386, a New York case in which the court held that the sixth amendment to the Constitution requires that non-English-speaking defendants be provided with a complete translation of the proceedings.

The court reasoned that the services of a translator are required, at Government expense, if the constitutional rights of a defendant to be confronted with the witnesses against him and to have the effective assistance of counsel are to be protected.

The bill under consideration proposes to legislatively implement this constitutional right by prescribing the occasions for, the quality of, and the machinery for providing competent and effective translation of the English portion of both criminal and civil proceedings in the Federal courts.

Since the bill, S. 1724, was introduced, the sponsors and interested organizations, in cooperation with subcommittee staff, have worked on various perfecting revisions in the language of the bill.

These efforts culminated with the introduction by Senator Tunney on September 28, 1973, of printed Amendment No. 565.

It would be my suggestion that during these hearings, we concentrate, as much as possible, upon the language of this printed amendment.

Because Spanish is the dominant language of a great majority of litigants in the U.S. District Court in Puerto Rico, the enactment of

this legislation would require undue translation expense and would hinder the expeditious trial of cases in the Puerto Rico Federal court, unless by this same act we were to change the statutory requirement that all proceedings in the Federal court in Puerto Rico be conducted in English.

Therefore, I have had the subcommittee staff. in cooperation with proper authorities of the Commonwealth of Puerto Rico, draft language to make appropriate amendments to the Federal Relations Act of Puerto Rico and other related Federal statutes.

The problem in Puerto Rico was brought to my attention during the omnibus judgeship hearings held on March 21, 1973. At those hearings, Judge Hiram Cancio of the U.S. District Court of Puerto Rico advised us that 90 percent of the cases tried in the Federal court in Puerto Rico require the use of an interpreter.

He said that this increases the trial time by 33 to 50 percent. While Spanish is the prevailing language in the Commonwealth of Puerto Rico, the law requires proceedings in Federal court in Puerto Rico to be conducted in English.

I will now offer for the record, along with S. 1724 and the printed Amendment No. 565, a draft of a proposed amendment marked as committee exhibit A, which would help solve the problem in Puerto Rico.

[The material referred to follows:]

93D CONGRESS
1ST SESSION

S. 1724

IN THE SENATE OF THE UNITED STATES

MAY 7, 1973

Mr. TUNNEY (for himself, Mr. BAYH, Mr. BENTSEN, Mr. BROOKE, Mr. CASE, Mr. CRANSTON, Mr. DOLE, Mr. EASTLAND, Mr. HART, Mr. HASKELL, Mr. HUMPHREY, Mr. JAVITS, Mr. KENNEDY, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MONTOYA, Mr. PEARSON, and Mr. WILLIAMS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide more effectively for bilingual proceedings in certain district courts of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bilingual Courts Act".

FACILITIES AND PERSONNEL FOR BILINGUAL PROCEEDINGS

SEC. 2. Section 604 (a) of title 28, United States Code (relating to the duties of the Director of the Administrative Office of the United States Courts), is amended—

(1) by redesignating paragraph (12) as paragraph (16); and

(2) by inserting immediately below paragraph (11) the following new paragraphs:

"(12) Determine from time to time, from the best and most current data available, each of those judicial districts in which at least 5 per centum or fifty thousand of the residents of that district, whichever is less, do not speak or understand the English language with reasonable facility, and certify each such district as a bilingual judicial district by certificate transmitted to the chief judge of the district court for that district;

"(13) Prescribe, determine, and certify, for each such certified bilingual judicial district, the qualifications of persons to serve as interpreters in bilingual proceedings (as provided in section 1827 of this title) in that district who have a capacity (A) for accurate speech and comprehension of speech in the English language and in the non-English language, and (B) for the simultaneous translation from either such language to the other;

"(14) Prescribe from time to time a schedule of reasonable fees, at rates comparable to reasonable rates of compensation payable to expert witnesses of substantially the same degree of technical skill and experience, for services rendered by such interpreters;

"(15) Provide, in each such bilingual judicial dis-

trict, appropriate equipment and facilities for (A) the recording of proceedings before that court, and (B) the simultaneous language translation of proceedings in such court;".

CONDUCT OF BILINGUAL PROCEEDINGS

SEC. 3. (a) Chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1827. Bilingual proceedings

"(a) (1) Whenever a district judge determines, upon motion made by a party to a proceeding in a judicial district, which has been certified under section 604 (a) of this title to be a bilingual judicial district, that (A) a party to such proceeding does not speak and understand the English language with reasonable facility, or (B) in the course of such proceeding testimony may be presented by any person who does not so speak and understand the English language, that proceeding shall be conducted with the equipment and facilities authorized by section 604 (a) (15) of this title. Any such proceeding or portion of such proceeding (including any translation relating to) shall be recorded verbatim. Such recording shall be made in addition to any stenographic transcript of the proceeding taken.

"(2) After any such determination has been made, each party to the proceeding shall be entitled to utilize the

services of the interpreter, certified pursuant to section 604 (a) of this title, to provide a simultaneous translation of the entire proceeding to any party who does not so speak and understand the English language and who so speaks and understands such non-English language, or of any portion of the proceeding relating to such qualification and testimony, from such non-English language to English and from English to such non-English language.

"(b) The party utilizing the services of a certified interpreter provided under this section shall pay for the cost of such services in accordance with the schedule of fees prescribed under section 604 (a) (14) of this title, except that—

"(1) if the services of an interpreter are utilized by more than one party to the proceeding, such cost shall be apportioned as such parties may agree, or, if those parties are unable to agree, as the court may determine;

"(2) if the United States (including any department, agency, instrumentality, or officer or employee thereof) is a party utilizing the service of an interpreter, the cost or apportioned cost of the United States shall be paid by the Director of the Administrative Office of the United States Courts from funds appropriated to him for that purpose; and

"(3) if the services of an interpreter are utilized by a party determined by the court to be an indigent, the cost or apportioned cost of such party shall be paid by that Director out of funds appropriated to him for that purpose."

(b) The analysis of chapter 119, of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1827. Bilingual proceedings.".

APPROPRIATIONS

SEC. 4. There are hereby authorized to be appropriated to the Administrative Office of the United States Courts such sums as may be necessary to carry out the amendments made by this Act.

EFFECTIVE DATE

SEC. 5. The amendments made by this Act shall take effect on the first day of the seventh month beginning after the date of enactment of this Act.

93D CONGRESS
1ST SESSION

S. 1724

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 1973

Referred to the Committee on the Judiciary and ordered to be printed

AMENDMENTS

Intended to be proposed by Mr. TUNNEY to S. 1724, a bill to amend title 28, United States Code, to provide more effectively for bilingual proceedings in certain district courts of the United States, and for other purposes, viz:

Beginning on page 1, line 4, strike out through the end of the bill and insert in lieu thereof the following:

"CONDUCT OF BILINGUAL PROCEEDINGS

"SEC. 2. (a) Chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"'§ 1827. Bilingual proceedings

"'(a) (1) In any criminal action, whenever the judge determines, on his own motion or on the motion of a party to the proceedings, that (A) the defendant does not speak

and understand the English language with a facility sufficient for him to comprehend either the proceedings or the testimony, or (B) in the course of such proceedings, testimony may be presented by any person who does not so speak and understand the English language, the court, in all further proceedings in that action, including arraignment, hearings, and trial, shall order an oral simultaneous translation of the proceedings, or an oral simultaneous translation of that testimony, to be furnished by an interpreter in accordance with the provisions of subsection (b) of this section.

"'(2) In any civil action, whenever the judge determines on his own motion or on the motion of a party to the proceedings, that (A) a party does not speak and understand the English language with a facility sufficient for him to comprehend either the proceedings or the testimony, or (B) in the course of such proceedings, testimony may be presented by any person who does not so speak and understand the English language, in all further proceedings in that action, including hearings and trial, the court shall order an oral translation of the proceedings to be made by an interpreter in accordance with the provisions of subsection (b) of this section. The judge shall also determine, in the interests of justice, whether the translation shall be simultaneous, consecutive, or summary in nature, except that if a party

requests a simultaneous translation, the court shall give the request special consideration.

"'(3) In any criminal or civil action, the judge, on his own motion or on the motion of a party to the proceedings, may order all or part of the non-English testimony and the translation thereof to be electronically recorded for use in verification of the official transcript of the proceedings.

"'(b) (1) The district court in each judicial district shall maintain on file in the office of the clerk of the court a list of all persons in that district who have been certified as interpreters by the Director of the Administrative Office of the United States Courts under section 604 (a) (12) of this title.

"'(2) In any action where the services of an interpreter are required to be utilized under this section, the court shall obtain the services of a certified interpreter from within the judicial district, except that, where there are no certified interpreters in the judicial district, the court, with the assistance of the Administrative Office of the United States Courts, shall determine the availability of and utilize the services of certified interpreters from nearby districts. Where no certified interpreter is available from a nearby district, the court shall obtain the services of an otherwise competent interpreter.'

"(b) The analysis of chapter 118, of title 28, United States Code, is amended by adding at the end thereof the following new item:

"'1827. Bilingual proceedings.'.

"FACILITIES AND PERSONNEL FOR BILINGUAL PROCEEDINGS

"SEC. 3. Section 604 (a) of title 28, United States Code, is amended—

"(1) by redesignating paragraph (12) as paragraph (13); and

"(2) by inserting immediately below paragraph (11) the following new paragraph:

"'(12) Under section 1827 of this title, (A) prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in bilingual proceedings, and in so doing shall consider the education, training, and experience of those persons; (B) maintain an updated master list of all interpreters certified by him, and report annually on the frequency of requests for, and the use and effectiveness of interpreters in bilingual proceedings pursuant to the provisions of this Act; (C) provide, or make readily available to each district court, appropriate equipment and facilities for the translation of non-English languages; (D) prescribe, from time to time, a schedule of reasonable fees for services rendered

by such interpreters and, in those districts where the Director considers it advisable based on the need for interpreters, authorize the employment by the court of certified full-time or part-time interpreters; and (E) pay out of moneys appropriated to the judiciary for the conduct of bilingual proceedings the amount of interpreter's fees or costs of recording which may accrue in a particular proceeding, unless the court, in its discretion, directs that all or part of those fees or costs incurred in a civil proceeding in which an interpreter is utilized pursuant to section 1827 (a) (2) of this title be apportioned between the parties or allowed as costs in the action:'.

"APPROPRIATIONS

"SEC. 4. There are hereby authorized to be appropriated to the Administrative Office of the United States Courts such sums as may be necessary to carry out the amendments made by this Act.

"EFFECTIVE DATE

"SEC. 5. The amendment made by this Act shall take effect on September 1, 1974.".

Amend the title so as to read: "A bill to amend title 28, United States Code, to provide more effectively for bilingual proceedings in all district courts of the United States, and for other purposes."

COMMITTEE EXHIBIT A

S. 1724, PROPOSED AMENDMENT, AMENDING PUERTO RICAN FEDERAL RELATIONS ACT

BILINGUAL PROCEEDINGS IN PUERTO RICO

Sec. 1. Section 42 of the Puerto Rican Federal Relations Act (48 U.S.C. 864) is amended by striking out the last sentence of such section and inserting the following new sentences: "Initial pleadings in the District Court of the United States for Puerto Rico may be filed in either the Spanish or the English language and all further pleadings and proceedings shall be in the Spanish language, unless upon application of a party or upon its own motion, the court, in the interest of justice, orders that the further pleadings or proceedings, or any part thereof, shall be conducted in the English language. The written orders and decisions of the court shall be filed in both the Spanish and English languages. If an appeal is taken of a trial or proceeding conducted in whole or part in the Spanish language, the transcript, or necessary portions of it, shall be translated into the English language. The cost of the translation shall be paid by the district court or by the parties, as the judge may direct."

JURY SELECTION

Sec. 2. (a) Chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new section: "§ 1869a. Language requirements in Commonwealth of Puerto Rico.

"No person shall be disqualified for service on a grand or petit jury summoned in the Commonwealth of Puerto Rico solely because such person is unable to speak, read, write, and understand the English language if such person is able to speak, read, write, and understand the Spanish language."

(b)(1) Section 1865 (b) of such title is amended by striking out "In making" and inserting in lieu thereof "Except as provided in section 1869a of this title, in making."

(2) Section 1869(h) of such title is amended by inserting after "English language" the following: "(except as provided in section 1869a of this title)".

(c) The analysis of such chapter 121 is amended by adding at the end thereof the following new item:

"1869a. Language requirements in Commonwelth of Puerto Rico."

The language in Exhibit A has been worked out by the combined efforts of representatives of the Commonwealth and members of the subcommittee staff. Under this proposal, Section 42 of the Puerto Rican Federal Relations Act would be amended to do the following things: one, permit initial pleadings to be filed in either Spanish or English; two, give the judge discretion to order further proceedings to be held in Spanish or English, as the interests of justice may require; three, require orders of the court to be filed in both Spanish and English, and; four, in the event of appeal, require that the Spanish portions of the record be translated into English.

Also, the proposed amendment in exhibit A would permit persons fluent in Spanish as well as English to serve on grand and petit juries in the Federal Court in Puerto Rico.

In other bilingual areas, for example in the Province of Quebec, Canada, the language problem is handled in much the same way as that set forth in exhibit A.

This, then, is the general nature and scope of the legislation which we will consider in these hearings.

Because we are hearing from a great many witnesses today, we encourage the witnesses to briefly summarize their statements, thereby leaving time for questions.

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We will now call upon my distinguished colleague from the great State of California, Senator Tunney, who will be our first witness.

Senator, your prepared statement will be entered in the record at this point, and you may proceed in any manner you wish.

PREPARED STATEMENT OF SENATOR JOHN V. TUNNEY

Mr. Chairman, I want to thank you and the members of the subcommittee for this opportunity to make a brief statement in support of legislation which I think vital to the open and evenhanded dispensation of justice.

The Bilingual Courts Act which I introduced in May attempts to remedy a long-standing deficiency in our Federal judicial system—the inability of thousands of non-English speaking Americans to defend themselves adequately in proceedings conducted in a language alien to them.

The cornerstone of our legal system is the equality of treatment that it guarantees to every citizen, rich or poor, old or young, black, brown or white. We cannot permit the circumstances of birth to decide the right of redress in a courtroom. The long strides which we made throughout the 1960's in extending civil rights protection to minority groups should not be taken as evidence that our task is completed. If persons must still come before our courts unable to comprehend fully the nature of the testimony or the charges that have been made against them, then they are suffering a handicap which is impermissible under our laws and our Constitution.

This bill is designed to remedy this situation by providing for oral translation of all Federal courtroom proceedings, both in civil and criminal matters, so that any individual incapable of speaking or understanding the English language with sufficient facility will be able to participate knowledgeably in such proceedings. This proposal is hardly novel or revolutionary.

The Canadian Bill of Rights, for example, adopted by the Government of Canada in 1960, guarantees every person the right to the assistance of an interpreter in any proceedings in which that person demonstrates inability to speak or understand the language in which the proceedings are conducted. The constitution of the State of New Mexico has wisely provided that in all criminal prosecutions, the accused is entitled "to have the charges and testimony interpreted to him in a language that he understands."

This bill is also not without congressional precedent. On three occasions, statutes have been enacted which allow for the appointment of interpreters in cases involving indigents. Rule 28(B) of the Federal Rules of Criminal Procedure provides that a Federal district court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter.

Also, the Criminal Justice Act of 1964, 18 U.S.C. 3006(e), sanctions the payment for services other than counsel which are "necessary to an adequate defense" from the United States Treasury. On the civil side, rule 43(F) of the Federal Rules of Civil Procedures states that the:

"Court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more or the parties as the court may direct and may be taxed ultimately as costs in the discretion of the court."

While these statutes point in the right direction, they do not offer a strong enough mandate to the courts for the appointment of interpreters. More importantly, they are lacking in guidance on how the Federal courts are to establish the machinery to effectuate the policies that are enunciated. This legislation would spell out the responsibilities of the Federal courts in meeting the critical need for more interpreters, and would furthermore ensure the appointment of interpreters whose competency has been tested through appropriate certification procedures.

If the objective of this measure is easily explained, the need for its adoption is even more readily demonstrated. In a report prepared in 1970, the U.S. Commission on Civil Rights provided penetrating insight on the shortcomings in the Administration of Justice for Mexican Americans in the Southwest. Allow me to quote only a small excerpt from that study:

"Interpreters are not readily available in many Southwest courtrooms. In the lower courts, when interpreters are made available, they are often untrained and unqualified; in the higher courts, where qualified interpreters were more

readily available, there has been criticism of the standards of their selection and training and skills."

But, I want to emphasize that other areas of the United States are similarly affected. While there are over five million Mexican-Americans in the population who would stand to be greatly benefited by this legislation, there are other national origin minority groups whose interests are as great.

Puerto Ricans comprise the Nation's second largest national origin minority with more than two million throughout the country. New York, Chicago, Boston, Philadelphia and Newark are among the communities with large numbers.

However, the Spanish-speaking minorities, although forming the largest minority-speaking concentration in the country, are not the only ones to have experienced language barriers in the courts.

In my own State of California, the Chinese, the Japanese and others of Asian extraction have, for several generations, contributed enormously to the development of our State's culture and economy, yet their distrust in the Judicial System has been nourished by the linguistic differences which are their birthright.

Thoughout the width and breadth of the continental United States, as well as in Alaska, there are Native Indians who, frequently because of their geographical isolation, are the most severely disadvantaged when they become the unfortunate subjects of litigation conducted in a manner entirely foreign to their understanding. Countless other Americans, while perhaps partially bilingual, may still experience difficulties which constitute a denial of their right. Over 600,000 persons of Cuban origin have settled here, more than 40 percent of them in Florida; many French-speaking people live in Maine and Louisiana; Massachusetts is the home for thousands of Portuguese-speaking Americans. German-speaking Americans inhabit many areas of the Middle-West, and Hawaii comprises a rich mixture of different nationalities.

According to the Administrative Office of the United States Courts, there are only four full-time Spanish-speaking court interpreters in the Southwest. In California, the Federal District Court in San Diego employs one full-time interpreter. And even in those districts where interpreters are available, there is no uniform procedure on how they are to be utilized nor adequate translation facilities to ensure simultaneous strong translation.

In the years prior to enactment of legislation that now ensures equal employment and educational opportunities, racial ancestry created occupational disabilities. We must now take steps to see that national ancestry does not create judicial disabilities. Our fundamental notions of fairness and the dictates of the first, fifth, and sixth amendments to the Constitution are a ringing affirmation of the rights that each and every citizen shall enjoy in the courts of this land. A mere glimpse at the pronunciations of the courts shows that denial of these constitutional safeguards amounts to judicial disinheritance.

The twin rights to confrontation of witnesses and the assistance of counsel required by the sixth amendment have been interpreted by the Court of Appeals of Alabama in *Terry* v. *State*, 105 So. 386 (Ala. 1925) to mean, and I quote:

"The accused must not only be confronted by the witnesses against him, but he must be accorded all necessary means to know and understand the testimony given by said witnesses . . . Mere confrontation of the witnesses would be useless, bordering upon the farcical, if the accused could not hear or understand their testimony." (105 So. 386, at 387).

Without the benefit of translation, how could a party safely communicate with his attorney to enable counsel to effectively cross examine those English-speaking witnesses, to test their credibility, their memory, and their accuracy of observation, in light of the non-English speaking person's version of the facts?

Case law on the right of a non-English speaking citizen to interpretation is somewhat scant, but in the case of *United States ex rel Negron* v. *New York* (434 F. 2d 386), a 1970 second circuit case, a Federal appeals court for the first time held it constitutionally required that a non-English speaking defendant be provided with a simultaneous translation of all the courtroom proceedings.

In *Negron*, while the State had provided the defendant with an interpreter, the interpreter was only required to periodically summarize what was happening in the courtroom. This, the court said, was not enough to protect the constitutional rights of the defendant. The court's strong language is noteworthy. It said, "Defendant's incapacity to respond to specific testimony would inevitably hamper the capacity of his counsel to conduct effective cross examination. Not only for the sake of effective cross examination, however, but as a matter of simple

humaneness, (defendant) deserved more than to sit in total incomprehension as the trial proceeded" (434 F. 2d 386, at 390).

Mr. Chairman, the *Negron* case is an invitation to the Congress to see to it that no citizen in the future will be forced to sit in "total incomprehension" as actions are taken which may deprive that person of his liberty, his property, or even his life.

The bill, as modified by amendment 565, which the members of the committee should have before them, would stipulate that certain measures be taken to eliminate the inequities which many citizens have had to endure unnecessarily and for so long. I am pleased to see that all of the Senators who cosponsored the original bill, but one who is unavailable due to illness, have agreed to cosponsor the amended version.

I am hopeful that this subcommittee will act favorably and expeditiously upon this measure.

The basic provisions of this act are as follows:

(1) Section 2 requires that, in all criminal proceedings in which the court has determined that a defendant does not speak and understand the English language so as to comprehend either the proceedings or the testimony, or that during such proceedings testimony may be presented by any person who does not speak and understand the English language, the court shall order an oral simultaneous translation of the proceedings and the testimony.

(2) In any civil proceedings, the judge must additionally determine whether such translation would be simultaneous, consecutive or summary. However, if a party requests simultaneous translation, then the court must give the request special consideration, and grant it if it is in the interests of justice. The purpose here is to ensure maximum protection of a non-English speaking party's rights even in civil proceedings, while recognizing that in certain cases where the factual issues are of a highly technical nature, the interests of justice may still be served and the proceedings expedited by interpretation that is not simultaneous. However once granted, the right to interpretation is broadened to encompass all phases of the proceedings including arraignment, hearings and trial.

The population formula established in the original bill for the purpose of designating certified bilingual districts was deleted, because it unnecessarily excluded certain minority groups whose numbers were not reflected in the census statistics as strongly as those of other non-English speaking groups, but whose right to interpreters is nevertheless equal.

(3) The court is required, in all proceedings, to seek the services of a certified interpreter, and an interpreter not so certified can only be used after the court has demonstrated that it was unable to locate a certified interpreter.

While this establishes the fundamental right to a highly qualified interpreter, it also recognizes the fact that in certain areas of the country a particular non-English language or dialect is spoken only by few individuals or the language is generally one of such rarity that interpreters certified in the language are unavailable.

(4) In lieu of the provision requiring electronic recording of the entire proceedings in all cases, a provision is substituted which permits the judge discretion in requiring such recordings. This change would reduce costs while still providing for adequate verification of the official transcript of the proceedings. The possibility of error in translation from one language to another, which such recordings are designed to detect, will also be substantially lessened by the use of certified interpreters. This is also reinforced by the addition of language requiring the director of the administrative office of the courts to direct the employment of certified full-time or part-time interpreters where justified.

(5) Section 3 authorizes the administrative office of the courts to develop and enunciate standardized procedures and criteria for certifying court interpreters, to report to the Congress annually on the frequency of requests for and the use and effectiveness of interpreters; to provide equipment and facilities in Federal courts for their use; to prescribe a schedule of reasonable fees for their service; to authorize the employment of full-time or part-time interpreters where it considers that justified; and to pay for interpreter's fees and costs in all criminal proceedings by funds appropriated to the judiciary. In civil proceedings, the court may, at its discretion direct that all or part of such expenses be apportioned between the parties or allowed as costs in the action.

These are the essential features of my bill. While I recognize that the enactment of this legislation would have a particular effect upon the proceedings in the

Federal court in Puerto Rico, it is my understanding that this is a matter which the chairman and the staff of this subcommittee have previously been concerned with, and it is my further understanding that appropriate amendments have been worked out to the Puerto Rican Federal Relations Act which are responsive to this situation.

I want to point out that a suggestion has been made that this legislation be expanded to apply to the D.C. Superior Court and Court of Appeals, which are, peculiarly, Federal courts in that they come under the judicial supervision of the district and are created by Congress within the scope of its governance over D.C. affairs. In actuality, however, they are state courts in terms of their judicial case-reach, and since we are jurisdictionally prevented from enacting legislation which effects the State and local courts, the D.C. Courts have not been included within this measure. The D.C. Courts are furthermore funded out of the D.C. budget.

However given the substantial Spanish-speaking population in the District of Columbia, and my own strong interest in eliminating procedures which act to discriminate against certain individuals because of their national origins, at all levels of judicial administration. I intend shortly to offer a bill within the district committee which will extend the rights set forth in the bilingual courts bill to the District of Columbia's courts.

Mr. Chairman I greatly appreciate the opportunity to address the subcommittee on this measure, and I hope we can move quickly to make it law.

STATEMENT OF HON. JOHN V. TUNNEY, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator TUNNEY. Thank you very much, Mr. Chairman.

Mr. Chairman, I want to thank you very much for your many courtesies and your close attention to this legislation. I also want to thank your counsel, Mr. Westphal, for the assistance he has given to me and to my office in the preparation of this legislation.

The Bilingual Courts Act, which I introduced in May, and which today is before us in the form of an amendment, attempts to remedy a longstanding deficiency in our Federal judicial system—the inability of thousands of non-English-speaking Americans to defend themselves adequately in proceedings conducted in a language alien to them.

The cornerstone of our legal system is the equality of treatment that it guarantees to every citizen, rich or poor, old or young, black, brown, or white. We cannot permit the circumstances of birth to decide the right of redress in a courtroom.

The long strides which we made throughout the 1960's in extending civil rights protection to minority groups should not be taken as evidence that our task is completed. If persons must still come before our courts, unable to comprehend fully the nature of the testimony or the charges that have been made against them, then they are suffering a handicap which is impermissable under our laws and our Constitution.

The bill is designed to remedy this situation by providing for oral translation of all Federal courtroom proceedings, both in civil and criminal matters, so that any individual incapable of speaking or understanding the English language with sufficient facility will be able to participate knowledgeably in such proceedings. This proposal is hardly novel, or revolutionary.

The Canadian Bill of Rights, for example, adopted by the Government of Canada in 1960, guarantees every person the right to the assistence of an interpreter in any proceedings in which that person demonstrates an inability to speak or understand the language in which the proceedings are conducted.

The constitution of the State of New Mexico has wisely provided that in all criminal prosecutions, the accused is entitled to have charges and testimony interpreted to him in a language that he understands.

This bill is also not without congressional precedent. On three occasions, statutes have been enacted which allow for the appointment of interpreters in cases involving indigents. Rule 28(b) of the Federal Rules of Criminal Procedure provides that a Federal district court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter.

Also, the Criminal Justice Act of 1964, 18 U.S.C. 3006(e) sanctions the payment for services, other than counsel, which are ncessary to an adequate defense, from the U.S. Treasury.

On the civil side, Rule 43(f) of the Federal Rules of Civil Procedure states that the "court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct and may be taxed ultimately as costs in the discretion of the Court."

While these statutes point in the right direction, they do not offer a strong enough mandate to the courts for the appointment of interpreters.

More importantly, they are lacking in guidance on how the Federal courts are to establish the machinery to effectuate the policies that are enunciated. This legislation would spell out the responsibilities of the Federal courts in meeting the critical need for more interpreters, and would furthermore insure the appointment of interpreters whose compentency has been tested through appropriate certification procedures.

If the objective of this measure is easily explained, the need for its adoption is even more readily demonstrated. In a report prepared in 1970, the U.S. Commission on Civil Rights provided penetrating insight on the shortcomings in the administration of justice for Mexican Americans in the Southwest. Allow me to quote only a small excerpt from that study. "Interpreters are not readily available in many southwestern courtrooms. In the lower courts, when interpreters are made available, they are often untrained and unqualified; in the higher courts, where qualified interpreters were more readily available, there has been criticism of the standards of their selection and training and skills."

But, I want to emphasize that other areas of the United States are similarly affected.

While there are over five million Mexican Americans in the population who would stand to be greatly benefited by this legislation, there are other national origin minority groups whose interests are as great.

Puerto Ricans comprise the Nation's second largest national origin minority with more than 2 million throughout the country. New York, Chicago, Boston, Philadelphia, and Newark are among the communities with large numbers.

However, the Spanish-speaking minorities, although forming the largest minority speaking concentration in the country, are not the only ones to have experienced language barriers in the courts.

In my own State of California, the Chinese, the Japanese, and others of Asian extraction have, for several generations, contributed enormously to the development of our State's culture and economy, yet their distrust in the judicial system has been nourished by the linguistic differences which are their birthright.

Throughout the width and breadth of the continental United States, as well as in Alaska, there are native Indians who, frequently because of their geographical isolation, are the most severely disadvantaged when they become the unfortunate subjects of litigation conducted in a manner entirely foreign to their understanding.

Countless other Americans, while perhaps partially bilingual, may still experience difficulties which constitute a denial of their rights. Over 600,000 persons of Cuban origin have settled here, more than 40 percent of them in Florida; many French-speaking people live in Maine and Louisiana; German-speaking Americans inhabit many areas of the Middle West; and Hawaii comprises a rich mixture of different nationalities.

Accounting to the Administrative Office of the U.S. Courts, there are only four full-time Spanish-speaking court interpreters in the Southwest. In California, the Federal district court in San Diego employs one full-time interpreter.

And even in those districts where interpreters are available, there is no uniform procedure on how they are to be utilized nor adequate translation facilities to insure simultaneous strong translation.

In the years prior to enactment of legislation that now insures equal employment and educational opportunities, racial ancestry created occupational disabilities. We must now take steps to see that national ancestry does not create judicial disabilities. Our fundamental notions of fairness and the dictates of the first, fifth, and sixth amendments to the Constitution are a ringing affirmation of the rights that each and every citizen shall enjoy in the courts of this land.

A mere glimpse at the pronunciations of the courts shows that denial of these constitutional safeguards amounts to judicial disinheritance.

The twin rights to confrontation of witnesses and the assistance of counsel required by the sixth amendment have been interpreted by the Court of Appeals of Alabama in *Terry* v. *State*, 15 So. 386, 387 (1925) to mean, and I quote: "The accused must not only be confronted by the witnesses against him, but he must be accorded all necessary means to know and understand the testimony given by said witnesses. Mere confrontation of the witnesses would be useless, bordering upon the farcial, if the accused could not hear or understand their testimony."

Without the benefit of translation, how could a party safely communicate with his attorney to enable counsel to effectively cross-examine those English-speaking witnesses, to test their credibility, their memory, and their accuracy of observation, in light of the non-English-speaking person's version of the facts?

Case law on the right of a non-English-speaking citizen to interpretation is somewhat scant, but in the case of *United States ex rel Negron* v. *New York* (434 F. 2d 386), a 1970 second circuit case, a Federal appeals court for the first time held it constitutionally re-

quired that a non-English-speaking defendant be provided with a simultaneous translation of all the courtroom proceedings.

In *Negron*, while the state had provided the defendant with an interpreter, the interpreter was only required to periodically summarize what was happening in the courtroom.

This, the court said, was not enough to protect the constitutional rights of the defendant. The court's strong language is noteworthy. It said, "Defendant's incapacity to respond to specific testimony would inevitably hamper the capacity of his counsel to conduct effective cross-examination. Not only for the sake of effective cross-examination, however, but as a matter of simple humaneness, defendant deserved more than to sit in total incomprehension as the trial proceeded."

Mr. Chairman, the *Negron* case is an invitation to the Congress to see to it that no citizen in the future will be forced to sit in total incomprehension as actions are taken which may deprive that person of his liberty, his property, or even his life.

The bill as modified by amendment 565, which the members of the committee should have before them, would stipulate that certain measures be taken to eliminate the inequities which many citizens have had to endure unnecessarily and for so long.

I am pleased to see that all of the Senators who cosponsored the original bill, but one who is unavailable due to illness, have agreed to cosponsor the amended version. I am hopeful that this subcommittee will act favorably and expeditiously upon this measure.

The basic provisions of this act are as follows: One, section 2 requiries that, in all criminal proceedings in which the court has determined that a defendant does not speak and understand the English language so as to comprehend either the proceeding or the testimony, or that if during such proceedings testimony may be presented by any person who does not speak and understand the English language, the court shall order an oral simultaneous translation of the proceedings and of the testimony.

Two, in any civil proceedings, the judge must additionally determine whether such translation would be simultaneous, consecutive, or summary.

However, if a party requests simultaneous translation, then the court must give the request special consideration, and grant it if it is in the interests of justice. The purpose here is to ensure maximum protection of a non-English-speaking party's rights even in civil proceedings, while recognizing that in certain cases where the factual issues are of a highly technical nature, the interests of justice may still be served and the proceedings expedited by interpretation that is not simultaneous.

However, once granted, the right to interpretation is broadened to encompass all phases of the proceedings including arraignment, hearings, and trail.

The population formula established in the original bill for the purpose of designating certified bilingual districts was deleted, because it unnecessarily excluded certain minority groups whose numbers were not reflected in the census statistics as strongly as those of other non-English-speaking groups, but whose right to interpreters is nevertheless equal.

Three, the court is required, in all proceedings, to seek the services of a certified interpreter, and an interpreter not so certified can only be used after the court has demonstrated that it was unable to locate a certified interpreter.

While this establishes the fundamental right to a highly qualified interpreter, it also recognizes the fact that in certain areas of the country a particular non-English language or dialect is spoken only by a few individuals or the language is generally one of such rarity that interpreters certified in the language are unavailable.

Four, in lieu of the provision requiring electronic recording of the entire proceedings in all cases, a provision is substituted which permits the judge discretion in requiring such recordings.

This change would reduce the costs while still providing for adequate verification of the official transcript of the proceedings. The possibility of error in translation from one language to another, which such recordings are designed to detect, will also be substantially lessened by the use of certified interpreters. This is also reinforced by the addition of language requiring the Director of the Administrative Office of the Courts to direct the employment of certified, full-time or part-time interpreters where justified.

Five, section 3 authorizes the Administrative Office of the Courts to develop and enunciate standardized procedures and criteria for certifying court interpreters, to report to the Congress annually on the frequency of requests for and the use and effectiveness of interpreters; to provide equipment and facilities in Federal courts for their use; to prescribe a schedule of reasonable fees for their services; to authorize the employment of full time or part time interpreters where it considers that justified; and to pay for interpreters' fees and costs in all criminal proceedings by funds appropriated to the Judiciary.

In civil proceedings, the court may, at its discretion, direct that all or part of such expenses be apportioned between the parties or allowed as costs in the action.

These are the essential features of the bill. While I recognize that the enactment of this legislation would have a particular effect upon the proceedings in the Federal court in Puerto Rico, it is my understanding that this is a matter which the chairman and the staff of this subcommittee have previously been concerned with, and it is my further understanding that appropriate amendments have been worked out to the Puerto Rican Federal Relations Act which are responsive to this situation.

I want to point out that a suggestion has been made that this legislation be expanded to apply to the District of Columbia Superior Court and Court of Appeals, which are, peculiarly, Federal courts in that they come under the judicial supervision of the District and are created by Congress within the scope of its governance over the District of Columbia's affairs.

In actuality, however, they are State courts in terms of their judicial case-reach, and since we are jurisdictionally prevented from enacting legislation which affects the State and local courts, the District of Columbia Courts have not been included within this measure. The District of Columbia Courts are furthermore funded out of the District of Columbia budget.

However, given the substantial Spanish-speaking population in the District of Columbia, and my own strong interest in eliminating

procedures which act to discriminate against certain individuals because of their national origins, at all levels of judicial administration, I intend shortly to offer a bill within the District Committee which will extend the rights set forth in the bilingual courts bill to the District of Columbia's courts.

Mr. Chairman, I greatly appreciate the opportunity to address the subcommittee on this measure. I hope we can move quickly to make it law, and I want to thank your committee and you for taking the time to hear this legislation.

Senator BURDICK. Thank you Senator, for your contribution this morning.

I have a few questions, and perhaps the staff has, too.

You quoted language from the *Negron* case, which was a criminal proceeding, and I followed your argument very carefully.

S. 1724, however, and the amendment 565, cover both criminal and civil cases. Certainly the constitutional rights of the criminal defendant involved in *Negron* are substantial justifications for this bill, but what is the theory behind this legislation as it applies to civil cases?

Senator TUNNEY. Well, Mr. Chairman, in my mind the results of a court proceeding in a civil action can be as onerous to a party as those of an action in a criminal proceeding. I think we are all aware of the fact that a person's property is not at the same level of importance as his life or his liberty, but it is not far behind. In many instances you have actions brought in Federal courts, which would have a substantial impact upon a person's property rights—to the degree that a person's whole life can be changed by the winning or the losing of a lawsuit.

In the case of welfare, you have actions brought in Federal courts, and a person can lose the right, for instance, to receive a welfare compensation. That can have, as I indicated earlier, a most dramatic impact upon his or her ability to live. I think we are also talking about certain kinds of civil liberty cases, which are important in the extreme. These would qualify as civil cases, not as criminal cases, but on the other hand, there could be a dramatic circumscription of a person's freedom resulting from such action. I would say that clearly for most people this is as serious a loss of freedom, or the ability to gain a freedom that they have not had, as a finding that could result from a criminal action.

So, I think that there is ample justification for extending this right to translation to civil proceedings.

The only thing that I have to ask myself is: how would I feel if I were in Mexico or Taiwan or Japan, suddenly being sued for everything that I had, went into a court and was not granted a translator, could not find a translator who met the court standards—so I couldn't have a translator sit with me in the courtroom—had witness after witness testifying against me, knew that my entire property rights in that country were being affected by the testimony, and I didn't know what was happening? In that case there would be no way that I could defend against the testimony or call witnesses to rebut it. I would say that that would have a very serious impact upon me, and upon what I consider to be justice and fairness and equity.

I think that that is the logic behind extending the protections to civil cases.

Senator BURDICK. We are all familiar with the quality of the simultaneous translations made in the debates in the United Nations. When this bill speaks of simultaneous translation, it does not contemplate that same high degree of sophistication, does it?

Senator TUNNEY. Well, I do not think that we are going to be able to achieve that same degree of translation, although I do know that we ought to attempt to strive for that as a goal.

I have been impressed, Mr. Chairman, as I know that you have, in various meetings that I have had, as a Member of the Congress, overseas with other parliamentary bodies, in which a simultaneous translation is offered in two or three languages.

Although it may not meet U.N. standards, it is extremely adequate, and professional, and it gives to those people who participate in those interparliamentary meetings an opportunity to understand what is being said. So I think that while we may not be able to get U.N. standards, which I assume represent the very best translation there is in the world, I think we can certainly shoot for a very high standard of excellence.

Senator BURDICK. I notice, throughout your testimony this morning, that you do recognize that there is a higher degree of care required in the criminal cases than in the civil cases. There is some discretion as to civil cases, isn't there?

Senator TUNNEY. Yes, Mr. Chairman.

We have that discretion in there, and I think that it makes sense to have it that way.

Senator BURDICK. All right.

Now, if I may ask a question as a practical lawyer. Assume a Spanish-speaking plaintiff from Los Angeles brings an action in the Federal court of North Dakota, where the dominant language is English, and it arises out of the collision of two automobiles in one of the streets in Fargo. Assume also that the Spanish-speaking plaintiff—under the actual state of facts—is completely at fault, yet he still brings the lawsuit. It may be necessary to take depositions in Los Angeles—where several witnesses reside—or it may even be necessary to take depositions in Chicago or Miami—before going to trial. There is also going to be an examination of jurors, and there may be various preliminary motions, and so forth.

Now, would this bill require the district court sitting in Fargo, North Dakota, in a civil case, to bear the expenses of interpreters going to any part of the country?

Senator TUNNEY. No, I do not think so. Not in civil cases. I think that in civil cases, the expenses ought to be borne by the parties, and the court would have the discretion to allocate expenses to one party or the other, or to both parties, depending upon the court's attitude.

Senator BURDICK. All right, Senator. I follow you that far, but suppose that this plaintiff is indigent.

Who pays the cost of the interpreters that would have to go around the country?

Senator TUNNEY. Well, if he is indigent—and you are assuming that the cause of action is not meritorious—it is clear to me that his attorney is not going to put up the money.

If the plaintiff is indigent, the attorney would be operating on a contingent fee, and if he knew it was not a meritorious case, he would not put up the money. I assume that nobody would bear the expense, and there just would not be interpreters.

Senator BURDICK. Well, suppose it was a borderline case.

Senator TUNNEY. Well, I think——

Senator BURDICK. Actually you cannot determine the merits until you have had the trial.

Senator TUNNEY. I was using your stated facts, though.

Senator BURDICK. Well, I'll have to change them for the sake of this question.

Senator TUNNEY. I recognize that there may be some gaps in the legislation as it is drafted, that in very close cases, perhaps where you have an indigent plaintiff, and where his attorney is not willing to put up the initial costs of an interpreter, that it would be difficult to get the money to hire an interpreter to take depositions in all parts of the country.

Although, as I analyze this legislation, I do not think that the taxpayers can be expected, in civil cases, to bear such a heavy burden as you suggest—when you are talking about sending a translator all around the country to take depositions. I feel that there is a difference in the criminal case, where a person's very liberty is being held up on the scales of justice, and he might lose that freedom.

Senator BURDICK. I see that distinction, too. But, we do have to deal with different factual situations. If we may change the state of facts again, suppose in this accident in Fargo that the defendant is still the non-English speaking party, but that he is in the right, absolutely, and that these depositions around the country are again required. The plaintiff certainly has a right to protect himself because he is not at fault in this accident. But assume he still cannot afford interpreters.

Now, having said all that, and having given all these very hypothetical situations, would you still leave this to the discretion of a trial court?

Senator TUNNEY. Well, the legislation is so drafted that it is in the discretion of the trial court.

I was assuming, in the fact situation that you gave, that the trial court was not going to allow the plaintiff to have any funds made available from the court for the purposes of translation.

It was assumed that the plaintiff was going to have to bear the burden of those expenses in the first instance himself.

But the bill, as drafted, gives the court very wide discretion, and I cannot think of anything, really, that is fairer than that.

I think we have to rely on our judges to exercise their best judgement in these matters.

Now, the administrative office currently spends a little less than $100,000 a year on interpreters' services. However, it must be taken into account that under the Criminal Justice Act of 1964, many interpreters needed by criminal defendants are paid by the U.S. Attorney's offices, so there are moneys that are presently being made available for this purpose.

If my legislation passes, it is clear that there will be significant additional cost, but on the other hand, I think there will be significant additional justice, and I think that under the circumstances, we have to

weigh justice as being more important than the added costs, which, when you figure the total U.S. budget, are quite insignificant.

Senator BURDICK. Well, for this record, let me ask another question on that point.

You have referred to the areas in which there are heavy nationalized populations such as California and some northeastern States, but that does not seem to me to be the whole question. Regardless of what area of the country a party may be in, he may be a member of a very small minority. He may be a non-English-speaking Chinese in North Dakota, where there may be only two Chinese in the whole State, or he may be a non-English-speaking American Indian in a State where even the resident American Indians do not speak his language.

In other words, we have to be prepared, if we are going to go this route, to provide this service in 94 districts in the United States, because a plaintiff in one district is entitled to the same type of service given a plaintiff in another district. How many tongues would we have to have on the shelf ready to go in each of the 94 districts?

Senator TUNNEY. Well, I think it is going to depend, of course, on the court and the area that it is in. I would say that, just as an example, in a city like San Francisco, where you have a large Chinese population, a large Spanish-speaking population, and a significant Japanese-speaking population, then you would want to be able to provide Chinese translation, Japanese translation, and Spanish translation. I think that it would be up to the Administrative Office to make the decision on a court to court basis. I would expect they would have to be prepared to move translators from one part of the country to the other, the way they move judges from one part of the country to the other, when there is a need to do so. I realize that it could be, at times, a tricky administrative problem, but I think it is one that can be handled.

I might also say I think that the bill as originally introduced was deficient in this regard. I think putting percentages of foreign language speakers into the bill, as a trigger for requiring the court to provide translators, did not make sense, and as a result of working with you, Mr. Westphal and your staff, and others, we have made the change, which eliminates that trigger device in amendment 565.

Senator BURDICK. Well, I agree with you. I think that the percentages had to go, because if there is just one man of a given tongue in a particular district, he is just as entitled to an interpreter as the man in a district with thousands. So I agree with that, but my question is—because this question is going to be asked of us on the Senate floor—How many of these tongues do we protect? Three or four? Sixteen?

We have talked about a Japanese or Chinese litigant, but what about a Yugoslav? Would we take care of the Yugoslav who does not speak English?

Senator TUNNEY. I think that can be done to a considerable extent—even with some of these unique situations where you are talking about a language that is not commonly spoken in this country—on an ad hoc basis by means of the certification process of the court. I think—according to the standards established by the Administrative Office—that in a truly unusual case, we could determine a standard which is fair but a little less demanding. In the case of a Yugoslav who speaks only Serbo-Croation, if the only person we can get to translate is one

who speaks Serbo-Croatian fluently, but who has not had any experience in the past as a translator, I think that would be sufficient. I do not think that standard would be sufficient in the case of a Spanish-speaking only litigant, because in such a case there are a great number of people who have had translation experience, and they would logically provide a higher degree of excellence. In other words, on a case-by-case basis we should strive for the highest degree of excellence which can be realistically attained.

I do not think that there are any rigid standards that we can draft, which will be applicable in all situations. We are a nation of human beings, as well as laws, and I think we are going to have to use human discretion and ingenuity in making this legislation work. I would hope that the Administrative Office would be able to—in their standards—provide for the kind of situation that you suggest. If they cannot, then maybe we will have to amend the legislation at a future time. But I do not think we ought to anticipate, in the first instance, that it is going to be impossible to make the legislation work, particularly when it comes to one of these languages that is not commonly spoken in this country.

Senator BURDICK. This really does not bear upon whether the legislation works or not; it does bear upon the scope and cost of the program. I simply wanted to have some kind of a horseback figure of how many tongues we would have to take care of, because that is going to be a cost factor if we are going to properly implement this machinery.

Senator TUNNEY. I agree with you, but one of the interesting things is that when a person comes from a country from which there are very few other persons in this country who speak their language, they usually learn English. If however a person is, say, Spanish speaking, and comes to this country, he will usually move into a community where there are a lot of other Spanish-speaking people, and therefore will not have to learn English as readily. He will probably continue to rely primarily on Spanish. If you come from Yugoslavia, unless you are an unusual person and have moved into a community in which there are a lot of Yugoslavs—and there are very few communities like that in the United States—the chances are that you are going to learn to speak English more readily and act rapidly. You are going to have to.

Senator BURDICK. But obviously we cannot rely on chance. We have to provide for all of those that do not speak English.

Senator TUNNEY. Well, as I suggested earlier, I think that you are going to have to have provisions in the standards of the Administrative Office to make translation available for those people.

I was just directing my remarks to the degree of the problem that we face here.

I think that it is fair to say that there are many languages that are not commonly spoken in this country, and when a person who speaks one of them, but who is not able to speak English, emigrates to this country, there is going to be a strong tendency to learn English rapidly. That is less true where an immigrant moves into a community in which almost everyone speaks his native language, and when we bring into court those immigrants who do not speak English, then there is going to have to be some kind of translation provided for them. Under this legislation, the court would have the discretion, it would seem

to me, to bring in someone who may not be as qualified as a translator in one of the more common tongues, but who could still do an adequate job of informing the party—plaintiff or defendant —of what was going on in the courtroom.

Senator BURDICK. Well, when we get the Administrative Office here, perhaps they can help us with some of the mechanical problems. By the way, you have done very well as an advocate developing a record, Senator.

Senator TUNNEY. Well, I want to thank you, Mr. Chairman, for your questions, and I want to thank you for your interest in this legislation.

Senator BURDICK. One more question.

Senator TUNNEY. Yes, sir.

Senator BURDICK. Would you have any objection to permitting the parties in a civil proceeding to waive their right to translation either before or during the trial? I am thinking in terms of the voir dire examination of jurors, of motions made in chambers, and especially of some minor procedural things that will not bear on the rights of the parties at all.

If the attorney explains to his non-English-speaking client what is going to happen, would you permit a waiver in some of these areas, to save the record, and help expedite the judicial process?

Senator TUNNEY. Well, the bill as it is presently drafted, requires that all proceedings are subject to translation. I think in the course of these hearings, Mr. Chairman, you may hear from qualified witnesses, more qualified than I, who will address the question of whether there should be some amendment which would—in the case of voir dire or other kinds of proceedings which might not directly relate to the interest of the parties—relax the requirements of the legislation.

I covered, in the legislation, all proceedings. If we are to step back from that, I think it should only be done after consideration of the most qualified opinions of people who have a long experience in the field. I know that Judge Manuel Real is going to be testifying, and I think that he would be the kind of person who could give a professional judgment that would be far better than mine.

I am willing to accept such an amendment, if the committee, in its discretion, feels that it would be best to do so.

Senator BURDICK. I was thinking of a very bulky record being made in a private case. That would certainly cause some delay, and it would run the cost up very, very high on matters that are relatively immaterial. If the parties would agree, and if the court would agree, to the elimination, I can see no harm done to either party.

Senator TUNNEY. Yes; I can see your point.

Senator BURDICK. Thank you, Senator.

Senator TUNNEY. Thank you, Mr. Chairman.

Senator BURDICK. I understand that one gentleman has limited time, so we will call him at this time.

The Honorable Miguel Hernandez, of San Antonio, Tex., whom I believe is going to be introduced by Mr. Manuel Fierro, executive director of Raza Association of Spanish Surnamed Americans, will be our next witness.

Mr. FIERRO. Mr. Chairman, my name is Manuel Fierro. I am the

executive director of Raza Association of Spanish Surnamed Americans. I have prepared a statement for you that I have submitted to the chief counsel for the committee. I would also like to introduce the Honorable Miguel Hernandez, who will make a presentation from his perspective. I will not read my statement but will let him present a statement for both of us.

Senator BURDICK. Your statement has been received for the record, Mr. Fierro, and I will place Judge Hernandez' statement in the record now as well.

PREPARED STATEMENT OF MANUEL D. FIERRO, EXECUTIVE DIRECTOR, RAZA ASSOCIATION OF SPANISH SURNAMED AMERICANS

Mr. Chairman, and members of the subcommittee, my name is Manuel D. Fierro. I am the executive director of Raza Association of Spanish Surnamed Americans (RASSA), a national non-partisan citizens' lobby for and of the Spanish speaking.

On behalf of our board of directors who represent a cross-section of the Spanish speaking people throughout the Nation, I wish to express their thanks as well as my own for allowing Rassa the opportunity to testify before you today concerning the need for the services and facilities which the Bilingual Courts Act of 1973 would provide.

I wish to express to you at the outset that I do not profess to have expertise as an officer of a court or an intricate knowledge of our judicial machinery which I'm sure many other witnesses who will testify here today will have. However, I appear for two purposes: One to briefly express the concern of the Spanish-speaking people who need the benefits which this bill would provide and second, to introduce the Honorable Miguel Hernandez who will also speak on behalf of Rassa in support of this bill. Judge Hernandez, unlike myself, will be able to provide you with a unique perspective of being one of only a few Spanish-speaking persons in this country whose legal experience stems from sitting behind the bench, presiding over a court rather than standing before it as a party or a witness.

In recent years we have witnessed a national effort to make the benefits of our legal system available to all Americans, whether rich or poor, old or young, black, white or brown. Although our efforts to achieve the goal of equal justice for all have been marked by some notable successes, there is still much to be accomplished. Among the most pressing problems confronting the movement for legal reform is the plight of the non-English speaking minorities of America.

The need for legislative reform in this area is not provincial. Substantial numbers of our citizenry are being denied access to the courtroom or when admitted, are not accorded their full rights as Americans. When seeking legal redress for wrongs inflicted upon them or when defending themselves in criminal or civil actions, the non-English speaking have had to participate in legal proceedings conducted in a language virtually alien to them.

It is not surprising then, that these minorities distrust America's institutions, including the courts, and view them as "Anglo" Bastions, protectors of the *Status Quo* and, therefore, largely insensitive to the needs of the poor and disadvantaged.

We submit that Senate Bill 1724 is needed to remedy the inequities presently suffered by many of the national origin minorities. This act can have a significant impact upon a vast number of persons residing in the United States.

Mr. Chairman and members of the committee, it is Rassa's opinion that persuasive constitutional arguments, primarily based on the fifth and sixth amendments, demand the enactment of bilingual court legislation which will provide the simultaneous translation of all courtroom proceedings. Other policy considerations; namely, fundamental fairness, the integrity of the factfinding process, and the potency of our adversary system of justice also mandate its enactment.

Let me make one other comment in conclusion. Access to the courtroom and full participation once in it, must be available to everyone. Clearly the branch of government charged by the constitution with the overriding responsibility for ensuring the rule of law must be free from the influence of prejudice and discrimination, no matter how subtle or unintentional it may be. Nothing less than the integrity of the judicial process is at stake.

I would like to now introduce Judge Hernandez who will provide some insight on the need for a bilingual court system.

PREPARED STATEMENT OF JUDGE MIGUEL HERNANDEZ, JR., RAZA ASSOCIATION OF SPANISH SURNAMED AMERICANS (RASSA)

Mr. Chairman and honorable members of the committee, my name is Miguel Hernandez, Jr. I am presently a justice of the peace of Bexar County in San Antonio, Texas. I filed for that office and was elected starting a four year term on January 1, 1971. Prior to that time I practiced law in Bexar County for three years.

I am honored and pleased to have the opportunity to testify on behalf of the Bilingual Courts Act of 1973 (S. 1724) along with Senator Tunney's amendments of September 28, 1973.

Since taking the post of J.P., I have become acutely aware of a need for a system of translation in our judicial system. In reference to the function of the justice court in Texas, we handle criminal and civil matters. The majority of cases in my court involve Mexican-Americans whose knowledge of the English language is highly limited and I have on many occasions found it necessary to conduct entire trials in Spanish where all concerned were more versed in Spanish than in English. We are fortunate in Texas to have this situation possible but it is an exception rather than the general rule.

While the jurisdiction of my court is rather limited ($200.00 in civil cases and fines under $200.00 in criminal cases—small misdemeanors) I handle the bulk of felony examining trials in the entire county (over 300 cases per year).

The need for competent translators in our courts is evident from all points of view. It is difficult for me to hear a case and keep the factual matters and legal questions in proper perspective when I'm also acting as a translator. The mental gymnastics one has to utilize are trying and affect the judgment of a case to the point that the ends of justice will not be met.

I can recall cases where I have been so keen on correcting the improper translation of an interpreter that I ask the translator to leave because the poor job he was doing taxed my functions as Judge to the point where both of us were being totally ineffective.

The fact that I am bilingual and understand the problems of translation, justice would not have been done to the parties because of the poor quality of the translation or the lack of translation.

No doubt you are all aware of the well worn phrase, "A lot is lost in the translation". When liberty or economic well being is on the line, this truism takes on an awesome perspective, and so demands the highest quality translation.

I have experienced the problem which face other judges in other courts, equal and superior to mine involving translation. It reaches carnivalesque proportions when a non-Spanish-speaking judge attempts to pass on the merits of a case where the judge and/or attorneys in the case speak only English and non-English dialogue is presented which is not understood by the court or where there is a translator and the quality of the translation is inconsistent or remote to the actual utterance of the witness.

The quality of interpreters found in San Antonio where most of the people speak some sort of Spanish is not consistent with a high enough standard to be of benefit to the courts.

I am happy to observe that this bill reaches out to fill a need long overdue and I am happy to be able to speak in its support. I wholeheartedly support this effort and hope you gentlement give it the consideration it deserves.

In further consideration of this bill, I observed that there is a section which can be amended on page 2 line 24 and page 3 lines 1 and 2 of the latest amendments dealing with section (2)(B)(b)". . . The judge shall also determine if the interest of justice . . . , or summary in nature, except that if a party requests a simultaneous translation, the court shall give the request special consideration."

The *Negron* case cited in Mr. Tunney's comments in the Congressional Record holds that summary type translation was not sufficient to grant a defendant his constitutional rights under the sixth amendment. There is one distinction and that is that the *Negron* case is a criminal case and this section the bill makes reference to civil actions.

On page 3 line 5 the bill states that ". . . The Judge . . . May order *all or part* of the non-English testimony and translation thereof to be electronically recorded . . ."

This section I question because it makes it discretionary with the court to allow all or part of the testimony to be translated, etc., as a defense counsel I

would want all the testimony that is translated to be recorded and I would like this portion to be mandatory, not discretionary because a defense counsel would have to rely on the translation at the trial and be able to go back and check to see if the matter considered was translated to his satisfaction. I believe it is obvious that it would hinder a defendant's case where the defense counsel would have to concern himself with the defense of the case and also be preoccupied with accuracy of the translation.

Another part of the bill which I would like to have considered for amendment would be on page 3 line 23 and 24 where reference is made to the court obtaining the services of an "otherwise" competent interpreter."

I would like to insert a section that would allow defense counsel or one of the litigants to challenge the competency of an interpreter other than a certified one.

This bill should also allow for more than one interpreter at any one time since several problems may arise which have not been considered. There is the problem of the physical limitation of the translator. In a long case it is difficult to expect the translator to go on hour after hour without relief. We must consider that for a translator to do an adequate job he must be totally alert and he is constantly under stress due to the nature of the job. Two or three hours at a time should be considered.

So far we have been considering the interpreter from the standpoint of having a non-English speaking witness testifying before the court and his words translated for the benefit of the court, plaintiff and/or jury. What of the case where you have a combination of a witness who is not English speaking and a defendant who also is not English speaking but where defense counsel does not speak the language of the non-English speaker and he has to serve as defense counsel that has been appointed but is unable to communicate with his client?

Here, one must by necessity travel with caution because the same translator, however able and objective he may try to be, if he serves to translate to the court, attorneys and jury, then he cannot in all honesty do justice to the defendant if he translates between the defendant and his attorney. Once the translator goes into the area of privileged communication between attorney and client, the translation of testimony given by witnesses, adverse or otherwise may be tainted by the knowledge the translator obtained from the defendant and the attorney.

In conclusion, I would like to observe that the very document which has been our guide to one of the most perfected legal systems in the world dictates that this bill be enacted into law. The requirements of the sixth amendment . . ."All prosecutions, the accused shall . . . be confronted with the witnesses against him . . . and shall have the assistance of counsel in his defense." Clearly dictates that mere physical confrontation is not enough—the defendant must also be able to understand clearly what the proceedings are all about; hence the need for the Bilingual Courts Act.

The fifth amendment to the U.S. Constitution provides . . . "No person shall . . . be deprived of life, liberty or property without due process of law." Here again due process goes to the understanding by the defendant of the proceedings so that he can prepare and assist in the defense of his case. Mere ignorance of the language should not be the determinant factor in cases where legal rights are concerned. The Honorable Floyd Haskell of the Senate ably recognized the issue of this case when he stated in the Congressional Record on May 7, 1973, "How shallow that right to justice becomes when a party before the court can only stand mute before it."

Thank you.

STATEMENT OF HON. MIGUEL HERNANDEZ, RAZA ASSOCIATION OF SPANISH-SURNAMED AMERICANS, ACCOMPANIED BY MANUEL FIERRO, EXECUTIVE DIRECTOR, RAZA ASSOCIATION OF SPANISH-SURNAMED AMERICANS

Mr. HERNANDEZ. Thank you, Mr. Chairman.

My name is Miguel Hernandez. I am a justice of the peace in the Justice Court in San Antonio, Texas, in Bexar County, Texas.

I have had this position for about 3 years. It's an elected position, and in the duties of office, I handle primarily matters of limited

jurisdiction. The bulk of my activity in the felony area is related to examining trials. This is the matter that I am concerned with this morning.

In the examining trial we have to establish whether or not there is probable cause, and we are often called upon to call interpreters to the court. The quality and degree of interpretation that we have at this level is far from acceptable.

I was very happy to see the introduction of this bill. I've studied both the bill and its amending language, and I hope someday, after this bill has been accepted and passed by the Federal authorities for Federal use, that we in the State courts will have something similar to it.

In the Southwest we have quite a large number of people who are Spanish speaking, and I can tell you from experience that had it not been for the fact that I am bilingual, it would have been extremely difficult to carry on the proceedings without adequate translation. Even though I am bilingual, having to decide the facts, to hear matters of evidence, to pass on the issues, and then make sure that the translation is accurate and correct taxes one's mind; it makes the actual carriage of justice somewhat difficult. That is one reason why I am happy to see that this bill is being brought here at this time.

Now, there are certain areas that are in the amendment—I allude to page 2, line 24—which have generated some discussion as to the type of translation to be allowed by this bill. In the area where the bill talks about translation being summary in nature, I noticed that it refers strictly to the civil action. I am most concerned with the kind of questions raised in the *Negron* case, which you, Mr. Chairman, have mentioned already.

It is very difficult—and you will hear similar testimony later from another man that is here—to adequately give summary of a translation of testimony that has gone on because of problems with the language.

Senator Tummy alluded to the fact that he would find it very difficult to be in Japan or Mexico or somewhere else where he did not speak the local language and to be unable to obtain a translation.

I had intended this morning to open my remarks totally in Spanish and give you the benefit of the same experience, but I understand we are pressed for time. Certainly, we do have some situations where all parties concerned are bilingual and we can carry on perfectly well in Spanish; that is often the situation in Puerto Rico. I must object to this provision of the bill allowing the translation to be summary in nature. I would heartily recommend a change to eliminate that part of it, based on the decision in the *Negron* case and the fact that when a defense counsel must be concerned with the translation—the proper translation—as well as carrying the burden of defense in the case, it is very difficult for him to concentrate on both the translation and the original plan of defense properly. Usually he has to rely on the translator, but if he cannot rely on the translator, then he cannot provide his client with the best defense.

Now, this bill, on page 3, line 5, talks about the court having the discretion to order all or part of the non-English testimony translated. I think that part should be reconsidered, and I think you should make it mandatory that all the translations be recorded for the purpose of assisting counsel, particularly in the defense of a criminal

case. There is also a provision on the same page in lines 23 and 24 for "an otherwise competent interpreter." I have studied the situation a little bit, and I am of the opinion that that part is fine.

The chairman stated earlier a case where, in an isolated situation involving a Yugoslav, we might not be able to find a translator who would come up to the standards. If you would add to that, giving counsel a right to challenge the competency of this person for subsequent use, such as appeals and that sort of thing. I think that——

Senator BURDICK. Well, if the official interpreter wasn't competent, wouldn't the parties have a right to challenge him, in any case?

Mr. HERNANDEZ. I would imagine that would be true. If you're taking a certified interpreter, you would have no cause to complain unless he were patently and grossly——

Senator BURDICK. Then the parties could object, too.

Mr. HERNANDEZ. That's very true; you could challenge him at the time.

Adding to my comments with respect to the entire bill, I am especially concerned that the quality of a translation be one of the primary concerns. The guidelines, as stated by Senator Tunney, would have to be set very rigidly. As I said, I am primarily knowledgeable about the situation in the southwest and I cannot speak for any place else, but I know one standard would have to be applied uniformly throughout the entire system.

Now, in the guidelines, we recognize that interpreters have, like everybody else, certain limitations. I am sure this young lady who is recording testimony couldn't sit here for 10 straight hours and do an adequate job. We wouldn't expect her to do that.

Therefore, this situation should be looked into for the purpose of guaranteeing that a translator would not be working so long that he would be doing an inadequate job. I would also like to allude to the Chairman's remarks about the cost factor. You mentioned that you would probably be faced with that question on the Senate floor. In a criminal case, where you have an indigent defendant who needs a translator, the cost of that help seems to me a small matter when compared to the work required of the trial court, and the appeals court, and perhaps ultimately the Supreme Court, in determining the extent of a violation of rights due to the fact that a translator was not available.

Senator BURDICK. My question was directed to the civil cases.

Mr. HERNANDEZ. Oh, the civil cases. I misunderstood. Senator. Well, to continue, there is a provision in the proposed bill, on page 5, lines 8 through 11, which gives the court discretion to direct fees and costs to the parties involved in the litigation. I do not think you are going to have too many indigent plaintiffs unless they are participants in a class action or in some other way are able to bear the expense. Of course, there are provisions for requesting that a bond be put up for the cost involved.

Senator BURDICK. Judge, I can easily see a personal injury case in the city of Fargo in which a person who cannot speak English would have a solid case of negligence.

You are going to have to recognize that case, are you not?

Mr. HERNANDEZ. Well, that may get into the dilatory proceedings as far as the attorney-client relationship, where you make case law

and the rest of it, but I don't think we should burden the courts with that kind of expense.

I think we must be careful in deciding when we should saddle the taxpayer with the costs that possibly should be borne by the litigants in civil cases.

I think the bulk of this should come in in the consideration of the criminal cases and the indigent people that have problems with our language.

Another area that I am concerned with—that this bill does not mention—that I might bring to your attention, is that in which there is a translator for the court to translate testimony of a witness who is an alien, or who may be hostile to the defendant in the criminal case, but no translator in the case where we have an indigent defendant being represented by appointed counsel who speaks only English while that defendant speaks only some foreign tongue. There is no way they can communicate.

I've had this in my court, and the court translator would be hard pressed, knowing the problems of translation, to translate privileged communications between the attorney and client, and then be objective enough to not taint the translation from the witness.

Now, I've been troubled with this.

Senator BURDICK. I would think the only answer in that case would be to resort to a battle of experts—to seek a consensus from at least two translators.

Mr. HERNANDEZ. That's very true. But you can see the problem is there, and your answer is how we've coped with it up to now, but only in a very limited way. It's been a problem. In the vernacular, it's been a hassle. I have had to throw inept translators out of the courtroom, because of the fact that they have failed to do a good job, and this further, in my mind, establishes a need for adequate translation.

Paraphrasing the comments made by one gentlemen—I believe it was Mr. Haskle: "How shallow the carriage of justice would be if the defendant could only stand before the court mute, unable to participate." I feel very strongly about that, and I think it is essential that your standards be mandatory standards.

If the fifth and sixth amendments, the due process clause, and the right to confrontation of witnesses are to be properly implemented, the defendant has to understand what is going on. I very urgently support this legislation. Hopefully, the bill will be enacted into law with deliberate speed.

Senator BURDICK. Thank you very much, Judge.

Mr. FIERRO. Mr. Chairman, I would also like to thank your chief counsel for his assistance in developing the amendments to the bill.

Senator BURDICK. I have only one observation and one question. My observation is that in absence of a bilingual judge, we need a bilingual law. My question requires a brief foundation.

You referred to the language of the act, page 2, lines 23 to the top of page 3:

> The judge shall also determine, in the interests of justice, whether the translation shall be simultaneous, consecutive, or summary in nature, except that if a party requests a simultaneous translation, the court shall give the request special consideration.

Now, in the case where there is a highly technical expert witness who testifies about metallurgy or about some kind of scientific process which is absolutely meaningless to the parties, do you not think it would be all right to give the judge the discretion to say whether or not that very technical testimony should be translated simultaneously?

Mr. HERNANDEZ. Now, in that area, of course, that goes without saying. The main objection which I had at the time I read this was that the section alluded to both criminal and civil actions, and now it talks only about civil cases. It has been amended, eliminating my original complaint.

Of course, you should have this discretion in civil cases.

Senator BURDICK. Then you have no objection to that?

Mr. HERNANDEZ. No, that should be within the court's discretion. I have no objection to it. We might even stipulate between the parties, that that part of it not be translated.

Senator BURDICK. Well, we have no intention of that discretion applying to the criminal cases.

Mr. HERNANDEZ. Very good. I think the *Negron* case takes that out of the purview of discretion.

Senator BURDICK. Thank you very much.

Our next witness is Judge Manuel Real of the U.S. District Court for the Central District of California.

Welcome to the committee, Judge.

Judge REAL. Thank you, Mr. Chairman. I do want to apologize for not having the prepared statement here. My secretary sent it last week.

Senator BURDICK. That won't be a problem, Judge; we'll simply place your prepared statement in the record at this point, after we have received it.

PREPARED STATEMENT OF TESTIMONY OF HON. MANUEL L. REAL, U.S. DISTRICT JUDGE, CENTRAL DISTRICT OF CALIFORNIA

Although what is now taught as a foreign language in the educational system of the United States was first heard on this continent probably as early as 1492[1] and certainly historically recordable in 1542 when Juan Rodriguez Cabrillo sailed into my native San Pedro, California, no official recognition of the need for the translation of Spanish—as well as other non-English languages—was given in our Federal Judiciary until 1966.

In 1966 Rule 28(b) of the Federal Rules of Criminal Procedure and Rule 43(f) of the Federal Rules of Civil Procedure gave Federal Judges the power to "appoint an interpreter of its own selection and may fix his reasonable compensation." I say officially because before the enactment of these particular rules, Federal courts were providing interpreters—furnished by the Justice Department—to aid in the prosecution of criminal cases, particularly in those districts in which much of the talent of government lawyers was directed to prosecution of narcotics and immigration offenses endemic to the United States-Mexico frontier.

If lack of official recognition can be attributed to anything, it might be said to be that no provision of the United States Constitution or its Amendments articulates a right to understand the proceedings in which one finds himself involved in terms of language.[2]

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[1] Almost three centuries before the creation of our Federal Court system by the Judiciary Act of 1789.

[2] No doubt a recognition most appropriately articulated by Lerner and Loews in their musical interpretation My Fair Lady when Professor Higgins bemoans the failure of the English to know their own language.

It was not until Judge John Bartels sitting in the Eastern District of New York and considering the habeas corpus petition of a New York state prisoner that any Federal judge[3] came to grips with the United States Constitutional proportions of the necessity of interpreters in court proceedings involving persons less than conversant in the English language. Although the facts, as set out by Judge Bartels in *United States of America, ex rel Rogelio Nieves Negron* v. *The State of New York*, in 310 F. Supp. 1304,[4] could, in the hindsight of his analysis allow no other conclusion, whether grounded in constitutional right to confrontation of witness or upon fundamental fairness required by due process that a defendant be "present" at his trial. The recognition of the compulsion upon government to furnish interpreters has had a less than easy acceptance.

The personal experience I have had as a lawyer and judge in the Central District of California and the Southern District of California, the District of Massachusetts and the District of Arizona, indicates to me the need for legislation affecting court interpreters and the availability of their services to non-English speaking litigants.

Because of their proximity to the border of a Spanish speaking nation, the Southern and Central District of California and the District of Arizona have always—within my experience—had available Spanish speaking interpreters in criminal cases when needed. We have had within these districts, however, a need to upgrade the quality and quantity of interpreters available to us. In the Central District, we have one available interpreter who is extremely competent—but her services are given to us at some considerable financial sacrifice. I'm sure almost every district engaging interpreters within areas that have metropolitan state courts meets the same problem. This condition creates difficulties to the administration of justice in two ways—1. delay of proceedings where our interpreter is otherwise engaged in another court, or 2. settling for an interpreter insufficiently qualified to completely give an accurate translation of the testimony.

In cases where two or more of the litigants are non-English speaking, one interpreter cannot possibly fulfill the obligations expressed in *Negron, supra*, particularly when the interpreter's services are required to translate the testimony of a non-English speaking *witness*. The vice is not only that pointed out by Judge Bartels in footnote 3 of this opinion in *Negron, supra*, of the non-English speaking litigants not being able to hear the witness speaking in his native language but, also, that even if he hears the testimony he cannot communicate with his attorney to provide effective cross-examination.

Any legislation which would improve the quality of justice must recognize that just saying it doesn't make it so. Federal courts in metropolitan communities must be able to compensate interpreters competitively with State courts and administrative tribunals to get and keep competency at the highest level available. To assure that, the legislature must provide first—the funds, and second—the compulsion that fees be set (by whatever administrator does the setting) at levels "at least as high as the courts of general jurisdiction in the community in which the District Court sits." Who, particularly in today's economy, would work for the District Court for $35.00 per day when right across the street they get $50.00 per day for the same services?

My experience in the District of Massachusetts was limited to one month just a year ago but the experience does not appear to be atypical. A Spanish speaking defendant appeared before me in a criminal case for setting for a trial date. No one advised me that the defendant did not speak English until I heard his lawyer audibly—in open court—tell him in Spanish of the date set for his trial. I then inquired whether the defendant understood English and the lawyer told me he did not, but that it wasn't that important because he translated for him as he had many times, not only in Federal courts, but also in States courts, acting as interpreter of the proceedings. Everybody in *Negron, supra*, must have thought the same things until Judge Bartels recognized the realities of justice when personnel liberty is at stake.

Let me now turn specifically to Senate Bill 1724, the Bilingual Courts Act. I do believe that the interpreter system now being employed in Federal courts is in need of some very serious study and reform. The Bilingual Courts Act is a step in that direction but falls short of the need and has some practical difficulties.

The original bill made no distinction between criminal and civil actions. Amendments referred September 28, 1973 somehow distinguish the need differently

[3] At least in the reported cases.
[4] Affirmed *United States, ex rel Negron* v. *State of New York* (2d Cir. 1970) 434 F. 2d 386.

when the proceeding is denominated civil or criminal. I have never been able to rationalize that justice somehow differs because I sit as a "civil" or "criminal" judge. Justice—to my mind—is the ultimate goal of the judicial process and every litigant, criminal or civil, is entitled to the same measure.

My concern about S.1724 is that this distinction does not recognize the realities of the judicial process. Habeas corpus and immigration matters for instance are denominated civil actions to which proposed section 1827(a)(2) would be applicable. Anyone who has ever sat—or been concerned—in habeas corpus and/or immigration matters coming before a United States District Court can realize that what is at stake is every bit as important to the personal liberty of an individual, as is the embezzlement of $10 from a bank, which is denominated by our federal statutes a federal criminal offense. Should a different standard of court proceeding be applied because of the accident of what we call the proceeding? The question answers itself.

The distinction that permits—in the context of a trial—consecutive or summary, as opposed to simultaneous, translation—is not practically workable. Trial requires only simultaneous translation, if effective presentation of testimony and representation (in cross-examination) is to be equalized between English and non-English speaking litigants. In the Central District of California it is difficult enough now to provide for daily transcripts when all of the testimony is in English. Superimpose on that procedure the need to find either dictators or transcribers or both, who can proficiently put to paper the non-English transcription and the delays that would occur are insurmountable in a District that includes the largest speaking Spanish population outside of Mexico City. In other areas of the country, the problem is, in modern language, a "no way" situation.

The cost of such translation is another factor mitigating against consecutive or summary translation. Translators, when available, in the Central District will not work for less than $10 per page and in most cases the going rate is from $15 to $40 per page, depending upon the nature of the subject matter.

If the object of S. 1724 is to provide an understanding—and consequent respect—of the judicial process, then it can be accomplished only by providing for simultaneous oral translation in both criminal and civil actions, financed as a court service, with judges given the discretion—and the duty—to provide reimbursement to the Treasury where the litigants have the capacity to pay the interpreter's fees and costs in *both* criminal and civil actions.

S. 1724 may not assume the proportions of a "giant step for humanity" but it is certainly a necessary reform to the needs of many Americans now sitting only in the "sombra" of our justice system.

STATEMENT OF HON. MANUEL REAL, JUDGE, U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES

Judge REAL. I just want to take a few moments. I think Senator Tunney has covered adequately the need for this legislation, and I agree that there is need for this legislation. I think the legislation falls a little bit short of the need, however.

I think one of the particular problems that I have faced as a trial judge sitting in several districts—not only in my own district of central California, but also in the Southern District of California and the districts of Arizona and Massachusetts—is that although we do have available to us qualified interpreters, we do not have enough qualified interpreters for the need that is present in those districts—particularly in the Spanish-speaking areas. In my district, for instance, we have the largest urban Spanish-speaking population in the Northern Hemisphere outside of Mexico City.

I think that I want to go to amendment 565 directly because there are some problems which are set forth by the amendments which we might profit from discussing. One is, at least from my view as a trial judge, that my job is to administer justice, and I do not think that it depends upon whether or not I sit as a criminal judge or as a civil

judge. I do not think that justice and the Constitution are necessarily inseparable, or that justice equals the Constitution or that the Constitution equals justice. I think the fact that people come into a courtroom that has been set up by the legislature for the purpose of determining their disputes requires that justice be done to all people, whether they be dominated a criminal defendant, a civil plaintiff, or a civil respondent. Therefore I go a lot further than Mr. Tunney did in suggesting that the distinction between the criminal and civil proceeding is unnecessary and perhaps works a disservice to our justice system.

I recognize that there is discretion in the trial judge to be able to provide interpreters in all cases, both civil and criminal. There is some suggestion that it might depend upon whether or not the litigant can pay for it, and that suggestion is one which I think is unnecessary, and certainly unjust, because the suggestion provides us sometimes with the reason for not doing it.

We have to recognize that judges, like all other people, are human beings and certainly are subject to the suggestion that maybe we can get by this time without doing it because it costs too much. I think that is one of the things that faults the bill and the amendments.

From a trial judge's standpoint, I think the provision for the consecutive or summary translation is unnecessary, and again one of those things that practicably is impossible, because I think in the effort to save costs in terms of consecutive or summary translation, you lose entirely the effect of a trial. The trial is an action which should proceed efficiently and progress as rapidly as possible.

Certainly with consecutive or summary translation that is not possible. I suggest to the committee that the cost of the delays in court time are better offset by the provisions for simultaneous translations in all cases, whether they be criminal or civil. You cannot try an involved case, particularly with a jury, over a period of 3 or 4 or 6 months—which might be required in a complicated case—on consecutive or summary translation.

The cost, I think, is another factor which is tremendous. A consecutive or summary translation would cost, in our district, somewhere from $10 a page to $35 or $40 a page depending upon the nature of the translation that is being done. You can imagine that if a court is fairly average, it will proceed at about 250 to 300 pages a day of transcript. The cost can be enormous.

I have one other problem. I feel that any legislation that is considered by the Congress in terms of a provision for interpreters should include a provision which will require the Administrative Office, either through its own offices or through the Federal Judicial Center, to improve the quality of intrepreters in general. I will say that we now have many qualified interpreters; do not misunderstand me, Mr. Chairman. But I have had the experience of having many unqualified interpreters in my courtroom. Some I have known about, but some I have not known about. I happen to know the Spanish language but I had, not too long ago, the need for an interpreter in the Thai language and could not tell whether he was qualified or not. This was a criminal case, and I assume that, because the defendant was a Thai, he must have understood some of the proceedings. I hope he understood all of them.

In a civil case not too long ago I needed a Korean interpreter, and

the problem of finding a Korean interpreter in Los Angeles was rather difficult. In that civil case, fortunately, the parties could pay for the interpreter, since they were the Korean Airlines and Douglas Aircraft. I think they had no problems in paying for the interpreter and had agreed that the interpreter was qualified.

But sometimes I wonder because, as in the Spanish language—and I am sure that in all languages—somebody will string out a lot of words, but the answer that will come from the interpreter is a "yes" or a "no," even though he knows you know there has been more phraseology involved.

I have had that experience with Spanish interpreters. Perhaps not linguistically, but at least procedurally, the purpose of translation or interpretation in court is to faithfully reproduce specific language and to maintain a sense of continuity of testimony. When an interpreter says "he" wants to know the purpose of a question of counsel, and then gives an answer, he is often not interpreting; he is not translating the language, he is giving his own interpretation of what counsel wants to know or what he thinks counsel wants to know.

I often had that experience when I was a young prosecutor—an Assistant U.S. Attorney prosecuting cases in San Diego. We had a very wonderful man. He was a good interpreter, but he had a tendency on occasion to interpret the way he wanted the case to go. I do not think that many of the people could understand the language well enough to understand what he was doing. But on occasion that is what would happen; he might suggest an answer that might be wanted of the witness. That's not an impossible situation in terms of interpreting a language, but I think that some provision should be made for the training and setting up of provisions for qualified interpreters, not only in the Spanish language but, as you suggested, Mr. Chairman, in all languages.

I do not think the number of people who speak the language equates with the justice that is required in either a criminal or a civil trial. I think that the legislation is necessary, and I think it does not go far enough.

Senator BURDICK. Thank you, Judge, for your contribution this morning. I presume that when you say it does not go far enough, you are referring to the fact that there is this distinction drawn between criminal and civil cases.

There is a distinction, though, is there not, Judge, when we permit six-man juries in civil cases but do not permit them in criminal cases?

Judge REAL. Well, we do not permit them in criminal cases because there happens to be a rule which prevents that, but the Supreme Court has indicated, certainly, in *Williams* v. *Florida*, that six-man juries in criminal cases are constitutional and proper and can effect justice. I think 3-man juries may effect justice in the same way as 6 or 12. I do not think that numbers are any magic formula for the dispensation of justice.

Senator BURDICK. I am just pointing out one distinction that exists today. There are other distinctions as well.

Judge REAL. Well, we have made distinctions and I think it is unfortunate, Mr. Chairman, that we have. I do not equate the quest for justice with whether I am sitting as a civil or criminal judge.

I think that every person that comes into my courtroom is entitled to the same justice. I do not think the criminal defendant is entitled to any more justice than the civil litigant.

Senator BURDICK. Well, I have no quarrel with that ideal, but there are cases—civil cases, I think, more often than criminal cases—in which you have certain testimonial matters on which both parties may be willing to waive the interpreter. If the court agrees, why could not that be done?

Judge REAL. Oh, I think that could be done, not only in civil cases, but also in criminal cases, Mr. Chairman. I do not think there is any distinction——

Senator BURDICK. Do you not think the standards should be a little higher in the criminal case?

Judge REAL. No, I do not think the standards should be any different. If the people agree that justice is being done, however it may be done, then I think that you have justice, at least justice in that case and justice for those individuals.

Senator BURDICK. You would permit a waiver in criminal cases, too?

Judge REAL. I sure would, if the people understandingly made the waiver. If they understood what they were doing and wished to do so, I do not find any quarrel with that problem.

Senator BURDICK. You may have added another factor to our legislative task.

Do you have any questions?

Mr. WESTPHAL. Yes, I have a few. Judge, you mentioned your hope that, if legislation such as this were enacted, it would carry with it the idea that the Administrative Office should conduct an affirmative program to improve the quality and competence of interpretation in our courts. In relation to that, I would point out that one purpose of the amendment is to vest considerable discretion in the Administrative Office to implement the intent of the legislation.

We already have in our laws a provision which specifies the Federal Judicial Center, which works closely with the Administrative Office, as the agency which is required to carry out educational programs of this type for various supporting personnel in the Federal court system. Do you see any reason why the Federal Judicial Center would not be able to conduct a program which, for example, would implement Mr. Marquez' code of ethics for interpreters? Assume such a code would require that the interpreter shall not slant, or give his own coloration to, any question or answer, and that he must give a verbatim translation of each question and answer. Do you not think that such a program could be conducted by existing units in the Judicial Center?

Judge REAL. Well, Mr. Westphal, I was not lobbying for work for the Administrative Office. I think it is better placed in the Federal Judicial Center, since the mission of the Federal Judicial Center is to educate those in our court system. These interpreters certainly would be part of our court system.

Mr. WESTPHAL. This legislation actually contemplates two different types of interpreters. We are going to need interpreters who are full-time or part-time employees of the judicial branch of Government, and we are also going to have a need for so-called free lance interpre-

ters, particularly in those tongues that we don't ordinarily run into in a particular district. We would then have to rely upon college or high school professors, or perhaps the tailor down the street who happens to be fluent in that language, if he is the best person that is available in that area.

So there will be a need for the Administrative Officer to establish certain standards of performance for interpreters of both types, won't there?

Judge REAL. Oh, yes, Mr. Westphal. There are some things that suggest themselves immediately. There are areas in which the recognition is almost absolute.

That is certainly true in Los Angels, San Diego, Tuscon, or Brownsville, where the Spanish language is almost a second language to the people; you can provide that kind of interpretation without any problem.

In regard to other, more exotic, languages, interpreters may be difficult to find, but with today's transportation, there is available a consulate within the reach of almost any district in the United States within hours, if not minutes.

Mr. WESTPHAL. Of course, you recognize that these details of improving the quality or the competence of interpreters are matters upon which it is very difficult to legislate. It would be easier to handle it by administrative standards and regulations.

Judge REAL. Oh, yes, I recognize that. My suggestion, Mr. Westphal, was not that we ought to legislatively mandate the actual standards themselves, but that we require the development of some kind of program, because, at least in my experience, where a program is discretionary, both the Federal Judicial Center and the Administrative Office have run into problems in terms of appropriations. Where a program is mandatory, there has not seemed to be the same problem.

Mr. WESTPHAL. I would like to examine one other point you raised. You cannot see in your analysis of this bill any reason why there should be descretion given to a judge in a civil case as to whether translation shall be simultaneous, consecutive, or summary in nature. You suggested that the bill should be amended to both erase that discretion between civil and criminal cases and require an oral simultaneous translation in all cases, whether civil or criminal?

Judge REAL. That is right, Mr. Westphal. I am sure you can understand that, in a trial situation, a lawyer who is attempting direct examination —or more particularly, cross-examination, because I think that is where it comes in more often—should have the witness' answers available to him in a tongue which he understands, so that he can put questions to the witness without having to wait a day or two.

It has been suggested, at least by our interpreter, that in the translation of transcripts, you need, assuming that you have a daily transcript in a case, at least a day to get the transcript transcribed. To have that translated often adds another day, so that you are delaying cross-examination 1 or 2 days if the best of conditions are available.

Mr. WESTPHAL. I understand, but maybe if I give an example of the type of problem that I ran into in my own experience, it will point out why I think there is a need to vest in the trial judge in civil cases a discretion or power to control the type of translation that is going to be afforded on a particular part of a case.

I had the experience, once, of trying a civil case involving highly complex matters relating to the construction of a building. We got into metallurgical studies and structural engineering concepts. Much of the nine-week trial was a battle over the coefficients of expansion of various metals and other materials when employed in the construction of this building. During this nine-week trial, there were occasions where I had to cross-examine the other party's expert witness, who had in his testimony adopted a long formula for computing the amount of expansion in a particular structural member.

He was most stubborn about it, and I was kind of stubborn myself; as a result we had about a full day of cross-examination where the witness and I were at a blackboard that was set up in the courtroom in front of the jury. I was writing formulas on the blackboard and carrying out the mathematics simply to drive home the fact that he was in error, depending on whether he used one formula or another.

Now, that particular type of situation could occur in all types of products-liability cases. If we have a non-English-speaking person who is plaintiff in a products liability case, he will testify to his purchase of the product, to the fact that the day after he bought it, it exploded and he was injured, and to the extent of his injuries. His doctor will testify to his treatment. Then we will move into the trial of what was wrong with the product.

Now, in that situation, we will probably have highly technical testimony concerning the design or the composition of that product.

If you assume that this non-English-speaking plaintiff is not himself a metallurgist or a chemist and that he can contribute nothing to his lawyer's cross-examination of the witnesses in that part of the case, is not that a situation where you, as the trial judge, might well feel that, instead of affording to this non-English-speaking plaintiff a word-by-word question and answer translation of that part of the case, that you could instead just direct that the interpreter give him a summary of what that testimony was about? I mean, I think he should understand, if he is the plaintiff in the case, that the testimony deals with the design of this product that he had purchased, but I see no need why he should have knowledge of every technical aspect of that testimony.

What is your reaction to that situation?

Judge Real. Well, you are positing, I take it, a situation in which you have a non-English-speaking plaintiff or defendant. Depending upon what is involved, I think probably that that is one of the situations in which it might not be necessary to do that.

The testimony that we are talking about, when we are talking about simultaneous translation, is—and I think the act must direct itself to this—that testimony which is not understood, either by the jury or by a defendant who may be speaking a language different from the witness.

In the case of the jury and a foreign-speaking witness, the jury is entitled to know the ramifications of all intonations and all of the niceties of what you are attempting to do by cross-examination, such as showing an error in the testimony with reference to the defendant or plaintiff. The problem is that although there are certainly circumstances in which simultaneous translation might not be necessary, those arise case by case, usually in a very specialized kind of case. You are

not talking about the general case that comes into a district court in which there are foreign-speaking parties. In such a case it is more often foreign-speaking witnesses who are involved, and for them the translation must be provided simultaneously, so that the defendant or the plaintiff can have the advantage of it at the time.

This bill does not distinguish, so that, under this bill a judge could—in what I suggest is a must situation for simultaneous translation—provide a summary or a consecutive translation of the testimony of the witness. That certainly is not the intent of the bill and certainly is a construction which can be given to the bill as it now stands. Simultaneous translation of testimony that goes on in court could be avoided due to the possibility of that construction.

Mr. WESTPHAL. Well, the theory of the printed amendment, No. 565, as I understand it, is to cover the situations where you need interpreters both in proceedings involving a non-English-speaking party, whether plaintiff or defendant, and in proceedings involving non-English-speaking witnesses.

The thrusts of the amendment is to cover both situations, and when you have a criminal case with a non-English speaking defendent, you are going to have simultaneous translation throughout all aspects of his criminal trial. I take it you agree with that purpose of the bill?

Judge REAL. Yes, but we never know what a party can contribute and translation has great problems. I will give you a simple example of a translation that could be a terrible problem. It is not a technical situation. The verb "molester" means to bother.

If an interpreter interprets that as molest, you can see what the English connotation of that is and what can happen not only in non-technical cases such as the one I have just posited, but also in very technical cases. Certainly if a party is involved, he must have some contribution to make to the testimony.

If he is a party then I take it, in the case that you were talking about, he was either a builder or the man who was having the building built, who had engineers available to him to make that determination.

Mr. WESTPHAL. Well, you mentioned that some of the problems that we have to deal with here can only be handled on a case-by-case basis. I think that is the obvious intent of section 2(a) of the act; in civil cases, the type of translation that is required in order to do justice to the non-English speaking party or, in the case of a witness who does not speak English, in order to get his testimony across to the jury, is a matter within the discretion of the trial judge.

Now, on a case-by-case basis, that determination should be made by the exercise of sound discretion by the trial judge. Don't you agree?

Judge REAL. I agree with your statement. I do not agree with the legislation. I think the legislation just turns the table around. The legislation puts each case on a case-by-case basis.

What you are suggesting is that there may be cases which may not come within the legislation, but those can certainly be handled with the discretion the trial judge has in every trial, whether it be a criminal trial or a civil trial, to undertake the proceedings which will best effect justice, whether there is legislation for it or not. If a trial judge has that discretion, just generally, as a trial judge, then if something is required in order to provide justice or can be handled in a different

way—for example, where the parties agree that it can be handled by translation which will be consecutive or summary—then the trial judge can see that it is done. The legislation suggests that every case should be taken on a case-by-case basis. I am suggesting to you that the risks of increased or prolonged civil cases in the Federal district courts do not require that kind of suggestion because that suggestion carries the possibility that there will be a requirement that there be consecutive or summary translation, rather than a simultaneous, oral translation.

Mr. WESTPHAL. Well, that, of course, is going to depend upon the sensitivity of the trial judge and how he perceives the phrase "interest of justice" that is used in this statute. Isn't that what it boils down to?

Judge REAL. That probably is true, Mr. Westphal. And, being one, I have enough confidence in the trial judges, at least the district court judges of the United States, to do that. Sometimes the suggestions, however, have fallen short of that. The title civil is something of a misnomer, however, because habeas corpus, for instance, is a civil case. Immigration cases are civil cases, but are certainly almost as important as any criminal case that ever comes before us.

To the litigants, a habeas corpus case started as a criminal case, but the proceeding in the district court is a civil proceeding. An immigration proceeding in which there may be a denial of citizenship or a deportation comes to us as a civil proceeding. In those situations, certainly, the language should be simultaneously translated. Judge Bartel recognized that in *Negron*, and I suggest that the trial court was the one who suggested the constitutional proportions of such translation—not the court of appeals, but the trial court. Judge Bartel has recognized that simultaneous translation was the only way to proceed in that case, which he effectively did in his hearing in a civil action, in the habeas corpus aspect of it.

Mr. WESTPHAL. I think, after this exchange, that you and I do not disagree on the goals to be attained by this legislation. We do agree, basically, on the means by which we are going to achieve the goals.

The only area where we might disagree is on an interpretation of the particular language that is employed in this printed amendment 565. To the extent that we have had this exchange we have added to the legislative history of that language and perhaps may have prompted some further markup or perfection of the bill by the subcommittee when it finally deliberates on this matter.

That is all the questions I have.

Senator BURDICK. Well, I have a question for the judge.

How long have you been on the bench, Judge?

Judge REAL. Well, Senator Burdick, I appeared in this room before you, almost 7 years ago to the day.

Senator BURDICK. In those 7 years, have you had any experiences that would lead you to believe that the court rules were not adequate to take care of matters for interpreters?

Judge REAL. I have not had any experience that would lead me to the conclusion that the court rules, as they presently stand, have not been used adequately to provide interpreters for anybody who needed them, Senator. But in my experience, I think there have been some problems, and I might give you an example.

I sat in the district of Massachusetts last year, helping out up there and was setting a case for trial. I finished setting the case for trial and the lawyer started to speak in Spanish audibly to his client. Nobody had told me the client could not speak English and I asked the lawyer whether or not his client spoke English and he said no, he did not, but it did not make any difference because he interpreted for his client.

That was not an atypical situation, Senator. He volunteered more than I asked him. I thought he had acted as interpreter not only in this kind of a situation, where the importance was not a question of a miscarriage of justice, but had acted as interpreter for his clients in litigation, both civil and criminal.

I cannot imagine anything that would suggest more the possibility that there could be a terrible miscarriage of justice than that situation.

Senator BURDICK. Judge, I just wanted to know if, in these past 7 years, you had had this law instead of the court rules, would you have dispensed any better justice?

Judge REAL. Well, I think if we have legislation, and this bill suggests such legislation, that would improve the quality of the interpreters who are available to us, that yes, we could do better justice. I do not think we have failed to dispense justice in my district, because, like many other districts in the Southwest, we have a peculiar situation. We are attuned to this kind of thing because the second language in Los Angeles is Spanish, so that Spanish interpreters by and large, whether they do it inadequately or adequately, will in my opinion, do what we have considered to be justice.

But if you are talking about the quest for pure justice, then I think that the legislation is necessary. It certainly is necessary in those districts which are not attuned to translation problems. The nonborder districts, I think, probably need the legislation much more than we do.

Senator BURDICK. In other words, in your experience, you cannot recall any case where justice was miscarried because of a lack of this legislation.

Judge REAL. In the Spanish language, Senator Burdick, I can say I have not had those experiences; in other languages, I do not know.

Senator BURDICK. For the record, Judge, what answer would you give to the basic question we are going to be asked on the floor: why do we need this legislation?

Judge REAL. Well, I think we need the law for two reasons.

It points up the problem of the requirement for more adequate translation and suggests that need to those judges who may be just monolingual, and who may not understand totally what is going on in the courtroom. It points out that we have to have an interpreter in every case, and that we cannot have this suggestion that lawyers can interpret for their clients, or that somebody whom they bring in, who is not qualified, or who may have a particular bias in the case one way or the other, can do the interpreting, and have it get by the judge.

Now, in those cases, we never know. It is like asking a person who has committed murder whether or not he ever considered the death penalty. It is that type of question which is never answerable.

Senator BURDICK. Thank you, Judge.

Judge REAL. Thank you.

Senator BURDICK. Our next witness is Mr. Louis Marquez, chief interpreter, Western District of Texas, San Antonio. Mr. Marquez, your prepared statement, containing your proposed code of ethics, will now be entered in the record.

PREPARED STATEMENT OF LOUIS F. MARQUEZ, OFFICIAL COURT INTERPRETER, WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION

INTRODUCTION AND PERSONAL BACKGROUND OF MR. MARQUEZ

Mr. Chairman and Members of the committee, to begin with, I would like first of all, to thank Senator Tunney and you for inviting me to testify in these hearings concerning the Bilingual Courts Act. I feel deeply honored for the opportunity and rare privilege of coming here to discuss a matter of national importance with such distinguished and honorable men as you. But, before I continue, I would like to tell you something about myself and my experience in the field of interpreting for the non-English speakers so that you can have a better idea of my general background.

In November 1971, I was appointed to the position of official court interpreter for the San Antonio Division, Western District of Texas, by Chief Judge Adrian A. Spears. This is a full-time job where, in addition to serving in Judge Spears' court, I also serve two other federal judges and two U.S. magistrates. At this time, I am the only full-time interpreter in this division.

Although I have been working for the U.S. Courts for only two years, I have been a professional interpreter-translator for nineteen. In July of 1971, after 22 years of military service, I retired from the USAF as a Senior Master Sergeant. Nine of these 22 years included working as a Spanish classroom interpreter for Latin American officers and airmen who were attending USAF technical schools in the fields of aviation, electronics, armament systems, munitions, etc. In addition, I was supervisor for extra curriculum activities and social director for these students and many others from all over the world. My last eight years in the Air Force were in the area of Human Intelligence as a language superintendent.

My educational background includes ten years of schooling in the Republic of Mexico where I graduated from a private school of business administration in the city of Monterrey. While in the Air Force, I took many technical and professional courses through the Extension Course Institute, and some of my travels and assignments were in Latin America. Last but not least, was my graduation from the University of Miami, where I obtained a Bachelor of Arts degree from the Department of Foreign Languages where I majored in Spanish. This, gentlemen, gives you a brief and general review of my education and experience background in this field.

SUPPORT OF BILINGUAL COURTS ACT

Regarding the Bilingual Courts Act introduced by Senator Tunney, I would like to make the following statements in favor of this bill.

As one, who at one time did not speak the English language, and because of this handicap was unable to communicate with members of the English speaking community where I lived, or to fully participate in many of their activities, I can easily understand the problems of the non-English speaking people in our country and to sympathize with their plight.

The apprehensions and frustrations brought about by the language barrier are awful feelings to bear during the normal course of living; but when a non-English speaking person is faced with the possibility of losing his freedom or his property, and is not able to effectively defend himself for not knowing the English language, his anguish becomes such that he could even lose his sanity to say the least.

We all know that for years, members of minority groups have suffered great injustices upon their person and property, not only from those who have taken it upon themselves, for reasons of their own, to exploit and mistreat these people, but also from the inequities of our own judicial system, when courts throughout the land and at every level have failed to fully protect the constitutional rights of these individuals. By their failure to appoint qualified interpreters to assist the non-English speakers, they have made the right to have effective

counsel and the right to confrontation totally meaningless to them. In addition, due to the failure of the courts to guarantee these rights, in both criminal and civil actions, many of these people have lost faith in the American judicial system.

Only through the effective use of a competent interpreter can the non-English speaker properly assist his counsel in preparing his defense, or can the Court or the Jury learn the true facts of the case from the point of view of the defendant, plaintiff or witness.

As we know, limited use of interpreter services in some courts has been in practice for some time, but this is still inadequate, as is the legislation that up to now provides for it. I believe that the Bilingual Courts Act is the first comprehensive bill that has taken a closer look to the very important service that the interpreters render to the non-English speaker and to the Court. Competent interpreters provide that vitally important element so absolutely necessary to learn the truth and to give justice where justice is due.,

The enactment of the Bilingual Courts Act, as we know, will favorably affect thousands of people in this country by allowing them to fully participate in our federal judicial system, and to enjoy the same constitutional rights that other Americans have been enjoying for years. This Bill, when it becomes Law, will attempt to remedy some of the past and present inequities of our courts and will return to the American people the confidence that some of them might have lost in what is still the greatest judicial system in the world.

WHO ARE THE USERS OF INTERPRETER?

Regarding this very important question gentlemen, I can only speak for the San Antonio Division where I am assigned. In this part of the country, the majority of the non-English speakers who require interpreters are those whose native tongue is Spanish. Of these, most are Mexican nationals. The others are Spanish-speaking legal U.S. residents and United States citizens who have limited knowledge of the English language. Occasionally, interpreters for persons who are other than those of Spanish language background have been provided when needed. In these cases, the interpreters have been obtained from the local universities or from the nearby Language School Institute at Lackland Air Force Base.

In the case of the Mexican nationals, most of them are brought to court for violations of U.S. Immigration laws, and frequently too, as material witnesses in cases against alien smugglers or transporters. Other cases where I am often needed in, are those involving illegal drug traffic. In addition, my services are occasionally requested by other federal agencies that need interpreter assistance, including the U.S. Attorney's Office for the interrogation of Spanish-speaking witnesses appearing before Grand Juries.

The request for an interpreter is usually initiated by either the defendant, the plaintiff or their attorneys. However, at times I am also called by the Court himself whenever there is the slightest doubt in his mind as to the ability of the individual to speak or comprehend the English language. My services normally begin at the moment the person is first brought before the magistrate for arraignment. After this initial step, I normally keep track of these cases and follow them through all the other legal proceedings which include rearraignment before the judge having jurisdiction of the case, the different pre-trial motions, the trial itself and finally, the sentencing of the individual. Some of these people, as you can see, require my services in more than one occasion, ranging in time from a short court appearance to full-day trial sessions, often times of several days duration.

From time to time a non-English speaking defendant gets a non-Spanish speaking attorney appointed to represent him in court. This situation of course, presents the problem of improper communication between the attorney and his client. In cases like this, I occasionally find myself in a jail cell helping the attorney interview his client, but in most cases, these interviews are conducted in a conference or witness room.

In this division I am the only full-time interpreter available to the courts and because of this, I once in a while have conflicts regarding instances when my services are needed in more than one court at the same time. These conflicts have not been a major problem as far as my services are concerned, because the judges are very understanding and know that I cannot be in two places at the same time.

What usually happens when these cases come up, is that the judges inform the attorneys about the situation and then request that those individuals needing my services be called to the witness stand either out of order, or at a time when I am available to the court. I do however, have written instructions by the Chief Judge indicating to me what cases and what courts have priority over my services. The only serious problem I can foresee is a situation where I am needed for the entire proceedings by different parties in different courts. In this case, the only reasonable solution is to hire a part-time interpreter to handle one of the cases.

STATISTICS

The following statistics are based on my day-to-day record of court appearances that I have kept since the first day I started to work for the Court. I have never been asked to keep any type of accounting on the number of individuals I have assisted, their individual nationality or any other facts concerning their cases. These are my own figures and facts recorded for my personal information.

Period	Number of instances	Individuals
Nov. 1, 1971 to Dec. 31, 1971 (2 mo)	40	36
Jan. 1, 1972 to Dec. 31, 1972 (12 mo)	542	503
Jan. 1, 1973 to Sept. 28, 1973 (9 mo)	588	538
Total	1,170	1,077

The above figure of 1,077 different individuals (some of who required interpreting services in more than one occasion, involving short court appearances to full-day trials) including the following nationalities and categories:

Mexican nationals	911
Argentine	1
Colombians	2
Chileans	2
Dominicans	3
Ecuadorian	1
Portorricans	4
U.S. citizens	115
Legal residents	27
Witnesses	11
Different individuals	1,077

STANDARDIZATION OF DUTIES AND RESPONSIBILITIES OF COURTROOM INTERPRETERS

I realize that every judge in the country has his own particular style of conducting the business of his court, and that the officers operating therein, must accordingly, conform to his desires in the manner in which court procedures are to be conducted. Therefore, to establish rigid rules for courtroom interpreters to follow in every court would not be practical or proper, as some of the rules could run contrary to the wishes and desires of the court. However, for the sake of some sort of standardization of the duties and responsibilities of interpreters, a set of rules or general instructions to guide him in the performance of his duties should be adopted nation wide. This would be in addition to any specific directions he may get from the particular court he serves.

The functions of the interpreters should, even when operating within certain prescribed rules set by the court, be flexible enough to allow him to perform his duties as required and at the same time conform to the wishes of the court he is in. The actual performance of the interpreter will hence, depend upon the wishes of the court and the situation at hand. He should always be prepared to meet any unexpected change in procedures which at times calls for using any of several different techniques of interpreting.

When I was first appointed to the position of court interpreter, there were no written instructions to advise me on the duties and responsibilities of this office, except for some oral directions from the court and some general written instruc-

tions of what would be expected of me. Because of this void of written instructions or guidelines as to the manner in which interpreters must act, proceed and carry out their appointed duties, I began to write notes on my good and bad experiences in the courtroom, and as a result of many months of observation and preparation, I developed a Code of Ethics for Courtroom Interpreters. I do not believe that the code is yet complete, for I have revised it several times, and I am sure that other interpreters could add some new ideas from time to time. I do however, believe that it is an initial effort to determine what are some of the specific duties and responsibilities that interpreters could follow in carrying out their assignments.

After reading my code of ethics, Mr. Sergio Linietsky, an interpreter from the Courts of Common Pleas in Philadelphia, wrote and said, "it is not only an inspiration for safekeeping our high standards of performance, but it also presents an excellent set of professional guidelines". I would like to recommend that this code of ethics be adopted and incorporated into future written instructions and guidelines for this position.

UNITED STATES COURTS, CODE OF ETHICS FOR COURTROOM INTERPRETERS

On my word of honor, as official court interpreter and officer of the court, I promise to be true to the Code of Ethics of my profession, and in serving my country and my fellowmen, I will faithfully discharge the following duties:

I will interpret accurately and faithfully to the best of my ability. In keeping with this promise, I will convey the true meaning of the words, phrases and statement of the speaker, and I will pay special attention to variations of the language I am interpreting for due to educational, cultural and regional differences.

I will never interject my own words, phrases or views, and if the need arises to paraphrase any statement in order to convey the true meaning, I will do so only after permission has been granted by the Court.

I will familiarize myself with the case as must as possible prior to going into the courtroom. I will inquire whether or not the language in the case will involve technical terminology or a particular vernacular that would require special preparation. The least I will do, is to study the indictment or charges in the case to avoid possible misinterpretations, delays or any other problems during formal court proceedings.

I will speak in a clear, firm and well modulated voice, and when using inflections, I will be particularly careful not to allow them to be interpreted as partiality. I will employ the techniques of interpreting best suited to the situation at hand, or according to the needs or wishes of those utilizing my services.

I will maintain an impartial attitude during the course of interpreting and will guard any confidential information entrusted to me. I will not, under any circumstances discuss the testimony or merits of the case with anyone, particularly with those I interpret for. I will instruct them to also follow this rule.

I will explain to those utilizing my services that I am an impartial officer of the court, serving both, the court and the individuals involved in the case. I will also inquire whether the person I am interperting for has any physical or psychological problems that could interfere with the effectiveness of my services, and if so, I will make adjustments accordingly.

I will adopt a conservative manner of dress and conduct in upholding the dignity of the Court and of my profession, particularly when attention is upon me in the courtroom. I will also thoroughly familiarize myself with all the local court rules and abide by them.

I will constantly strive to improve my knowledge of legal terminology in English and the language I interpret for and to become familiar with general courtroom procedures, so that in addition to interpreting for the non-English speaker, I may, when time and conditions permit, explain to him what is occurring in the courtroom.

I will be personally responsible for having the proper dictionaries and other linguistic materials readily available for consultation when needed.

CERTIFICATION OF INTERPRETERS

In regards to assigning the additional duty of prescribing, determining and certifying the linguistic qualifications of interpreters to the Administrative Office of the U.S. Courts, I would like to make the following remarks:

To begin with, I strongly support the idea of certifying all courtroom interpreters for several reasons. In the first place, by certifying only those who qualify for this position by virtue of their education, experience and personal background, the provision for official recognition by competent authority will eventually eliminate the common complaint that often times, interpreters (especially in the lower courts) are untrained or unqualified to perform their duties.

It stands to reason to say, that by establishing a certification board to review, test and approve the qualifications of only those applicants who qualify for this sensitive position, the courts, as well as the general public will greatly benefit by this action.

I know that the Administrative Office will not have an easy job in establishing and implementing this task, especially if provisions are made to include some sort of training program or seminars to upgrade the proficiency level of present or future interpreters, or to train and qualify bilingual persons wishnig to become interpreters.

The complexities and ramifications of this subject were recently brought to light at the Conference for Interpreter Certification held in Los Angeles on 21–22 June of this year. Mr. Peter S. Lopez, a staff consultant for The Institute for Court Management was in charge of this conference, and it is my understanding that he will be addressing the committee on this subject in much more detail.

I do however, want to stress, that in my opinion, certification, in addition to ensuring that only fully qualified interpreters are permitted to come into our courtrooms, will also enhance the status of interpreters, who for so long, have been relegated to a position of minor importance in the courts of this nation.

EQUIPMENT AND FACILITIES FOR TRANSLATIONS AND RECORDINGS TRANSLATIONS

At the time this bill was being drafted, one of the proposals to provide the non-English speaker with simultaneous interpretation of courtroom proceedings, was the construction of a United Nations type, sound-proof booth in at least one courtrom in each federal district. I did not agree with these plans, and in a letter to Mr. Jesus Melendez, former legislative assistant to Senator Tunney, I strongly objected to this idea for several reasons. I thought for instance, that the booth would surely detract from the decorum of the courtroom and that technical problems could develop to make its operation inpractical, not to mention the thousands of dollars that each one would cost.

As an alternate plan to the "booth" proposal, I told Mr. Melendez that we, in the San Antonio Division had an answer to this that was not only practical, but relatively inexpensive. I am referring to the portable interpreter's kit that I have been usinng since the early part of this year. Evidently, my letter must have had some effect, because Mr. Melendez called me to say that the language of the bill had been changed to now read, that each district should have the equipment and facilities to provide simultaneous translation.

This interpreter's kit, which was proven to be very effective in providing simultaneous interpretation to one, or multiple defendants, is relatively simple. It consists mainly of an amplifier, a miniature microphone that I can either hold in my hand or place on a headband for comfort, and four earphones with individual volume controls to fit the needs of the individuals using them. A 20 foot micriphone cable permits me to remain at a distance from the defendants, but close enough to come to their assistance in case they wish to confer with their attorneys. The beauty of this unit is that in addition to being an effective tool for translation, it is so compact that it fits into a regular size government-issued briefcase that I can take to any courtroom anywhere, and it only cost us $192.85. I brought it along with me and I will be showing it to you in a few minutes.

Recordings

Regarding the requirement to make audio recordings of the translations made by the interpreter, I agree that some sort of record should be made of these proceedings, in addition to the stenographic notes of the court reporter. I also agree with the amendment to the bill requiring that recording a part or all of the proceedings, should be left to the discretion of the Court.

I personally support the idea of recording only that part of the proceedings that is translated when either the defendant, the plaintiff or the witness is testifying under oath or on the witness stand. This, in my opinion, is the most important and sensitive part of the bilingual proceedings, and there should be a

back-up record to verify not only the notes of the reporter, but also the accuracy of the translations if need be. After all, interpreters are not infallable, especially when they must take into consideration the complexities of a language due to the educational, cultural and regional background of the speaker, to say nothing of the special vernacular spoken by certain individuals belonging to subcultural groups, such as those dealing in illegal drug traffic.

To record short proceedings, such as arraignments or sentencings poses no problems. Neither would recordings of proceedings taking place at the witness stand if the interpreter is provided with a small portable cassette recorder that he could operate himself. However, to record the entire proceeding of a lengthy trial, would require extensive and sophisticated equipment that would have to record on several tracks in order to pickup what is said from the bench, the witness stand, the prosecution, the defense and the interpreter. In addition, qualified personnel would have to operate this equipment and held responsible for its results.

As I stated before, I am in favor of recording only that part of the bilingual proceedings as described above, however, I believe that the final decision on this should be left to the discretion of the Court.

INTERPRETER'S SALARY—A KEY ISSUE

The issue of proper remuneration for courtroom interpreters is in my estimation a key factor in this bill that should not be taken lightly or overlooked by the Sub-Committee. I would therefore, like to take this opportunity to emphasize this point if the courts are to have the services of competent, professional interpreters now and in the future.

At the present time, full-time interpreters are hired in the grade of JSP-5 and are limited to grade JSP-6, with an annual salary of $8,752.00 at the entrance level, with step increases the same as for regular civil employes (see Federal Pay Chart). The problem with this classification is that it is a closed-grade position, with no way whatsoever of getting a grade promotion as other court employees can.

My own experiences in this area has been that the Administrative Office has turned down all requests for grade promotion that Judge Spears has ever written to them about. According to the Administrative Office, they cannot increase the present grade authorization for this position without action by the Judicial Conference. I believe that the only hope that the interpreters have for a promotion is now in your hands, and I am sure that I am not only speaking for myself, but also for everyone of the other court interpreters.

This sad situation is without a doubt, a gross injustice for those of us who want to make interpreting in the courts a professional career, and I am of the opinion that this situation will be a potential problem to the future recruitment and retainment of qualified individuals for this job. As I have pointed out to Senator Tunney, his staff and to others, some of the individuals to whom I have spoken about a possible career as a court interpreter, have told me that they could not consider applying for such a position as long as the grade classification remained as low as it presently is. In their opinion, and I share the same, the present salary is completely unrealistic from the point of view of professional remuneration and out-of-step with today's high cost of living. This very discouraging situation, will, I am sure, be a stumbling block to the future hiring of qualified people for these jobs.

When seeking justice for the non-English speakers, gentlemen, also seek justice for the interpreters, who in the end will be the ones to carry out the mission of this bill. Do not let this opportunity pass to demand that the best interpreters be sought out and hired, but also see to it that they are properly paid for their services as other officers of the court are. If you fail to do this, your bill will be like providing for a well equipped army, but with no soldiers to man the guns. And as a result of this oversight, you will have instead, mediocrity in the interpreters ranks, which in turn will lead to needless, costly and time-consuming legal problems. In closing , I once more ask that you give the salary issue very careful consideration and insure that positive steps are taken to improve this sad situation.

Well, gentlemen, that concludes by prepared statement. However, I would like to say just a few more words, some personal thoughts about all this. I want to thank all of you for your kind attention and consideration. I also want to thank Chief Judge Adrian A. Spears for permitting me to come here to testify, and for all

that he has done in supporting the concepts of the bill and the work that I am doing. He is undoubtedly, one federal judge who is truly sensitive and aware of the problems and needs of the non-English speakers in this country who come before the courts, particularly those in the Western District of Texas. Without his support, cooperation and farsightedness in this area, we would certainly not be able to provide these people with the professional services that we do. This, in my estimation, is a feather in our cap and for all to emulate. As for myself, I hope to continue working in this field and to work with others in the continuous improvement of all aspects of our judicial system. Thank you very much. Muchas gracias a todos!

STATEMENT OF LOUIS MARQUEZ, OFFICIAL COURT INTERPRETER, WESTERN DISTRICT OF TEXAS, SAN ANTONIO, TEX.

Mr. MARQUEZ. Good morning, Mr. Chairman.

I am the official court interpreter of the western district of Texas, San Antonio Division. I have a rather large statement here, so I do not intend to read it verbatim.

Senator BURDICK. Your statement has already been made a part of the record, so you can summarize as you wish.

Mr. MARQUEZ. Yes, sir, that is what I intend to do, and rather than to give you a long dissertation of my background, I will just say that I have been an intepreter for almost 19 to 20 years. Most of this time I have been in the U.S. Air Force, serving as an interpreter for foreign students from every Latin American country. More recently I have been working for the U.S. courts serving as Judge Adrian Spears' interpreter.

Now, regarding my support for the Bilingual Courts Act, I will skip that part of the statement. I think we all know that we need this legislation, and I am supporting it because I think it is very important to every person in this country who does not speak the English language, regardless of his national background.

I would, for a moment, like to address myself to who uses interpreters. For this, I can only speak for the San Antonio Division. I do not know about the other divisions. In that part of the country the majority of the non-English speakers who require interpreters are those whose native tongue is Spanish.

Of these, the majority are Mexican nationals; many others are Spanish-speaking legal U.S. residents and U.S. citizens who have very limited knowledge of the English language. Occasionally interpreters for those who speak a language other than Spanish have been provided in our district. In such cases the interpreters are normally obtained from the local universities and from the Defense Language Institute at nearby Lackland Air Force Base. In the case of Mexican nationals, most of them are brought into court for violations of the immigration laws, and some of them are also involved as witnesses against aliens, smugglers, and transporters.

Of course, we also have a great number of cases involving illegal drug traffic. The request for interpreter assistance is usually initiated by the defendant, the plaintiff, or the attorneys themselves. However, I am also called by the court whenever it has the slightest doubt about the English comprehension of any of these individuals. My services as an interpreter for these people normally begin the moment they are first brought before the U.S. magistrate for arraignment.

After this initial step, I normally keep track of these cases in my personal notebook, and later, whenever the cases come up for rearrangement or motions before the court, it is not necessary for the attorneys to call this to my attention. Other court personnel also keep me informed.

I would like to skip over to page 8 of my statement, Mr. Chairman, and just very briefly point out to you that, in the 2 years that I have been in the San Antonio division, I have interpreted in 1,170 different instances, involving 1,077 different individuals. At times these individuals require my services more than once, and the time involved, of course, varies according to the case; there are short appearances in court of about half and hour—somewhere between 15 minutes and 1 hour—and there are full-day trials of several days' duration. From the statistics that I have kept from the first day that I started to work for the courts, you will see the difference between the 1,170 instances and the 1,077 different individuals involved.

I would also like to point out that from January 1, 1972, to December 31, 1972, there was a period of 12 months in which there were 542 instances involving 503 individuals, and that in the 9 month period between January 1, 1973, and September 28, 1973, my figures have already surpassed the number of instances in which my services were utilized, and the number of individuals that I served last year. In other words, there has been a great increase in the number of cases in which my services have been required. At present I am the only full-time interpreter in the district, and consequently I sometimes have to run from one courtroom to the other, with occasional conflicts in time.

I would now like to say something regarding the standardization of duties and responsibilities of court interpreters. I think this is very important, due to the fact that, when I came to work, there were no written instructions as to how I should conduct myself in the courtroom, how I should proceed, et cetera. I realize that every judge in the country has his own particular style of conducting the business of the court, and the officers operating therein must accordingly conform to his desires in the manner in which court proceedings are to be conducted. Therefore to establish rigid rules for courtroom interpreters to follow in a courtroom would not be practical or proper, as some of these rules could run contrary to the wishes or desires of the court. I have seen that happen on several occasions.

However, for the sake of some sort of standardization of the duties and responsibilities of interpreters, a set of rules or general instructions to guide him in the performance of his duties should be adopted nationwide. This would, of course, be in addition to any particular instructions that the court might give the interpreters. It is here that I would apply my code of ethics. I do not want to read the entire code of ethics because it is rather lengthy, and I am sure you have already read it. These are general instructions that I think every interpreter should have in order to give him a general idea of how to conduct himself in the courtroom. As far as I know, there was nothing written on this subject anywhere at the time I came aboard.

I had some oral instruction from the court, regarding how he wanted me to operate in his courtroom, and some written, general instructions on what would be expected of me. In my particular division, I have

five different judges, three Federal judges and two magistrates, and each one has his own particular way of operating his court. As I said before, I thing that there should be some kind of nationwide stardardization and I would like to see the Administrative Office of the U.S. Courts if they ever go into the certification of courtroom interpreters, adopt standards and guidelines that the interpreters could follow. I am therefore recommending the adoption of my code of ethics for courtroom interpreters for this purpose.

Although I have discussed the certification of interpreters in my prepared statment, at page 13, I would like to make the following remarks in regard to assigning the additional duty of prescribing, determining, and certifying the linguistic qualifications of interpreters to the administrative office. To begin with, I strongly support the idea of certifying all courtroom interpreters for several reasons. In the first place, by certifying only those who qualify for this position, by virtue of their education experience and personal background, the provision for official recognition by competent authority will eventually eliminate the common complaint that, as we just heard a while ago, many of these interpreters are not qualified, and many times they do a disservice to the individual and to the court by their lack of qualifications. It stands to reason that, by establishing a certification board to review, test, and approve the qualifications of only those who qualify for this sensitive position, the courts, as well as the general public, will greatly benefit.

I would also like to say something about the equipment and facilities for translation and recording. I have with me, in that little briefcase, a translator's kit that we developed in San Antonio that I can take to any courtroom in our division, or anywhere, and use, either for one defendant or multiple defendants. It is a very simple apparatus. It consists mainly of an amplifier, a microphone, and some earphones. I have four earphones at this time, but more can be added if needed.

Senator BURDICK. There is a tape recorder in your kit, as well is there not?

Mr. MARQUEZ. No, there is no tape recorder, Mr. Chairman. We call it a translator's kit. There is no tape recorder.

Senator BURDICK. I see.

Mr. MARQUEZ. This kit is ideal as an alternate plan to the booth proposal that the bill initially called for—the United Nations type booth in every district court. From the very beginning I strongly objected to that, and I particularly addressed myself to Mr. Jesus Melendez, former legislative assistant to Senator Tunney. I told him that the booth would detract from the decorum of the courtroom, and that it would have to have air-conditioning and assorted electronic equipment. Some of those things could fail right in the middle of a trial; there you are, trying to stop proceedings because you cannot hear what is going on.

I strongly objected to that proposal, and I told Mr. Melendez that, as a substitute, as an alternate plan to this booth, we had this apparatus, this translator's kit. As I explained to you, it is a very simple unit to use, and it only costs us $192.85. I would be very happy to show it to you later on.

Now, with regard to recording. This is something very, very important. Concerning the requirement to make audio recordings of

the translations made by the interpreter, I agree that some sort of record should be made of these proceedings in addition to the stenographic notes of the court reporter. I also agree that recording only part or all of the proceedings should be left to the discretion of the court. I have now one particular portion of my prepared statement which I think is very important. It concerns the interpreter's salary. I would like to read this to you.

The issue of proper renumeration for courtroom interpreters is, in my estimation, a key factor in this bill that should not be taken lightly or overlooked by the subcommittee. I would therefore like to point this out and emphasize it. At the present time, the court interpreters have the grade of a JSP–5, and are limited to a 6, at an annual salary of $8,572 at the entrance level. Of course, they have the step increases every year for the first 3 years, and then it is the same as civil service.

In my particular case, Judge Spears has written several letters to the administrative office requesting that this grade classification be changed. So far, we have always been turned down by the administrative office, which states that it cannot do anything in this regard, unless some changes are made by the Judicial Conference. I want to point out that if something is not done to increase the pay of interpreters, we are going to have problems. One of the unavoidable problems will be mediocrity in the interpreters' ranks, which in turn will lead to needless costly and time-consuming legal problems. This is one aspect of the bill that I firmly believe should be taken very seriously into consideration when the time comes to recommend that the administrative office take some affirmative steps to correct this situation.

Most of my remarks will be concluded with this. However, I would like to add one more thing. Mr. Chairman, of course, I want to thank you for your attention, and I also want to thank Chief Judge Adrian Spears for permitting me to come here to testify and for all he has done in supporting the concepts of the bill and the work that I am doing. He is one Federal judge who I know is very sensitive to the interpreting needs of non-English-speakers throughout the whole Nation, particularly those in the Western District of Texas. He has always supported me, and has given his full cooperation to get me the equipment that I need for my work, such as my interpreter's kit; just recently he approved the purchase of a tape recorder which I can use whenever a witness, a plaintiff, or a defendant is testifying. With it I can go ahead and record whatever any of those people are saying and have a record of it.

A while ago I heard Judge Real say something that I am sure he has a right to be very concerned about, and I do not blame him. He was talking about the critical need for simultaneous interpretation, and I was surprised to hear him say that some of the interpreters in his courtroom want to wait until the following day for a transcript to be made, so they can then make a translation of that. I think, that in addition to the judges' discretion as to whether interpretation should be simultaneous, consecutive, or summary, the interpreter should also use his discretion. During trial, there are times when the technique of interpreting varies. If a man is on the stand, and he is being questioned by an attorney, this is the consecutive type of interpretation.

You ask questions and I translate, and he answers and I translate. But, for example, if a man is asked to give an explanation which would require a long dissertation, or if a man is not on the witness stand, but is sitting on the side, and wants to know what is going on—which is very important for cross-examination—that is where your simultaneous interpretation takes place. That is when I normally stand next to the defendant, plaintiff, or the witness, and give him a simultaneous interpretation of everything that is going on.

That is of vital importance, so that the individual can consult with his attorney and say, "Look, what the man is saying is wrong. It was not on a Saturday night that I was there. It was a Sunday night."

If that man has to wait until the following day, when these transcripts are made and then translated, that just does not make sense. So again, I want to say the techniques of the interpreting, whether they are consecutive, simultaneous, or summary, should be left to the discretion of the interpreter.

Senator BURDICK. The need for interpretation, rather than the type of interpretation, is, however, strictly in the judge's discretion.

Mr. MARQUEZ. Yes, of course.

There are times when attorneys will spend a lot of time strictly talking in legal terminology, which is really of no interest to the defendant. He does not know what one case versus another means. At such times I will normally use summary interpretation, by telling the person for whom I am interpreting that they are talking about points of law in other cases which may apply to his particular case.

There are times, for example, when a judge is explaining to an individual the responsibility and conditions of a bond. At such times I translate all of the instructions and all of the responsibilites and conditions simultaneously. But then, at times I will also summarize. I will say, "now, do you understand that you are not supposed to associate with certain types of people, that you are not supposed to break the law, that you are supposed to be working, et cetera?" My point is that when it comes to interpreting, I believe that interpreters should have the discretion to go to any one of these techniques.

Now I am ready to answer any questions that you may have.

Senator BURDICK. Well, you have given excellent testimony this morning. I have read your written presentation, and that is excellent also. We are indebted to you for your testimony today.

Mr. MARQUEZ. Thank you.

Senator BURDICK. Now the chief counsel is going to ask you a few technical questions.

Mr. WESTPHAL. Mr. Marquez, I understand from both your statement and your oral testimony that you are definitely of the opinion that there should not be any fixed equipment stationary in a particular courtroom in order to carry out this function of interpretation?

Mr. MARQUEZ. When it comes to translation, I don't believe there should be. If it is in regards to recording, of course, they are going to need a fixed recorder somewhere, but that should be up to the court. I do not want to see any fixed equipment in courtrooms for the purpose of providing translations. That is why I objected to the type of booth that they first wanted to install in the courtrooms. I think that this interpreter's kit is adequate. It can easily be taken to any court-

room. All I need is electric current, and I can go to work with it. I object to any type of permanent setup just for translation purposes.

Mr. WESTPHAL. This equipment that you have brought with you fits easily into a Samsonite case?

Mr. MARQUEZ. Yes, this is a Government-issued briefcase.

Mr. WESTPHAL. That equipment has a cost of about $192, and you selected the components and built it yourself?

Mr. MARQUEZ. No, I did not build it myself. I had problems because my voice was being heard by the judge, and sometimes by members of the jury, when I was interpreting for certain individuals. Now, if I had only one person, I could always sit next to that person and sort of whisper into his ear, and that would not bother anyone, but, when I had two or three different defendants, and had to sit next to them, they sometimes were stretching their necks, trying to hear me, or I was stretching my neck, trying to get close to them. That was disruptive and completely inadequate. It is very hard on an interpreter's voice, trying to keep it at a certain level where it cannot be heard by members of the jury or the judge—who occasionally turn around and look at you—but still at a volume high enough so the individuals can hear you. In short, those were some of the problems that I was having, so I talked it over with Mr. Dan Benedict, our court clerk, and he in turn obtained the services of a local electronics firm in San Antonio, Tex. They came out and asked me what I wanted. I told them that I needed some kind of amplifier with a microphone and some earphones. They developed that little unit, which we asked them to fit into that government-issued briefcase. It is not very heavy, and it is completely portable.

Mr. WESTPHAL. Now, would you just take that briefcase and bring it to the witness table, and briefly show it to the committee?

Mr. MARQUEZ. Yes, sir The main component, of course, is this amplifier right here. I also have this microphone which I can either hold in my hands or attach to a headband for comfort. In addition I have four connections in here for the four individual earphones each of which has its own volume control. More can be added, of course, if needed. I only have the four right now.

Mr. WESTPHAL. Do you plug that into a power source somewhere in the court?

Mr. MARQUEZ. Yes, sir. I just plug it into a power source. I have this additional extension cord, which is 25 feet long, and I have another one over here so that I can actually be from 15 to 20 feet away from the defendant; I do not have to be standing right next to him.

In other words, I can be by myself, rather inconspicuous in the courtroom. If I have to talk to anyone, all he has to do is signal me come close to him and——

Mr. WESTPHAL. I do not want to go into too much detail here, but the equipment that you have shown to the committee is contained in what is pretty much a standard attaché-type case, which is Government issued?

Mr. MARQUEZ. That is right. It is government issued.

Mr. WESTPHAL. The cost of that is some $192.

Mr. MARQUEZ. $192.85 is what it cost us last March.

Mr. WESTPHAL. In a district court where the requirements for interpretation are such that you would have to have two full-time inter-

preters, how many pieces of that equipment should be available for the use of those two full-time interpreters?

Mr. MARQUEZ. Well——

Mr. WESTPHAL. Would two——

Mr. MARQUEZ. There are times when I do not use this unit.

Mr. WESTPHAL. I understand that. If you had two full-time interpreters, would two sets of that equipment, with a third one for a spare in case you have a mechanical breakdown, be adequate?

Mr. MARQUEZ. Oh, more than adequate; yes, sir.

Mr. WESTPHAL. Now, in a district in the Midwest, where you do not have a high frequency of need for interpretation, that equipment is portable and could be sent to wherever an interpreter is going to be employed on a particular case?

Mr. MARQUEZ. That is right. It is completely portable.

Mr. WESTPHAL. So if equipment of that kind is available, for example, from the circuit executive's office, and in a particular case, several hundred miles away, they are going to use an interpreter to interpret Swahili or something, that equipment can be sent to that courtroom and the interpreter there could use it in giving an oral simultaneous translation to this Swahili defendant.

Mr. MARQUEZ. Certainly, it could be used that way.

Mr. WESTPHAL. Is the equiment relatively simple to operate?

Mr. MARQUEZ. Absolutely.

Mr. WESTPHAL. Could a so-called free-lance interpreter pick up the ability to operate it quite quickly?

Mr. MARQUEZ. Yes, sir. My answer to that would be yes.

Mr. WESTPHAL. All right.

Now, Mr. Marquez, you have included in your statement this code of ethics and standards for interpreters, which you yourself have devised, and you have suggested to the committee that it would be well for the administrative office as part of its duty to certify the qualifications of interpreters, to include some standards for governing the performance of duties by an interpreter, whether a full-time employee or a free lance interpreter?

Mr. MARQUEZ. Yes, sir.

Mr. WESTPHAL. To what extent have you had occasion in your district there to interpret in civil cases?

Mr. MARQUEZ. Of course, most of the cases I interpret for are criminal, but I have had occasion to interpret in civil cases. Judge Spears has permitted me to interpret in any courtroom any time I was needed in a civil case. Of course, criminal cases have priority over civil cases.

Mr. WESTPHAL. Have you functioned as an interpretor in civil cases where either the party plaintiff or the party defendant was a non-English speaking person?

Mr. MARQUEZ. Yes, sir; and also witnesses who are brought in.

Mr. WESTPHAL. Forgetting about the witnesses—because that is a more routine type of interpretation that most of us are familiar with—in the civil case where you have a non-English speaking party, either plaintiff or defendant, to what extent has the judge required that you translate all of the English portions of the testimony to that party?

Mr. MARQUEZ. Well, I have practically never deviated in utilizing the techniques of interpreting for either criminal or civil cases, but

the judges in the civil cases normally ask that I only translate that part of the testimony that is given from the witness stand.

However, when I am not tied up with criminal cases, I remain in court to give them simultaneous interpretation of everything that is going on in the courtroom.

Mr. WESTPHAL. On this matter of tape recording the non-English statement of the witness and then the English translation given by the interpreter, if we have certified interpreters, and if we have standards for their performance, and standards for their qualifications in order to be certified, and if they are persons of intergrity; do you see any need to tape record the proceedings when you have a competent interpreter?

Mr. MARQUEZ. Yes, I think there is a need to tape.

Mr. WESTPHAL. Where is that need?

Mr. MARQUEZ. You need to tape the translations even when you do have a competent interpreter, because there are occasions when lawyers sometimes have certain knowledge of that particular language—in my case it would be Spanish—and they misinterpret a particular word, or think that they understood a translation to be different from what they thought it should be, and they will say, "Look, I think the witness said this."

Now you can go back to the court reporter and have them read what he recorded, but he only takes down the English portion and not the Spanish portion of the testimony.

Mr. WESTPHAL. I understand that, but if I am the lawyer representing the non-English speaking defendant and you are the interpreter, even though I do not understand Spanish, I do, in the preparation of my case, know just about everything there is to know about the facts in that case, and if I hear you giving the wrong answer, I can call you on it right there; can I not?

Mr. MARQUEZ. Right, and we could go to the tape recorder and switch it back; and if the interpretation was wrong, a correction could be made. If it was right, it would stand as it was said.

Mr. WESTPHAL. Well, what I am trying to explore here is the circumstances under which we would have to go to this additional step of having a tape recording. For example, in the situation that I have posed, if I ask the witness questions and I say, "and at that time, what was the rate of speed of your car?" And by my preparation I know that he is going to say, "about 35 miles an hour," if you give the answer, 95 miles an hour, I am going to call you on it right then and there.

I would say, "are you sure that he said 95?" and you will say, "yes, I am." We will ask the witness again, and get it cleared up that way, will we not?

Mr. MARQUEZ. Well, I——

Mr. WESTPHAL. Well, you can make a mistake in interpreting, but if it is a very material mistake, it could be caught right there during the time of trial; if it is little immaterial difference as to whether he said "should" or "should or should not," that is not going to make any difference in the outcome of the trial.

Do you see what I am trying to get at?

Mr. MARQUEZ. Yes, sir.

Senator BURDICK. May I ask a question at this point? How much additional burden is it to tape the proceedings?

Mr. MARQUEZ. Well, as I pointed out in my prepared statement, to tape short proceedings such as sentencings, arraignments, or even testimony being taken at the witness stand, is no problem if the interpreter has available to him a small cassette tape recorder that he can operate himself. He can record everything that is being said, and stop it when he needs to.

Now, if the case is going to require the recording of the entire proceedings, then you are going to get into a different type of problem because you are going to need sophisticated equipment which is going to pick-up what is said at the bench, what is said at the stand, what is said over here by the prosecuting attorney, by the defense and by the interpreter himself. You are also going to need an individual to operate that equipment.

Senator BURDICK. Are the courtrooms equipped that way down in——

Mr. MARQUEZ. No, no, and I will tell you why, I feel very strongly about that. The U.S. Magistrate's Office had some type of equipment down there that was supposed to have replaced the court reporter. Well, it did not replace the court reporter and it did not do a good job either, because it still required a person to sit there and keep track of everything that A or B or C were saying at the time.

Then when the time came to make a transcript, many of the free lance court reporters did not want to touch it because they would get lost. They did not know who was talking at the time, especially when several people spoke at once. If the bill calls for recording all of our proceedings, of course, that is a different situation.

Mr. WESTPHAL. Mr. Marquez, you have mentioned the very point that I was leading up to. It is my understanding that there is really no fool-proof equipment available which can tape record court proceedings, so that you do not have to have a court reporter taking down the proceedings, because you have to get into this multiple track type of equipment, which is very expensive.

You have to have an employee who is monitoring that equipment to be sure that you do not develop a breakdown in the equipment during the trial. There are reported cases where they have employed such techniques on an experimental basis and the appellate court has had to order a new trial, because a particular portion of the tape is garbled when it gets down to the essential question, "did you pull the trigger?" Because it is garbled, a new trial had to be ordered.

Now, that is the type of problem that I do not think the Congress should get into by requiring a tape recording as a mandatory provision of this act. I think that tape recording is advisable if someone has reason to doubt the competency or the integrity of the interpreter. I think tape recording may be advisable when you have an interpreter who is asked to translate a particular dialect with which he is not fully familiar, but he is the best interpreter that is available—for example, when he explains that to the judge, and the judge says, "well, you are the best that is available, let us go ahead and try it, and we will tape record it just to cover all possibility of error that you may make."

Now, those are the circumstances where, in my mind, I can see that tape recording is of value in order to insure justice, but I do not see where mandatory provision under which you are required to tape

everything, furthers the purpose that this bill is designed to achieve.

Do you agree with that?

Mr. MARQUEZ. Absolutely, that is why I have stated here on page 17:

> I personally support the idea of recording only that part of the proceeding that is translated when either the defendant, the plaintiff or the witness is testifying under oath or on the witness stand.

This, in my opinion, is the most important and sensitive part of the bilingual proceedings; and there should be a backup record to verify not only the notes of the reporter, but also the accuracy of the translations if need be.

Mr. WESTPHAL. Now, Mr. Marquez, you mentioned this matter of salaries for interpreters. I think that you appreciate that this committee does not have any control over appropriations. That is another committee.

Mr. MARQUEZ. Yes, I understand that.

Mr. WESTPHAL. Also, under the law as it stands now, the Judicial Conference acting in conjunction with the administrative office, has been given the power by Congress to set the appropriate salaries for various employees of the judicial system. That is the way the system operates now.

Under this legislation, the Judicial Conference again is given the authority to set a proper salary for interpreters. I think the way things stand now we just have to assume that the administrative office and the Judicial Conference will exercise that authority properly. If they do not, of course, Congress can respond to it later.

But you do appreciate that it is not possible for this committee to start specifying salaries?

Mr. MARQUEZ. I understand that. I just wanted to make it a matter of record.

Mr. WESTPHAL. I think your point is well taken, and I think it is a matter that we must necessarily leave to the administrative people at this time.

Senator BURDICK. Thank you.

Mr. MARQUEZ. Thank you very much.

Senator BURDICK. You have helped us a great deal.

Mr. MARQUEZ. Muchas gracias.

Senator BURDICK. Ms. Vilma Martinez, general counsel, MALDEF, San Francisco, is our next witness. Welcome.

Ms. MARTINEZ. Senator. I have here my full statement.

Senator BURDICK. It will be made part of the record.

PREPARED STATEMENT OF VILMA S. MARTINEZ, GENERAL COUNSEL OF MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Mr. Chairman and distinguished members of the Senate Subcommittee on Improvements in Judicial Machinery:

I wish to take this opportunity to thank you for inviting me to present testimony concerning S. 1724, the Bilingual Courts Act and Amendment 565 to S. 1724.

My name is Vilma Martinez and I am General Counsel-elect of MALDEF, that is, the Mexican American Legal Defense and Educational Fund.

With your kind permission I would like to describe in a very brief manner the purpose and function of MALDEF, on whose behalf I am presenting testimony in support of this proposed legislation.

MALDEF is a non-profit, federal tax-exempt organization incorporated in October, 1967, to secure the civil and constitutional rights of Mexican Americans through litigation and legal education. Since May, 1968, when it began operations, MALDEF has expanded from one office to a National Office in San Francisco and four regional offices in Los Angeles, California; Denver, Colorado; San Antonio, Texas, and Washington, D.C. A fifth regional office in Albuquerque, New Mexico, will be in full operation soon.

MALDEF policy is determined by a 28 member Board of Directors which includes attorneys, law professors, law school deans, and community representatives. MALDEF staff attorneys, approximately 19 of them, are assisted by a national network of referral lawyers in a program of litigation and related activities designed to help the Mexican community achieve its rights under law.

Substantively, MALDEF's legal strategies are directed at traditional barriers: abridgement of participatory constitutional and political rights, unequal educational opportunities, discriminatory employment practices, unequal distribution of public services, and so forth.

In concluding my remarks regarding MALDEF, I am proud to say that MALDEF has been directly involved in and responsible for more than 90 percent of all civil rights litigation affecting Mexican Americans.

The Bilingual Courts Act, introduced in Congress on May 7, 1973, was a significant occasion for the non-English speaking people of this country. Congress last addressed itself in a significant and comprehensive manner to the needs of the non-English speaking in 1967 when it enacted the Bilingual Education Act which provided for the establishment of bilingual-bicultural educational programs. Through this legislation Congress recognized that our nation is a multicultural society and that this cultural diversity is a national asset which should be nurtured and developed.

In introducing the Bilingual Courts Act, Senator John V. Tunney, who was joined by 18 of his distinguished colleagues, took a significant step forward in our nation's struggle to secure justice under the law for all. Just as Congress has recognized the educational needs of the non-English speaking and has attempted to remove the vestiges of discrimination in the classrooms, the sponsors of the Bilingual Courts Act have responded to the compelling need for court reform and have attempted to remove some of the vestiges of discrimination in the courtrooms.

The distinguished Chairman and members of this Subcommittee are to be commended for their important efforts in scheduling and convening hearings on the Bilingual Courts Act.

It is MALDEF's understanding that S. 1724, as amended by Amendment 565, would require, among other things, the following:

1. An oral simultaneous translation by a certified interpreter in any criminal action where the defendant does not speak and understand the English language with a facility sufficient for him to comprehend either the proceedings or the testimony:

2. An oral translation by an interpreter in civil actions where a party does not speak and understand the English language with a facility sufficient for him to comprehend either the proceedings or the testimony; however, in such civil actions, the court shall give special considerations to requests for a simultaneous translation;

3. If no certified interpreters are available in the judicial district, the court shall determine the availability of such interpreters in other districts and if none is available an otherwise competent interpreter must be used;

4. The judge may order that all or part of the non-English testimony and the translation thereof, whether in criminal or civil actions, be electronically recorded for use in verification of the official transcript of the proceedings; and

5. The Director of the Administration Office of the United States Court shall

(a) prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in bilingual proceedings and maintain an updated master list of all certified interpreters; and

(b) prescribe a schedule of reasonable fees for services rendered by interpreters.

JUSTIFICATION OF S. 1724, THE BILINGUAL COURTS BILL

The enactment of this proposed legislation is clearly an appropriate matter to which Congress may address itself. But I am confident that this committee is also aware that enactment of this proposed legislation is amply justified and,

indeed, compelled by constitutional considerations. Simultaneous translation of criminal proceedings in the courtroom should be required if non-English speaking persons are to be accorded their Sixth Amendment rights of effective counsel and confrontation of adverse witnesses. The Sixth Amendment states that "the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; . . . and to have the assistance of counsel for his defense."

It is obvious that a defendant in a criminal proceeding loses these constitutional safeguards if he cannot understand the language used in the courtroom. Without the assistance of simultaneous translation, a non-English party cannot test the credibility, the memory, or the accuracy of observation of the English speaking witnesses.

Furthermore, to deny the non-English speaking a competent interpreter who can translate simultaneously is to deny the right to have the effective assistance of counsel. How else can an attorney fulfill the responsibilities to his client if they can neither communicate nor confer meaningfully with each other during any or all of the judicial proceedings? Simultaneous translation is necessary if the non-English speaking defendant is to be accorded these Sixth Amendment rights.

Further, we at MALDEF believe that simultaneous translation of all proceedings in the courtroom is compelled by the Fifth Amendment. That Amendment provides: "No person shall . . . be deprived of life, liberty or property, without due process of law . . ."

As Senator Tunney pointed out in his floor statement when S. 1724 was introduced, "any legal proceeding that allows a party to an action to be deprived of life, liberty, or property without bothering to insure that he understands fully and simultaneously what is happening at his trial is so lacking in basic and fundamental fairness as to be violative of the due process clause."

The right to simultaneous translation can also be based on equal protection considerations since the Fifth Amendment does not allow the federal government to discriminate in a manner which would not be allowed to the states under the Fourteenth Amendment.

It would not only be disappointing and unfortunate but also a blatant disregard of constitutionally mandated rights if reasonable people could not agree that such basic constitutional safeguards ought to extend to everyone, regardless of language disability.

You have heard me make some of the legal arguments which, in my opinion, compel the passage of this legislation. What I have not articulated—and what perhaps I do not have the skill to say—is the anguish of sitting in a courtroom, completely alone and helpless, while one's fate is being determined in a language one does not understand.

THE NECESSITY FOR S. 1724

Thirty three years ago, Wigmore commented:

"It may be suspected that Courts in the metropolitan cities do not exercise sufficient care to provide a staff of honest and competent interpreters. They become callous to the grist of petty criminal cases; and they tend to forget that one of the cruelest injustices is to place at the bar a person of alien tongue and then fail to provide him with the means of defending himself by intelligible testimony." 3 Wigmore, Evidence Section 811, at 226 (3d ed. 1940).

Unfortunately, there are many people today who know that little has changed since then. Less than three years ago, the United States Commission on Civil Rights in its 1970 report, *Mexican Americans and the Administration of Justice in the Southwest* found that

"Interpreters are not readily available in many southwestern courtrooms:

(a) In the lower courts, when interpreters were made available, they are often untrained and unqualified;

(b) in the higher courts, where qualified interpreters were more readily available, there has been criticism of the standards of their selection and training and skills."

I don't think you need the Civil Rights Commission to tell you Chicanos have little faith in the American judicial system as it has worked to date.

It was not until 1970 that a circuit court of appeals affirmed a federal district court which had held that the state has a duty to inform a defender of his right to simultaneous interpretation at government expense and that since the defendant was unaware of the existence of such right, he could not be charged

with a waiver, *U.S. ex rel, Negron* v. *New York*, 310 F. Supp. 1304, (E.D.N.Y. 1970).

Prior to this landmark case of which this committee is well aware, no federal court had decided these specific issues.

Although MALDEF believes that the *Negron* decision has precedential value, the necessity for S. 1724 is obvious since this holding of the second circuit does not bind other federal circuits. It does not bind, for example, the area of the country (the southwest) where most Mexican Americans live. For this reason, MALDEF respectfully submits that this proposed legislation is essential. Congress must not forfeit this opportunity by failing to provide the federal courts with clear and specific procedures and guidelines concerning the appointment of interpreters.

Although Congress has addressed itself on three previous occasions to the issue of appointment of interpreters, the right to an interpreter is not established and no guidance is given the federal courts regarding this right. In these respects, the effect of such federal legislation is similar to that of most of the state statutes concerning interpreters, that is the appointment of an interpreter is at best a mere judicially-administered privilege.

There is no question that under this proposed legislation, a person who speaks or understands no English whatsoever has a right to an interpreter. A problem may arise, however, when a person understands little English or speaks broken English. This problem is considered in a Rutgers Law Review article, *The Right to an Interpreter:*

"The trial judge must determine in some appropriate manner whether the accused comprehends English sufficiently well to maintain his constitutional rights without an interpreter. Accordingly, one would expect a full examination of the accused to ascertain his level of fluency and comprehension in the English language. Many times, however, the courts will flatly deny a defense request for an interpreter without conducting an examination or merely conduct a perfunctory inquiry. No one to date has established or suggested an appropriate procedure for appraising an accused's actual need for an interpreter. Thus, the trial judge's manner of inquiry has been largely a matter of discretion—a decision making process often exercised without objective standards for determining whether the defendant shall be granted the right and bordering on the arbitrary." 25 Rutgers Law Review 157 (1971).

MALDEF suggests that the following approach, smiliar to the one suggested in the Rutgers Law Review article, be considered and adopted in response to situations where a person speaks some or little English:

"The court shall not refuse any motion for an interpreter without first taking into consideration the party's performance on an examination administered by the Director of the Administrative Office of the U.S. Courts for the purpose of determining and measuring the party's command of the English language."

The rationale for such a proposal is cogently discussed in the Rutgers article:

"The non-English speaking accused shares much the same position as the individual incompetent to stand trial by reason of insanity. These two individuals are burdened with analogous handicaps. If made to stand trial without additional measures being taken, neither is 'present' at his own trial—one because of mental aberration, the other because of a linguistic infirmity. There is presently a federal statute governing the determination of an accused's mental competency to stand trial. It provides that after arrest and before trial, if it appears that an individual may be insane or mentally incompetent to stand trial, he is to be examined by at least one qualified psychiatrist. The psychiatrist must submit a report of his findings and conclusions to the court. If the report indicates that the individual is incompetent to stand trial, the court is to hold a hearing on the question, considering the psychiatrist's report with other evidence on the question...

No one would expect a trial court judge to determine the specialized medical question of whether a particular individual has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him. Analogously, no one should expect the trial court judge to determine a technical, linguistic question of whether a particular individual speaks and understands enough English to consult with his lawyer and understands the proceedings againsta him." 25 Rutgers Law Review 167, 8

The Director of the Administrative Office, for example, could model such an examination, the results of which would be available to the trial judge, on the

TOEFL, Test of English as a Foreign Language, which is presently administered by the Educational Testing Service in Princeton, New Jersey.

The Supreme Court of Utah has recognized the grave importance of insuring that a person have full and complete understanding of the proceedings. In one situation where a defendant spoke "broken English," it held that every presumption should lie in favor of the accused's need for an interpreter. That Court said:

"Degrees of understanding may present themselves between that of complete comprehension of the language to that of minor matters. The question, not properly heard or understood, may bring forth an answer that might turn the scales from innocence to guilt or from guilt to innocence. Then, too, the answer given might be made in words not entirely familar or understood by the defendant. Mr. Justice Holmes once wrote:

'A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.'

"While English has comparatively few inflections, either a prefix or a suffix mistakenly applied or interpreted may change the meaning of a whole sentence . . .

It is important that the trial court in the exercise of its discretion to the necessity of an interpreter, either for the defendant or for a witness be fully advised. It is far better to err by traveling a longer road or taking more time than to err by depriving one of a fair trial for want of understanding or comprehension of what is taking place. This is especially so where a human life is at stake . . ." 121 P. 2d 903, 905–6, (1942)

Further, insofar as S. 1724 as amended requires that the Director of the Administrative Office prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters, this is a step long overdue. In response to an inquiry by Senator Tunney in May of this year, representatives of the Administrative Office took the position that there are presently no specified standards.

". . . by which interpreters are hired. It was noted that, as a practical matter, many of the Federal judges assigned in the southwestern United States, where the majority of the interpreters are employed, are themselves bilingual. Additionally, many of the court personnel and members of legal aid and public defender services in these areas speak both English and Spanish."

It is sad enough that even though our country is increasingly filed with non-English speaking individuals, there exist no organized efforts to recruit and train court interpreters. (The Bureau of the Census indicated in its 1970 Supplementary Report, *Persons of Spanish Ancestry*, that almost eight million persons reported Spanish as their mother tongue.) What disappoints MALDEF is the manner in which the Administrative Office perceives the importance, or lack thereof, of the need for the establishment of such standards.

As to the adequacy of interpretation by counsel understanding the language, Wigmore has commented that:

". . . the process of counsel stopping at every question and answer . . . would be intolerable to the court and disconcerting to counsel."

—5 Wigmore, *Evidence* Section 1393, at 119, n. 4 (3d ed. 1940).

For this reason, no doubt, the Rutgers Law Review commentary urges that

". . . even in those cases where the appointed counsel speaks the language of the accused, such accused is denied his constitutional rights of confrontation and effective assistance of counsel. Direct translation is a complicated, technical procedure which requires the interpreter's absolute concentration and attention. Any attorney who takes on such a burden is surely incapable of exercising the other requisite functions of an attorney during trial."

—25 Rutgers Law Review 151.

As to the availability of certified interpreters, MALDEF would recommend that the Director of the Administrative Office keep a thorough record of all motions for such interpreters. This would be one method with which to determine who and where the users of S. 1724 as amended are.

The Federal Judicial Center has stated:

"At this point, we do not know who are the actual and potential users, but every indication is that it is a large group. There is a scarcity of figures on the nature and extent of the English-handicapped population of the United States, i.e., that portion of the adult public which (sic) cannot speak and understand English sufficiently well to comprehend and participate in court proceedings."

Of course, another purpose of the tabulation of such data would be to provide the Director of the Administrative Office with the necessary information so that he could determine those districts which would require certified interpreters on a regular basis as well as determine the necessary expenditures.

Another recommendation which MALDEF would like to make concerns the discretionary language of S. 1724, as amended by Amendment 565, by which the judge may or may not order the recording of all or any part of the translation. MALDEF urges that a provision be included by which it would be required that the interpretation or translation made to the non-English speaking party at his table be recorded so that he would have the opportunity to review such a recording against the court transcript to insure the utmost of accuracy under the circumstances.

In support of this position, MALDEF invites your attention to the Rutgers Law Review article:

"It should be quite clear that it is impossible for the accused, sitting at the defense table, to show by specific evidence that his interpreter, either by reason of bias or incompetency, was incorrectly interpreting the testimony of the English-speaking witnesses. Under the present system, these interpretations will not constitute a part of the trial court transcript, and thus, the reviewing court has no possible way of determining the truth or accuracy of the accused's allegation. But the problem is almost equally distressing with respect to the interpreter being provided for the witness. In that case the interpreter's translations become a part of the record, but it should be clear that unless the accused has an additional interpreter at his side to check the accuracy of the court interpreter, there is no way of proving on appeal that the court interpreter performed incorrectly."—25 Rutgers Law Review 164.

Finally, MALDEF would like to address the issue of the cost of this proposed legislation in terms of time, resources and money. In response to those who may argue that S. 1724 would consume too much time and money, MALDEF would submit that there is a substantial probability that a party, to whom an accurate and simultaneous translation by a certified interpreter has been made available, is less disposed to appeal. Such a likely result, of course, means significant savings of judicial and appellate time and money which otherwise would be consumed by appeals on the grounds that there had been a violation of the constitutional rights of a non-English speaking party.

Notwithstanding that S. 1724, the Bilingual Courts Act as amended, would mean additional expenditures, MALDEF urges its adoption.

Judicial economy may not be used to abridge a person's fundamental and constitutional rights. Public confidence, and this includes the confidence of Chicanos, in the appearance of court proceedings, as well as the fairness of court proceedings, must be secured. Chicanos want and are entitled to their First Amendment rights of free speech. They also want to be able to petition for redress of grievances. And very often the forum for the exercise of these rights, as well as the constitutional rights discussed earlier, is the courtroom.

MALDEF submits that if all the language of our Constitution is ever going to be translated to reality for the non-English speaking persons of this country, then S. 1724 as amended must become law.

STATEMENT OF VILMA S. MARTINEZ, GENERAL COUNSEL OF MEXICAN-AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Ms. MARTINEZ. I want to thank you first of all for inviting me to present testimony concerning S. 1724 and amendment 565.

Senator BURDICK. Can you pull the microphone a little bit closer to you?

Ms. MARTINEZ. Certainly. Is that better?

Senator BURDICK. Your full statement has been made a part of the record, and we would appreciate it if you would summarize it.

Ms. MARTINEZ. Can you hear me now?

Senator BURDICK. A little bit more volume would be helpful.

Ms. MARTINEZ. I just want to note that I am Vilma Martinez, general counsel-elect of MALDEF, which is the Mexican American Legal

Defense and Educational Fund. I want to tell you that MALDEF is a private, nonprofit Federal tax-exempt organization, incorporated in 1967, to secure the civil and constitutional rights of Mexican-Americans through litigation and legal education.

We expanded from one office to a National Office in San Francisco, four regional offices throughout the Southwest, and one in Washington, D.C.

I do not think I need to go over the provisions of the bill or the amendment. However, I do want to say this much; I think this legislation is an appropriate matter to which Congress should address itself.

I am sure that this committee is aware that enactment of this proposed legislation is timely, justified, and, in my legal opinion, compelled by constitutional considerations. Simultaneous translations, in criminal proceedings in the courtroom should be required, if non-English speaking persons are to be accorded their Sixth Amendment rights of effective counsel and confrontation of adverse witnesses.

I think this has been amply discussed by other witnesses.

I also want to point out—this was not as clearly articulated as it might have been—that simultaneous translation of all proceedings in the courtroom—and this includes both civil and criminal, although I know there are differences—is compelled by the Fifth Amendment.

That amendment, as I am sure you know, Senator Burdick, provides that no person shall be deprived of life, liberty, or property without due process of law. As I think Senator Tunney pointed out in his floor statement when S. 1724 was introduced:

> Any legal proceeding that allows a party to an action to be deprived of life, liberty or property without bothering to insure that he understands fully and simultaneously what is happening at his trial, is so lacking in basic and fundamental fairness as to be violative of the due process clause.

I think it would not only be disappointing and unfortunate, but also a blatant disregard of constitutionally mandated rights, if reasonable people could not agree that such basic constitutional safeguards are to extend to everyone, regardless of language disability.

You have heard me make some of the legal arguments which in my opinion, compel the passage of this legislation. But what I have not articulated, and what perhaps, I do not have the skill to describe, is the anguish of sitting in a courtroom, completely alone and helpless, while one's fate is being determined in a language one does not understand.

I am especially sensitive about this because I started school unable to speak English. It was very difficult to learn the A, B, C's when I had no idea what the teacher was trying to say.

I would like to point out, and bring to your attention, Senator Burdick, and Mr. Westphal, that there are many people in this country today who know that little has changed since the U.S. Commission on Civil Rights, in its 1970 report, pointed out that interpreters are not readily available in many Southwestern courtrooms; where they are, is the exception.

In addition, they are often untrained and unqualified. I do not think you need a Civil Rights Commission, or me, to tell you that Chicanos have very little faith in the judicial system as it has worked for them to date.

You made some comment earlier today, about why you need this law, given one marvelous Federal district judge and one interpreter who have appeared before you. I submit that not all judges are like Judge Manuel Real, and in not all districts is an interpreter available like Mr. Marquez in San Antonio.

I would like to remind you that it was not until 1970 that a circuit court of appeals affirmed the Federal district court which had held that the State has a duty to inform a defendant of his right to simultaneous interpretation at Government expense, and that since such defendant was unaware of the existence of such right, he could not be charged with a waiver. That, of course, was the *Negron* case which was argued in the second circuit.

Senator BURDICK. I do not want to break up your train of thought but I would like to ask at this point, if, in your court experience, you have found instances where justice is denied because of the absence of a law like this?

Ms. MARTINEZ. Not in my limited court experience. I have only been practicing 6 years, and I have not done very much criminal law work.

Senator BURDICK. I was just wondering. We have some court rules covering these subjects. The whole question before this committee is to find out whether they are adequate or if we need to go further.

That is why I asked the judge and you that question. You do not know, from your own experience, that justice has been denied under existing court rules.

Ms. MARTINEZ. No; not in my, again, limited experience.

I would like to point out that I have corresponded with persons, on occasion, who have brought this up. But I have not been able to answer their responses.

Senator BURDICK. I am not being critical of anybody. I am trying to find out——

Ms. MARTINEZ. Yes; I understand that. I am trying to answer as fully as I can, given my experience, because you phrased it in terms of my personal experience.

I would like to go back to that *Negron* decision which, as you know, was a second circuit opinion. I would like to point out that we, at MALDEF, believe that this decision has precedential value, but that the necessity for S. 1724 is still obvious, since this holding of the second circuit does not bind other Federal circuits.

It does not bind, for example, the area of the country in the Southwest where most Mexican-Americans reside. For this reason among others we submit that this proposed legislation is essential.

I do not remember if anyone has spoken to the issue of what you do when a person understands a little English or speaks broken English instead of being completely in the dark, but I would suggest that you refer to a very excellent law-review article in Rutgers Law Review for guidance.

I have set out some quotes from it on pages 8 and 9 from my presentation. I would also like to point out that there is a test which is administered by the Educational Testing Service in Princeton, called the TOEFL, Test of English as a Foreign Language, which could be used to test the competency of a person to see if he can speak and understand the language.

I think I have already articulated my sentiments that I am very happy to learn that the Director of the Administrative Office under this proposed legislation, must prescribe, determine and certify the qualifications of persons who may serve as certified interpreters. I think this is long overdue.

I would also like to put a little warning note in here, and that is that, unfortunately, the Administrative Office, which has jurisdiction over interpreters, as early as May of this year, took the position that there are presently no specified standards and was not really worried about it. They say that, as a practical matter, many of the Federal judges assigned in the Southwestern United States, where the majority of the interpreters are employed, are themselves bilingual.

I think that is inaccurate. They say additionally, many of the court personnel and members of legal aid and public defender services in these areas speak both English and Spanish. That also is inaccurate.

There are very few Spanish-speaking lawyers; there are very few court personnel who are Spanish speaking. And even if there are, I submit they may or may not have the requisite qualifications to serve as interpreters in court proceedings.

Mr. WESTPHAL. Plus the fact that the lawyer, even though he is bilingual can hardly keep his mind on the progress of the trial and at the same time try to inform his client of what is going on. He cannot carry water on both shoulders.

Ms. MARTINEZ. You are absolutely correct. Those are two very hard jobs. I know, since I have done both, but not simultaneously.

I would also like to point out that MALDEF is recommending a change regarding the discretionary language in the proposed statute, by which the judge may, or may not, order the recording of all or any part of the translation. I have heard the discussion between Mr. Westphal and Mr. Marquez, but the hypothetical you posed was a very simple one, you know—the 90 miles per hour versus 35 miles per hour—that you would catch and I would too. But there again there are nuances in phrasing and speaking that might not always be caught.

I think, for that reason, that I must urge that the proceedings always be recorded.

Mr. WESTPHAL. On that point, Ms. Martinez, I think the intent of this legislation, as you have just suggested, is to serve as a first effort to try to improve the quality of interpretation services. I think the intent of the legislation is that, if we have standards prescribed for the competence and performance of interpreters, that that should eliminate a large amount of the error, prejudiced interpreting, mechanical difficulty that is now occurring.

Now, if a competent interpreter cannot give an adequate and competent translation, then there may have to be some amendments which would require tape recording all the way, but I think that we have to realize that we have to take it one step at a time.

Ms. MARTINEZ. Mr. Westphal, I understand that. You have given me the given of competent interpreters, but I am not prepared today to accept that given. I think now is the time to implement as many safeguards as are possible.

I think that, after we have a group of trained competent interpreters, I would be less upset if there were not a simultaneous recording.

But, when we are only beginning, as you correctly point out, to do something, I think now is the time to have the translations.

I, as a lawyer for a client, would want that to be sure my client's rights were protected. Because, as you have just stated, it is very difficult to do both jobs at once.

Senator BURDICK. Ms. Martinez, why would it not be possible, by being the counsel in the court, to request simultaneous recordings of portions which you think were important, but not everything? Would that be possible?

Ms. MARTINEZ. I think it is possible, and I think it should be explored. That would satisfy me: but I would feel very strongly that that should be made available, at least, whenever you would be doing less than recording every word.

Senator BURDICK. I think you are referring to meanings of words, just like the Judge referred to the word, bother. It could mean, molest.

Ms. MARTINEZ. That is right, but even that is a blatant example. There are more subtle forms, you know, of expressing ourselves in a foreign tongue; even a good interpreter may or may not always catch it.

Finally, I would like to address the issue of the cost of this legislation, in terms of time, resources, and money. I understand that it will entail some time and money, but I think it really should be adopted, that judicial economy may not be used to abridge a person's fundamental and constitutional rights.

I would also like to talk about three other things that I noticed and have not submitted; these things are not included in my statement.

The amendment does make it clear, or apparently makes it clear, that the indigent, non-English speaking, accused, criminal defendant should be entitled to an interpreter at Government expense, but it does that in a backhanded kind of way. I would prefer to see it phrased more affirmatively instead of the way it is phrased.

If you are familiar with that, it is on page 5. The language is that they shall "pay out of moneys appropriated to the judiciary for the conduct of bilingual proceedings the amount of interpreter's fees or costs of recording which may accrue in a particular proceeding, unless the court, in its discretion, directs that all or part of those fees or costs incurred in a civil proceeding in which an interpreter is utilized—be apportioned between the parties." I would like to see that more affirmatively stated.

Second, I have noticed that the bill, first of all, fails to address the issue which I think is important; that the failure to request an interpreter must not be deemed a waiver of the constitutionally mandated right to an interpreter. I have not seen the bill, am I correct in assuming that it is not in there?

Mr. WESTPHAL. It is not in the bill because section 2A is mandatory; that in every criminal case he must be given oral simultaneous translation to all of the proceedings. Therefore, I do not think it is possible under this legislation to reach the question that was reached in the *Negron* case, which was that the defendant, Negron, by standing silent, had waived his right to interpretation.

I do not think that we would ever reach that question. So I do not think it is necessary, as long as section 2A is mandatory, to further write in legislation about waiver.

Ms. MARTINEZ. I hope you are right. I am reading it again. If everyone knows the law and follows it, maybe there will not be a problem.

I also would like to point out that the law, itself, and again, it might be elsewhere, but the law, itself, does not deal with the issue of whether or not the interpreter should take an oath that the translation will be true and accurate. I, of course, think that is essential.

Then, finally, I also think that the bill could use a provision which would provide an interpreter for the attorney and the client when they are trying to communicate to one another. This of course, would have to be with due regard for the attorney-client privilege.

Mr. WESTPHAL. I think that, in criminal cases, that is covered under the Criminal Justice Act.

In civil cases, my own reaction is, that that is a burden which is more or less of a private burden—counsel and his client have got to find some means of communicating as they prepare for trial.

I have represented some Finnish people who spoke no English at all, and I had to find some member of the family who did speak English to keep me in communication with my client. But I think that is essentially a private matter in civil cases.

Now, once we get that case into the courtroom, then I think it is more of a governmental function to provide the type of interpretation that insures that justice is done in that civil case. I think that there is a distinction there that we have got to bear in mind.

Ms. MARTINEZ. What does the Criminal Justice Act provide? I am really not familiar with it?

Mr. WESTPHAL. It is my understanding that it provides, where you appoint counsel, for example, for an indigent who does not speak English, that the appointment carries with it the right to have interpretation provided, so that they can communicate.

Ms. MARTINEZ. Very good.

Well then, I just want to thank you and say again that MALDEF submits that if all the language of our Constitution is ever going to be translated into reality for the non-English speaking persons of this country, then we urge that this proposed bill become a law.

Senator BURDICK. Thank you very much for your testimony.

I might add that you are a good lawyer; you hit all the important points.

Ms. MARTINEZ. Thank you.

Senator BURDICK. Our next witness is Cesar Perales, of the Puerto Rican Legal Defense Fund, New York City. Mr. Perales, your full statement will be made a part of the record. We would appreciate it if you summarize it.

Mr. PERALES. I will try to be brief.

PREPARED STATEMENT OF CESAR A. PERALES, EXECUTIVE DIRECTOR, PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, INC., NEW YORK, N.Y.

Mr. Chairman, members of the subcommittee, ladies and gentlemen: My name is Cesar A. Perales. I am an attorney and Executive Director of the Puerto Rican Legal Defense and Education Fund, Inc., with offices in New York City. The Puerto Rican Legal Defense Fund is a non-profit corporation formed to provide legal representation on issues of general concern to Puerto Rican communities throughout the United States. Since its inception in August, 1972, the Legal Defense Fund has actively championed bilinguism in voting, education, provision of social services, and the courts. May I say that it is an honor to appear before

this subcommittee today and have the opportunity to support S. 1724, the Bilingual Courts Act.

I believe that the proposed Bilingual Courts Act, although deficient in certain respects, is a long overdue and significant recognition of the Fifth and Sixth Amendment Constitutional rights of non-English speaking Americans. If expeditiously enacted, the federal Bilingual Courts Act will go far toward guaranteeing Spanish-speaking and other non-English speaking Americans equal justice in the federal courts. Its passage would also have salutory effects on the overall federal criminal justice system and on the many state systems of criminal justice which look to the federal courts for procedural models.

For the non-English speaking Puerto Rican, an American citizen by birth, whose rights are being adjudicated in federal court, the first essentials of the Fifth Amendment right to due process of law must be both that he can comprehend the proceedings, and that other participants to the proceedings—judges, jurors, prosecutors, plaintiffs, and defense attorneys can understand him. If such understanding does not take place, the non-English speaker will be denied, in fact, the right to be present at his own trial. For example, without the services of a translator, the non-English speaker has no way to understand what is being said against him in English; he is therefore unable to assist his attorney in cross-examining witnesses—a violation of the federal Sixth Amendment right to confrontation of witnesses. As the Utah Supreme Court said in *State* v. *Vasquez*, 121 F.2d 903 (1942):

"Suppose a defendant were placed in a transparent compartment where he could see all that took place, yet was deprived of hearing what was said because all sound was cut off, could it be said that such a situation were less than a deprivation of the constitutional right of confrontation? The purpose of confrontation must be to permit the defendant to be advised of the proceedings against him."

The Bilingual Courts Act begins to take the non-English speaker out of his transparent glass box, and permits him active participation in judicial proceedings on the same basis as the English speaker.

In the landmark decision of *U.S. ex. rel. Negron* v. *State of New York*, 434 F.2d 386 (2d Cir. 1970), the Second Circuit Court of Appeals has held that a non-English speaking criminal defendant has a federal Constitutional right to an interpreter:

"It is axiomatic that the Sixth Amendment's guarantee of a right to be confronted with adverse witnesses, now also applicable to the states through the Fourteenth Amendment, includes the right to cross-examine those witnesses as an 'essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal.' But the right that was denied Negron seems to us even more consequential than the right of confrontation. Considerations of fairness, the integrity of the fact-finding process, and the potency of our adversary system of justice forbid that the state should prosecute a defendant who is not present at his own trial. And it is equally imperative that every criminal defendant—if the right to be present is to have meaning—possess 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.'"

Criminal or civil, the Puerto Rican Legal Defense Fund maintains that "considerations of fairness, the integrity of the fact-finding process, and the potency of our adversary process" require at a minimum that the non-English speaking party to a judicial proceeding ought to have present means to fully understand the progress of his cause.

Let me now turn to the statistical case for the Bilingual Courts Act, as far as the mainland Puerto Rican population is concerned. In reflecting upon these statistics, compiled by the U.S. Bureau of the Census, this subcommittee should be aware that these figures, dating from 1969 and 1970, are not only somewhat out of date but represent a substantial *undercount* by admission of the Bureau of the Census itself. Returning now to the census count, it shows 1,518,000 Puerto Ricans living on the American mainland. Substantial numbers of Puerto Ricans (over 5000) live in the following 13 states:

New York	916,825
New Jersey	138,896
Illinois	87,509
California	50,917
Pennsylvania	44,263

Connecticut	37,609
Florida	28,166
Massachusetts	23,332
Ohio	20,272
Hawaii	9,300
Indiana	9,269
Wisconsin	7,248
Texas	6,334

These figures also show that the Puerto Rican population of the United States is not confined, as is widely believed, to New York City. Instead, they indicate that the Puerto Rican population has been shifting elsewhere. For example, while the Puerto Rican population of New York State grew 42% from 1960 to 1970, the Puerto Rican population of neighboring New Jersey grew 150%; of Massachusetts, 360%; of Connecticut, 146%; of Illinois, 141%; and of Pennsylvania, 109%.

Moreover, because many Puerto Ricans are recent migrants to the United States, the numbers and percentages of Puerto Ricans who speak no English or speak English with serious difficulty is very high. This statement is supported by the following Bureau of the Census statistics:

Spanish is the mother tongue of 83.1% of Puerto Ricans in the United States.

Spanish is the language usually spoken in the home of 72.1% of Puerto Ricans in the United States.

Only 69.4% of Puerto Ricans age 10 and over in the United States report ability to read and write English. Approximately 30.6% of Puerto Ricans age 10 and over in the United States do *not* report ability to read and write the English language.

Thus, there is every reason to believe that the appearances of non-English speaking Puerto Ricans in federal, whether in criminal or civil matters, are common. Moreover, the fact that non-English speaking Puerto Ricans, as well as other non-English speaking persons live in such large numbers in so many jurisdictions necessitates the availability of interpreters in every federal district court.

Turning now to the text of the proposed legislation, which the Puerto Rican Legal Defense and Education Fund supports in principle, and substantially as written, I would like to offer several suggestions for improvement. Adoption of these recommendations would strengthen the Act without adding either to its administrative burden or cost.

First, we recommend that the judicial determination for or against the need for a translator be made upon submission of evidence on the record. There are a number of good reasons for this. Many non-English speakers are reluctant to admit deficiencies in English language skills, either out of pride or embarrassment or out of apprehension that the judge or prosecutor may frown upon the request for an interpreter. In *Ex Parte Muraviov*, 13 Cal. Rptr. 444 (1966), for example, a defendant affirmatively indicated to prosecution that he understood English and was denied an interpreter. The reviewing court, after observing and interrogating Muraviov, reversed and said "it should be obvious that, if petitioner were unable to understand or speak English, his monosyllabic 'yes' or 'no' answers had no meaning."

Another reason for requiring a hearing on the record is to assure the non-English speaker an opportunity to present evidence of his language disability, including his date of immigration, level of education, and the language he speaks at home and at work; similarly, the proposed revision would enable the court to utilize trained personnel, e.g., language specialists, to assess the party's English language ability and report to the court.

Second, we recommend that once an affirmative determination is made of the need for an interpreter, the Act require "an oral simultaneous translation" of the entire proceedings, and not permit an oral simultaneous translation of testimony of only certain witnesses. This recommendation is based on the need for interpretation to the defendant, as well as to the court. The present draft, as I read it, would allow a non-English speaking defendant to be convicted on the basis of English language testimony against him on factual matters which he did not understand and therefore could not rebut. The same considerations which apply in criminal cases ought to apply to civil cases, where rights of critical importance are also adjudicated. The only allowable exception to this

legal principle might be where lengthy expert testimony is involved; in this situation, it may be appropriate in the interests of judicial efficiency to provide the litigant a consecutive or summary translation of expert testimony.

With reference to those parts of the legislation dealing with the duties of the Director of the Administrative Office of the United States courts, the Legal Defense Fund is in close agreement. Our suggestions in this area are as follows. First, in determining the qualifications of interpreters, idiomatic as well as formal facility in the language used by the non-English speaking party should be required. Such a proviso would minimize possibilities of misunderstanding between the non-English speaking persons and the other participants in the proceedings. What the *Vasquez* court said about persons whose understanding of English is only partial, is also valid when the interpreters understanding is only partial:

"Degrees of understanding may present themselves between that of complete comprehension of the language to that of minor matters. The question, not properly heard or understood, may bring forth an answer that might turn the scales from innocence to guilt or guilt to innocence. Then, too, the answer given might be made in words not entirely familiar or understood by the defendant."

Second, the duties of the Administrative Office might encompass evaluations of proposals for the use of linguistically trained personnel outside the courtroom. Such personnel could utilize appropriate interviewing or testing techniques to determine the language ability of a party, and report to the court. Such a procedure would alter the haphazard manner by which trial judges make the critical determination of need for an interpreter on an ad hoc or first impression basis.

A third recommendation is that, where a request for simultaneous oral translation is denied, an electronic recording of the proceedings be required. Such a recording would enable the parties, to review proceedings for instances where the language barrier might have been responsible for material distortions of fact.

Finally, the Puerto Rican Legal Defense Fund supports the requirement of an annual report by the Administrative Office on "the requests for use and effectiveness of interpreters in bilingual proceedings." Such a report will bring to the public attention an often neglected aspect of federal court proceedings where little or no reliable data now exists. These annual reports, provided they cover the circumstances under which simultaneous oral translations are denied, as well as granted, would demonstrate more precisely the need for interpreters in federal proceedings.

In conclusion, let me reiterate that the Puerto Rican Legal Defense Fund welcomes the Bilingual Courts Act as a necessary response to the real needs of our community. For non-English speaking Puerto Ricans, as well as other non-English speakers, the ability to be truly present at trial cannot but reinforce our faith in the fundamental fairness of the American system of justice.

STATEMENT OF CESAR PERALES, PUERTO RICAN LEGAL DEFENSE FUND, NEW YORK CITY

Mr. PERALES. Mr. Chairman, may I say that it is an honor to appear before the subcommittee today and have the opportunity to support the Bilingual Courts Act.

I am an attorney and I am the executive director of the Puerto Rican Legal Defense and Education Fund. Like the Mexican American Legal Defense Fund, represented by the woman you have just heard, the Puerto Rican Legal Defense Fund is a nonprofit corporation formed to provide legal representation on issues of general concern to Puerto Rican communities throughout the United States.

I want to emphasize the fact that I will not be commenting on the Puerto Rican Federal Relations Act. As I understand it, the Commonwealth Representatives will come before the committee at some future point in time to discuss those amendments.

The Puerto Rican Legal Defense Fund is concerned with the rights of Puerto Ricans who reside within the continental United States.

Let me begin by saying that I believe the proposed Bilingual Courts Act is long overdue. I think, if expeditiously enacted, the Federal Bilingual Courts Act will go far toward guaranteeing Spanish-speaking and other non-English-speaking Americans equal justice in the Federal courts.

I think it is important to note that its passage would no doubt have salutary effects on the overall Federal criminal justice system and on many State systems of criminal justice which look to the Federal courts for procedural models.

I do want to indicate that the Puerto Rican is in a peculiar situation. You are no doubt aware that in the Commonwealth of Puerto Rico, Spanish is the official language, and that we have native-born American citizens whose language, in essence, is Spanish.

So I feel that it is particularly unjust and particularly unfair to have these American citizens, finding themselves in trials in Federal court within the continental United States, unable to have translators available to them in view of the fact that the Congress of the United States fosters, on the island of Puerto Rico, the culture and the language of Puerto Rico.

Senator BURDICK. May I ask a question at this point?

The Puerto Ricans that live in America do go to our public schools and are learning English, aren't they?

Mr. PERALES. The ones that are young enough to be educated. I was referring to the older migrants.

Senator BURDICK. Well, that is my question. Is the Puerto Rican population now growing up to use the English language in this current generation?

Mr. PERALES. Yes, to a great extent; a large portion of it is.

Senator BURDICK. We are talking about an older generation, now though?

Mr. PERALES. Yes, we are.

I was about to give some statistics from the Census Bureau that I think will relate to this question. Within the United States at this point, there are approximately 2 million Puerto Rican residents.

I want to indicate that the Puerto Rican population of the United States is not confined, as is widely believed, to New York City. I can name at least 9 States where there are well over 20,000 Puerto Ricans; they are New York, New Jersey, Illinois, California, Pennsylvania, Connecticut, Florida, Massachusetts, and Ohio.

Now, because many Puerto Ricans are recent migrants to the United States, the numbers and percentages of Puerto Ricans who speak no English or speak English with serious difficulty are very high. That statement is supported by the following Bureau or Census statistics. Spanish is the mother tongue of over 83 percent of Puerto Ricans living in the United States.

Spanish is the language usually spoken in the home of 72 percent of Puerto Ricans in the United States. Only 69 percent of the Puerto Ricans age 10 and over in the United States report an ability to read and write English.

So approximately 31 percent of adult Puerto Ricans in the United States do not report an ability to read and write the English language.

When we talk about 2 million Puerto Ricans residing in the continental United States, I think we are talking about one-third of our adult population not being fluent in the English language, and who would probably require an interpreter in a court proceeding.

I would like to turn to the text of the proposed legislation and offer some suggestions. A great many of them have been covered by previous testimony, so I will be brief, and to point out some of the things that have not been discussed.

I think first, the Puerto Rican Legal Defense Fund would like to recommend that the judicial determination for or against the need for a translator be made upon submission of evidence upon the record. I think there are a number of good reasons for this.

Many non-English speakers are reluctant to admit deficiencies in English language skills, either out of pride or embarrassment or out of apprehension that the judge or prosecutor may frown upon the request for an interpreter. Another reason I would give for requiring a hearing on the record, is that it assures the non-English speaker of an opportunity to present evidence of his language disability.

I think it would lead ultimately to the court's utilizing trained personnel; that is, language specialists, who would determine at some early point whether or not the individual needed an interpreter. I think it would avoid the haphazard situation that exists right now in New York's Federal courts and throughout the rest of our country.

I want to reiterate a point that was made by Ms. Martinez—the bill is silent in regard to the duty of the interpreter to translate communications between the attorney and the client. It is silent with regard to this even in the courtroom.

I think that the bill speaks of providing a translation of the judicial proceedings, and, as Mr. Westphal has indicated, once in the courtroom, I think it is the obligation of the Government to provide that type of translation and communication between the attorney and the client while the procedures are going on. This bill is completely silent as to that.

Again, let me state that I agree completely with Judge Real that the same considerations that apply in criminal cases ought to apply in civil cases, because rights of critical importance are adjudicated in civil cases in the Federal courts. I do not think that it would be an outright burden to require simultaneous oral translation as opposed to a summary translation.

I do not think the burden is that great, and I think that it would assure justice in most cases. My experience has been that summary translations are invariably bad, and that they are not accurate.

Finally, let me refer to those parts of the legislation dealing with the duties of the Director of the Administrative Office of the U.S. Courts.

Our suggestions are as follows: first, in determining the qualifications of interpreters, idiomatic as well as formal, facility in the language used by the non-English-speaking party should be required.

I think we have heard some examples of how words can be misinterpreted, such as the example of the words "to molest." It is very, very important that the translator be acquainted with the idioms of that particular portion of the population which is involved.

If we are talking about the Southwest, some of them should be acquainted with the idioms of the Chicanos; if we are talking about the Northeast, and Puerto Ricans primarily, someone should understand the idiomatic expressions used by the Puerto Ricans, so that it would minimize the possibilities of misunderstanding between the non-English-speaking and the other participants in the proceedings.

I would also suggest that the duties of the Administrative Office might encompass evaluations of proposals for the use of linguistically trained personnel outside the courtroom, personnel who would utilize appropriate interviewing or testing techniques to determine the language ability of a party and report to the court.

Again, that procedure could alter the haphazard manner by which trial judges make the critical determination of need for an interpreter on ad hoc or first impression bases.

In conclusion, let me reiterate that the Puerto Rican legal defense fund welcomes the Bilingual Courts Act as a necessary response to the real needs of our community.

For non-English-speaking Puerto Ricans, as well as other non-English speakers, the ability to be truly present at trial cannot but reinforce our faith in the fundamental fairness of the American system of justice.

Senator BURDICK. I thank you, very much, Mr. Perales, for your contribution this morning.

Mr. PERALES. Thank you.

Senator BURDICK. There is just one question that I have, and I think the staff might have a question or two to ask you.

To your knowledge, do you know of any Puerto Rican in your community who was denied an interpreter when he needed one?

Mr. PERALES. Well, we should be aware of the fact that the famous *Negron* case was a case of a Puerto Rican in New York City, and that in the Northeast, we were not as fortunate as people in the Southwest, where for some time adequate translation and interpreters have been made available.

The situations in New York and in New Jersey are notorious. I have personally witnessed——

Senator BURDICK. Are you a lawyer, yourself?

Mr. PERALES. Yes, I am.

Senator BURDICK. Have you had this experience?

Mr. PERALES. Prior to the *Negron* decision, yes. *Negron* is in our circuit and is presently being implemented.

I am just saying that the situation was that: and that it was resolved by that decision in 1970.

Senator BURDICK. Thank you.

Mr. WESTPHAL. Mr. Perales, I have one question here.

You suggested that we write into the statute that the judge must make this determination of the inability to adequately understand or speak the English language, and that he should make that determination in a formal hearing in open court. My own reaction to your suggestion is that I am a little bit reluctant to see that kind of language written into the statute.

As I see the situation, based on my own experience in trial work, if I am representing a non-English speaking party, the first time I get before that judge, even if we passed this law, I would make a motion. I

would say to the judge, "We have a little problem in this case, Judge. My client does not understand English sufficiently. We are going to have to have an interpreter." Very frequently the judge is probably going to take my word for it, especially if the prosecuting attorney agrees, and the prosecuting attorney knows because the police and others have had some dealings with him.

Now, then, suppose the judge does not accept this representation that I make, or suppose that the prosecuting counsel opposes it or says he does not think it is necessary, because my client understands well enough. In that situation, I think, as a defense counsel, I have the obligation to protect my record, and I would say, "well, Your Honor, I feel very strongly about this and I would ask that we hold a short hearing and that I be given an opportunity to demonstrate to the court that my client does not have this degree of fluency and that we do need an interpreter." That is an obligation of the defense counsel, as I see it. The Congress has tried to respond as much as possible to provide public defenders and provide their legal services for people who cannot afford to pay for legal services. Your organization and many others have tried to supplement the governmental effort to provide counsel for people who need it. It seems to me that since we have started out at the very ground level by doing our best to provide them adequate counsel, we are entitled to rely upon the fact that counsel is going to be conscientious in carrying out his duties.

I do not think we need to require a formal hearing in all instances. I think we can do as the language of the amendment does: leave it to the discretion of the judge to decide, and of course, if defense counsel does not think that judge is responding very well, he has got to build his record and protect the case for potential error on appeal. I think that is the only practical way we can handle it.

Mr. PERALES. I can only tell you, for example, that there are now a number of cases on appeal in which there is absolutely no record of the question as to whether or not an interpreter should have been appointed. It may very well be the responsibility of defense counsel in the criminal proceeding to get it on the record. I can only tell you that it is very rarely on the record and what happens quite often—not always but quite often—is that the court summarily rejects that motion and denies that motion.

Mr. WESTPHAL. I have no doubt that that is what in fact has gone on in the days prior to the *Negron* decision and may even be going on today in the courts where the judge or the other personnel are not sensitive to this particular problem. But I would think that with the passage of this legislation, there would be more awareness on the part of the defense counsel that it is primarily their obligation to protect the rights of their clients, to see that they get an interpreter. If, in order to get that interpreter, it requires a full-blown showing on the record, I think that we have got to rely on counsel to do that rather than to require a formal hearing in all instances.

Mr. PERALES. Well, let's hope that we can rely on counsel.

I was only pointing out a way in which I felt that the bill would be strengthened by requiring that part on the record. It may not be a very formal hearing, but again, most records on appeal in which the issue has been raised are really very silent as to what was said.

Mr. WESTPHAL. If the judge will accept my representation that my

client does not speak English and that therefore we need an interpreter, there is no sense in spreading that on the record.

Mr. PERALES. Right, in that situation, no, but in a situation in which a denial is made——

Mr. WESTPHAL. If a denial is made, then I think it is the obligation of counsel to build his record.

Mr. PERALES. Well, I would prefer not to rely on counsel but to have the legislation require that a denial of an interpreter always be on the record.

Senator BURDICK. You will still have the same problem with the law.

Mr. PERALES. I will still have the same problem?

Senator BURDICK. You will still have the same problem of having to show that your client does not understand the English language. You will have to show that on the record.

Mr. PERALES. True, but I still want that on the record so that it might lead to a more regular method of determining whether or not one needs an interpreter, and second, to protect the rights on appeal.

Senator BURDICK. Just so I understand, you say you are an attorney, and you say prior to the *Negron* case that you were not getting representation.

In your own experience, did you have an experience like this?

Mr. PERALES. No, I did not personally.

Senator BURDICK. You did not have any personal experiences?

Mr. PERALES. No.

Senator BURDICK. I wonder what the lawyers do to present their case to the trial judge as requiring an interpreter.

I just wonder how far they go. That was my point.

Mr. PERALES. Well, I did witness an oral argument, of perhaps 5 minutes' duration, in which an attempt was made to persuade the court that there was need for an interpreter, and that the judge had complete discretion.

Senator BURDICK. There was no documentation or anything like that?

Mr. PERALES. Very rarely did I see documentation for that.

Senator BURDICK. Maybe the defense lawyers have fallen down in too many cases.

Mr. PERALES. Well, perhaps if we had it in the legislation, lawyers would know that there is going to be a hearing on the record, and then they would be prepared to present that type of evidence.

I am just pointing out that there is no regular method of determining whether or not someone is entitled to an interpreter, and that this legislation does not clear that up.

Senator BURDICK. You have raised a good point.

Mr. WESTPHAL. That is all the questions that I have.

Senator BURDICK. Thank you very much.

Mr. Norman Lew, attorney, representing the Neighborhood Legal Assistance Association of San Francisco.

Is he present?

Mr. LOPEZ. Mr. Chairman, did you skip me intentionally? I think I was next on the list on the door, Peter Lopez.

Senator BURDICK. Oh, we certainly did. Mr. Lopez, you are next. You are bracketed here in another category. My apologies.

STATEMENT OF PETER LOPEZ, INSTITUTE FOR COURT MANAGEMENT, VENTURA, CALIF.

Mr. LOPEZ. Thank you very much, Mr. Chairman. Because so many of the things that I did want to speak on this morning have been covered, I think that I will pass over them and just say that the legal process of protecting, insuring, and guaranteeing the constitutional provisions contained in the 5th, 6th, and 14th amendments, I think, will be strengthened by this bill.

I have been involved in this interpreter problem now for a little over a year, since we were asked to conduct a study of State court systems, primarily in the Southwest. We also looked at the States of New Jersey and New York, basically to determine the availability and competency of interpreters there. It has also been pointed out this morning that, primarily, the sources of interpreters are basically three. There is either an employee who works for the system—who has been hired specifically for the purpose of interpreting—or a bilingual employee who works somewhere else in the system, or there is a per diem, or freelance, or privately employed interpreter, or there is a friend, a relative or individual sitting in the audience.

I think I would prefer to address myself to the problems of interpretation, since problems are usually addressed when the frequency is high and the severity is great.

In the Southwest there are approximately 8 million people of Spanish-speaking origin. The language "efficiency" for those individuals indicates that 50 percent of the Spanish origin population in the four-county area of Los Angeles, Ventura, Santa Barbara, and Orange Counties are Spanish speaking only, and that an additional 24 percent have a preference for the Spanish language.

Therefore, if you look at the almost 2½ million population in that four-county area, you have about 47 percent of them who are Spanish speaking only. In further support of this, we find that the estimated reading levels and the language skills of the Southwest Mexican-American children show that 39.9 percent in the eighth grade are 2, 3 or more years behind in reading and language skills; by the time they are at the 12th grade level, 40.2 percent of them are 2 or 3 or more years behind in reading and language skills.

We have to realize from the start that only about 75 percent of the Mexican-American children enter school, which is the lowest school entry level, and of that 75 percent, only 91 percent of them ever complete the eighth grade. Sixty percent of them only complete the 12th, and only 22 percent of them enter college. You can see the severity of the problem is great, and the frequency of the problem is considerable.

Senator BURDICK. Can we wait a minute?

I understand we have been working our reporter for too long.

The committee will be in recess for just a moment.

[A brief recess was taken.]

Senator BURDICK. You may continue.

Mr. LOPEZ. We may continue? Very good, thank you, Mr. Chairman.

What I was trying to address myself to in my initial comments was the fact that we usually look at a problem, in an effort to resolve it, only where there is a high frequency, a high severity, and when there

are resources locally available to address it. I think that when we have 8 million persons of Spanish-speaking origin plus 8 million people from other ethnic groups whose primary language is other than English in the United States, the problem is sufficiently severe that we need to consider it.

I would like to also address myself to some of the questions which were posed here in relation to the need for legislation. I think that there is need for the legislation for two reasons. Throughout most court statutes or State statutes that I have found, the appointment of an interpreter is discretionary with the court. In all fairness, in most instances when it becomes quite obvious that the court cannot continue its operation without the appointment of an interpreter, an interpreter will be provided. However, it still is basically discretionary; therefore, the legislation is needed, I think, to clarify that non-English-speaking persons, or persons with language deficiencies, should have the unquestionable right to interpretation into a language which they can understand. As I was saying, the extent of the problem is considerable. There is a huge population. The educational levels of non-English-speaking people and, in particular, of the Mexican-American or Spanish-speaking people is greatly deficient. In some of the areas there are overwhelmingly large populations. For example, in the four-county area which I mentioned earlier, the increase in population from the 1960 census to the 1970 census has been over 130.2 percent. That growth rate nearly doubles the rate of the black population growth, and almost equates the rate at which the whites have been leaving the area. I think what we need to examine, in the work that I have done with the interpreters over this past year, is the critical question which the two of you have been raising this morning relating to administrative considerations. The establishment of standards is of primary import.

I have found in my experience with most courts—and I have worked primarily with State courts of general jurisdiction and limited jurisdiction—that the determination of competency is frequently made by incompetents. You have a county local personnel unit of government which makes a determination of whether or not an interpreter is competent. If at all, they will administer a written examination or perhaps an oral examination which will only determine whether or not an individual has basic bilingual skills, not at all the kind of bilingual skills that are required in the judicial adversary setting. Most frequently the determination of competency is made depending on the level of classification at which that person will be brought into the system. For example, if they are going to hire an interpreter at a "clerk 2" level, they will administer a "clerk 2" level examination. Occasionally they will, in addition, provide some written or oral examination of language skills, which is totally inadequate. Another problem is that most assistant employees will have additional duties even though they may be hired specifically to interpret. Frequently we find that interpreters who work in smaller court jurisdictions will be given the responsibility of traffic clerk or some other kind of clerical duty. They may be investigators or probation traffic investigators. This, of course, raises different kinds of problems. It becomes very difficult for a defendant in a criminal case, sitting there before the

court, to believe that the interpreter who is provided will give an objective and accurate interpretation when that interpreter is the same police officer who arrested him the previous day or the investigator at the D.A.'s office who has been questioning members of the family and friends.

So the question of standards is one which is very crucial to the overall effect and intent of the legislation. I propose in my recommendations to this committee—and I do not know whether it is within the scope of this committee or not—but I propose that a task force be established to do an indepth inquiry into the standards, qualifications, procedures, and administrative processes which are required for the business of interpretation. Some of the questions which you have raised this morning have been quite perceptive. They raise some of the basic issues which frequently are not raised and on which we can sit here and offer you testimony. The testimony that we can offer you is, however, pretty much a subjective and individual opinion, rather than an opinion which is based on sound administrative and lingual premises.

I think, rather than ramble on, I would like to have you ask me the kinds of questions which you think are important.

But before moving on to that, I notice that one recurring question which has been asked is, "Have we seen any violations or denials of individual rights in the courtroom as a result of not having legislation?" My response to that is a hearty yes. My colleague who did considerable inquiry in the Newark N.J. courts frequently found Puerto Rican criminal defendants who had been subpoenaed to appear in court, or had been issued a citation, and had appeared in court, waiting in the courtroom. The procedure in these particular courtrooms was that a first rollcall was made and the individual's name would be called. He would stand, start to come forward, and he would be told by the bailiff to sit down, they were just checking to see if it was his name. Since he did not understand what the intent was, he would sit down again.

Senator BURDICK. May I just identify this incident? Were you with the lawyer at that time? Were you the lawyer in that case?

Mr. LOPEZ. No, I was not. My colleague did an inquiry of the Newark, N.J., courts.

Senator BURDICK. Do you have any personal experience of this yourself?

Mr. LOPEZ. Of a different kind. I will give you a personal experience with the Mexican-American lawyers club in Los Angeles.

Senator BURDICK. May I ask what kind of a court that was? Was it a State court or a Federal court?

Mr. LOPEZ. We were talking about State courts in all instances. We have a Mexican-American lawyers club in Los Angeles and I made a presentation to them relative to the subject of interpreters. It was the most difficult group that I had ever worked with in trying to get them to understand and become sensitive to the issue of interpreters because most of them were bilingual. Their response to me was that interpreters are really not a critical part of the judicial proceedings because they, as Mexican-American attorneys, are bilingual and can adequately protect the rights of a defendant. But, of course, this was a denial of

the individual defendant's rights to know what's happened to him. The attorney would know what was happening to him, but not the defendant. After much examination, I found that what this really was was a case of ego protection on the part of the Mexican-American attorney who felt that he, as an attorney, was quite competent. He felt that, because he was a Mexican-American and bilingual, he could provide the required protections of the 5th, 6th, and 14th amendments to his clients. I feel he did so at the expense of his clients.

I would like to stop at this point and offer myself for any questions which you might have. I would be happy to respond to them as candidly as I possibly can.

Mr. WESTPHAL. In the course of the studies which your group has undertaken, did you get into this matter of tape recording the non-English language and then the English interpretation given to it?

Mr. LOPEZ. Yes, sir; Mr. Westphal, we did.

Mr. WESTPHAL. Would you comment briefly on that?

Mr. LOPEZ. Surely.

The matter of recording, I think is a requirement and a necessity. In one of my comments to Senator Tunney, in regard to his legislation, I stated that it is very crucial that any defendant, or any individual, who comes before the judicial system to have a record of those proceedings. In the case of a non-English speaking individual, that protection is equally, if not more, crucial.

Mr. WESTPHAL. Excuse me, just a minute, Mr. Lopez, I do not think that you understand. I am assuming that there is going to be a court reporter that is taking down everything that is said in English. The question is, do we have to go further than that and tape record the English question which is then translated into a Spanish question and then the Spanish answer and then its interpretation into an English answer? Do we have to tape record that, assuming that we have competent counsel, a competent qualified interpreter that knows the idiom? That is the question.

Mr. LOPEZ. I cannot definitively respond to your question, but I can say that there needs to be a bilingual record of those proceedings. Now the questions of what portions of it are transcribed, what portions are recorded, and in what manner would they be recorded, I think are the requirements and duties and responsibilities that a task force such as I suggested to this committee should undertake.

Mr. WESTPHAL. I have one further question. Do you have a written statement prepared for your testimony?

Mr. LOPEZ. Yes, I have provided an outline statement to the committee. If you would like another one I can send you another one we have.

Senator BURDICK. We do not have it. Could you send us another copy to make it a part of the record?

Mr. LOPEZ. Surely.

Senator BURDICK. The entire statement will be made a part of the record, thank you very much.

PREPARED STATEMENT OF PETER S. LOPEZ OF THE INSTITUTE FOR COURT MANAGEMENT VENTURA, CALIF.

THE PLIGHT OF THE LANGUAGE HANDICAPPED IN JUDICIAL PROCEEDINGS

The justice system has given very little or no consideration to improving the competency and availability of interpreter services to persons with language

handicaps. Statutory proof of this judicial neglect is evidenced by Arizona's antiquated provision for appointment and compensation.[1]

Discussions with judges, administrators, attorneys, and others daily involved in the administration of justice reveal that they have given little or no thought to the subject. Interpreters are usually appointed in criminal matters when defendants clearly cannot communicate in the English language. But, the important role the interpreter plays and the effect his competency of incompetency may have on the verdict of judge or jury has either been overlooked or the system simply doesn't care. Assuming the former, it is past time that action be taken to correct this inequity.

To be sure, the entire matter of modernizing and improving the administration of justice is relatively new. Few persons have been professionally prepared to administer a justice system in a manner which is both responsible for the conduct of efficiently moving judicial workloads while simultaneously attempting to achieve justice in individual cases.[2] Moving judicial workloads is statistically reflected, but, achieving justice to individuals is not as easily documented nor discernible. Defense attorneys representing non-English speaking persons can rely on interpreters to assist in the preparation and presentation of their cases. The language handicapped must rely on interpreters to assist in the preparation and presentation of their cases. Without available and competent interpreters, the non-English speaking person is caught in the midst of and at the mercy of attempts to accelerate the disposition of cases without the ability to exercise his rights.

Since the competency and appointment of interpreters is a discretionary matter in most instances with the courts it would appear that such onus is one for which the courts are ill-prepared.[3] It is commonly argued that courts rely on professional personnel services to determine qualifications and standards for such competency, but they too appear to be ill-prepared to make such determinations.[4]

During a preliminary inquiry into the matter of interpreters, findings indicate that several sources are used when interpreters are needed.[5] Although the number of bilingual persons is limited, one source is persons who work within the system. In some instances, such persons have been hired specifically as interpreters and have been accepted on qualifications previously challenged in this discussion. For the sake of proceeding, assuming that such interpreters are qualified, in most instances they are assigned additional duties. These duties most often become primary duties and the function of interpretation is relegated to a secondary responsibility.

Other systems persons who are used to provide interpreting services range from custodial employees and clerks to police officers and, usually, have not been qualified by any established standard. Since the determination of competency is often discretionary with the courts, qualification may be determined by a perfunctory "Do you speak ———?" followed by appointment.

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[1] Arizona Revised Statutes Annotated, Vol. 4 (St. Paul: West Publishing Co., 1956) Title II, Section 11-601.

[2] Friesen, Gallas & Gallas, Managing the Courts, Robbs-Merrill Co., Inc., 1971, p. 18.

[3] Ventura County, an investigation under sec. 1421 of the California Labor Code, The California Fair Employment Practice Commission, June, 1972 documents:
Spanish surname population: 20 percent—County employment by ethnic group.

Department	Spanish surname	Other Caucasian
Superior Court	0	24
Personnel	*4	16
Municipal Court	**4	61

* "Poor minority utilization—all minorities are Spanish surnamed female clerks."
** "——— all minorities are service-clerical."

NOTE.—The investigation documents a pattern of employment practices in Ventura County which support allegations of such practices throughout the country.

[4] Ibid.

[5] Lopez & Rodriguez, Interpreters Effect on Quality of Justice for nonEnglish Speaking Americans, The Institute for Court Management, Jan. 15, 1973.

Still another source of interpreters might be friends or relatives who accompany a defendant, individuals seated in the courtroom, or passersby in halls and corridors. These persons most often have not been qualified by any standard. Since the matter of competence is discretionary with the court, and the case is before the court and needs to be disposed, a prompt determination of competency is made, the person appointed, and the trial commenced.

Private individuals engaged in the business of interpretation and translation are another interpreter source to the courts. These individuals are found mostly in larger cities having a high percentage of non-English speaking persons. Although interpreting in the courtroom is one source of income, private interpreters show preference for civil matters and administrative hearings. Such preferences become quite obvious because deposition taking and other such services provided by attorneys and private individuals can command higher fees without committing large blocks of time often required of court trials. Competency of such private individuals appears to vary considerably and may determine the frequency with which they are called upon and the income they derive. Since a higher degree of competency appears to result in a higher degree of recognition by attorneys and other individuals who utilize their services, these interpreters are often not available to the courts. Private interpreters interviewed indicate that many were former police officers or court clerks. These individuals are either known by the courts because of a previous relationship and their names included in an appointed interpreter list or they may have gone through some qualifying procedure to have their names placed on such lists.

The challenge to the currently used qualifying provisions continues. Judges and personnel systems have not assessed the complexity of considerations required to adequately establish standards and procedures which define interpreter functions and qualification. If used at all, the most commonly used criteria is a written vocabulary test and an examination of oral skills. Assuming the adequacy of vocabulary tested and oral skills examined, a multitude of other factors are left unconsidered.

Dialects, regionalisms, idioms, and sub-cultural slang are matters of utmost importance in determining vocabulary and oral skills. The affect of a misinterpretation of testimony because of any difference in intent attributable to any of these factors might mean the difference in findings. The difference in findings can of course mean the difference between justice or injustice. In a report of the United States Commission on Civil Rights a disgraceful example of such misunderstanding is cited:

"* * * a Mexican American who had been drinking struck his daughter for being tardy in bringing him some shampoo while he was showering. His wife called the police and told them of the assault. Erroneously understanding his wife to mean that her husband was sexually assaulting the daughter, the police arrived with drawn guns. The father, almost shot during the process of arrest, was taken before a city magistrate and charged with sexually molesting his daughter. Understanding little English and thinking he was being charged only with drunkenness, the father made no objection to the charge. No interpreter was present to explain the charge or to help him. He was then placed in the county jail in Phoenix, where he remained for 2 months awaiting trial because he could not afford the high bail. When he was able to see the defendant and converse with him in Spanish, the probation officer learned the facts and explained them to the magistrate. As a result, the case was dismissed."[9]

During an interview with Mr. Phil Montez, Director, Western Field Office, U.S. Commission on Civil Rights, he stated that the actual verbal exchange which took place between the man's wife and the police officers was: "Esta molestando mi hija." An equivalent literal interpretation is: "(He) is molesting my daughter." The police officers misunderstood the intent of the allegation due to differences affecting language. They assumed that "molestando" meant "molesting" which in our dominate culture is commonly understood to mean SEXUALLY molesting.

In addition to previously mentioned factors affecting accurate language interpretation we find that cultural differences play an important part. Language used in different cultures may have entirely different connotations from that

[9] Mexican Americans and the Administration of Justice in the Southwest, A Report of the United States Commission on Civil Rights, March, 1970, p. 70.

which a literal interpretation may convey. A judicial system and a personnel system which does not understand these subtleties cannot be responsive in providing adequate services.

But, we have not yet begun to consider other facets to this service which need consideration and improvement. Most court systems provide interpreting services through systems personnel, that is, persons either hired specifically to interpret or others who may be bilingual and work somewhere within the system. Yet, no rule or procedural provision has been found to adequately define the role of interpreters nor the procedure that should be followed in providing interpretation services during trial proceedings. As a result, interpreter procedure becomes an individual matter among judges, interpreters, and attorneys Interpreters may work in various ways. They may summarize testimony given by a language-handicapped after foreign language testimony is offered, they may endeavor to interpret verbatim and literally following such testimony, or they may simultaneously interpret verbatim while foreign language testimony is being offered. In some instances only testimony offered by the language-handicapped is interpreted. In other instances interpreters interpret for both the language-handicapped while English testimony or comments are made and for the English-speaking person while a foreign language is being used. The procedures used are dependent upon the instructions of the individual court, the acceptance and agreements reached by litigating counsel, and the role perceptions and capabilities of the interpreter.

Role perceptions of the interpreter play an interesting and critical part in the trial process. These perceptions seem to fall into three major categories.

First, the prosecution oriented interpreter. Usually systems employees who work for some branch of law enforcement or prosecution fall into this category. In this role they often, knowingly or unknowingly, endeavor to strengthen the case for the prosecution because either consciously or subconsciously, their attitude toward the defendant is based on a presumption of guilt.

The second role perception is the defense oriented interpreter. In this role the interpreter views himself as the protector of the at-a-disadvantaged language handicapped individual.

In either role cited, opportunities for the interpreter to promote a possible ambivalence in role occurs when marginal interpretation is possible. Marginal interpretation as used in this sense describes testimony or comments that can be worded differently but the meaning of which remains essentially the same. For example, a defense oriented interpreter might interpret testimony which would seem to be overly harsh or incriminating but which could be interpreted in a way that would seemingly reduce its severity. It is possible that the interpretation could be defended as accurate by the interpreter to protect his bias. In an adversary system of justice, the intervention of an interpreter as an additional advocate of one interest or another, injects one more factor to the proceedings and to the ultimate fair determination of guilt or innocence.

A third role perception is that of interpreters who view their role as officers of the court rather than of the prosecution or defense. In this perception, interpreters endeavor to interpret objectively and accurately allowing the chips to fall where they may. They believe that if evidence is interpreted which is either strengthening or weakening to the prosecution or defense that the burden for the shifting strengths lie with the opposing counsel and not the interpreter. A number of causes can be conjectured for these varying role perceptions, but, conjecture does not address the important differences in these role perceptions which can and do have a long and lasting affect on the outcome of the trial and the lives of the language handicapped.

The matter of interpreter role perceptions and definitions of functions has been briefly discussed from both the perspective of the system and of the interpreter. Yet another very important perspective merits consideration regarding the matter of role perceptions. What is the defendant's perception of the interpreter? The interpreter is his sole lifeline in an extremely important process which affects his life and that of family and relatives. The defendant must rely upon the interpreter's competency and role perception. Can he have any degree of personal assurance that a police officer he saw in the station while being booked can and will truthfully and accurately convey his, the defendant's side of the story? Might he not have similar anxieties if he knows that the interpreter is a clerk who also works in the office adjoining the courtroom? No discussion on these occurrences is offered but a simple request: empathize, if you can, with the situation.

This statement is not intended to be a comprehensive nor exhaustive discussion of facets which need to be considered in improving interpreter services. Its primary intent is to create new awarenesses which need to be seriously examined and considered by those judges, administrators, and other decision-makers whose lack of understanding elicits simple solutions to a complex problem.

This statement is also intentionally devoid of legal arguments in support of correcting this sorely neglected facet in the administration of justice. However, the latest and strongest case law in support of interpretative services for a criminal defendant is that of *Negron* vs. *State of New York*, 434 F 2d 386 (2d. circuit, 1970). The language in *Negron* states in essence that the right to interpretative services throughout the trial process is even more consequential than the right to confrontation, that considerations of fairness, the integrity of the fact finding process and the potency of our adversary system of justice forbid that the state should prosecute a defendant who in effect is not present at his own trial because of his inability to comprehend the proceedings.

Equal protection of the laws is guaranteed under the Fourteenth Amendment. Whether or not the system takes the initiative to improve this deficiency which presently deprives the language handicapped of that equal protection is the challenge offered. Providing this critical human right is a responsibility of a just justice system and one for which it must be held accountable.

Senator BURDICK. Our next witness is Mr. Norman Lew of San Francisco.

Mr. LEW. Senator, I submitted a written statement last week. Did it get here?

Senator BURDICK. Yes, Mr. Lew. We have it and I will now place it in the record.

PREPARED STATEMENT OF MR. NORMAN LEW, ATTORNEY FOR THE NEIGHBORHOOD LEGAL ASSISTANCE ASSOCIATION OF SAN FRANCISCO

INTRODUCTION

The Bilingual Courts Act (S. 1724) can fill many of the gaps now existing in our federal courts. I have not had extensive experience in the federal courts. For that reason, much of my remarks will be addressed in large part to the Municipal and Superior Courts of San Francisco County in California. However, I hasten to add that the problems dealing with the lack of competent interpreters in the state courts are the same as those in our federal courts. These problems are common to both judicial systems. I remember quite vividly my first major criminal case before the federal courts. It involved non-English speaking defendants; precisely the subject of S. 1724. Remembering that case, which involved multiple defendants speaking several dialects of Chinese, makes me only too glad to speak on behalf of the Bilingual Courts Act.

The main areas of discussion will deal with the following topics: a brief historical sketch of the use of our courts by Chinese-Americans and persons of Chinese ancestry; the present availability of competent interpreters; the present process of selecting interpreters; and finally, the desirability and need for enactment of the Bilingual Courts Act.

HISTORICAL BACKGROUND

As a youngster growing up in the heart of San Francisco's Chinatown, I heard all too often from my elders that the Chinese people do not air their differences in the Courts. The reason most commonly given for the Chinese shunning the Courts was and still is, their lack of understanding of the English language. Fearful of being ridiculed for their lack of understanding of a "foreign language," very few of the Chinese people sought the Court's assistance. I am sure many other ethnic groups have avoided the Courts for the same reason.

In the ten years of my own practice, I have discovered that although a large part of this fear has now subsided, all too many still do not utilize our courts and for precisely the same reason as given years ago. In talking with my colleagues, and particularly those who have practiced law many more years than I have, and to court personnel, the failure to use the courts by the Chinese is one reason why we do not have a comprehensive method of securing competent

interpreters of the Chinese language. The courts just did not believe it was necessary since not many Chinese people were seen in court. Obviously, what existed twenty-five years ago no longer exists today. With the influx of immigrants and the taking over of businesses by the younger generation, the use of the courts has greatly increased. Unfortunately, the system for selection of competent interpreters remains as it existed twenty-five years ago.

AVAILABILITY OF COMPETENT INTERPRETERS

The Superior Courts in San Francisco County, California, have two part-time Spanish-speaking interpreters, one part-time Italian-speaking interpreter, one part-time Greek-speaking interpreter, and one part-time Chinese-speaking interpreter. San Francisco County has had a Chinese-speaking interpreter for at least the past twenty to twenty-five years. As in the case of the present Chinese-speaking interpreter, Mr. Thomas S. Leong, his predecessors have been appointed by the Presiding Judge of the Superior Court. He is subsequently "qualified" by the executive officer of the Superior Courts.

Mr. Leong is paid $225.00 per month but receives no compensation for his expenses. Mr. Leong's duties are mainly in the criminal courts, and he is expected to be available every day whenever a non-English speaking Chinese defendant is brought before the courts. This would include arraignment of defendants, preliminary hearings should it be a felony matter, participation in the actual trial of a case, sentencing, and all other judicial proceedings requiring his services.

Mr. Leong is often called upon to interpret in civil matters by private counsel. He is compensated by the parties involved in such civil matters. Since he is the only "qualified" Chinese-speaking interpreter, his case load is extremely heavy. In the last three years, his criminal case load has increased eight-fold in terms of appearances per month. To add to his burden, he was sworn-in three (3) years ago as the Chinese-speaking interpreter for the Federal District Court for the Northern District of California.

None of our courts, state or federal, has a list of qualified interpreters to draw upon. Whenever an interpreter is unavailable, the courts will solicit the assistance of language schools, consulates, or attorneys who can speak and understand a particular foreign language. I have on more than one occasion been asked to interpret in court where an interpreter was unavailable.

The Bilingual Courts Act will do much in the way of providing counsel and our courts with competent interpreters. It will create a list of competent and qualified people to act as interpreters. In discussions with Mr. Jim Hewitt, Federal Public Defender for the Federal District Court, Northern District of California, since 1965, for lack of such a list, it is conceivable that the same interpreter will be used to interview both government and defense witnesses by differing and adverse lawyers. This is obviously unacceptable.

SELECTION OF INTERPRETERS

Mr. Thomas S. Leong, whom I have dealt with on numerous occasions and who is eminently qualified, has been the official Chinese-speaking interpreter for San Francisco County for the past seven years. There are no guidelines or standards to determine who is competent to be an interpreter. Fortunately, Mr. Leong is competent, but conceivably because we lack a system of selection, we may not be so fortunate next time.

The Bilingual Courts Act would set guidelines and standards in the selection of competent interpreters. Accuracy and precision in interpreting or translating from one language are extremely important. I once represented a woman who wanted to bring three (3) minor children to the United States from Hong Kong. But, because on one of the birth certificates her name was listed as "King" rather than "Ping", she was unable to bring that particular child. The Chinese character for the name is identical, but its translation into English, differing from the other two birth certificates, made all the difference in the world.

DESIRABILITY AND NEED FOR BILINGUAL COURTS ACT

My colleagues are unanimous in their opinion that the Bilingual Courts Act is a necessary and desirable piece of legislation. Criminal matters require meticulous work and a thorough understanding of the client's case in order that he

be properly defended. Under the present system, access to competent interpreters is haphazard at best. There is no list from which to draw.

The areas for conflict of interest in criminal cases are numerous. Obviously, it is undesirable to have the same interpreter for the defense and prosecutor conduct the pre-trial interviews. The scarcity of competent Chinese-speaking interpreters is vividly illustrated when Mr. Leong, in recent months, has been called to Las Vegas, Nevada, and San Diego, California, where his services were required in cases involving major crimes. To draw upon the offices of consulates, language schools, and certain attorneys who speak a particular foreign language, as is often done under both the state and federal systems today, is wholly inadequate. The accurate interpretations required in court are an absolute necessity. The proposed Act would provide both a list of competent interpreters and standards for their selection.

STATEMENT OF NORMAN LEW, ATTORNEY, REPRESENTING THE NEIGHBORHOOD LEGAL ASSISTANCE ASSOCIATION OF SAN FRANCISCO

Mr. LEW. Senator, I am more or less pinch-hitting for Mr. Mike Lee who had originally been invited by the Senator to appear. I am a private attorney and have been so practicing for the past 10 years.

Today, I would like to make some general observations and basically, it will deal with the Chinese-American people of Chinese ancestry, in the San Francisco Bay area. As indicated in my written statement, my trial experience in the Federal courts is quite limited. However, I have had a number of cases in the State and county courts in California and I would add that problems relevant to those courts are also relevant to the Federal courts.

In preparing my testimony for today, I have discussed the basic problems with a number of my colleagues, as well as with Mr. Thomas S. Leong, who is the only qualified Chinese interpreter in the San Francisco courts, both Federal and State courts. I have set forth in my written statement the procedures upon which Mr. Leong may be appointed by the courts to act as interpreter. I have used Mr. Leong on a number of occasions myself, both in criminal and civil matters. Some of the pertinent matters that I think should be brought before the subcommittee involve, basically, problems in communications. In order to secure the services of an interpreter for a criminal matter in our State courts, it is necessary to contact the court personnel at least a day in advance, indicate to the clerk that you are representing a non-English-speaking defendant, and request the services of an interpreter. In most instances, Mr. Leong or any of the other interpreters, if it should be in a language other than the Chinese language, will appear in court and will interpret for you. Although, I am bilingual and I do speak and understand the dominant Chinese dialect which is Cantonese, invariably I will request the serviecs of Mr. Leong.

As comments have been made this morning, it is for the record and for proper representation of a defendant, that despite the fact that I am bilingual, I would want a qualified interpreter present to interpret for the defendant and for the court. Now, as the present system exists, we do not have a list from which to draw qualified interpreters. Mr. Leong was appointed by our presiding judge some 7 years ago. Prior to Mr. Leong, Mr. Fung, who is now deceased, was appointed by the presiding judge in the same fashion.

Mr. Fung served some 15 years as the official court interpreter. He was then qualified. Now, in discussing this point with Mr. Leong prior to my coming to Washington, he indicated there are no procedures or guidelines to determine whether he is qualified to interpret or not. Fortunately, I have found Mr. Leong to be qualified. As I have indicated, I have used him both criminally and in civil matters. The Bilingual Courts Act I believe will go a long way in furnishing both counsel and the courts with a list of qualified interpreters.

I have set forth in my statement some of the obvious areas where conflict can take place, especially in the criminal field, where obviously it is undesirable if the situation arose where you had a non-English speaking witness and non-English speaking attorney and non-English speaking defendant, Mr. Leong obviously cannot interpret the testimony of the witness and at the same time assist counsel in transmitting questions the defendant may have. The act would provide a test and it would provide the names of individuals that are qualified. I am sorry to say that on more than one occasion I have appeared in court, or in an administrative-type proceeding, where an interpreter, brought in by opposing counsel or recommended by opposing counsel, who purported to interpret, made it necessary for me to interrupt and admonish him that his duty was to interpret in an unbiased fashion. I would add to this particular piece of legislation the requirement that even the interpretations made by the interpreter at counsel's table to defendants be part of the record. I believe that is important for the following reason. I was retained by a defendant to prepare an appeal. The basis of that appeal was that he was not informed of his rights, that he did not understand English and that counsel who represented him did not speak Chinese. In preparing for the appeal, and going through the records, this does not show whatsoever. The record is void of any translations or any interpretations that may have been made.

As was pointed out this morning to the subcommittee, all that is transferred into the record was the English version. So I may suggest that that might be a point that should be considered. I have on more than one occasion been asked to interpret in court. Even though I am bilingual I do not feel that this is adequate. There are many technical words in the Chinese language that I cannot interpret. The assumption that I am an attorney who is bilingual and will therefore be able to protect the interests of my client, is erroneous. Although I am bilingual I am not a qualified interpreter. This act, I feel, will go a long way in doing away with that assumption and in giving us the interpreters that we need in our courts.

Thank you.

Senator BURDICK. How many of the Chinese people cannot speak English?

Mr. LEW. I do not have that answer, Senator. I do know in a case that is presently pending in the Supreme Court *Lau* v. *Nichols* for which my office prepared an amicus brief, it was stipulated by the school district that there are at least 2,800 school children who cannot speak English or are deficient in it.

Senator BURDICK. What is the Chinese population?

Mr. LEW. As of 1970, I believe Senator, there were approximately 58,000 people of Chinese ancestry in San Francisco.

Senator BURDICK. That is San Francisco Bay area?

Mr. LEW. San Francisco, not the bay area.

Senator BURDICK. Just San Francisco. Well I was just wondering, and this applies to the Spanish-speaking people and the Portuguese-speaking people as well as the Chinese-speaking people, if we will eventually outlive the problem?

Mr. LEW. I would hope so Senator, except for this quirk in, at least the Chinese ancestry portion of it. In 1965 our Government saw fit to enact legislation to "loosen" the restrictions on the immigration of the people from what were called the Asian block. Prior to that time I believe most of us are aware of the limited number of Asians that were allowed to come to the United States. I believe that in 1965 that restriction was loosened and under the quota system, as I understand it, we are now allowed 20,000 immigrants per year.

In addition to that, there are at least 7 categories where preferential type treatment is afforded where they do not fall within the 20,000. By that I mean, for example, if a husband is in the United States and he wishes to petition for his wife, they are allowed to come to the United States. I would hope that this opportunity to come to the United States would not be curtailed. On the other hand, and unfortunately, most of those who come to the United States do not speak English.

So, speaking only for this portion of the problem, I would think that the problem perhaps in many many years to come will take care of itself. When we have given everyone an opportunity who wanted to come to the United States, and they are here, that problem will probably take care of itself. But I frankly do not anticipate that within the next——

Senator BURDICK. The next quarter of a century at least.

The staff has a question.

Mr. WESTPHAL. Mr. Lew, you mentioned that Cantonese is the dominant Chinese dialect? How many distinct dialects are there in the Chinese tongue?

Mr. LEW. Well, let me explain, Mr. Westphal. Cantonese is the dominant language used by people in the United States. Mandarin is probably the predominant Chinese language if we were to consider China and people throughout the world of Chinese ancestry.

Within the Cantonese dialect itself, there are several different dialects. I can name perhaps four or five different variations of that dominant language which we call Cantonese. Now I do not know how many other dialects, other than Cantonese are spoken by Chinese. There is Fucanese, there is Taiwanese, there is Shanghinese; these are probably not the correct terms used, but they are properly called as such. And there is, of course, Mandarin and Cantonese and the variations of Cantonese.

Mr. WESTPHAL. Then in both the San Francisco area or the New York area, where Cantonese is the dominant dialect, a good competent interpreter who understands the Cantonese dialect, would probably be able to do an adequate job of handling these four or five little variations, should he not?

Mr. LEW. I am afraid not.

Mr. WESTPHAL. He cannot?

Mr. LEW. No, he cannot.

Mr. WESTPHAL. Is there one variation that is more dominant than the other that is within the Cantonese grouping?

Mr. LEW. Well, let me say this, that I will have to give you the Chinese, I guess, interpretation of it. The predominant language that I have come into contact with in my practice is Cantonese, and in two variations. One is called Sei Yuk; the other is called Son Yuk. So, literally translated one is four and one is three, I cannot tell you what the second word means. That is one of the reasons why I am here. While I am bilingual, I am not a qualified interpreter, but nevertheless those are the two primary variations of the Cantonese dialect, sei yuk and son yuk.

Mr. WESTPHAL. The thing that I am getting at is this, Mr. Lew. In Federal court in San Francisco, for example, if they have a certi-defendant and to make sure that he can handle his particular dialect. of Cantonese, when a particular defendant comes along, then it is going to be a problem for the certified interpreter to speak with this defendant and to make sure that he can handle his particular dialect. If he cannot handle it he has then got to suggest to counsel and to the court that this man speaks a dialect that he is not very fluent in and we have got to then find somebody who is better able to handle that particular translation problem. That is basically what we are talking about, is that not right?

Mr. LEW. Yes, sir.

Mr. WESTPHAL. They are also going to have someone who can handle Mandarin, and this is a decision that is just going to have to be made on a practical basis by the presiding judge with the assistance of counsel in almost every case, it is not?

Mr. LEW. Yes, it is.

Mr. WESTPHAL. But at least we are blessed with the fact that there is a dominant dialect among the Chinese-speaking people.

Mr. LEW. Yes, that is, at least for the people that are here.

Senator BURDICK. In this country?

Mr. LEW. Yes.

Mr. WESTPHAL. I assume that this may apply in several other tongues, Spanish and German, and things of that kind. There are various dialects that a good qualified interpreter may not be able to handle because there are little variations or idioms.

Mr. LEW. I am sure that is probably true.

Mr. WESTPHAL. That is all I have, Mr. Chairman.

Senator BURDICK. Thank you, Mr. Lew, you have been very helpful.

Senator BURDICK. The following additional material will be included in the hearing record at this time:

One, the statement of Tomás Sanchez will be received for the record. The enclosures to his statement will be received for the committee file.

Two, a letter from Mr. Mario G. Obledo, of La Raza National Lawyers Association, supporting this bill.

Three, a prepared statement from Miss Jane Beale, of the Registry of Interpreters for the Deaf, supporting this bill and indicating the obvious fact that deaf persons are also non-English-speaking persons.

Four, a letter from Kathryn Fong, of the Chinese for Affirmative Action Group, supporting this bill.

Five, an abstract showing the interpreter requirements of the existing rules of criminal and civil procedures.

Six, the prepared statement of Peterson Zah, director of the D.N.A.—People's Legal Services of Window Rock, Ariz.

Seven, the prepared statement of Mr. Cornelius Toole, general counsel of the Chicago Metropolitan Council of the NAACP.

Eight, the prepared statement of Ricardo A. Callijo Esq., Acting President and Counsel of the Spanish Speaking Surnamed Political Association Inc. of San Francisco, Calif.

The committee will be in recess until further notice.

[Whereupon, at 1:47 o'clock p.m., the committee adjourned, subject to the call of the Chair.]

PREPARED STATEMENT OF TOMAS SANCHEZ ON BILINGUAL COURTS ACT

My name is Tomás Sanchez, Legal Intern, representing the Model Cities Center for Law and Justice located at 2111 East Brooklyn Avenue, Los Angeles, CA 90033. Our non-profit corporation is a poverty law agency providing quality bilingual legal representation for low-income residents within Boyle Heights, Lincoln Heights, Cypress-Atwater, Elysian Park, and El Sereno in Los Angeles. The Law Center is comprised of four (4) distinct units, namely, the Civil Law Services Section, the Criminal-Juvenile Law Services Section, the Administrative Law Services Section, and the Special Release and Crisis Section. Our Executive Director is Mr. Robert H. Perez.

I would like to highly commend Senator Tunney, Congressman Roybal, and the many others who are seeking passage of the "Bilingual Courts Act." Compassion, fairness, and foresight are admirable qualities to have. Indeed, equality of justice is a most noble goal.

Gentlemen, I will answer your question of why the Model Cities Center for Law and Justice fully supports the "Bilingual Courts Act," by stating a hypothesis. Assuming there were foreign life on Mars who spoke a language other than English, and American spacemen were tried in Mars Federal Court for criminal trespass, would not the accused spacemen be, at the minimum, entitled to a trial in English? Doesn't the world-universe in respect of human dignity require that one receive a fair trial and that one be able to defend himself in a language he understands?

Some might regard this hypothesis far fetched. Let me pose another. Wouldn't an American traveling in Mexico, China, Viet Nam, or the Middle East countries expect to be tried in a language they comprehended? I think they would. The Common Market countries, for example, have established a Tribunal for Human Rights for all of the participating countries—a quasi-international court. In India, a person is entitled to be tried by the court of his religion. If one is a Hindu, he is tried by Hindu law. If one is a Moslem, he is tried by Moslem law. If one is a Christian, he is tried by Christian law. In the United States, there are Indian Tribunal Courts on reservations.

In addition, the "Bilingual Courts Act" may be justified historically. It is a return to the era of approximately 1886, for there was a period where even the California Constitution was written in bilingual form. In other words, the act represents a recognition of former reality and respects the dignity of a monolingual person.

Therefore, the questions pose the basic problem that we are here discussing, that is, *communication*. Communication plays a crucial role because our legal system is complex.

When a monolingual person is involved in a legal proceeding, he sits there and views other persons make arguments he cannot understand. Procedures are implemented which he does not comprehend. He feels lost in court not knowing what is wrong, what he is supposed to do, or why things are done in a specific way. In many instances, the monolingual person is unaware of or not told the judicial result. This is the conjured picture of a monolingual language handicapped non-English speaking person in an extreme case, i.e., without an interpreter at all. The problem is very egregiously pointed out if the party is deaf from which an analogy may be drawn if no interpreter is provided for the monolingual person. Another parallel includes an obstreperous defendant who is bound and gagged, i.e., the gagged defendant may be compared to a monolingual person who in fact does not have a gag, but who cannot speak because the judicial system has not effectively provided him with the tools to do so.

Again, to focus on the problem of communication, it is not just the inability of the non-English speaking person to communicate in English. I feel that the other half of the problem involves the inability of the government to communicate with non-English speaking persons. In short, it is the duty of the Federal Government to have qualified bilingual persons in all public contact positions to furnish information or to render services to communicate with the non-English speaking person.

Such a duty is constitutionally mandated by the United States Constitution if the ideal of fair trial is to flourish.

It is our position that there is a constitutional right to an interpreter for the benefit of the non-English speaking accused. This proposition may be justified by the 5th, 6th, and 14th Amendments to the United States Constitution.

The fifth amendment provides in part, that, "no person shall be deprived of life, liberty, or property without due process of law." Consequently, any criminal proceeding which allows the non-English speaking accused to be deprived of life, liberty, or property without guaranteeing that he understands fully and simultaneously what is happening at his trial violates due process.

The sixth amendment provides in part, that, in "all prosecutions, the accused shall be confronted with the witnesses against him . . . shall have the assistance of counsel for his defense." If the defendant is unable to understand the language used in the courtroom, he cannot probe, cross-examine, nor clarify ambiguities in the testimony. Additionally, the defendant's right to the "assistance of counsel" is limited, if counsel is deprived of an interpreter to speak with his client.

The fourteenth amendment guarantees the equal protection of the law and due process. The Equal Protection Clause mandates that two groups similarly situated sine qua non language cannot be treated differently within the judicial system. Treating the national origin minorities differently in [illegible] not guaranteed either by statutes nor legislation the right to effective interpretation amounts to a violation of the equal protection of the law, constituting invidious discrimination. To the extent that the Federal and State Courts do not guarantee said right, they violate the due process clause.

The Constitution of the State of New Mexico provides an example of a constitutionally guaranteed right to interpretation. It provides in Article II, Section 14 that "In all criminal prosecutions, the accused shall have the right . . . to have the charge and testimony interpreted to him in a language that he understands." By such provisions, the State of New Mexico has recognized its burden; namely, to provide persons who can communicate with monolinqual defendants as well as the right of the defendant to understand his trial.

It is imperative that we discuss the type of interpretation to be practiced. Given the many problems with standards and methods for court interpreters, it is submitted that a monolingual person is entitled to *effective* interpretation.

I feel that this issue must be addressed, for there are many situations where an interpreter has been provided but the interpretative services provided are of low quality. Our Law Center, for example, is representing a defendant who had been told by a court appointed interpreter to plead guilty to a drunk driving charge so that his license would not be suspended. Here the interpreter was an advocate; rather than interpreting impartially, he was giving legal advice. In many instances, parties make their own arrangements for interpreters. In other circumstances, court bailiffs, county secretaries, or persons in the audience are used as interpreters. This has been the practice. Therefore, the "Bilingual Courts Act" is a step in the right direction in providing for competent licensed and tested interpreters in a uniform manner throughout the Federal System.

The "Bilingual Courts Act" will help to solve the communication problems between the Federal Government and the nine million Spanish-speaking persons in the United States. The legislative approach being undertaken today provides the solution; namely, bilingual proceedings. This is true because the Supreme Court has to date been unwilling to address itself to the fundamental questions of the guaranteed right to a court interpreter for the benefit of the defendant even though a large percentage of non-English speaking court clientele appear daily before the court.

In closing, I would like to stress the reason why it is important that non-English speaking minorities fully comprehend, be able to participate in, and have full access to the judicial process which is that the present trial system must

be changed otherwise the oppressed will continue to be oppressed and eliminated, the trial process will be unfair and partial, and the individual defendants will be denied their constitutional rights.

At this time, I would like to submit documents which the "Committee for the Guaranteed Right to Interpretation" has for further review:

(1) Justice System Interpreter Certification Program;

(2) New Mexico Constitution, Article II;

(3) Interpreters Effect on Quality of Justice for non-English Speaking Americans;

(4) Appendix I—(Samples of Court Forms in Spanish.)

LA RAZA NATIONAL LAWYERS ASSOCIATION,
San Francisco, Calif., October 5, 1973.

Senator QUENTIN N. BURDICK,
Chairman, Subcommittee on Improvements in Judicial Machinery, Room 6306, New Senate Office Building, Washington, D.C.

DEAR SENATOR BURDICK: As president and on behalf of the La Raza National Lawyers Association (LRNLA), I wish to express our appreciation concerning your efforts on behalf of S. 1724, *The Bilingual Courts Act.* I also wish to take this opportunity to urge expeditious and favorable consideration of S. 1724.

LRNLA is a nation-wide organization whose membership includes most of the Mexican American and Puerto Rican attorneys in the United States. One of the purposes of LRNLA is to address itself to the various problems which plague the Spanish surnamed residents of this country whenever they seek redress within our legal system. As you are well aware, the language disability is an insurmountable barrier to many of the non-English speaking. S. 1724 would be a significant step for the purpose of securing equal opportunity in our nation's administration of justice.

LRNLA is confident that the hearings scheduled on S. 1724 by the Subcommittee on Improvements in the Judicial Machinery, of which you are Chairman, will focus on and underscore the justification and critical need of this proposed legislation.

With kind regards, I am

Sincerely,

MARIO G. OBLEDO,
President.

PREPARED STATEMENT OF THE REGISTRY OF INTERPRETERS FOR THE DEAF, PREPARED BY JANE C. BEALE

Preliminary statistics from the National Census of the Deaf and the National Center for Health Statistics (1973) reveal that the deaf population has been underestimated during the past 40 years (the last census of the deaf was in 1930). Approximately 13.2 million Americans have a measurable hearing loss, and of those with a hearing loss, 6.5 million have a bilateral loss. A large portion of these people have become hard of hearing or deaf due to aging. Approximately 2 million people in the United States cannot understand normal speech, and of this number, just under 500,000 comprise the deaf community (deaf people who use sign language).

There is no federal legislation that requires an interpreter for a deaf person in a court of law as a means of guaranteeing the deaf person's rights. In this brief statement, the Registry of Interpreters for the Deaf will give evidence to support an amendment to the Bilingual Courts Act to include deaf people as non-English speaking persons covered in the Act.

Though most deaf adults have had speech and lipreading training in our nation's schools for the deaf, few congenitally deaf people can fully understand spoken English and speak so that they are easily understood. A great many English speech sounds are not visible on the lips (throat and nasal speech elements), and 40% to 60% of the sounds in English look like other sounds on the lips. At best, the deaf person understands 10%to 20% of what is said to him/her. (Grinker) The most skillful deaf adult speechreaders perceive only key words and then "fill in" portions of the utterance that are not visible. (Scouten)

Lipreading is further complicated by the fact that many English words do not require lip movements ("dinner", "uncle") and that so many words look alike. The words "mother" and "father" are easy to lipread; however, "mama" and "papa" are indistinguishable. And, of course, all speakers enunciate with different degrees of clarity and have different lip shapes, making the task of speechreading more complex.

Speechreading is recognized as a talent, much like talent in music or art, rather than a skill that can be developed through instruction. "Many acquire elemental skill at it, but very few become so adept that their lipreading ability becomes a workable substitute for hearing." (Burnes)

It is not hard for us to understand the difficulties in learning to speak intelligibly without the necessary monitoring system (hearing). Not many of us could learn to understand and speak Russian if all instruction was through lipreading and we were not allowed to hear it.

Surprisingly, some deaf people are very good lipreaders and some speak intelligibility. Even fewer have both talents. Thus, it is possible in the courtroom setting that a deaf person can speak if asked to testify, but cannot follow what is said through lipreading. Moreoften, though, an interpreter is needed both to convey what is said in the court to the deaf person through signs and also to convey in spoken English to the court what the deaf person signs.

Since "non-English speaking person" can be defined as a person who does not understand English when it is spoken to him/her and who does not speak English so that it is easily understood, certainly a deaf person is a non-English speaking person and should be covered under the Bilingual Courts Act.

In another sense, many deaf people are "non-English speakers." Linguistics research indicates that American Sign Language (or ASL) is a language in itself, rather than a variety of English. It has a syntax very different from English. In fact, in structure ASL is more like Chinese than English. (Stokoe, Woodward, Fant, Bellugi, Bergman, Covington, Croneberg, Friedman, McCall, Markowicz, Meadow, O'Rourke, Schlesinger).

American Sign Language as a language is further supported by the fact that currently 66 colleges and universities offer courses in manual communication and a growing number are accepting ASL as a foreign language for doctoral degree language requirements—American University, Catholic University of America, University of Minnesota, University of Southern California, and New York University.

Most deaf adults handle English on a level below 5th grade level, whereas most hearing adults function around the 9th or 10th grade level. A survey conducted in 1971 by the Office of Demographic Studies, Gallaudet College, of 17,000 deaf students (about ¼ of deaf students in schools) reveals some deplorable educational levels for deaf students. On the paragraph meaning subtest of the Stanford Achievement Tests, 16 year old deaf students averaged grade level 3.85, as compared with grade level 9.0 for hearing students the same age. Fifty-four percent (54%) of deaf students 17 and older scored under 4th grade; 30% scored 4th grade to 6th grade; and only 4% scored 8th grade or higher.

The reasons for this huge gap between deaf and hearing persons in understanding and using English are several, "but basically it boils down to the fact that for the typical deaf person, English is a second language, a foreign language. Just as most hearing people who study a foreign language rarely master it, a deaf person rarely masters English." (Fant)

A Spanish-speaking person in court requires an interpreter fluent in Spanish, and the deaf person limited in understanding of English requires an interpreter fluent in American Sign Language. The Bilingual Courts Act, as proposed, excludes deaf persons, a large segment of our non-English speaking public.

How does the number of deaf persons using sign language compare with speakers of other languages? Census statistics on languages spoken in the home, published in "Characteristics of Population by Ethnic Origin", indicate that 4.5 million Americans speak Spanish; 631,000 speak Italian; 414,000 speak French; 251,000 speak German; and 126,000 speak Yiddish. Thus, the number of deaf persons using sign language (approximately 500,000) compares with the number of persons speaking Italian and French, which rank second and third of the six major foreign languages spoken in American homes. Figures are not available on the number of foreign-speaking people who have sufficient knowledge of English so that they do not require an interpreter in legal proceedings. However, all deaf persons, regardless of knowledge of English, require an interpreter in court.

In America, we believe that every person has a right to understand charges against him/her and to follow proceedings in a courtroom. Any person who has not mastered English is handicapped in a court of law and has the right to an interpreter fluent in his native language. Justice cannot prevail for a native of Mexico, Italy, Germany, Japan, Russia, or for a deaf person without an interpreter.

The preamble to the Code of Ethics of the Registry of Interpreters for the Deaf makes a succinct statement concerning the deaf person's right to an interpreter. "It is recognized that through the medium of interpreters, deaf persons can be granted equality with hearing persons in the matter of their right of communication."

Because there is no federal legislation requiring interpreters for deaf persons in court, the deaf person's right of communications is denied. An amendment to include deaf people in Bilingual Courts Act is called for in order to guarantee the deaf person's right of communication in our courts.

Appendix

Interpreters for deaf people in court and a variety of other settings can be obtained by contacting a state or local chapter of the Registry of Interpreters for the Deaf (RID).

Two primary functions of the RID are to maintain a registry of professional interpreters, through a directory, and to evaluate and certify interpreters for the deaf.

Listed in the 1973 directory are 469 certified interpreters, evaluated since the RID's national certification program was launched in October 1972. Of these 469 certified interpreters, 184 hold the Comprehensive Skills Certificate, which means that they are highly skilled in American Sign Language (ASL) and signed English, in both expressive interpreting (signing to the deaf person) and reverse interpreting (conveying what the deaf person signs). Another 123 have the Expressive Translating Certificate and/or the Expressive Interpreting Certificate, evidence of skill in expressive translating (signing verbatim English) and expressive interpreting (signing ASL) and more limited ability in reverse skills. The RID also certifies deaf people as interpreters to assist hearing interpreters in situations, especially courts, where the deaf person has extremely limited language.

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Dr. William Gauge, Center for Applied Linguistics, October 9, 1973.
Frederick C. Schreiber, National Association of the Deaf, October 1, 1973.
Dr. William C. Stokoe, Jr., Gallaudet College, September 28, 1973.
Dr. James C. Woodward, Jr., Gallaudet College, September 28, 1973.
Peter Ries, Gallaudet College, October 5, 1973.

CHINESE FOR AFFIRMATIVE ACTION (CAA),
San Francisco, Calif., August 6, 1973.

HON. JAMES EASTLAND,
Chairman, Senate Judiciary Commitee,
Washington, D.C.

DEAR SENATOR: We understand that a bill has been submitted before the Subcommittee on Judiciary Machinery on the subject of establishing bilingual federal courts for non-English-speaking residents. Specifically, we are referring to Senator John Tunney's bill which calls for the provision of translation personnel and equipment in every federal district with 50,000 or more residents whose primary fluency is in another language.

As a voluntary civil rights organization which has enunciated as one of its goals the establishment of a bilingual educational system for non-English-speaking Chinese children, Chinese for Affirmative Action feels that an equally compelling case applies to the establishment of a bilingual court system. In any event we believe that the issue merits prompt and careful consideration on part of the Subcommittee, and my influence which you may exert in expediting consideration of this bill by the Subcommittee will be duly appreciated.

Thank you for your kind attention in this matter.

Yours truly,

KATHERYN M. FONG,
Interim Executive Director.

ABSTRACTED EXISTING RULES FOR INTERPRETERS OF THE FEDERAL RULES OF CIVIL AND CRIMINAL PROCEDURE

CRIMINAL

Rule 28 (b) Rules of Criminal Procedure

Interpreters. The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the government, as the court may direct.

Rule 43 (f) Rules of Civil Procedure

Interpreters. The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

PREPARED STATEMENT OF PETERSON ZAH, DIRECTOR, DNA—PEOPLE'S LEGAL SERVICES, INC.

I am an enrolled member of the Navajo Tribe residing on Navajo Reservation at Window Rock, Arizona and speak both the Navajo and English languages. I offer this testimony in support of the concept of the Bilingual Courts Act proposed by S. 1724 and to relate my own experiences as a court interpreter, as they might be relevant to the bill.

I am 35 years old and a graduate of Arizona State University at Tempe, Arizona. While in college I was called upon several occasions to interpret in federal court during prosecutions of non-English speaking Navajo people charged with felonies under the Major Crimes Act, 18 U.S.C. § 1153. In retrospect I feel I was not prepared or qualified for this kind of work, even though I know both languages quite well. I had no training or other preparation, and I was frankly terrified by the experience of my first case, which just happened to be a murder trial. I had not had enough experience with legal terms or court procedures to interpret these adequately to the defendant, who was bewildered by the proceedings. Later in talking with several other Navajo interpreters, I found that they also felt very uneasy about their ability to interpret adequately. However, we all did our best under these circumstances and just hoped that parties involved in the litigation really understood the legal process and court proceedings. It is because of these experiences and the importance of this proposed bill that I offer my comments to this committee. If S. 1754 can remedy these problems, I am enthusiastically for it. It will certainly help attorneys, courts, Judges and defendants to effectively deal with the judicial backlog involving non-English speaking people.

In light of the above, I would like to make the following specific suggestions:

1. It is implicit in what I have said that interpreters, to be qualified, need some kind of preparation before they take on the responsibility of assisting the courts. They should have a chance to become thoroughly acquainted with court procedures and legal terms.

2. It is essential that interpreters be adequately qualified. Many of my people know both languages reasonably well, but relatively few can interpret well. Interpreters have had low status in the past, so the job has often drawn persons of minimal qualifications and abilities. Testing the adequacy of an interpreter cannot be done by a monolingual court clerk or judge. Thus some method of certifying the interpreting abilities of candidates is needed, at least informally. In the case of Navajos, Navajo Community College in conjunction with DNA might be able to institute some kind of training program for Navajo court interpreters.

3. Navajo speaking litigants need not only their own testimony interpreted to the court; they also need assistance in understanding the entire proceeding. I commend the bill for providing for full translation of the entire proceeding, meeting this need. This has been lacking in many court proceedings involving Navajo people, even where an interpreter is available for the litigant's own testimony. However, this further emphasizes the need for a well-qualified interpreter.

4. The bill refers to "simultaneous" translation of proceedings. If this refers to simultaneous in the United Nations sense, requiring translation overlaid onto testimony word for word, it will require even more preparation of proper interpreters for Navajo speaking litigants. The custom here in the Navajo Nation is for translation to be done by sentence, phrase or paragraph, with the speaker pausing for separate translation, and very few of our people have any experience with simultaneous translation as referred to above. A major reason for this is that the Navajo and English languages are unrelated in origins or structure. One word in English may require a paragraph of translation into Navajo, and vice versa. Of course, simultaneous translation is still possible, but it requires great

practice. On the other hand, I recognize that our method of separate translation is very time consuming. It may be that the only practical alternative for the time being is to have simultaneous translation of the proceedings to the litigant, but the litigant's own testimony would be done by separate translation, since absolute accuracy is most essential at that point.

5. The bill provides for the "recording" of the bilingual proceedings. If this means making a tape recording of what is said in Navajo, fine. But when it comes to a written record in Navajo, there will be a problem. The Navajo language is largely oral. It has been written down by linguists, but unfortunately only a few schools teach the written form to Navajo people, and the great majority of Navajos don't read or write the language. For an appellate court record, then, the transcript would have to be in English only, with the tape of Navajo testimony available as a double check where needed.

I hope these problems don't hold up this bill, which is badly needed. I wish I could have appeared personally before the Committee, to answer other questions which might come up. But I appreciate the Committee's interest in the effect of this bill on Native Americans and the opportunity to state my views.

PETERSON ZAH,
Director.

PREPARED STATEMENT OF MR. CORNELIUS TOOLE, GENERAL COUNSEL, CHICAGO METROPOLITAN COUNCIL, NAACP

My interest in Senate Bill 1724, the Bilingual Courts Act, stems generally from my personal interest in languages, and general experience as an attorney in this country.

I have studied several languages. My proficiency, if any, is in the Spanish language; and as a result, over the years I have represented many defendants charged with crimes who speak and understand Spanish better than English.

It is my conclusion, that although interpreting service is feebly available to defendants who cannot speak English, those defendants really never fully grasped the full significance of the judicial machinery in which they were involved.

I should emphasize that I am not a spokesman for the Spanish-speaking community. My present practice as General Counsel for the Chicago Metropolitan Council, NAACP, however, has exposed me to a wide arena of civil and criminal litigation, perhaps more than many lawyers get in a lifetime. At present, I also serve as a member of the Federal Defender Panel in Chicago, Illinois and I am also serving a four-year term as Chairman of the Illinois State Appellate Defender Commission.

As a lawyer who has spent most of his practicing career in the courts, I believe Senate Bill 1724 must be endorsed; first of all, it is legislation which will enhance and give prestige to our legal system.

One cannot ignore the recurring attacks upon the legal system over the past year and a half. The spokes of the wheel have never been that strong, but the recent exposure and adverse publicity reduces them to nothing but small pieces of threads. Despite these attacks, the system must continue to function and must have the support of the people whose behavior patterns and lifestyles give rise to factual situations which, in effect, create the system.

Those patterns of behavior that we lawyers and judges end up analysing, and which we in our profession attempt to guide, come from all the people, even those who do not speak or understand the English language.

Many people of some Spanish origin, question the available statistics as to the number of Spanish-speaking people in Chicago. One thing is for sure, and that is, there are many. They, therefore, like all other people in this country ultimately become exposed in some way to the legal system.

I would think that for many people speaking foreign languages, the exposure to the judicial machinery comes first through the federal system. The immigration hearings, for example, are numerous, but the proceedings are cursory. There is little regard given for a respondent's inability to understand the intricacies of the proceedings. But, it is the criminal proceeding, if any, that demands the necessity of official and competent interpreters in a federal proceeding. (I have seen federal magistrates compel co-defendants to act as interpreters, and although proficient in Spanish, the English was bad.)

I think it is Constitutionally sound to say that anyone who does not speak English should be provided competent translating facilities in a federal proceeding.

In criminal cases, defendants along with the court simply have to understand the totality of the proceedings. Simultaneous translations would provide for the defendants to understand the question and response of jurors and would enable them to understand all witnesses who testify. The court could provide for the simultaneous electronic recordation of the testimony which would enable the accused to be able to peruse his own record for appeal purposes.

It must be remembered that it is the defendant who is inextricably bound up in these proceedings. The fact that he might not speak or understand English does not vitiate any of his rights.

There is some significant precedent for this change. Chicago voting machines have been provided for in Spanish. Innumerable Government booklets, and forms e.g. Truth-in-Lending forms are being printed in Spanish.

Moreover, the diminishing size of the world (and a world-accepted truism most probably in eclectic societies), would demand that the dominant or host society provide foreigners, non-english speaking citizens and or residents with communicative access to, if any institution, at least the legal system. American Society is complex, sophisticated and the legal system is multifarious. One of the reasons is because of our diverse ethnic and racial composition.

This Senate Bill 1724 is a logical and sound extension of our legal system. I urge your profound consideration.

PREPARED STATEMENT OF RICARDO A. CALLEJO, ESQ., ACTING PRESIDENT AND COUNSEL, SPANISH SPEAKING/SURNAMED POLITICAL ASSOCIATION, INC.

Honorable Chairman and members of the Committee:

The expense involved in the full implementation of the bilingual courts bill will be set off against a much greater saving, in my judgment, for the following reasons: 1. Under the present system there are no records for appeal by a litigant who makes statements in another language whereby the litigant can contest the accuracy of the interpretation made from that language to English and from English to that language. The litigant is denied a bilingual (and bicultural) record because the only language recorded is the English used by the interpreter. The result is not only a technical denial of a fair trial, but also a practical and effective denial of a fair trial because the litigant invariably is unable to know what is being correctly interpreted. This is particularly true in cases where the only person in the courtroom who knows both languages is the interpreter. The consequences of this fundamental lack in the present system are destructive not only of the rights of individuals, but also result in vast expenditures for trials, appeals, incarceration and other supportive expenses that are unnecessary. This Bilingual Courts Bill will stimulate a respect for the rights of litigants that should result in prevention of cases that, but for the exclusive monolingual-monocultural approach used to date, would never develop into cases at all.

In an article I wrote for the American Trial Lawyers Association magazine "TRIAL," entitled "The Case for the Spanish Speaking" and published in the October/November 1968 issue on page 52–3. I refer to the result of the denial of these rights as being 1,000 miles of poverty stretching across the Spanish speaking Southwest as well as the urban ghettos of the Northeast and Midwest. I have also documented the evidence supporting my conclusions in an Amicus Brief for Appellants in Case No. 71–1575, Carmona v. Sheffield, before the Ninth Circuit Court of Appeals, filed May 17th, 1971. These materials have been made available to your committee and I am prepared to expand upon any matter related thereto.

2. Under the present system of consecutive rather than simultaneous translation the individual and/or collective rights of the litigant, and counsel, as well as the court (and jury), to participate in an ongoing and immediate manner are seriously impaired in that objections now become a function of retentive memory rather than immediate recognition of inaccuracy, misstatement, error, misunderstanding or omission. In addition, unless there are other persons fluent in the languages present and concerned with the rights involved, the Interpreter is left the sole judge of his own accuracy—an intolerable and unreasonable burden even for the most competent and reasonable interpreters. Simultaneous translation, including the use of ear phones for all participants, permits immediate individual and/or collective objection to errors and precludes the geometric and cumulative effect of these errors over extensive areas of testimony and investigation into the facts. The saving in time and money by not having to go over

errors will result saving far greater than the expense involved in purchasing the equipment and paying interpreters to do the work.

3. Under the present system interpreters are selected by judgs who often are not competent to know whether or not the interpreter is or is not competent to do the work required. Therefore, appropriate testing and certification of competent interpreters will be a necessary concommitant of this Bill and result in substantial savings since trials, re-trials, appeals and other matters can be resolved at earlier stages of the proceedings by elimination of interpreter error that today results in unnecessary expense and injustice.

This bill is necessary in order to improve the fulfillment of constitutionally guaranteed rights of persons, citizens, veterans, taxpayers and others who presently suffer invidious discrimination based upon their linguistic and/or cultural attributes different from American English and Anglo-Saxon attributes for the following reasons:

1. There are vast numbers of native born Americans, immigrants and others, who have grown up speaking another language other than American English. They have failed in the English-only schools and dropped out to work as farmers, factory hands, paying taxes, living on the fringe of the mainstream of life and opportunity open only to those with a good command of English and an education to match; drafted or volunteering for army service and missing the benefits they have earned because of a lack of English; and when trouble of a civil or criminal nature has come from such simple things as refusing to sign a notice to appear on a traffic ticket because of a lack of knowledge of what the signature means, many a hard working, law abiding veteran, taxpayer has found himself in court. At that point an interpreter will tell him that he is charged with a violation and, perhaps that a public defender is going to help him. He then is told by the interpreter that he should plead guilty and get it over with as this is what his public defender advises. Because of a cultural as well as linguistic failure to communicate, too many such individuals decide to fight for their rights, ill equipped as they are under our present system, resulting in vast unnecessary expense and grave injustice. From these general considerations, here are three examples from my own experience of specific cases. Keep in mind that I am completely fluent in several languages, among them American English and American Spanish, and as a lawyer practicing before the Federal (and State of California) Courts since 1962, I have been involved in many cases, criminal and civil, dealing with plaintiffs and defendants whose ability to understand American English was either inadequate or non-existent.

Case No. 1: My client, defendant in a criminal case, is on the witness stand and is sworn through an interpreter whose abilites as an interpreter are clearly inadequate for the purpose. I object eight times to the interpretation being given and request a new interpreter. The Judge is a white anglo-saxon English speaking judge who does not know American Spanish. Nevertheless, without hesitation and with considerable demonstration of irrigation at my objections, arbitrarily and capriciously, overrules my objections and "finds" the interpreter "competent" for the purpose. The appeal based upon such a record is an exercise in futility and the experience of my client as well as those present, including myself, was to serve notice that such discrimination would continue until such judges are forced to recognize the reality of certain litigants rather than to merely satisfy the appearance of equal protection of the laws.

Case No. 2: My client, defendant in a criminal case, is offered a reduced charge in exchange for a plea of guilty. Plea bargaining plays a vital role in keeping courts available for more important issues as well as saving taxpayers funds. It most often results in substantial justice in average cases. In dealing with defendants of different linquistic and cultural backgrounds, however, it becomes a negative and expensive process. In this case my client believed he was innocent and refused, as was his right, to plead guilty. Under the present system his ability to defend himself is seriously impaired, and in the case in point he was found guilty and punished excessively as a consequence of the difficulties that continue to exist in such cases. Cultural values do not "translate", they must be explained in parallel meaning. These problems would be resolved by simultaneous translation and a bilingual record for appeals. A few of these appeals would serve notice of the need for earlier clarification and result in substantial net savings in both monetary and human terms.

Case No. 3: My client, an indigent wetback, arrested for illegal entry, after working for a month, just before being paid, without resources of any kind,

put through a ritual designed to provide the appearance of due process while in reality protecting the employer and permitting him to continue to exploit the ignorant and avoid payment of wages by reporting the illegal alien whose illegal entry he has fostered and encouraged. Failure of a record for appeals has resulted in vast expense to the Federal Courts indirectly subsidizing the profits of farm worker employers by allowing the process to go on over and over again. The results related to these matters have been well documented in many cases and hearings before Congressional committees and need not be repeated here in detail.

SUMMARY AND CONCLUSION

This Bill represents, in my judgment, an important and vital step in bringing the opportunity of law, order and justice to substantial numbers of persons presently suffering invidious discrimination before our Federal (and State) Courts, as a result of linguistic and cultural differences.

The many arguments that often are raised against these progressive laws have been discussed in detail in my above referred to Amicus Brief. In the final analysis, a Democratic form of government requires the acceptance of people as they are while Totalitarian forms of government fail in their efforts to remake people in the image of their pre-conceived ideas of what is "good".

Vast and as yet untapped human resources will emerge from the shadows of discrimination as recourse to law, order and justice becomes available to other linguistic and cultural assets. The benefits that have resulted from the release of energy wasted in combating discrimination based upon color, creed, race, and national origin, after civil rights legislation has forced creative change, will flow, with even greater effect, from the recognition of the value of our multi-linguistic and multi-cultural heritage.

Therefore I respectfully urge you to join with substantial numbers of your fellow Americans in bringing this Bill into law and aiding the fulfillment of its objectives at the earliest possible moment.

RICARDO A. CALLEJO, Esq.,
Counsel.

References: 1. TRIAL magazine article dated Oct./Nov., 1968 "The Case for the Spanish Speaking"; 2. Amicus Brief-Carmona v. Sheffield, 9th Circuit Ct. of Appeals, Case #71-1575, filed May 17th, 1971.

S. 1724—THE BILINGUAL COURTS ACT

TUESDAY, FEBRUARY 5, 1974

U.S. SENATE,
SUBCOMMITTEE ON IMPROVEMENTS IN
JUDICIAL MACHINERY OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m. in Room 1318, Dirksen Senate Office Building, Senator Quentin N. Burdick [chairman of the subcommittee] presiding.

Present: Senator Burdick [presiding].

Also present: William P. Westphal, Chief Counsel; Miss Kathryn M. Coulter, Chief Clerk.

Senator BURDICK. Today we have scheduled the second day of our hearings on S. 1724, the Bilingual Courts Act. This hearing was originally set for last October 11 but was postponed due to a conflict with a full Judiciary Committee hearing.

In our first day of hearings we considered at length the printed amendment No. 565 to the original bill and heard testimony from nine witnesses concerning the need for and the use of interprters in the Federal trial courts.

Today we will receive testimony relating to the cost of this legislation and will receive the views of a representative of the Department of Justice.

We are also privileged to have with us today three distinguished representatives from the Commonwealth of Puerto Rico who will testify concerning the effect which this legislation will have on proceedings in the U.S. District Court for the District of Puerto Rico.

In commencing the prior hearing, I commented on the fact that because Spanish is the dominant language in Puerto Rico, enactment of S. 1724 would require that consideration be given to presently existing statutes which require English to be used in the Federal Court in Puerto Rico.

Also at that time, I introduced as part of the hearing record a draft of a proposed amendment, marked as committee exhibit A, which would amend section 42 of the Puerto Rican Federal Relations Act, making appropriate changes in the Jury Selection and Service Act of 1968.

The effect of these proposed amendments would be to eliminate undue expense for interpreters and to expedite trials in the U.S. District Court for Puerto Rico.

We will now hear from Mr. William Foley, the Deputy Director of the Administrative Office of the U.S. Courts.

STATEMENT OF WILLIAM E. FOLEY, DEPUTY DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. FOLEY. Thank you, Senator.

Mr. Chairman, I have submitted to the committee a prepared statement. In the interest of time, I will not repeat that unless there is any part of it that you wish for me to go into.

Senator BURDICK. Your full statement will be incorporated in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF WILLIAM E. FOLEY, DEPUTY DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Mr. Chairman, my name is William E. Foley. I am the Deputy Director of the Administrative Office of the United States Courts. I am appearing pursuant to your request in regard to S. 1724, the proposed bilingual courts legislation.

As the committee knows, when the requests for comments on proposed legislation are received in the Administrative Office, they are referred to the appropriate committee of the Judicial Conference of the United States for study and comment. Accordingly, S. 1724 was referred to the Committee on Court Administration. That committee met only last week and formulated its views which will be transmitted to the Judicial Conference for consideration at its March meeting. Before discussing the views of the committee, however, I shall outline the present practices in the federal court system in the use of interpreters and the provisions now made for translation services.

At the present time, the federal courts are guided by Rule 43(F) of the Federal Rules of Civil Procedure in the appointment of interpreters and the fixing of compensation for their services. In several districts, in addition, the Judicial Conference has authorized the appointment of full-time interpreters as follows:

Southern District of California	1
District of the Canal Zone	1
Southern District of Florida	1
Eastern District of New York	1
Southern District of New York	1
District of Puerto Rico	3
Southern District of Texas	1
Western District of Texas	2

These intepreters are assigned to the office of the clerk of the court and, when not engaged in their primary task, assist the clerk in the discharge of his duties.

In addition, each of the Federal Public Defender offices, created pursuant to the Criminal Justice Act of 1964, as amended, along the southern border of the United States in Southern California, Arizona, New Mexico, and the Southern District of Florida, have staff members who are fluent in the Spanish language.

The federal courts generally follow the principles established by the Court of Appeals for the Second Circuit in the Negron case (*U.S. ex rel Negron* v. *New York*, decided October 15, 1970; 434 F.2d, 386). The court in that case recognized "the nearly self-evident proposition that an indigent defendant who could speak and understand no English would have a right to have his trial proceedings translated so as to permit him to participate effectively in his own defense, provided he made an adequate request for this aid." The court concluded: "The least we can require is that a court, put on notice of a defendant's severe language difficulty, make unmistakably clear to him that he has a right to have a competent translator assist him, at state expense if need be, throughout his trial."

The draft bill submitted with your letter of September 19, Mr. Chairman, which is substantially similar to S. 1724, seems to assure application of the principle of the *Negron* case in the federal courts. As you know there has been little reported litigation on this subject. Likewise the Administrative Office has received almost no comment relating to the unavailability of adequate interpreters.

The Committee on Court Administration of the Judicial Conference, when this legislative proposal was forwarded to it, communicated with the chief judges of

all of the border districts and other districts such as the Southern and Eastern Districts of New York which were regarded as the districts most likely to be affected by the legislation. Some of the replies were written and others oral. Based on an analysis of these replies the committee agreed with the concept of this legislation but, on the other hand, could discover no demonstrated need for such legislation in the federal court system. This comment has no reference to the specialized situation in the District of Puerto Rico which will be discussed subsequently. The committee found some difficulty in reaching a precise determination as to the meaning of an oral simultaneous translation as would be required in criminal cases. Many of the judges feel that the present system of the use of interpreters does provide oral simultaneous translation. Others, in view of prior drafts of this legislation, were concerned that it would require the installation of expensive equipment such as now used in sessions of international tribunals and they seriously doubted that there has been any demonstrated need for use of such equipment in the federal courts.

In connection with the maintenance of a list of certified interpreters, the State Department at present maintains a large roster of interpreters of many languages and in many parts of the country. It would be hoped that the provisions of this legislation would be considered broad enough to allow the Director of the Administrative Office to avail himself of this roster without the necessity of establishing a completely separate function in the Administrative Office for the testing and certifying of interpreters. Many judges have advised that they have not experienced any difficulty whatsoever in obtaining interpreters either from the State Department list, from the United Nations, or from consulates around the country for translating and interpreter purposes in any recognized foreign language. The only problem that has come to the attention of the Committee on Court Administration has to do with the interpretation of various Indian dialects, a very specialized problem affecting only a few of the districts, and which has had to be handled on an ad hoc basis. This problem is best illustrated by the letter from the Chief Judge of the District of New Mexico. He states:

"We have two tribes of plains Indians and at least nine Pueblos and maybe more. As a result it is often difficult to get an interpreter and we have been forced to use people who work for the government, students and others in order to obtain competent interpreters. Of course we don't have any trouble with Spanish Americans because there are many interpreters but when it comes to Indians we do find it a little more difficult."

Judge Payne points to two further difficulties with regard to Indian dialects which S. 1724 might cause. One is the difficulty of maintaining any firm list of certified interpreters because of the transient habits of many of the students and others who have been used on an ad hoc basis. The other problem relates to transcription. He advises that there is no known typewriter which is adapted to any of these Indian tribal languages and dialects.

A concrete example of the operation of an interpreter system is given in a letter to me from the Executive Director of the Federal Defenders of San Diego, a copy of which is attached hereto as Exhibit A.

In connection with your request for cost estimates, we have no estimate of the cost of interpreters who are brought into the court on an ad hoc basis for a specific case or for the testimony of a specific witness. We do know, however, that the ten full-time and one part-time interpreters now regularly assigned to the courts cost approximately $100,000 annually.

You have requested our best estimate of the amount that will be required in the event the bill which you sent on September 19 is enacted. Our budget office has had a difficult time attempting to analyze the cost of the program because of the lack of any usable information to enable us to determine with any degree of accuracy the extent to which, for example, interpreters will be used in simultaneous court proceedings. In the absence of a comprehensive survey of potential users in each of the judicial districts, based on the percentage or ratio of residents who do not speak or understand the English language, it would be virtually impossible to estimate our requirements in terms of numbers of man-hours or man-days of interpreter service that would be required. We have assumed that the reference to court proceedings in the draft bill would include any hearings or trials before the United States magistrates. We have not included, however, any grand jury proceedings.

It has been estimated in very general terms that in the initial year the program envisioned by the draft bill would cost approximately $2,415,000. The recur-

ring annual cost excluding our initial investment in the transmitting and recording equipment is estimated at approximately $1.8 million.

Provision has been made for the employment of 40 full-time salaried interpreters for those districts where there are a significant number of non-English speaking "potential users". In some districts there will be a need for more than one salaried interpreter, i.e., Puerto Rico, New York and in the border states. As a general rule, free lance interpreters will be engaged under contract when there is a need for the services. We have estimated that approximately 5,200 days of contractual services will be required per annum at a cost of $100 per day. It should be noted that with respect to simultaneous translation, as a rule interpreters must work in pairs since they would require a half-hour rest for every half-hour of work in order to function properly. Also, five hours of work per day normally would be considered a full-day's work. Therefore, the estimates for per diem interpreters will actually provide for the translation of 13,000 hours of court proceedings, which on the average is less than 200 hours per district per year.

We have made provision for the employment of 30 full-time recording machine operators who will be responsible for operating the multi-track audio equipment, and for maintaining a voice-writer/log to identify speakers. These operators will be required primarily in those districts with a high volume of translation work.

Provision has been made for the installation of 40 permanent transmitting facilities in those courts where the demand for simultaneous translation is greatest. Portable units will be made available to all of the district courts. The cost of these portable units will be approximately $850 based on information furnished by the State Department. Provision has been made for the procurement of multitrack audio recording equipment for the courts for use in verification of the official transcript of the proceedings.

Also attached, as Exhibit B, is an analysis prepared by our budget office of the initial costs of the program envisioned in the draft bill. I would again caution that this is an estimate reached without any hard facts upon which to make a more accurate analysis and estimate.

With regard to the provisions relating solely to Puerto Rico, it is, of course, a policy decision for the Congress as to whether proceedings shall be conducted in the Spanish language. We would, however, urge that the decision be left to the discretion of the court inasmuch as circumstances do arise when all of the judges in the District of Puerto Rico have recused themselves and it has been necessary to send a visiting judge from another district. In such circumstances it might be very difficult to find a judge who is adequately fluent in the Spanish language to conduct a trial. The alternative would be a stalemate and the frustration of litigation. A draft of an amendment offered by Senator Burdick to S. 1724 relating to Puerto Rico, which has been made available to me, incorporates these considerations and would seem to be acceptable if the Congress sees fit as a policy matter to permit the conduct of proceedings in the court of Puerto Rico in the Spanish language.

In conclusion, may I suggest that section 5 of your draft bill be amended slightly to include authorization for appropriations to the federal judiciary as well as to the Administrative Office inasmuch as many of the costs would be chargable in our line item appropriations to expenses of the federal judiciary. Lastly, as to the effective date of the legislation, it is suggested that the committee might find it more desirable to provide that the bill will become effective at a given time after enactment, such as 180 days.

Exhibit A

FEDERAL DEFENDERS OF SAN DIEGO, INC.,
January 28, 1974.

WILLIAM E. FOLEY, *Deputy Director,*
Administrative Office of the United States Courts,
Supreme Court Building,
Washington, D.C.

Re: Court Interpreters

DEAR BILL: For your consideration prior to your giving testimony on a proposed federal legislation dealing with official court interpreters, I would like to

set forth a summary description of the use of interpreters in our district court. The Southern District of California comprising San Diego and Imperial Counties probably has one of the highest federal criminal caseloads in the United States, and approximately 20 to 25 percent of those cases require the use of an interpreter to translate from Spanish to English and from English to Spanish. The heavy volume of cases requires daily that these court interpreters be both extremely proficient and accurate, and in our courts their superior ability permits them to provide simultaneous translation. Recently, the Clerk for the United States District Court for Oregon, Mr. Robert Chrlst, observed cases being heard before a magistrate and was impressed with this capability for simultaneous translation.

The Administrative Office provides for the employment of a Chief Interpreter, Patricia Moranville, who is employed at a JS–6 position. Funds made available by the Department of Justice through the United States Attorney locally provide for the employment of seven official interpreters, who are paid $25 for a half day and $35 for a full day. In the event of overtime after 6:00 p.m. they are given another half-day compensation. On Monday when all courts are hearing motions, setting cases for trial or disposition, and sentencing defendants, a very busy day, in addition to the Chief Interpreter there are seven interpreters to provide translation services before our five district court judges and three full-time magistrates. On days other than Monday there are usually employed six official interpreters. These interpreters also provide assistance before the grand jury, before our senior district judge and at other related court functions.

In the trial of a criminal case where the defendant speaks Spanish, ordinarily defense counsel will use the official court interpreter. In very few cases we have sought to employ an additional interpreter for the defendant personally under 18 U.S.C. 3006A(e), because the circumstances require that the defendant be able to consult with his attorney when the interpreter is translating for a witness, however, such consultations are rare. The interpreters are trained to respect the professional confidence of the attorney-client relationship, and our attorneys have found this confidence respected by these interpreters.

The need for court interpreters depends upon the caseload requiring such services, and when the caseload is great as in our district, we have found that internal standards established by the district court as implemented by the Chief Interpreter have insured quality translations in court. The interpreters that are used in court should have to pass some type of requirements similar to those California requires for official court reporters. However, since such standards have not been required for official court reporters in the fedeal court system, I think it would be inappropriate at this time for official interpreters. I think that each district court could develop its own standards under guidance furnished by the Administrative Office. I might also note that although Rule 604, Proposed Rules of Evidence (unchanged in H.R. 5463) refers to the interpreter as an expert, it sets out no standards.

One of the more important things is the need for interpreters by the court-related functions such as the Marshal's Service and defense counsel (be it organized defender service or individual counsel). In our office we have four full-time investigators who are bilingual in Spanish and English and three of our seven secretaries are fluent in Spanish. The Criminal Justice Act does permit the out-of-court assistance of interpreters, but no qualifications have been established. Again, flexibility should be the guideline to permit the federal district court to tailor the qualifications and uses of interpreters to its own circumstances. *A fortiori* this rule would apply to federal legislation dealing with state courts. The state is now under an obligation to provide an interpreter in a state criminal proceeding. *U.S. ex rel. Negron v. New York*, 434 F.2d 386 (2d Cir. 1970).

The above comments are offered in the hope that the experience in our district may be of some assistance to you.

Sincerely,

JOHN J. CLEARY,
Executive Director.

EXHIBIT B

BUDGETARY REQUIREMENTS RELATING TO BILINGUAL COSTS BILL

	Number of positions	Salaries and expenses
Personnel compensation:		
Full-time salaried interpreters, JSP-12 at $17,497	40	$700,000
Full-time recording machine operators, JSP-5 at $8,055	30	242,000
Total full-time permanent positions	70	942,000
Less: Interpreters currently employed	−10	−93,000
Net personnel compensation	60	849,000
Personnel benefits		76,000
Travel and transportation of personnel:		
Training seminars		12,000
Inter and intra district		24,000
Telephone service (commercial and FTS)		12,000
Contractual services:		
Per diem interpreters (5,200 days at $100)		520,000
Repair and maintenance of equipment		126,000
Miscellaneous		3,000
Supplies and materials:		
Magnetic recording tapes		104,000
Miscellaneous		6,000
Equipment:		
Electronic transmitting equipment (includes microphones, headsets, receivers, etc.):		
40 permanent facilities at $10,000 per installation		400,000
100 portable units at $850		85,000
Multi-track audio recording equipment: 100 portable units at $1,500		150,000
Administrative office, 4 full-time positions at $12,000 (accounting, procurement, and audits)		48,000
Total		2,415,000

Mr. FOLEY. I wish to make a few observations, however. Since submitting the statement yesterday, I received a letter from Chief Judge Connally, from the Southern District of Texas.

Judge Connally is not only the chief justice of a district which has two border places of holding court in Brownsville and Laredo, but he has also drafted proposals which will go to the judicial conference in March regarding this legislation.

In his letter Judge Connally says:

No one questions the importance of and need for accurate interpretation of court proceedings for the benefit of parties who are not fluent in English, particularly so with respect to criminal defendants who do not speak English.

While the present bill obviously is directed at this problem, I feel that certain language will cause delay and confusion in the prompt disposition of our cases and suggest certain modifications.

First, with respect to line 7 on page 2, the bill provides that in a criminal case the court "shall order an oral simultaneous translation of the proceedings." If by the term "oral simultaneous translation" is meant the utilization of equipment whereby an interpreter in another room speaks into a microphone, and is received by the non-English speaking defendant through headphones, I suggest that the word "shall" be stricken and that "may" be substituted therefor.

As I am sure you are aware, circumstances from time to time require us to hold court in places other than our own courtrooms. I have held court in quarters borrowed from the State courts, grand jury rooms and other assembly rooms in the Federal Building.

If our place of holding court is required to be equipped for "oral simultaneous translation," I suggest this would make it impossible to utilize other than a courtroom so equipped and from time to time would delay our disposition of criminal cases.

Secondly, I question the advisability of restricting the use of interpreters to those persons certified by the Administrative Office as provided in lines 14 et seq. on page three.

Of course, in the vast majority of the cases where interpreters are needed in this District, it is for English to Spanish translation. We have not the slightest

trouble securing intelligent and highly educated persons who are completely fluent in both languages.

On occasion when our regular interpreter (who is always in attendance when court is held in our two border divisions) is absent by reason of illness or other matters, we can and do use a substitute with all ease and without objection from the parties.

It would restrict our flexibility in this case to be restricted to those few who may have made known to the Administrative Office their desire to serve as interpreters. In those relatively rare cases where interpreters are needed for some unusual foreign tongue, we have found little trouble finding a suitable person through the Consulate, the foreign language department of some of the excellent universities in the area, and so forth.

In my 20 years' experience I have only tried one case in which the question of locating a competent interpreter presented a problem. That was where a National Chinese vessel was in collision with a Norwegian vessel in the Houston Ship Channel.

The Norwegian interpreter presented no problem, but it was found that three separate Chinese dialects were utilized by the crew of the Chinese vessel. Many of them could not understand each other.

Through the Consulate, however, we secured competent help. Hence I believe the requirement that we be restricted to use of those certified by the Administrative Office would cause unnecessary delay and confusion in the handling of the problem.

The only other comment I wish to make is in regard to your amendment regarding Puerto Rico. It is the view of the conference that as far as the conference is concerned, there is no objection whatsoever, but the basic decision is one of legislative policy.

We would only urge that the amendment remain discretionary as you have suggested. Otherwise, we would run into the situation where a visiting judge would be unable to sit in the District of Puerto Rico.

This is sometimes essential because of the heavy workload and also in the last numbers of years the judges have found it necessary to recuse themselves.

Senator BURDICK. Thank you, very much. The amendment you mentioned as mine was brought before the committee by Senator Tunney, and I do not want to take credit away from its author.

You also mentioned, I think, that the interpreter need not be a certified interpreter under subsection two of the bill.

Let me read it with you:

(2) In any action where the services of an interpreter are required to be utilized under this section, the court shall obtain the services of a certified interpreter from within the judicial district, except that, where there are no certified interpreters in the judicial district, the court, with the assistance of the Administrative Office of the United States Courts, shall determine the availability of and utilize the services of certified interpreters from nearby districts. Where no certified interpreter is available from a nearby district, the court shall obtain the services of an otherwise competent interpreter.

I think you have more or less covered that ground, and I more or less share your views.

On the first amendment, where you urged the subcommittee to substitute "may" for "shall" in the phrase "shall order a simultaneous order of proceedings." I would like to note that we are not dealing with problems like they have in the U.N.

Mr. FOLEY. I think that is where the committee had trouble. They were concerned that that not be the intent, namely a U.N. type interpretation which would be very costly and in many situations would not allow adequate flexibility.

Senator BURDICK. We had considerable testimony on that earlier in these hearings. I think some light was shed on that in the first day.

To the extent that this bill requires interpreters for non-English-speaking witnesses, do you think it would increase the number of occasions when interpreters are required under existing rules?

Mr. FOLEY. No, sir.

Senator BURDICK. To the extent that this bill requires interpreters for non-English-speaking criminal defendants or parties in civil cases, will there be required a greater number of interpreters? I suppose your answer is the same?

Mr. FOLEY. At the present time yes.

Senator BURDICK. At the present time you spend approximately $100,000 on interpreters' salaries. I gather that is correct.

Mr. FOLEY. Yes, sir.

Senator BURDICK. Your estimate is that the number of full-time interpreters would increase from 10 to 40 in number at a cost of $700,000.

Mr. FOLEY. That, sir, in an outside figure.

Senator BURDICK. If we are not going to have a substantially greater use, I would not think the cost would rise to that level.

Mr. FOLEY. I would not think so either, sir. The figures we submitted to you were based primarily on an estimate of the maximum cost that this legislation could bring about.

Senator BURDICK. If there were no greater use than we have had in the past, it very well could be around the $100,000 figure, too?

Mr. FOLEY. It would depend on the interpretation of the words "oral simultaneous translation." I think this could cause some increase in the number of appointments.

Senator BURDICK. In addition you estimate that in those districts which do not have full-time interpreters you will need about 13,000 hours of free-lance interpretation, or about 200 hours per district. This 200 hours would represent about 40 full trial days, wouldn't it?

Mr. FOLEY. That, again, sir, we regard as a maximum.

Senator BURDICK. So that outside of the border-State districts, which have a large non-English-speaking population, 200 hours of per diem interpreters would appear to be a reasonable estimate?

Mr. FOLEY. Yes.

Senator BURDICK. Under subsection 3 of section 1(a) of the amended bill, it is suggested that electric recordings be made. You estimate over $500,000 for electronic equipment and an additional $240,000 for personnel to run the machines.

It seems to me that if we assume that the interpreters will be certified as to their competence, then there would be few occasions when the electronic equipment would be needed. Would you agree with this?

Mr. FOLEY. I agree with that. The figures we have given you were prepared prior to your earlier hearings and were based on the possibility that oral simultaneous interpretation would require the use of equipment.

Senator BURDICK. In other words, the judge would not normally order that a tape recording be made unless there was some reason for him to doubt the impartiality of the interpreter. Do you agree with that?

Mr. FOLEY. Yes.

Senator BURDICK. Wouldn't your office be better off to start with portable equipment rather than permanent equipment?

Mr. FOLEY. Yes, sir. We have started to do that.

Senator BURDICK. Does your estimate include portable transmitting equipment to be used by an interpreter who gives a translation to the non-English speaking defendant of the English testimony given by witnesses?

Mr. FOLEY. Yes, sir.

Senator BURDICK. Do you know how much those kits cost?

Mr. FOLEY. No, I do not.

Senator BURDICK. We understand, and I believe Mr. Marquez of El Paso has testified, that his interpreter's kit was assembled at a cost of $192.83. So the use of a portable kit would be a nominal cost, wouldn't it?

Mr. FOLEY. Yes, sir.

Senator BURDICK. In any event the continuing cost of $108,000 a year is quite a liberal estimate, is it not?

Mr. FOLEY. Yes, sir.

Senator BURDICK. It will fall far below that?

Mr. FOLEY. Yes, sir. We would hope so.

Senator BURDICK. Any questions?

Mr. WESTPHAL. I just have a few, Mr. Chairman, in reference to Judge Connally's suggestion for possible amendments of the language of the printed amendment, introduced by Senator Tunney, the principal sponsor of the bill, that the word "shall" on line 7 of page 2 be changed to "may."

It seems to me that under the *Negron* case, that the use of the word "shall" is required in this legislation. Do you agree with that?

Mr. FOLEY. I agree with that. I think Judge Connally's suggestion was based on a concern lest those words require the use of equipment in all criminal cases.

Mr. WESTPHAL. In the *Negron* decision the court held that the right of a non-English-speaking defendant in a criminal case to be confronted by the witnesses against him and to have the effective assistance of counsel could only be guaranteed if he was furnished an oral simultaneous translation of the English portion of the trial as the trial proceeded. That is the effect of the *Negron* decision?

Mr. FOLEY. Yes, sir.

Mr. WESTPHAL. So, as you have said, the only question, then, is what is meant by "oral simultaneous translation"? The chairman has already indicated to you that, in our prior hearing, the witnesses who testified were generally of the opinion that that phrase should not be construed to include the type of translation that is accorded in the proceedings at the United Nations.

Mr. FOLEY. If the legislative history shows this, I think that takes care of Judge Connally's concern with this language.

Mr. WESTPHAL. The court, in *Negron*, if my recollection of the facts is correct, indicated that the defendant in that particular proceeding was given a translation only occasionally, and the record didn't indicate that the interpreter was present at all times during the proceedings had in open court.

Mr. FOLEY. Yes.

Mr. WESTPHAL. As Judge Connally points out, if the phrase were interpreted to require the high level of interpretation accorded at the U.N., then it would require soundproof booths which, if put into the

courts in this Nation, would be prohibitively expensive. Would you agree with that?

Mr. FOLEY. Yes. As Judge Connally also pointed out, he often goes right into the prisons and conducts habeas corpus matters. This U.N. interpretation would require equipment wherever the court sat, which is not always in a normal courtroom.

Mr. WESTPHAL. And subsection 2, beginning at line 11 of page 2, requires that, in a civil action in which a party is not speaking English, if the judge orders translation, he has the discretion to determine whether it shall be a simultaneous translation or a consecutive translation?

Mr. FOLEY. Yes, sir.

Mr. WESTPHAL. I think you have already indicated that you agree with the interpretation with reference to the use of certified interpreters that was given to you by Senator Burdick; that is, that under that statutory language, there is sufficient flexibility so that if an interpreter who has been certified by the Director of the Administrative Office is not available in the district and is not readily available in a nearby district, then the judge has the discretion to use an interpreter who is otherwise competent, even though he has not been certified?

Mr. FOLEY. Yes, sir, I think the last sentence of section 2 takes care of that.

Mr. WESTPHAL. So the intent is to give a measure of flexibility to the system by vesting in the trial judge a sound discretion in the employment of competent interpreters certified or noncertified?

Mr. FOLEY. Yes, sir.

Mr. WESTPHAL. It expresses a preference to have certified interpreters used?

Mr. FOLEY. Yes, sir.

Mr. WESTPHAL. That is all the questions I have, Mr. Chairman.

Senator BURDICK. Thank you, Mr. Foley. You have been very helpful.

Our next witness will be Mr. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, accompanied by Julio Morales Sanchez, U.S. attorney for Puerto Rico.

Welcome to the committee, gentlemen.

STATEMENT OF J. STANLEY POTTINGER, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, ACCOMPANIED BY WALTER W. BARNETT, DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION

Mr. POTTINGER. Good morning, Senator.

Senator, Mr. Julio Morales Sanchez, a U.S attorney for the District of Puerto Rico, is not with me this morning. He was detained in Puerto Rico because of his daughter's illness. He expresses his regrets at not having the opportunity to be here.

Since we are speaking to the same issue, I will cover the points that he might have covered, had he been here.

Mr. Chairman, as the committee wishes, I shall either proceed with my testimony as submitted to the committee or, if you wish, submit it for the record and proceed to any questions that the chairman may have.

Senator BURDICK. If you care to summarize it, we would appreciate that. I will place your prepared statement in the record at this point and you may proceed with your summary.

PREPARED STATEMENT OF J. STANLEY POTTINGER, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION

Mr. Chairman and members of the Subcommittee: I appreciate this opportunity to testify before you on behalf of the Department of Justice in support of the amended version of S. 1724, now before this Subcommittee. I shall also address the possibility, which I am advised the Subcommittee is considering, of further amending the Bill to make possible the use of the Spanish language in the United States District Court for the District of Puerto Rico.

It is my opinion that S. 1724 is a significant and necessary step toward insuring that all persons before the Courts are able to comprehend and participate in the judicial process.

The ability of a party to comprehend what is happening in a judicial proceeding may well be considered an implied element of the constitutional right to a judicial proceeding.

In 1965, Congress provided in section 4(e) of the Voting Rights Act a guarantee that a person with a sixth grade education from an American-flag school in which the predominant classroom language was other than English could not be denied the right to vote on the ground he was not literate in English. This section is a manifestation of a Congressional finding that the right to vote is too basic to justify language infringements on that right.

The right to equality before a federal court is equally as fundamental as the right to vote. Despite the outward appearance of objective equality in our judicial system, persons are treated unequally when some are unable to comprehend what is happening to them because of a lack of understanding of English.

In its recent decision in *Lau v. Nichols*, the Supreme Court held that the failure of a school system to teach English to San Francisco school children who speak only Chinese had effectively foreclosed those children from any meaningful education. In that case all students had been provided with the same facilities, textbooks, teachers, and curriculum. However, because the Chinese students could not comprehend the language of their teachers, textbooks, or fellow students, they were unable to utilize any of these material benefits. The Court found that equal educational opportunity in fact requires more than just equal access to the material components of an educational program; it requires a basic ability to communicate in and comprehend the language of instruction. Thus, *Lau* was a situation in which apparent equality was actually a denial of equal educational opportunity for a non-English speaking minority.

The rationale of the Court in *Lau* may be equally applicable here. Equality before the courts means more than the mere providing of all parties with the same tangible protections and guarantees. Equality, in fact, requires that each party be able to participate in and to comprehend the proceedings. The question seems to me to be how most efficiently to insure that parties are able to comprehend the proceeding.

The bilingual courts bill represents recognition that a person's ability to comprehend the language of the court is an indispensable element of equality and efficiency in the courts. The Justice Department endorses this legislation.

I would now like to discuss specifically the problem in the United States District Court for Puerto Rico.

In Puerto Rico there is a language situation converse to that of the United States. Whereas in the United States practically all persons speak English, 1970 Census statistics reveal that 57.3% of all Puerto Ricans over the age of ten years old do not speak English. The same statistics show that 59.2% of the women and 75.2% of those over 60 speak no English.[1] The Census Bureau explains

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[1] *U.S. Bureau of the Census, Census of Population: 1970, Detailed Characteristics, Final Report PC(1)–D53 Puerto Rico 53–624 (1973).*

that "(p)ersons were classified as able to speak English if they reported that they could make themselves understood in English."[2] Thus, these statistics probably overstate the true percentage of persons unable to comprehend, without the aid of an interpreter, the language of something as complex as a judicial proceeding. In addition, they undoubtedly understate the true percentage of defendants in federal criminal proceedings who are unable to comprehend the proceedings wihtout the aid of an interpreter.

Although Spanish is the primary language of most Puerto Ricans and the only language spoken by the majority, the law currently provides that all pleadings and proceedings in the district court shall be conducted in English (48 U.S.C. §864 (1970)). As a necessary concomitant to this provision, another statute, 28 U.S.C. §1865(b)(2) and (3) (1970), effectively limits participation on federal grand and petit juries to those Puerto Ricans, usually of a higher educational and occupational level than the average Puerto Rican, capable of speaking and understanding English. The result of these two statutes is to foreclose for a large number of Puerto Rican litigants the ability to comprehend fully judicial proceedings to which they may be parties and especially in criminal proceedings, the right to a trial by a jury of their peers. We question whether that is the most effective way to operate the United States District Court for the District of Puerto Rico.

The district court presently provides interpreters to translate questions addressed to and answered by Spanish speaking witnesses and it does provide oral simultaneous translation to criminal defendants. Though these practices help remedy the problem inherent in a situation where such a large number of persons do not speak the language of the court, they do not provide to most Puerto Ricans a fair trial. Further, such a substantial amount of translation results in unnecessarily drawn out proceedings as well as too many non-English speaking persons using the district court for such translating procedure to function efficiently.

In considering steps to remedy this problem, there are obviously several alternatives. One would be to make Spanish the principal, but not exclusive, language of the district court, and open up jury duty to non-English speaking Puerto Ricans currently barred from service. Puerto Ricans will be better able to make effective use of the court in both civil and criminal proceedings.

In addition, such changes would open the jury selection process to a substantial and important group of persons presently excluded.

The proposal also should improve judicial efficiency. By eliminating the time necessary to conduct translations, proceedings will move more quickly. Further, the larger jury pool will expedite the jury selection process.

The Justice Department feels that this legislation will do much to effectuate the guarantees of equality of all persons before a federal court and to insure that all persons before the court understand the court proceedings.

There are obvious problems to be worked out before this proposal can be implemented, such as determining when proceedings would be conducted in Spanish, when in English. We are not prepared, at this juncture, to make recommendations as to the form such an amendment might take, but we offer our assistance to your Subcommittee and its Staff in working toward the details of legislation to insure that all persons in Puerto Rico can effectively participate in the judicial process; and to improve the operation of the United States District Court for the District of Puerto Rico.

Mr. Chairman, that concludes my prepared statement. I would be happy to receive any questions you or members of the Subcommittee may have.

Mr. POTTINGER. I appreciate this opportunity to testify before you on behalf of the Department of Justice in support of the amended version of S. 1724, now before this subcommittee.

I shall also address the possibility, which I am advised the subcommittee is considering, of further amending the bill to make possible the use of the Spanish language in the U.S. District Court for the District of Puerto Rico.

It is my opinion that S. 1724 is a significant and necessary step to-

[2] The Bureau notes, though, that "persons who could speak only a few words, such as 'Hello' and 'Goodbey', were classified as unable to speak English." Id., Appendix B at App. 8.

ward insuring that all persons before the courts are able to comprehend and participate in the judicial process.

The ability of a party to comprehend what is happening in a judicial proceeding may well be considered an implied element of the constitutional right to a judicial proceeding.

In 1965, Congress provided in section 4(e) of the Voting Rights Act a guarantee that a person with a sixth grade education from an American-flag school in which the predominant classroom language was other than English could not be denied the right to vote on the ground he was not literate in English.

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same statistics show that 59.2 percent of the women and 75.2 percent of those over 60 speak no English.

The Census Bureau explains that persons were classified as able to speak English if they reported that they could make themselves understood in English. Thus, these statistics probably understate the true percentage of persons unable to comprehend, without the aid of an interpreter, the language of something as complex as a judicial proceeding.

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Although Spanish is the primary language of most Puerto Ricans and the only language spoken by the majority, the law currently provides that all pleadings and proceedings in the district court shall be conducted in English.

As a necessary concomitant to this provision, another statute effectively limits participation on Federal grand and petit juries to those Puerto Ricans, usually of a higher educational and occupational level than the average Puerto Rican, capable of speaking and understanding English.

The result of these two statutes is to foreclose for a large number of Puerto Rican litigants the ability to comprehend fully judicial proceedings to which they may be parties and, especially in criminal proceedings, the right to a trial by a jury of their peers.

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The Justice Department feels that this legislation will do much to effectuate the guarantees of equality of all persons before a Federal Court and to insure that all persons before the court understand the court proceedings.

There are obvious problems to be worked out before this proposal can be implemented, such as determining when proceedings would be conducted in Spanish, when in English.

We are not prepared, at this juncture, to make recommendations as to the form such an amendment might take, but we offer our assistance to your subcommittee and its staff in working toward the details of legislation to insure that all persons in Puerto Rico can effectively participate in the judicial process, and to improve the operation of the U.S. District Court for the District of Puerto Rico.

Mr. Chairman, that concludes my prepared statement. I would be happy to receive any questions you or members of the subcommittee may have.

Senator BURDICK. Thank you for your contributions this morning.

I confess that I am not certain whether or not the amendment that has been referred to is the way out of this problem. At one time I was, but I am now in doubt for this reason: In your statement, you observed that the statstics show that 59.2 percent of the women and 75.2 percent of the people over 60 speak no English, but when you look at the figures tabulated for the 1970 census, which shows that among all people over the age of 10, 57.3 percent speak no English, you can see that there has been an improvement.

Further, I have been told that in 1949 English was made a requirement in the schools in Puerto Rico. Given these facts, it looks like we are heading toward an ever-increasing level of English speaking in Puerto Rico. Would you agree with that?

Mr. POTTINGER. I would agree that the figures show there is a tendency that way; yes, sir.

Senator BURDICK. Then we reach a 50–50 situation, we will have another decision to make.

Mr. POTTINGER. Mr. Chairman, if I may, I would not find that the proposed amendment to the Puerto Rico Federal Relations Act, or at least the draft which we have before us, would be inappropriate because of the trend that you observe.

Certainly as much as 50 percent of the population or, indeed, in our opinion, substantially less than that, do not speak English as the primary tongue or comprehend it well enough to understand court proceedings. That would justify the court having the proceedings conducted in Spanish.

Mr. Chairman, we all know that, in our jurisprudential system, the extent to which an individual before a court, and particularly in a criminal proceeding, understands the proceeding, and has his or her rights protected, depends entirely on the ability to communicate.

In other words, I believe it is fair to say in such a situation that the overall statistics in such a situation would not be dispositive of one's rights to one's fair trial.

We would still support the notion that the court in its wisdom and discretion ought to have the capability of having the proceeding done in such a way that the litigant understands the way his rights are being disposed of.

Senator BURDICK. But the fact remains that as long as it is a matter for the district judge's discretion that these proceedings are done in Spanish, you are sill not relieved from interpreters; you are still going to have interpreters for people who speak only English.

Mr. POTTINGER. That may in fact be the case and, Mr. Chairman, that is the case today in Puerto Rico as subsequent witnesses may testify here today.

It is a practice, and not an overly burdensome practice, to have interpreters in the court. I would not see that the existence of interpreters would be a radical change from the current practice.

Senator BURDICK. What I am saying is, in either case, you are going to have to have interpreters.

Mr. POTTINGER. I would say that was correct.

Senator BURDICK. One more thing that concerns me is the records that go up to the Circuit Court of Appeals. They will all have to be transcribed into English as well as Spanish, won't they?

Mr. POTTINGER. I think it is correct that they would be so transcribed. As the proposed amendment now reads, such a transcription would take place, and I think should take place, but I would not see that as an overly burdensome practice.

Senator BURDICK. Except that there would have to be two transcriptions which would have to go up. If it goes to the Circuit Court, there would have to be an exact translation of the record, and all the exhibits would have to be duplicated.

Mr. POTTINGER. I suppose some, if not all, exhibits would have to be duplicated.

Senator BURDICK. When I learned that the population was tending toward a 50–50 breakage very soon, I began to ask questions about the lines of the rationale behind this amendment.

Eventually there will be a great deal of English spoken in that area.

Mr. POTTINGER. I think there has been a tendency toward English in Puerto Rico for many years. I am not sure over how many decades this trend has occurred, but I am sure it has taken at least the last 100 or 200 years.

Yet we have found over that period of time that there has not been such an extensive use of the English language that all persons entitled to a fair trial have received one.

In other words, I don't think the trend we all acknowledge here is going to progress so rapidly that it will result in a fair trial, in the context in which we have been discussing it this morning.

Therefore, while I think it is understandable that your concern about this trend might lead you to modifications of the proposed amendments, I would hope this trend would not be seen as so substantial that it will eliminate what we feel is a strong need for the option on the part of the court.

I might suggest that it is our view, and perhaps this would help the chairman and the committee, that one might say that the option could be reversed. We believe as a practical matter, the court is going to determine the nature of the proceedings and from that determination whether the proceedings should take place in Spanish or English.

We don't believe, in other words, that it is a critical point whether the court presumes Spanish and sometimes finds English or vice versa, as long as that capability is understood and as long as the criteria by which the court decides that judgment are set forth by the court.

However, I believe it is of vital importance that the capability to conduct the proceedings in Spanish should be considered by the Congress.

Senator BURDICK. You spoke of the process taking over 100 years, but it is only in recent years that English has been required in the schools.

Mr. POTTINGER. Mr. Chairman, if it turns out that within a decade or two the problem dissolves because of the educational process, we would be as delighted to see this proposed statute go into disuse as you and the Congress would.

However, we strongly urge the Congress to act on this pending that historical development. I am optimistic that bilingual capabilities will improve in the United States as rapidly as they have in Puerto Rico.

Until that day arrives, I would hope the Congress would help us help all people receive fair and equal treatment in the courts. We do not believe that is occurring today.

Senator BURDICK. Would you also give discretion to the courts to, let's say, have an English-speaking court in civil matters and Spanish in criminal matters? Would you give them that much discretion? I am just guessing, but I am saying that because I would assume that a great many of the criminal defendants are Spanish speaking, while, in civil cases, where there are very often commercial interests, we might find a greater number of English-speaking people litigating those cases.

Mr. POTTINGER. That may be the case. I believe, as a practical matter, that in many of the civil cases of a corporate nature the proceedings are more likely to take place in English.

May I strongly suggest, however, that the court itself will recognize this factor. Given a capability, which this proposed statute can give to the court, it can better adjust to this on a case-by-case basis rather than by fixed general rules of applicability.

The U.S. Attorney has told me that more than 75 percent of the criminal defendants in Puerto Rico do not speak English. We also know that almost all of those who do speak English in Puerto Rico still would be considered as speaking it not as a primary tongue.

I would like to stay with the position that we have testified to here in our written statement, which is not to distinguish between civil and criminal in the sense we proposed it.

Senator BURDICK. What I am referring to is an express grant of discretion to the judge. For example, tomorrow morning we may have a case against defendant A, who is charged with burglary and who is Spanish speaking. Does this amendment provide the judge with the necessary flexibility?

Mr. POTTINGER. Yes, sir. I believe the proposed amendment does provide such flexibility. We would support any language which provided such flexibility; yes, sir.

Senator BURDICK. In our prior hearings a Federal judge suggested it would be wise to require a defendant to specifically waive his right to the translation.

I would assume this waiver would have to have the consent of both the attorneys and the judge, but that being the state of facts, what do you think of the suggestion?

Mr. POTTINGER. I believe there should be some provision for waiver. It would be our strong concern that those provisions be so written or understood that waiver is truly based upon intelligent and informed consent by the waiving party.

However, the concept that waiver ought to be provided does to me seem to be reasonable and important. It would be expeditious to most proceedings if waiver were available.

Senator BURDICK. If the party himself and the court would agree, then I think you have the necessary safeguards. However, do you feel that this waiver could be made by the party himself or that, even though an interpreter would not be required during the proceedings, one would be required to guarantee an understanding of the process of waiving?

Mr. POTTINGER. I have not considered it beyond this morning. I would be very worried about that. I do not believe on the basis of that description that a waiver which is not itself based upon a clear notion or translation would be other than a suspect waiver.

I would want to insure, either through the provision of a translator, or through some other safeguard that I may not know of at the moment that the client or the litigant himself or herself be informed, and that it be made a matter of record as to how that information was extended to the person.

Senator BURDICK. In other words, you might find yourself in the position where you would need an interpreter to make the waiver?

Mr. POTTINGER. That is possible. If the were so, it would suggest there might be very careful safeguards taken before such a waiver is taken by the court.

I would imagine, Senator, that waivers would occur where the client is fully bilingual and believes that, given the nature of the documentation—let us say it is a corporate case—he or she would be more comfortable proceeding in English even though his or her native tongue might be Spanish and might demonstrate that to the counsel and to the court that in such a situation there would be a waiver.

If you are talking of a typical situation where the client speaks little or no English and states that he may want to proceed in English because he finds himself in an English—speaking court, I would want to make sure that the process by which that decision was made was a careful one.

Senator BURDICK. I think in most cases where the judge would have to consent to a waiver there are fairly good safeguards.

Mr. POTTINGER. I would think so. I certainly do not want to cast any aspersions on public defenders in Puerto Rico or anywhere else, but many times they are overworked. I have found in my work that public defenders are people of integrity and skill, but that the pressures upon them sometimes make waiver decisions very difficult.

I would want to give them a framework, in the legislation, which would allow them to exercise great care in that regard. Perhaps there is something more that could be done, but I would be interested in how public defenders at the public bar would feel about this. Perhaps that would assist this committee.

Senator BURDICK. In regard to the safeguards we talked about, do you think a waiver would be helpful which would result in a summary, instead of a simultaneous, translation?

There might be some cases where a full-scaled simultaneous translation would not be absolutely necessary to get the message across. In other words, this would be a partial waiver.

Mr. POTTINGER. I believe I would respond as I have with regard to waiver generally. It is unclear to me in what situations that would

arise, but because it is unclear, I don't doubt that there are situations in which it might arise.

I take it we are now addressing a problem that may arise with regard to S. 1724 as well as the provision in the proposed amendment relating to Puerto Rico?

Senator BURDICK. Mainly S. 1724.

Do you have any questions?

Mr. WESTPHAL. Yes. On the last point made by the chairman, an example that comes to my mind where you might have what would be, in effect, a partial waiver would arise in a criminal proceeding in which you were going to have 2 days of expert testimony from a toxicologist or chemist. Such testimony will largely involve technical subject matter. Assuming the criminal defendant who does not speak English is not a qualified toxicologist or chemist, it seems to me that our system should permit a waiver of a word-for-word, blow-by-blow simultaneous translation of that particular testimony.

He could then be given a summary translation so there would be some saving of time. An interpreter would still have to be present. There would be no saving of money, but there would be some saving of the court's time in the trial.

That is an example of where a partial waiver would be useful. Would you agree with that?

Mr. POTTINGER. Yes; I think it is a good example of an appropriate idea.

Mr. WESTPHAL. On the matter of waiver, if waiver of some form is going to be written into the bill, do you agree that it should be an express, or as you say, an intelligent waiver rather than an implied waiver of the right?

Mr. POTTINGER. Caution would lead me to say that it should be express, yes.

Mr. WESTPHAL. Generally, any implication of waiver should be discouraged regarding the right to an effective translation which preserves the right to confront the witnesses against you and the right of the assistance of counsel?

It seems to me our court should not be able to find an implied waiver because of the fact that a man stands mute.

Mr. POTTINGER. I agree completely.

Mr. WESTPHAL. I have no further questions.

Mr. POTTINGER. May I express one other thing? Although we do not read S. 1724 with the view that a person is not able to obtain his own translator through his or her own devices, we do believe it is important that at least the legislative history reflects that, if not the language of the bill.

The reason for that is as follows: As this bill is now constructed, translators who would be provided are certified by the court or by the Administrative office of the U.S. Courts and are paid by the court.

So in both a real as well as a technical sense, they are employees of the court, not of the defendant or the litigant. We would assume that there is no intention here to require a litigant to take an employee of the court who, through institutional or bureaucratic arrangements may be somewhat less vigorous and, indeed, should be less vigorous in advocacy of a client rather than seeking the truth for the court or the jury.

Therefore, we would like to have the history clear that this in no

way precludes, as an example, a Spanish-speaking client from obtaining an interpreter of his own or an investigator.

Senator BURDICK. The only thing that comes to my mind on that is that I think the court would want to know that the interpreter was competent.

Mr. POTTINGER. There is no question about that. In other words, in a proceeding today, without the existence of this bill, presumably a nonspeaking client can have a competent interpreter with him at counsel's table. We would not see the proceedings by which that competency exists today altered by passage of this bill. We would like to be sure that this in no way intrudes upon that as it exists today.

Senator BURDICK. I can see all kinds of problems if the man came in with somebody who was not competent and you had a record that was full of contradictions.

Mr. POTTINGER. If the court decided that a person were inappropriate, we would consider that to be an appropriate decision by the court today or after passage of the bill. We share the concern with you in that regard, but our concern is that this structure may in some courts inadvertently be seen as a deterrent to a client having his or her own investigator or translator at counsel's table working strictly for that client.

While we don't see that as a typical case, given the provisions of this bill, we hope that you would agree that should a request of that kind arise by a defendant or a defendant's counsel, that this bill would not be used as a deterrent to that decision by the court.

Mr. WESTPHAL. May I, Mr. Chairman?

Senator BURDICK. Yes.

Mr. WESTPHAL. There are two situations we are talking about. One concerns the interpreter who is needed principally as an officer of the court, to interpret the testimony of a party or a witness. That interpreter must be one whom the judge is satisfied is not only competent but also impartial, one who can make a record which the court reporter can take down, one who will protect the integrity of the record.

The second situation arises when an English-speaking witness is in the witness chair, or the judge makes a ruling from the bench. Then there is a need to have an interpreter sitting next to—or in some way in communication with—the non-English speaking defendant who can tell that defendant what is being said in English in his presence.

Your point is that if that defendant in the latter situation desires to use someone whom he selects and employs—a friend, a relative, a neighbor—and in whom he has confidence, he should be permitted to do so. If he doesn't exercise that choice on his own, this bill requires the court to see that someone who is competent to so interpret is in communication with him to tell him what is going on.

Mr. POTTINGER. That is precisely right. It is only in the latter situation, that is, with regard to translation from English to another primary tongue on behalf of the non-English speaking litigant, that we are addressing ourselves.

On the contrary, I do believe that the first function which you stated, which is translation on behalf of the court or the jury ought to be done by certified persons as this bill would provide.

However, in the latter situation, we also believe it is important that the bill not be understood to require the defendant to take a person who is chosen by an institutional process rather than by himself or his

counsel if, indeed, he has a choice to make, and he can show his choice is competent to help.

Mr. WESTPHAL. In other words, in the first situation where it is the interpreter who is interpreting for the official record, primary factors are competency and impartiality and in the second situation, the confidence of the defendant.

I think that is now in the history of this legislation.

Senator BURDICK. I have one last question. In your capacity as a member of the civil rights section of the Attorney General's office, do you know of any specific case where there has been a miscarriage of justice on a matter involving a defendant or a party in the courts caused by a lack of interpreters or caused by language difficulties?

Mr. POTTINGER. Mr. Chairman, I cannot think of any as I sit here. Our own experience is in a different area. It is to sue people for discrimination of the kind we are addressing today rather than to be a defense counsel.

To answer your question directly, no, sir; I do not have a specific example. I can only say that my observations, not in the courtroom in this regard, but in regard to officers of the court or courts and as a private lawyer in California and working in Texas for a period of time, would lead me to believe that such miscarriages do occur more times through inadvertence than by willful attempts of any individual person.

Senator BURDICK. But you cannot give me a specific citation?

Mr. POTTINGER. No, sir.

Senator BURDICK. I am thinking of any rights that might have been lost by virtue of language difficulties. I wanted to know if you knew of any such situations.

Mr. POTTINGER. If you think that is necessary, I think we can get studies for you, done by bar associations and others, judges included, which can address this problem directly. I do believe they would demonstrate such problems.

Senator BURDICK. Ordinarily when we pass such legislation, we correct some evil. It might strengthen our record to have examples of the evil this legislation seeks to correct.

Mr. POTTINGER. I wish I had specific case citations to give you. I would be happy to provide them to you, if you wish.

Senator BURDICK. I would be interested if you can shed more light on it.

[The information to be furnished follows:]

DEPARTMENT OF JUSTICE,
Washington, D.C., February 14, 1974.

HON. QUENTIN N. BURDICK,
Chairman, Subcommittee on Improvements in Judicial Machinery, Senate Committee on the Judiciary, Dirksen Office Building, U.S. Senate, Washington, D.C.

DEAR SENATOR BURDICK: Thank you for allowing me to testify before your Subcommittee on February 4, 1974. I appreciated the opportunity to present the views of the Justice Department in support of S. 1724, the Bilingual Courts Act, and the proposal to provide more effectively for bilingual proceedings in the United States District Court for Puerto Rico.

We feel that both elements of the proposed legislation are positive steps toward insuring that all persons before the courts are able to comprehend and participate in the judicial process.

At the conclusion of my testimony, you asked about the extent of the communication problem addressed by the Bilingual Courts Act.

I am enclosing a copy of a recent law review article which discusses some problems the non-English speaking defendants have in communicating with

attorneys, understanding the proceedings, and confronting English-speaking witnesses. I think you will find that this article indicates that the problem addressed by S. 1724 is substantial. I will be happy to send other materials to you, which I do not have readily available here, if you think they would assist in your consideration of the proposed statute.

As I stated on February 4, 1974, the Justice Department endorses the general thrust of both elements of the legislation. We do, however, recognize that there are significant details to be worked out before the proposals can be implented. I would once again like to offer to you, the Subcommittee, and its Staff, our assistance in this regard.

Sincerely,

J. STANLEY POTTINGER,
Assistant Attorney General,
Civil Rights Division.

[The law review article referred to in Mr. Pottinger's letter is entitled, "The Right to an Interpreter," and is available at 25 Rutgers L.R. 145 (1970). The article is not reproduced in this record due to its ready availability in law libraries.]

Senator BURDICK. Our next witness is Congressman Benitez. Congressman?

STATEMENT OF CONGRESSMAN JAIME BENITEZ, RESIDENT COMMISSIONER, PUERTO RICO

Mr. BENITEZ. Mr. Chairman, my name is Jaime Benitez. I am the elected representative of the people of Puerto Rico. I speak to this matter officially and with the support of, I believe, the entire Puerto Rican community and, of course, the Government of Puerto Rico.

I am, in the first place, grateful for the opportunity to express myself on this subject. The bill that has been introduced by Senator Tunney is one which we have supported in the House. I have cosponsored S. 1724, introduced in the House as H.R. 8349, because I believe in the essential principle that it embodies—the right of the people to have justice administered to them in a language which they understand.

I may say that I am particularly grateful to the chairman for having accepted the presentation of this section dealing specifically with the Puerto Rican situation, which is, as was brilliantly presented by Mr. Pottinger, the converse situation from the normal situation to be applied in the United States and which S. 1724 as originally submitted, covers.

I would go further and say that after his presentation, there is very little that I would have to say except to add some clarifications to my statement, which has already been submitted to this committee.

Senator BURDICK. Your statement will be included in this record now.

STATEMENT OF JAIME BENITEZ, RESIDENT COMMISSIONER, PUERTO RICO

Mr. Chairman and Members of the Subcommittee: I appreciate this opportunity to submit a statement to you concerning the interest of the Commonwealth of Puerto Rico in S. 1724. This Bill is intended to provide more effectively for bilingual proceedings in the United States District Courts.

The basic purpose and principle of the Bill is to increase the efficiency of the United States courts in proceedings involving persons whose language facility is not in English, but in some other tongue, and, at the same time, to assure fairness and justice to such persons. The Commonwealth of Puerto Rico strongly endorses these objectives and, in general, the methods which S. 1724 would provide to achieve them in the courts of the mainland.

To achieve the same purposes in the United States District Court for Puerto Rico, however, additional legislation is required. It is for this reason that, on

October 9, 1973, I wrote a letter to the Chairman, on behalf of the Commonwealth government, a copy of which I attach to this Statement. This letter, in compliance with the procedure established under the law pursuant to which the Commonwealth Government was organized (Public Law No. 81-600, July 3, 1950), constitutes a formal request and consent to amendment of the Puerto Rican Federal Relations Act (48 USC § 731, et seq.).

We request that S. 1724 be amended so as to eliminate from the Puerto Rican Federal Relations Act the anachronistic and burdensome requirement that all "pleadings and proceedings in the United States District Court for Puerto Rico shall be conducted in the English language" and so as to amend the Jury Selection Act of 1968 (28 USC, ch. 121) to permit the selection of jurors in that court who are qualified in the Spanish language as well as those qualified in English.

Our proposal would permit the court to provide for proceedings in either English or Spanish, depending upon such circumstances as the language facility of the parties and their counsel and the presiding judge. It would also facilitate the jury selection process by enabling Spanish-speaking citizens to serve as jurors in cases conducted in Spanish.

At the same time, our proposal would adequately provide for the translation of proceedings conducted in Spanish as necessary for purposes of any appeal that may be taken to the United States Court of Appeals or the Supreme Court.

As your Committee knows from facts presented to it in connection with requests for increased judges for the United States District Court for Puerto Rico, that court is severely over-burdened. The present requirement that proceedings be conducted in English requires that a substantial amount of time be consumed in translating testimony into Spanish so that it may be intelligible to those parties and lawyers whose facility in English is inadequate. The magnitude of this can be ascertained from the fact that more than 75% of the defendants in criminal proceedings in the United States District Court are not competent in English. In most instances, the judge, lawyers and the parties are entirely at home in the Spanish language, and the compulsory use of English merely places a burden of time and expense upon all concerned and interferes with the administration of justice.

In addition, the compulsory use of English as the language of the United States District Court is at odds with the spirit of mutual respect and dignity which has characterized United States-Puerto Rican relations at least since 1952 when the Commonwealth was organized as a result of compact between the United States and the people of Puerto Rico. It is a needless, useless, anachronistic relic of colonialism which contradicts the basic nature of the relationship. To the lawyers and the parties involved in proceedings before the United States District Court, the requirement that English is the exclusive permissible language is an unnecessary and outmoded remedy of conditions and provocations that, prior to the Commonwealth, incited significant antagonism in Puerto Rico against its colonial status.

In summary, we submit that amendment of the Puerto Rican Statute of Federal Relations to authorize the use of Spanish in the United States District Courts, as we have requested and amendment of the Jury Selection Act of 1968 to permit the selection of jurors who are qualified in the Spanish as well as the English language, will have the following advantages:

1. It will save judicial time and expense, particularly in court, which is now consumed by the process of translation from English into Spanish in the many cases where the defendant or parties to civil proceedings are not qualified in English.

2. It will reduce the burden on Spanish-speaking defendants and parties and upon their lawyers.

3. It will facilitate the jury-selection process.

4. It will remove one of the remaining vestiges of "colonialism," and will be further evidence of United States' understanding and respect for the culture and institutions of Puerto Rico.

5. It will improve the quality of justice in the United States District Court for Puerto Rico by providing for the conduct of proceedings in the Spanish language where Spanish is the familiar tongue of the parties.

6. At the same time, the proposal will make provision for the conduct of proceedings in English when this is appropriate in light of the requirements of parties or the Court. In this connection, I should point out that presently and since 1952, all District Judges appointed to the Federal Bench in Puerto Rico, have been Puerto Ricans who, although they are qualified in English, speak and use Spanish as their familiar language.

7. It will facilitate the selection of jurors from panels of persons qualified in Spanish as well as in English.

This proposal is fully supported by the Commonwealth Government and the Bar Association of Puerto Rico, and its enactment will be applauded by the people of Puerto Rico.

On behalf of the Commonwealth Government and the people of Puerto Rico, I earnestly ask your favorable consideration.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 9, 1973.

Re S. 1724.

HON. QUENTIN N. BURDICK,
Chairman, Subcommittee on Improvements in Judiciary Machinery, Committee on the Judiciary, U.S. Senate, Washington, D.C.

MY DEAR SENATOR BURDICK: On behalf of the Government and of the people of the Commonwealth of Puerto Rico, I write this letter to request that S. 1724, relating to bilingualism in the Federal Courts be amended to add provisions which would amend Section 42 of the Puerto Rican Federal Relations Act (48 U.S.C. 864) so as to eliminate from Section 42 of that Act the existing requirement that all pleadings and proceedings in the United States District Court for Puerto Rico shall be conducted in the English language and, in lieu thereof, to substitute provisions which adequately provide for the use of Spanish in that Court where the interests of the litigants and of the effective and economical administration of justice requires that the proceedings should be in English. Correspondingly, the provisions of the Jury Selection Act of 1968 (U.S.C. Title 28, ch. 121) should be amended so as to permit the selection of jurors who are qualified in the Spanish language as well as those qualified in English.

As you know, Spanish is the basic and indigenous language of Puerto Rico. While English is taught in our schools, beginning in the second grade and continuing throughout the system, for most Puerto Ricans Spanish is their familiar language and for many, court proceedings conducted in English are unintelligible. This is true, for example, of more than 75% of the defendants in criminal proceedings in the Federal Court in Puerto Rico. The result is to place upon the Court, the parties and the lawyers, a burden which results in needless time and expense and unquestionably interferes with the administration of justice.

Amendment of the Puerto Rican Statute of Federal Relations, as requested by the Commonwealth, and of the Act of 1968, will have the following advantages:

1. It will save judicial time and expense, particularly in court, which is now consumed by the process of translation from English into Spanish in the many cases where the defendant or parties to civil proceedings are not qualified in English.

2. It will reduce the burden on Spanish-speaking defendants and parties and upon their lawyers.

3. It will facilitate the jury-selection process.

4. It will remove one of the remaining vestiges of "colonialism," and will be further evidence of United States' understanding and respect for the culture and institutions of Puerto Rico.

5. It will improve the quality of justice in the United States District Court for Puerto Rico by providing for the conduct of proceedings in the Spanish language where Spanish is the familiar tongue of the parties.

6. At the same time, the proposal will make provision for the conduct of proceedings in English when this is appropriate in light of the requirements of parties or the Court. In this connection, I should point out that presently and since 1952, all District Judges appointed to the Federal Bench in Puerto Rico, have been Puerto Ricans who, although they are qualified in English, speak and use Spanish as their familiar language.

This proposal is fully supported by the Commonwealth Government and the Bar Association of Puerto Rico, and its enactment will be applauded by the people of Puerto Rico.

I should add, Mr. Chairman, that the Commonwealth and I as its elected representative to the Congress, endorse and support the purpose and principle of S. 1724 introduced by Senator Tunney along with other Senators. We believe that it will greatly assist the Federal Courts in the administration of justice to non-English speaking persons, and that it will further assure justice to all such

persons, including many Puerto Ricans, who are involved in proceedings in the Federal Courts.

Yours truly,

JAIME BENÍTEZ.

Mr. BENITEZ. I would briefly like to read what the proposal is. "Initial pleading in the district courts for Puerto Rico may be field in either Spanish or English and all further proceedings shall be in the Spanish language unless upon application of a party or upon its own motion, the court, in the interest of justice, orders that the proceedings or any part thereof shall be conducted in the English language."

The rest of the provisions are for the purpose of implementing this basic and, I may say, simple change.

This bill fundamentally proposes that Federal justice be administered in Puerto Rico in the language of the people of Puerto Rico. Reduced to its bare essentials, the proposition is so clear that it becomes self-evident. Yet, since the law has been otherwise in Puerto Rico for 74 years, it may be necessary to provide some background to account for the fact that to this day "pleadings and proceedings in the U.S. District Court for Puerto Rico shall be conducted in the English language."

I speak out of personal experience as a student, as a member of the bar, as a teacher of sociology and—for 30 years—as chancellor and president of the University of Puerto Rico. In 1900, when the English-language provision we are discussing was first incorporated as part of the initial organization of the civil authority in Puerto Rico, the assumption was made that Puerto Rico could be turned into an English-speaking community.

The educational program was geared to the premise that all instruction should be conducted in the English language.

It followed then that the proceedings of the district court should likewise be conducted in the English language.

Experience has taught all Puerto Ricans that this was a profound educational mistake and that the notion that people who didn't know English should teach English to students who didn't know English was a travesty on education.

What did happen, in fact, was that over the years classes would start in something that sounded like English and then, after some pathetic efforts, would switch to Spanish.

Eventually, the obvious reality asserted itself. Since 1949 Spanish has not only been the operational, but also the legal, language of instruction, even though English continues to be a required subject from the first grade until the bachelor's degree.

This has not made and will not make Puerto Rico a bilingual community. The reason why it hasn't made Puerto Rico a bilingual community is because—as anyone who has been trained in a second language or in a third or fourth language knows well—the real source of language fluency comes with the practice of it.

In Puerto Rico, we have the daily experience that ours is a most compact land—800 persons per square mile. The normal, regular, everyday language of communication is Spanish. While many of us, and all of our students at the university, speak English with some fluency, it still is a tongue which is not the normal, spontaneous, mother tongue of Puerto Rico and will never be.

That conclusion has been reached in Puerto Rico by everybody. Even most participants of the United States have concluded that statehood,

or any other form of relationship, must postulate basically and inexorably the Spanish tongue as the one which is normal, natural, and basic to Puerto Rico.

The statistics to which the chairman alluded earlier indicate not only that 50 percent of the population in Puerto Rico speaks English, but that 100 percent of the population in Puerto Rico speaks Spanish and that a percentage—which, at present, is indicated as 42.8 percent—in addition to speaking Spanish speaks English.

I am sure that when the practices were started in Puerto Rico 74 years ago the assumption was made that by today everybody would be able to speak fluent English in Puerto Rico.

That has not been the case. Today we know that that could not have been the case. It couldn't have been the case for the basic reason I earlier indicated: Puerto Rico is a community where all the conversation, all the relations, all the basic dealings of one person with another take place in Spanish.

We could say that there is an elite in Puerto Rico which, while more at home in Spanish than in English, could handle themselves with a degree of competency in English. However, courts are not for the elite alone.

The Federal court, quite to the contrary, is meant to be a court where all matters pertaining to the Federal laws are handled. Either in civil or criminal cases, it is highly desirable that proceedings should be in Spanish or at least that the judges should be able to determine when the proceedings should be in one or the other language.

This is one of the instances where to hold onto the premise of English supremacy is anachronistic and basically untenable.

The people of Puerto Rico would unanimously welcome a determination by the Congress along the lines I have indicated. Such a decision would be congruous with the situation we are dealing with. It would avoid the invidious colonial implications presently prevailing.

It will strengthen the value and the significance of the Federal court in Puerto Rico. It will be appreciated and understood by the Puerto Rican community as an additional instance of finally bridging the gulfs of misunderstanding. It will result in an awareness that the human relationships, the understandings, the affections and the norms of law can equally well be achieved and expressed in the English and in the Spanish language.

If it serves the cause of justice, of communication and of living together to use the language with which the people are fully conversant, then there is no point in insisting on imposing a different one.

The rest of my testimony has been submitted in my prepared text. I now stand ready for any questions.

Senator BURDICK. Thank you very much for your fine testimony, Congressman.

I do have a few questions. How long ago was the requirement that the Federal courts in Puerto Rico use English established?

Mr. BENITEZ. In 1900, 74 years ago. It is one of the provisions of what was called the Foraker Act and then repeated in the Jones Act of 1917, and finally included verbatim in the Puerto Rican Federal Relations Act.

Senator BURDICK. There was more of a need to have Spanish used then, than there is today, wasn't there?

Mr. BENITEZ. There was.

Senator BURDICK. According to the testimony that Mr. Pottinger gave, 75 percent of the people over 60 speak no English today.

Mr. BENITEZ. That is right.

Senator BURDICK. However, when you look at those over 10 years of age, the figure drops to 57 percent, so there has been quite a change.

Mr. BENITEZ. Yes, there has been a change. We are happy about it, but it is of no benefit to the people who know English that their trials will be held in English if Spanish is the language they know best.

Senator BURDICK. I am merely seeking information for this record, Congressman.

Mr. BENITEZ. We are appreciative of that.

Senator BURDICK. The district courts are a part of the U.S. system. A proceeding could go as high as the Supreme Court, and all through that process, it would proceed in English-speaking courts.

Mr. BENITEZ. That is right.

Senator BURDICK. I wonder how much complication will be generated if all transcriptions go up in both languages. Do you have any views on that?

Mr. BENITEZ. The provision provides that if a proceeding takes part in whole or in part in Spanish, the transcript or necessary portions of it shall be translated into the English language. The cost of the translation shall be paid by the district court or by the parties as the judge may direct.

I may say we have ample experience in that situation at present. The records of the Supreme Court of Puerto Rico are translated and on appeal go in English to the Supreme Court of the United States.

Senator BURDICK. What about all your communications with the administrative office? Will they be in Spanish or English?

Mr. BENITEZ. I would think they would have to follow the ones here in Washington which would have to be in English. The only purpose is not to inconvenience the continental administrators or judges, but to facilitate the local situation.

Mr. WESTPHAL. For the purposes of discussion, I would like to suggest that you leave it as it is with English as the preferred language and, at the same time apply the provision for proceedings in Spanish when it is appropriate for the parties and the court. In other words, just reverse it, keep the system as it is, but give permission for the case to go in Spanish. You would then have latitude both ways.

Mr. BENITEZ. What would be the advantage?

Mr. WESTPHAL. Everything else in the system is in English. It is just a question of which one you proceed with at trial.

Mr. BENITEZ. This reminds me of one of the famous statements of Voltaire's "Candide," where he said that, "trials existed so that lawyers would live, sick people so that doctors would profit, and noses so that you could rest your glasses on them."

The basic problem I see with this is who is the client? I would think that the real client, your client, mine and ours, is the community at large.

I think the community at large should have the preminence on the evaluation of difficulties.

I may also add that with us in Puerto Rico, Mr. Burdick, this matter has become a sort of point of honor. You will easily hear your judges—and it is basic, really, that the trials in Puerto Rico should be

conducted in Spanish, unless there is a justifiable reason to have them in English.

In any criminal case where the defendant is English speaking, there is no problem. In any case where the interest of justice requires it, there is no problem. Where the parties agree and the court, no problem. But I think it harms the United States not to accept the basic principle that in Puerto Rico the language is Spanish and that the adjudication of matters, criminal and civil, normally should follow the language of the community.

Senator BURDICK. You said that 75 percent of the defendants in criminal cases speak only Spanish. Would you say that same percentage would hold in civil cases?

Mr. BENITEZ. I didn't say that, but I would accept the statistics. I don't think so. I think it varies significantly. I would also say that the big objection to what I am proposing is the membership of the Federal bar in Puerto Rico.

They have become a reduced group. They are an elite. They have the advantage of being extremely competent in English. There has been achieved something which you and I don't like. It is a professional segregation resulting from the ability to handle yourself in English.

That, we think, is bad. I think that is an artificial situation, and I trust that it will be possible for us to have this matter remedied.

Senator BURDICK. In other words, as far as the defendant is concerned or the parties are concerned, whether you go from Spanish to English or English to Spanish, really makes little difference to the case. What you are telling me is that the people of Puerto Rico for reasons of their own would like to have it in Spanish?

Mr. BENITEZ. For reasons that I would hope both you and the people of the United States would share.

Senator BURDICK. For what they consider to be good reasons?

Mr. BENITEZ. That is right. One of the things we do maintain in Puerto Rico is that we believe you can be an excellent American citizen and believe in all the principles of democracy even if your basic tongue is Spanish.

Senator BURDICK. Any questions?

Mr. WESTPHAL. No.

Senator BURDICK. Thank you, Congressman Benitez.

Our next witness is Judge Jose V. Toledo, Chief Judge of the U.S. District Court of the District of Puerto Rico. Judge, I will now enter your prepared statement in the record.

PREPARED STATEMENT OF JUDGE JOSE V. TOLEDO

My name is Jose V. Toledo and I am Chief Judge of the United States District Court for the District of Puerto Rico. I appear before you today to give you my views in relation to bill No. S. 1724 presently before your consideration. Specifically I will testify as to that section of the bill dealing with Puerto Rico.

I must start by saying that I believe the administration of justice in any community should be conducted in the language of that community, even in the court which forms part of a federal system of a country where another language is the prevalent and official language.

Essentially, I am also in favor of the bill as it applies to Puerto Rico because I think it would guarantee better due process and a better quality of justice to litigants in Puerto Rico. I am referring specially to defendants in criminal cases who in most cases are able to understand the proceedings being conducted against them only through the words of an interpreter.

Based on the number of times an interpreter is used in our court in criminal cases, I can say that a substantial number of the defendants in criminal cases are non-English speaking. If proceedings in criminal cases were allowed to be conducted in Spanish, these defendants would be able to understand first hand the nature of the criminal action brought against them.

Spanish-speaking witnesses would testify directly in Spanish, and defendants could confront those witnesses directly in their own language. The United States Attorney and Assistant United States Attorneys in Puerto Rico are all bilingual and would have no difficulty in arguing the government's case in Spanish. All the judges in the United States District Court for the District of Puerto Rico are bilingual, and defendants could understand our rulings directly if we were allowed to make them in Spanish.

With regard to the jury, presently juries must be limited to include only jurors whose mastery of English is good enough to allow them to understand trial proceedings. This represents only a relatively small percentage of well-educated citizens. Some say that this condition prevents defendants from being tried by a jury of their peers; I will limit myself to saying that if Spanish is spoken in court in criminal cases the jury that fully understands the proceedings will represent a better cross-section of Puerto Rican society, and this will make for a better quality of justice.

Also, if Spanish were used, trial time in our cases would be cut down by the amount of time it takes in-court interpreters to translate the proceedings from Spanish to English and from English to Spanish. Of course, we would have to face a new problem of having to translate the entire case from Spanish to English if an appeal is taken, but I will talk about that later.

I should, at this point, stop to emphasize that having proceedings conducted in Spanish will in no way jeopardize the rights of those parties who would need to have proceedings conducted in English. In such cases, and in view of the fact that all officers of the court and the lawyers of the United States attorney's office are bilingual, the proceedings would be conducted in English.

Another effect of the present system which limits proceedings to English is that it keeps many local attorneys out of the Federal court. If Spanish were to be allowed, those attorneys who do not litigate in the Federal court because they do not feel their mastery of English is good enough to allow them to represent their clients adequately, would begin to protect their clients' interests in the most appropriate forum whether State or Federal. I would recommend in this vein, however, that a saving clause be added to the bill, to protect those attorneys already practicing in the Federal court and those to be admitted in the future who do not speak Spanish adequately, and those stateside attorneys who often times do not speak any Spanish at all.

While my remarks to this point have been directed mainly to the merits of the bill, I take this opportunity to stress one vitally important aspect of the bill which the members of this committee should have clearly in mind while considering the feasibility of its passage. The bill, if passed, will bring about far reaching changes for the Federal District Court in Puerto Rico, changes which at present the court is not equipped to handle effectively.

Specifically, once proceedings in the Federal District Court are allowed to be conducted in Spanish, we can expect with certainty that the number of case filings in our court will increase dramatically. Many attorneys in Puerto Rico do not file their cases in the Federal court precisely because of the language barrier. Once these attorneys are allowed to plead in Spanish, and try their cases in Spanish, we can expect they will come to the Federal court in order to get the benefit of a jury trial in civil cases which they do not get in the commonwealth courts and to claim the benefit of Federal rights many of which at present go unclaimed.

At the present time, the Federal District Court in Puerto Rico is overworked—case filings in fiscal year 1972 averaged 512 per judge—fourth highest rate in the Nation. I am sure all the members of this subcommittee are aware of my efforts to secure two additional judgeships for Puerto Rico in order to alleviate this caseload. If we are going to allow proceedings in our court to be conducted in Spanish we are going to need the creation of not two, but three, additional judgeships for Puerto Rico in order to be able to handle the expected caseload in an effective manner.

In addition to the need of additional judgeships the members of this subcommittee should be aware that if proceedings in the Federal District Court in Puerto Rico are to be conducted in Spanish while at the same time preserving speedy appeal proceedings, our court is going to have to be provided with a truly effective interpreter-translator department.

At the present time interpreters, for the most part, work in court and are closely supervised by counsel and the presiding judge. Any doubts as to correct translation are cleared up on the spot. Once in-court proceedings are allowed to be conducted in Spanish the interpreters will spend most of their time translating records for appeal and all orders entered by the judges and the magistrate of our court. Inasmuch as the interpreters in this regard will not be getting the on the spot supervision they have been receiving to date, we must insure that they are sufficiently skilled and have enough clerical assistance to do their work in a truly effective manner.

This means we are going to have to upgrade the position of interpreter-translator so as to attract truly qualified people; we are going to have to hire more clerical personnel to type the translated transcripts, and we are going to have to provide the interpreters' office with proper office space and equipment such as electronic tape recorders if we are going to expect the office to do a good job.

In cases where the proceedings are conducted in Spanish, but where an English-speaking witness will testify, in-court interpreters will continue to be needed.

Finally, if proceedings in the Federal District Court in Peurto Rico are to be conducted in Spanish, the court will need court reporters who are able to take down the proceedings in English and an equal number of reporters who can take them down in Spanish.

I am not in a position at this time, to give you a detailed analysis of what needs to be done in order to insure that this bill's implementation be truly effective. I think it is a subject that requires a thorough study. The Federal Judicial Center has issued an internal memorandum, which in my opinion represents a fairly comprehensive view of the complexities this bill carries with it, and of the determinations that must be made with regard to providing effective translations when proceedings are conducted in Spanish. The study refers to the bill in general, but it is very pertinent to Puerto Rico's case. I believe the study has been made available to the members of this subcommittee.

In closing, I repeat that on the merits the bill represents, in my opinion, a positive step towards guaranteeing a better quality of justice to litigants in Puerto Rico who are Spanish speaking; the bill, however, should not defeat justice in another sense by not carrying with it provisions which will enable the Federal District Court in Puerto Rico to handle the far-reaching changes it will inevitably bring about.

Thank you.

STATEMENT OF JUDGE JOSE V. TOLEDO, CHIEF JUDGE, U.S. DISTRICT COURT OF THE DISTRICT OF PUERTO RICO

Judge TOLEDO. My name is Jose V. Toledo and I am chief judge of the U.S. District Court for the District of Puerto Rico.

I appear before you today to give you my views in relation to bill No. S. 1724 presently before you. Specifically, I will testify as to that section of the bill dealing with Puerto Rico.

I must start by saying that I believe the administration of justice in any community should be conducted in the language of that community, even in the court which forms part of a federal system of a country where another language is the prevalent and official language.

Essentially, I am also in favor of the bill as it applies to Puerto Rico because I think it would guarantee better due process and a better quality of justice to litigants in Puerto Rico.

I am referring specially to defendants in criminal cases who in most cases are able to understand the proceedings being conducted against them only through the words of an interpreter.

Based on the number of times an interpreter is used in our court in criminal cases, I can say that a substantial number of the defendants in criminal cases are non-English speaking.

If proceedings in criminal cases were allowed to be conducted in Spanish, these defendants would be able to understand firsthand the nature of the criminal action brought against them.

Spanish-speaking witnesses would testify directly in Spanish, and defendants could confront those witnesses directly in their own language.

The U.S. Attorney and Assistant U.S. Attorneys in Puerto Rico are all bilingual and would have no difficulty in arguing the Government's case in Spanish.

All the judges in the U.S. District Court for the District of Puerto Rico are bilingual, and defendants could understand our rulings directly if we were allowed to make them in Spanish.

With regard to the jury, presently juries must be limited to include only jurers whose mastery of English is good enough to allow them to understand trial proceedings. This represents only a relatively small percentage of well-educated citizens.

Some say that this condition prevents defendants from being tried by a jury of their peers; I will limit myself to saying that if Spanish is spoken in court in criminal cases the jury that fully understands the proceedings will represent a better cross section of Puerto Rican society, and this will make for a better quality of justice.

Also, if Spanish were used, the trial time in our cases would be reduced by the amount of time it takes incourt interpreters to translate the proceedings from Spanish to English and from English to Spanish.

Of course, we would have to face a new problem of having to translate the entire case from Spanish to English if an appeal is taken, but I will talk about that later.

I should, at this point, stop to emphasize that having proceedings conducted in Spanish will in no way jeopardize the rights of those parties who would need to have proceedings conducted in English.

In such cases, and in view of the fact that all officers of the court and the lawyers of the U.S. Attorney's Office are bilingual, the proceedings would be conducted in English.

Another effect of the present system which limits proceedings to English is that it keeps many local attorneys out of the Federal court.

If Spanish were to be allowed, those attorneys who do not litigate in the Federal court because they do not feel their mastery of English is good enough to allow them to represent their clients adequately, would begin to protect their clients' interests in the most appropriate forum whether State or Federal.

I would recommend in this vein, however, that a saving clause be added to the bill, to protect those attorneys already practicing in the Federal court and those to be admitted in the future who do not speak Spanish adequately, and those stateside attorneys who oftentimes do not speak any Spanish at all.

While my remarks to this point have been directed mainly to the merits of the bill, I take this opportunity to stress one vitally important aspect of the bill which the members of this committee should have clearly in mind while considering the feasibility of its passage.

The bill, if passed, will bring about far-reaching changes for the Federal District Court in Puerto Rico, changes which at present the court is not equipped to handle effectively.

Specifically, once proceedings in the Federal district court are allowed to be conducted in Spanish, we can expect with certainty that the number of case filings in our court will increase dramatically.

Many attorneys in Puerto Rico do not file their cases in the Federal court precisely because of the language barrier. Once these attorneys are allowed to plead in Spanish, and try their cases in Spanish, we can expect they will come to the Federal court in order to get the benefit of a jury trial in civil cases which they do not get in the commonwealth courts and to claim the benefit of Federal rights many of which at present go unclaimed.

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Thank you.

At this time I would like to read a statement of judicial council of the first circuit, which was reached by the members of the council yesterday morning.

STATEMENT OF THE JUDICIAL COUNCIL OF THE FIRST CIRCUIT

The Judicial Council of the First Circuit, although it has not studied either the proposed legislation or its implementation if applied to the District of Puerto Rico, has these preliminary observations:

As the Circuit which hears appeals from the District Court of Puerto Rico, we are aware of the problems of Puerto Rican witnesses and defendants posed by the present exclusively English language system, and would be sympathetic generally to any workable arrangement which could ameliorate the situation. On the other hand, it must be recognized that converting the District now into a truly bilingual court, at the same time preserving the right of speedy appeal so that the court remains an integrated part of the Federal system, will require the building up, funding and maintenance of an efficient department of translation well beyond anything now in existence. Otherwise there will be no effective right of appeal to the Circuit Court and to the Supreme Court. Also, we must recognize that the already congested District Court would undoubtedly gain much new business requiring new judgeships.

Finally, the District Court serves an essential function as a bridge between the rest of the United States and the Commonwealth. The language of the law in our Nation is English. We think it important that the Court continues to maintain the capacity to conduct much of its official work including the decisions of the judges in English so that the close ties now existing within our Federal system remain. We deem it important that the judges appointed be fluent in English. Many United States administrative agencies, such as the Department of Health, Education and Welfare, etc., perform important services in Puerto Rico and their decisions are reviewed in the Federal Courts. Additional burdens on the processes of administrative law should be avoided.

Senator BURDICK. Thank you, Judge.

You raised some questions that obviously cannot be answered.

You talked about the dual system of interpreters and translators which is, of course, going to add costs to the system.

I would like to ask you some specific questions.

Judge TOLEDO. Yes, sir.

Senator BURDICK. I presume you heard the testimony of Congressman Benitez to the effect that, if the law passes and, depending upon the language situation of the parties, we will continue to have cases not only where Spanish-speaking only persons are excluded from jury service, but also the opposite might be true.

Judge TOLEDO. I think we might have to have two jury wheels, unless we can be sure that at least 50 or 60 members of the jury speak

English. At that time, we can make sure of it because of the questionnaire we send to them.

Every month we hold an empaneling of the jury for the month. The judges are very sure that the members of the jury understand English. Otherwise, they are disqualified.

Mr. WESTPHAL. If we have a Spanish-speaking defendant?

Judge TOLEDO. We would have no trouble because I would say that 98 percent of our jurors speak Spanish.

Mr. WESTPHAL. Wouldn't you have to maintain a separate jury wheel of some kind to the extent you have an English-speaking system?

Judge TOLEDO. We could maintain an English-speaking jury wheel. We would bring our jury usage very high, because it is already unusually high, due to these special English language hearings we have.

Mr. WESTPHAL. But from what you have said today you would have to have a very large panel to get an English-speaking jury?

Judge TOLEDO. I think you would be surprised. When we hold these empaneling sessions, we only excuse maybe 10 or 12 people.

Senator BURDICK. What about the deputy clerks and marshals; are they bilingual now?

Judge TOLEDO. Yes.

Mr. WESTPHAL. So they can go either way?

Judge TOLEDO. Yes; in fact, they are all Puerto Ricans.

Senator BURDICK. If this amendment should be enacted, what are the factors the judges would have to take into consideration to determine whether a trial should be held in Spanish or English?

Judge TOLEDO. This is my opinion. I would recommend a rule to the effect that when attorneys file a case they would let the court know if their witnesses are only Spanish or English speaking or otherwise. The defendant, when he files his answer to that complaint, would have to do likewise.

I would say if there was a discrepancy as to the language— if there were an English-speaking attorney only and the attorney for the other side speaks only another language—I would hold it in that other language and use in-court interpreters.

I think this is completely within the discretion of the court depending on the circumstances of each case. But I agree with Mr. Benitez that when we have a Puerto Rican judge, a Puerto Rican attorney and defendant, Puerto Rican witnesses, and Puerto Rican judges, I do not see why we should not hold the trial in Spanish if that were the wish of the parties.

Senator BURDICK. The only added difficulty we would have would be the dual record if it went up on appeal?

Judge TOLEDO. That is correct.

Mr. WESTPHAL. However, if one party and all the witnesses speak English only and all the parties on the other side speak the other language, how do you balance that situation?

Judge TOLEDO. The way we do it now.

Mr. WESTPHAL. What language would you use in that case?

Judge TOLEDO. Depending on the case.

Mr. WESTPHAL. I think the chairman's question was if one party speaks English only and has an English speaking only attorney and the other party speaks Spanish only and all his witnesses speak Span-

ish only and his lawyer speaks Spanish only? In which language would you hold that trial?

Judge TOLEDO. That would be a problem. Most attorneys who belong to our bar do speak some English. The only trouble is that sometimes their English is not the best, but they communicate.

The court sometimes is very helpful to the attorneys. Sometimes they even have to translate a specific word they don't know in the English language, and so forth.

We have interpreters in court, even though the interpretation we are giving the defendants now is not simultaneous interpretation in the sense that when the witness is testifying in Spanish the interpreter interprets in open court.

But when there is an argument between the attorneys and the judges in English, then there is no interpreter to translate to defendant as to what is going on in the arguments between the attorneys and the judge.

That is a problem and I think the defendant should be entitled to know what is going on. For example, my instructions to the jury are given in English. It would be very difficult to have a simultaneous interpretation of that.

Senator BURDICK. Yes; I would think you would have some trouble describing contributory negligence through interpreters.

Judge TOLEDO. Yes, sir.

Senator BURDICK. Thank you very much for your testimony. I think the statement you made at the conclusion of your prepared remarks concerning the overall impact of this bill on the quality of justice in Puerto Rico is overwhelmingly true. I certainly think this needs a thorough study to be sure we find an answer which promotes that.

Judge TOLEDO. Yes; I think it will take additional time to find final satisfaction.

Mr. WESTPHAL. Judge, one question.

Judge TOLEDO. Yes.

Mr. WESTPHAL. What is your situation with court reporters? Do your court reporters have the ability to hear Spanish testimony and instantly translate it into English?

Judge TOLEDO. No; they are all English-speaking court reporters.

Mr. WESTPHAL. If this amendment were to become law, how would you have the court reporters work?

Judge TOLEDO. I don't know of any court reporters who are truly bilingual, who can take testimony in both languages. I am in a field where I am lost, but that is the way I think it is.

Mr. WESTPHAL. In the decision of *People* v. *Superior Court*, it was noted that there was only one court reporter in the area who was able to translate and take testimony in both languages?

Judge TOLEDO. I must accept the statement of the Supreme Court.

Senator BURDICK. But you don't know of any?

Judge TOLEDO. I don't

Mr. WESTPHAL. If this amendment passes, the Federal court would have to hire experienced court reporters from the other court system who have a capacity in Spanish?

Judge TOLEDO. That is right.

Mr. WESTPHAL. So you either have to go through a lot of advanced arrangements for the court reporters or else have two reporters where you now have one reporter?

Judge TOLEDO. Right.

I think that is one complexity which should be studied by the subcommittee.

Mr. WESTPHAL. That is all the questions I have, Mr. Chairman.

Senator BURDICK. Again, thank you for your contribution.

Judge TOLEDO. Thank you.

Senator BURDICK. Our last witness is Mr. Schuck. We have a vote in about 5 minutes and I am sure you will take longer than 5 minutes. Would it be convenient for you to come back at 2 o'clock?

Mr. SCHUCK. That would be fine. I will be here at 2 p.m.

Senator BURDICK. The committee will be in recess until 2 p.m.

[Whereupon, at 12 o'clock noon, the subcommittee recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

Senator BURDICK. Our next witness will be Hon. Francisco de Jesus Schuck, Secretary of Justice of the Commonwealth of Puerto Rico, accompanied by Jose Gabriel Guerra-Mondragon, Deputy Administrator of the Commonwealth of Puerto Rico. Gentlemen, welcome to the committee.

Mr. WESTPHAL. You have the same name as the Lieutenant Governor of New Mexico.

Mr. MONDRAGON. We are relatives from far back, coming from Mexico.

Senator BURDICK. Mr. de Jesus, I will now place your prepared statement in the record, and you may proceed to summarize it for us.

PREPARED STATEMENT OF FRANCISCO DE JESUS SCHUCK, SECRETARY OF JUSTICE OF THE COMMONWEALTH OF PUERTO RICO

Mr Chairman and Members of the Subcommittee: I am Francisco de Jesus Schuck, Secretary of Justice of the Commonwealth of Puerto Rico. I am accompanied by Gabriel Guerra-Mondragon, Deputy Administrator of the Office of the Commonwealth of Puerto Rico.

I am pleased today to present the views of the Commonwealth of Puerto Rico in support of an amendment to authorize the use of Spanish in the United States District Court for the District of Puerto Rico. This amendment was offered to Senate Bill 1724 and provides for the use of Spanish as the language of the U.S. District Court for the District of Puerto Rico in all appropriate instances. Members of juries and petit-juries will no longer be required to be fluent in English in the cases that will be conducted in Spanish. The amendment also provides for the translation of proceedings for the appeals to the Circuit Court and for the preservation of English as the language of the District Court in all cases where it is proper.

THE IMPORTANCE OF SPANISH

As you know, Puerto Rico is the only political unit under the American Flag where Spanish is the predominant language instead of English. In 1965, Luis Negrón Fernández, Chief Judge of the Supreme Court of Puerto Rico said:

"It is a fact not subject to historical rectification that the vehicle of expression, the language of the Puerto Rican people—integral part of our origin

and our hispanic culture—his been and continues to be Spanish . . .[1] the means of expression of our people is Spanish and that is a reality that cannot be changed by any law.[2]

The 1970 United States Census data details the ability or lack thereof of Puerto to speak English. A significant number of Puerto Ricans do not speak English.[3]

This reality creates a peculiar situation for the United States District Court for the District of Puerto Rico. All pleadings and proceedings in court must be conducted in English, which is a second language to its judges and an unknown one to most of the defendants.[4]

The English requirement of the District Court was but one example of the United States policy to make English the official language of Puerto Rico. Another example was the requirement until 1949 that English be the official language of instruction in Puerto Rico's public school system.[5]

This policy was wisely changed. Spanish is presently the official language of instruction, while English is compulsory taught as a second language. This change is a recognition of Spanish as the official language of Puerto Rico, and the uniqueness of our characteristics in the American System.

A BRIEF HISTORY OF THE COURT

In order to understand the unique language problems facing the United States District Court of Puerto Rico, one should consider its history.[6]

The present United States District Court of Puerto Rico is a direct successor of the United States Provisional Court, established by Brig. Gen. Davis in General Order No. 88, June 27, 1899. In section 34 of the Organic Act of 1900 the District Court of the United States for Puerto Rico was created.[7] In addition to the ordinary jurisdiction of district courts of the United States, it had jurisdiction "of all cases cognizant in the circuit courts of the United States."[8] The district judge was appointed by the President with the advice and consent of the Senate for a term of four years, "unless sooner removed by the President." By an Act of Congress on March 2, 1901, a special jurisdiction was added to the Court in which civil cases could be tried by citizens of the United States without any residency requirement in Puerto Rico.[9] It must be remembered that United States Citizenship was granted to Puerto Ricans in 1917. The special jurisdiction of the Court was repealed by Public Law 91-272 of June 2, 1970.[10]

From the Organic Act of 1917 until the present, the law requires that: "All pleadings and proceedings in the District Court of the United States for Puerto Rico shall be conducted in the English language.[11]" This provision is part of the Puerto Rican Federal Relations Act. Since January 28, 1952, all the United States District Judges appointed have been Puerto Ricans. Today the United States District Court for Puerto Rico has three judges and as this Committee knows a fourth judge was requested and was not authorized. The judges of the Court have the same tenure and rights as all other United States District Judges pursuant to Public Law 89-571.[12] The qualifications of jurors for the United States District Court for Puerto Rico is the same of other District Courts pursuant to Public Law 90-274.[13]

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[1] *People* v. *Superior Court*, 92 P.R.R. 580, 588 (1965).
[2] *Id.* at 589.
[3] See Table 42. *Ethnic and Literacy Characteristics by Urban and Rural Residence:* 1970, of General Social and Economic Characteristics, Bureau of the Census, Puerto Rico, Oct. 1972.
[4] 48 U.S.C. § 864.
[5] See Ismael Rodríguez Bou, *Significant Factors in the Development of Education in Puerto Rico*, Selected Background studies prepared for the United States—Puerto Rico Commission on the Status of Puerto Rico, Government Printing Office, 1966.
[6] For a scholarly article on the history of the U.S. District Court in Puerto Rico see Delgado Cintrón, *El Tribunal Federal como Factor de Transculturación en Puerto Rico*, 34 Revista del Colegio de Abogados de Puerto Rico, 5, (1973).
[7] The Foraker Act § 34, 31 Stat. 84 (1900).
[8] *Ibid.*
[9] 31 Stat. 953 (1901), 48 U.S.C. 863.
[10] Pub. L. 91-271 § 13, 84 Stat. 294 (1970).
[11] 39 Stat. 966 (1917), 48 U.S.C. 864, *United States* v. *Amy Valentine*, 288 F. Supp. 957 (D.C.P.R. 1968).
[12] Pub. L. 89-571, 80 Stat. 764 (1966) 28 U.S.C. 134.
[13] Pub. L. 90-274 § 103, 82 Stat. 63 (1968), 48 U.S.C. 867.

THE PRESENT SITUATION

Today a significant part of the Puerto Rican population does not speak English. Spanish is the vernacular language of Puerto Rico; while English, as noted earlier, is taught as a second language in the schools. In Puerto Rico knowledge of the English language is unequally distributed in the population. The urban poor and rural sectors of the population possess less knowledge of the English language than other parts of the population.

More important, a sampling conducted by former Chief Judge Cancio revealed that more than 78% of the defendants in criminal cases in the United States District Court of Puerto Rico are non-English speaking. The local courts conduct their proceedings in Spanish.[14] The decisions of the Supreme Court of Puerto Rico are published both in English and in Spanish. The appeals from the Supreme Court of Puerto Rico to the Supreme Court of the United States are translated in English without major difficulties. Many of the appeals are matters of law which do not require a translation of the trial transcript. The three judges of the United States District Court of Puerto Rico can speak Spanish as well as English. The same is true of the United States Attorney General and his staff in Puerto Rico. Finally, the Bar examinations in Puerto Rico are conducted in Spanish.

Non-Spanish-speaking visiting judges should present no problem. Either they could be assigned the still numerous cases which still will need to be conducted in English, or the proceedings can be translated as it now occurs.

ARGUMENTS IN FAVOR OF THE PROPOSED USE OF SPANISH

The language barrier has created a number of very real problems for the Federal Court System in Puerto Rico.

The right of a non-English speaking defendant to a fair trial with due process of law is needlessly impaired by his inability to understand and cross-examine witnesses in his own language.

Juries are not adequately representative of the Puerto Rican population because the majority of the urban poor and residents of rural areas are not able to speak English and are, therefore, prevented from serving on juries. This discriminates against significant segments of the population, and, it has long been argued, is a denial of due process of law.

Current procedures are needlessly cumbersome. The Hon. José V. Toledo (United States District Court Judge) has recently described them in the following terms:

"Proceedings in the court are not translated simultaneously. When the witness testifies in Spanish, he is interrupted at the end of each phrase by the interpreter who states for the record the testimony in English. When the witness is English speaking, the interpreter sits next to the defendant and interpretes the proceedings to his ear. Translators are not used for the benefit of parties in civil cases and when a translator is translating for a witness, the defendant in criminal cases does not have the benefit of having the questions of law raised or the remarks made by the court to the attorneys translated for his benefit. No record is ever made of the translation. What saves this system from being completely inadequate is the fact that the judge and attorneys in this court are normally bilingual and are constantly checking on the translations to correct any mistakes, and they normally make sure that the defendant in criminal cases knows what is going on." [15]

The current language requirement limits the number of lawyers who will practice in Federal Court. Since English is taught in Puerto Rico as a second language, many attorneys do not feel they can adequately represent their clients in an English language proceeding. This has the effect of limiting the opportunity of selecting to many the right to an attorney of their own choice.

The proceedings are not unnecessarily expensive because translation is required even when all the parties are Spanish-speaking. The most important economy will not be on a straight cost basis, but on the time now unnecessarily consumed by the burdensome procedure of translating the proceedings and of not using the vernacular language of those involved.

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[14] See *People* v. *Superior Court*, 92 P.R.R. 580 (1965).

[15] Letter from Judge José Toledo to Ms. Stephanie Wolkin, July 3, 1973.

THE CONSENSUS OF THIS ISSUE IN PUERTO RICO

The Puerto Rican people are asking that the proceedings in the United States District Court for the District of Puerto Rico be conducted in Spanish when appropriate. The Bar Association and all three Federal judges in Puerto Rico have strongly supported the proposed use of Spanish in the Federal Court.[16] The Hon. Hiram Cancio, Chief Judge of the United States District Court, supported the proposal in his testimony before this Subcommittee last year. Finally, members of all parties support the use of Spanish in the proceedings of the United States District Courts.

CONCLUSION

In conclusion, I believe the strength and virtue of federalism is its ability to find unity in diversity. Today, as always, the best way to promote great friendship is to recognize basic differences.

Spanish is the language of Puerto Rico. The United States District Court proceedings that will normally be conducted in Spanish should be conducted in Spanish. The Court proceedings that normally are conducted in English should continue to be conducted in English. The qualifications of the Judges and attorneys involved allow the flexibility that will be necessary for the success of this proposal.

In 1959, a bill was presented on behalf of the Government of Puerto Rico, asking approval of a similar proposal.[17] It was an unsuccessful attempt.

Today, the time is ripe for action, the People of Puerto Rico are firmly committed to this proposal. Action must be taken not only because it is a convenient move, but because it is right.

Finally, on May 7, 1973, Senator John Tunney (D-Calif.) introduced S. 1724, the Bilingual Courts Act. This bill will provide for simultaneous translation in those proceedings where the parties or witnesses do not speak and understand English with reasonable facility. If this procedure is used in the United States District Court for the District of Puerto Rico, simultaneous translation would be required in a large number of cases. This would delay proceedings and make them exceedingly cumbersome and is not adequate to meet the special needs of Puerto Rico.

We are attaching a number of documents which will assist you in your consideration of this problem.

1. Copy of Section 42 of the Puerto Rican Federal Relations Act, 48 U.S.C. 864.

2. Resolution of the Bar Association of Puerto Rico regarding the use of the Spanish Language in the Federal Court—May 5, 1973.

3. *People v. Superior Court*—92 P.R.R. 580 (1965). In this case the Supreme Court of Puerto Rico decides that Spanish is the language of judicial proceedings in Puerto Rico.

Prepared Statement Exhibit 1

§ 42. [—Relationship to courts of Puerto Rico; proceedings in English]

The laws of the United States relating to appeals, certiorari, removal of causes, and other matters or proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the United States District Court for the District of Puerto Rico and the courts of Puerto Rico.

All pleadings and proceedings in the District Court of the United States for Puerto Rico shall be conducted in the English language.—Mar. 2, 1917, c. 145, § 42, 39 Stat. 966; amended Feb. 13, 1925, c. 229, § 13, 43 Stat. 942; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54; June 25, 1948, c. 646, § 21, 62 Stat. 990; continued in effect July 3, 1950, c. 446, § 4, 64 Stat. 319.

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[16] No. 2 La Toga pp. 4–19, June–August 1973.
[17] H.R. 9234, 86th Cong., 1st Sess. (1959).

Prepared Statement Exhibit 2
NOT AN OFFICIAL TRANSLATION

ILUSTER COLLEGIO DE ABOGADOS DE PUERTO RICO, 1973–1974 SESSION,
BOARD OF GOVERNORS

Regular Meeting No. 12

Proposed Resolution Regarding the Spanish Language

Presented by: Jose Nilo Davila Lanause.

Be it resolved by the Board of Directors of the Ilustre Colegio De Abogados.

Whereas: General Order number 88 of June 27, 1899 created the Provisional Court of the United States in Puerto Rico, which provided in its tenth paragraph that in those cases in which Puerto Rican parties were involved or when the controversy arised from contracts executed under Puerto Rican or Spanish laws, the Court would conform with the precedents established in the territories which the United States *acquired from Spain* and *Mexico.*

Whereas: Article 34 of the Foraker Act of May 1, 1900 created the United States District Court for the District of Puerto Rico (Federal Court) providing that "all the defenses and proceedings in said Court will be carried out in the English language."

Whereas: The natural language of Puerto Rico from the origin of its discovery, colonization and development as a civilized community, in each and every one of its aspirations and manifestations as a country, *is the Spanish language.*

Whereas: After the transfer of sovereignty of Puerto Rico to the United States of America through the Treaty of Paris of April 11, 1899, the Legislative Assembly approved on February 21, 1902 an Act, by which it was provided that *Spanish and English are the official languages of the Island of Puerto Rico.*

Whereas: Repeatedly, distinguished Puerto Rican attorneys who appear before the Federal Court have tried to obtain that the use of the vernacular language be permitted in said court in criminal proceedings when the defendants are Puerto Ricans and do not understand the English language.

Whereas: In November 1967 three distinguished Puerto Rican attorneys contested before said court the rules of criminal procedure of the court which limit the selection of jurors to persons who know English, for being discriminatory against citizens of the United States on account of the language, in violation of the due process of law, as guaranteed by the Fifth Amendment to the Constitution of the United States.

Whereas: In August 1969, the North American attorney Frederich H. Cohn alleged the unconstitutionality of the proceedings in said Federal court claiming that a person accused before said court does not enjoy his constitutional right to have an adequate defense on account of the proceedings not being carried out in his native language.

Whereas: The Honorable Chief Judge of the Federal Court, Hiram R. Cancio, has favored the use of the Spanish language in said court, as a constitutional guarantee in favor of the defendants that know only the Spanish language; having ably taken up this matter before a Congressional Committee of the United States just recently. This opinion is shared by the other two judges of said court.

Whereas: Notable Puerto Rican constitutionalists favor the use of the Spanish language in the judicial proceedings in the Federal Court.

Whereas: The Honorable Colegio de Abogados de Puerto Rico has repeatedly sustained the sane criterion, i anrgeement approved in several Assemblies since 1963 up to this date.

Therefore: Be it resolved by the Board of Directors of the Colegio de Abogados de Puerto Rico, assembled in its twelfth meeting at Vieques, Puerto Rico, today, May 5, 1973:

1. To request from the pertinent federal authorities that the corresponding rules of the Federal Judiciary be amended to authorize the use of the Spanish language as the common language in the judicial proceedings before said court and before all the other federal administrative forums in Puerto Rico.

2. Reaffirm the resolutions approved by the Ilustre Colegio de Abogados de Puerto Rico in previous meetings, to accordingly amend or repeal the *Act of February 21, 1902,* (1 LPRA Sections 51 to 55, inclusive), which provides that the official languages of Puerto Rico are Spanish and English, since:

a. the language of Puerto Rico should be *only and essentially its vernacular language,* as a consubstantial expression of its personality and as an unquestionable affirmation, of our cultural identity.

At Vieques, Puerto Rico, May 5, 1973.

PREPARED STATEMENT EXHIBIT 3

THE PEOPLE OF PUERTO RICO, Petitioner, *v.* SUPERIOR COURT OF PUERTO RICO, SAN JUAN PART, DANIEL LÓPEZ PRITCHARD, JUDGE, Respondent.

No. C-63-98. Decided June 30, 1965.

1. STATUTES—CONSTRUCTION AND OPERATION—GENERAL RULES OF CONSTRUCTION—LANGUAGE USED IN ACT AND MEANING THEREOF—IN GENERAL.
   The Act of February 21, 1902, in providing that "the English language and the Spanish language shall be used indiscriminately" as regards judicial proceedings in court, has only a directive scope and does not grant either the accused or his lawyer the right to choose the language in which a criminal trial is to be conducted.

2. COURTS—ESTABLISHMENT, ORGANIZATION AND PROCEDURE IN GENERAL—RULES OF COURT AND CONDUCT OF BUSINESS—POWER OF COURTS TO REGULATE PROCEEDINGS.
   The conduct of proceedings in court and the adoption of measures that will guarantee a fair trial to the accused is up to the judges, not to the lawyers.

3. ID.—COURTS OF ORIGINAL GENERAL JURISDICTION—STATE COURTS—COURTS OF ORIGINAL JURISDICTION—LANGUAGE TO BE USED IN PROCEEDINGS.
   Spanish is the language in which judicial proceedings in this jurisdiction must be conducted, but judges will take whatever steps they consider necessary to protect the rights of any accused who does not know said language sufficiently by keeping him and his lawyer informed—by means of translators or other efficient means—of all that happens in the trial, and to have it so shown in the record.

PROCEEDING in Certiorari to review order of *Daniel López Pritchard*, Judge (San Juan), ordering that proceedings in a criminal case be heard in English, as requested by defendant's attorney. *Set aside and case remanded to the lower court for further proceedings not incompatible with the opinion.*

Hiram R. Cancio, Secretary of Justice, J. B. Fernández Badillo, Solicitor General, and *Nilita Vientós Gastón, Assistant Solicitor General,* for petitioner. *Robert H. Rout* for intervener, Eagle Broadcasting Corporation. *Manuel Abréu Castillo* for the Bar Association, as amicus curiae. *W. H. Beckerleg,* as amicus curiae.

MR. JUSTICE NEGRÓN FERNÁNDEZ delivered the opinion of the Court.

The question for decision in this case is not so much which language should be used in our courts in the trial of a defendant who does not know Spanish well, but whether an attorney admitted to the Puerto Rican bar who does not have sufficient command of our language is entitled to demand that the proceedings be conducted in the English language.

This case deals, according to the information, with a Puerto Rican corporation, organized under the General Corporations Act of Puerto Rico, approved January 9, 1956, which failed to file at a certain date with the Secretary of the Treasury, as required by law, the annual report corresponding to the year 1961 containing a general balance of the financial condition of the corporation, and other data, including a statement of its profits and losses during said year. Its legal representation was assumed by Mr. Robert H. Rout, who after several postponements, upon appearing at one time at the trial, stated "that he was not prepared to argue the case in Spanish."[1] The trial judge considered that "in view of the contention made by counsel for the defense, it should be definitively determined whether or not the court has power to order the case to be argued in Spanish." In another occasion Mr. Rout, again the legal representative of three other corporations likewise under prosecution, withdrew his petition that the proceedings against said three corporations be conducted in English "because they had retained the services of another attorney to join the defense and that therefore the cases could be argued in Spanish."[2]

After both the attorney for the defense and the prosecuting attorney filed their memoranda, the question was decided in open court,[3] whereupon the judge and the attorneys

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[1] Minutes of August 19, 1963.

[2] Minutes of September 30, 1963.

[3] Transcript of the record of the hearing of October 7, 1963.

made lengthy statements from which we deem it pertinent to copy the following:

"THE COURT: The defendant and its attorney as well as the prosecuting attorney are present in this case. The parties shall remember that this case was originally called together with the cases of Franciscus Real Estate Co. and Associates, Inc., First Property Management, Inc. and Yunque Estates, Inc. The cases were originally called on August 19, 1963, Mr. Rout having appeared on behalf of the four corporations and stated *that he was not prepared to argue these cases in Spanish because he did not have sufficient command of the Spanish language to hold a hearing in that language.* The prosecuting attorney objected, and on that day, considering that the court's stenographer was not able to take the stenographic record in English, and considering the interesting point that was being raised by the attorney for the defense, the court granted him until October 29, 1963 to file a memorandum of authorities, and to the prosecuting attorney until September 6 to reply, the case being set for September 9, 1963 for the continuation of the hearing and for the discussion *of the motion that the case be argued in English.*

"On that date, in view of the fact that the parties had not been able to file their memoranda within the term fixed to each one, respectively, the case was again set for September 12, 1963 for the discussion *of the petition of defendant's attorney that he be authorized to conduct the proceedings in the English language.* On September 12, 1963 the defendants appeared through their attorney, Mr. Robert H. Rout, and the prosecuting attorney represented by Mr. Carlos Noriega, and in view of the fact that the prosecuting attorney was not ready to argue the case that day, after an oral exposition elaborating the grounds set forth in his memorandum, the hearing as well as the discussion of the motion were postponed to September 24, 1963. On that day, the Administrator Judge for Civil cases, Mr. César Bobonis, was asked to designate stenographer Carmelo Pérez to take the notes, because, according to the information obtained by the court, he was the only stenographer in the metropolitan zone with sufficient knowledge to take the proceedings in English, if necessary, and the hearing was postponed for September 30, 1963.

"On September 30, 1963 the cases were again called for hearing and to argue the motion and for the hearing on the merits, if necessary. Mr. Rout and the prosecuting attorney appeared and stated that the parties were ready for the hearing and for the discussion of Mr. Rout's motion. Mr. Rout stated that he withdrew Franciscus Real Estate, the First Mortgage Management, and Yunque Estates, Inc., from his petition at the request of said defendants, adding that for the hearing of those cases he would use the services of his colleague who would join him at the hearing. However, he maintained his petition in the case for Eagle Broadcasting Corporation.

"In view of this situation the parties stated that they were ready for the hearing and the discussion *of the petition that the case be argued in English*, and both parties made lengthy arguments in support of their points of view, leaving the matter to be decided by the court today.

"The court has carefully examined the briefs filed by the parties, has made its own study as to the provision of law, and has found that several points of view were explained at the hearing which are stated and elaborated in the briefs of the parties.

"In order to decide this motion the court *has taken into consideration the administrative problems which this motion might cause to the administration of justice.*

"*If the court were to grant counsellor's petition it would mean almost a complete paralyzation of the judicial proceedings.*

"In the first place, the stenographers are not required to have full command of the English language in order to act as stenographers. In the second place, it would imply the need of the translation of almost all the proceedings from English into Spanish and from Spanish into English, since the prosecuting attorney would argue in Spanish and the defense in English, or vice versa, and it would create great difficulties, *particularly for the ladies and gentlemen of the jury who are only required by law to write and speak Spanish but not English.* We do not see how adequate justice can be done where an interpreter gives his own interpretation of the statements of the parties which fail to carry to the ladies and gentlemen of the jury the same feeling, the same inflections in the voice, different inflections of voice which entail different thoughts and which upon being

translated substantially lose to some degree the sense meant by those words.

"However, the court, notwithstanding all these facts, *finds that the provision of law is clear and conclusive.* Section 51 of Title I of the Laws of Puerto Rico Annotated says that in all government state departments, *in all the courts of the island* and in all the public offices, *the English and the Spanish language shall be used indiscriminately.*

"We have tried to find some legislative justification why *section 5* of the Act of February 21, 1902, known as the Language Act, which is § 55 of Title I of the Laws of Puerto Rico Annotated, *we have tried to investigate why this Act was not made applicable to municipal courts or offices of any municipality.* Because of our limitation in time we have been unable to find any information, *for which reason we may only assume that the legislator had in mind this exception because of the innumerable difficulties it would create.* However, we have to take into consideration that this legislation was approved in the year 1902, shortly after the termination of the military system which prevailed in Puerto Rico at that time. *We have no evidence that the legislative intent was that both languages be used indiscriminately.* It is not the duty of the court to legislate but merely to construe our legislation. If notwithstanding the amendments that have been made in Puerto Rico the Legislature of Puerto Rico has not considered that this provision of law should be amended, notwithstanding the fact that the court has knowledge of the great number of attorneys with seats in the Legislature of Puerto Rico, and who must be acquainted with this provision of law; if the Legislature has not decided, for different reasons of its own, to amend this provision of law, the only thing left for us to do is to apply it as it has been enacted.

"We sympathize deeply with the position of the Prosecuting Attorney. We believe that he has made an excellent approach of the situation. *In our position of administrator judge we understand that this decision will bring innumerable administrative difficulties.* We sincerely sympathize with the position assumed by the Prosecuting Attorney *because we believe that it should be so,* but we cannot always be carried away by our sympathy. The law is clear and thus we must apply it, for which reason *the court grants the petition of counsellor Rout in this*

case. Considering that the colleague does not fully understand the Spanish language, the court shall now make a brief summary of our ruling for his own information.*

"Attorney Rout, the court has just stated that we have made a detailed study of your memorandum of law and authorities, and also of the one submitted by the District Attorney in this particular case. We feel that *the conclusion that we have reached will create a very difficult problem for the administration of justice,* for various reasons we don't have the evidence, the person, we don't have the contact between the attorney and the jurors in case of trial by jury, and lots of points of fact will be lost, because when you have a translator we don't have the faithful alterations of the voice where the point is made or has been submitted personally.

"We sympathize with the District Attorney that all proceedings should be in Spanish. However it is felt by the court that since this law was approved in 1902 when we still had at the time when the military government had finished we had no doubt that the intent of the legislature at the time was that the language used could be either Spanish or English *without any distinction or preference among them.* As the years went by, despite the fact that there are attorneys in our legislature, they have not deemed it advisable of an amendment. It is not our mission to legislate. Our mission is to interpret the law as we see it without any miscarriage of justice. In spite of our sympathy, our personal feeling that this case be carried out in Spanish, we are obliged to interpret the law as it is and not as we would like to interpret it. *There is no doubt in my mind that we may have a miscarriage of justice and administrative difficulties only to carry out the intent of the legislature* stated in Article 1 of this law which is section 51 of Title I of the Laws of Puerto Rico Annotated, which you cite in your memo *the court finds that you are correct in what you have raised and therefore decides that the proceedings be carried out in English, the district attorney can address the court in Spanish and you may address the court in English. If you wish a specific translation, it will be translated. The district attorney understands English so we don't have need of an interpreter for*

* Editor's Note: The following five paragraphs are a direct quotation in English from the judgment of the trial judge.

the district attorney. How do you want to work out the actual mechanics in this particular case? You want to have the court act as an interpreter or do you want any other interpreter? Fortunately we have the reporter of the court who takes both English and Spanish.

"MR. ROUT: I am not sure. It is up to me to state [*sic*].

"THE COURT: The court decided *that you have the right to use the English language.* It is now up to you how do you want it to be carried on.

"MR. ROUT: If I have that freedom, *I would like the testimony of the witnesses translated. That would be all.*

"THE COURT. The court asks the Prosecuting Attorney if he has understood it?

"PROSECUTING ATTORNEY: Yes, Your Honor.

"THE COURT: *In this case the translation must be from Spanish into English because the Prosecuting Attorney understands English.* Then, we must translate from the Spanish into English and not from English into Spanish. The parties are ready for the hearing of the case, or do they wish to take any other action?

"PROSECUTING ATTORNEY: With the leave of the court, very respectfully. We have heard the statements of the court and it pleases us greatly that the court sympathizes with the position of the Prosecuting Attorney, which is a position that must have the sympathy of the court as a Puerto Rican.

"THE COURT: I even go further. We have not decided in favor of the Prosecuting Attorney because we have not found, in our opinion, the basis to do so *if the law were not so clear we would not have granted the petition,* but we do not have the time nor the necessary library to make an exhaustive study, but we do believe that it is worth while to study and find out why this Act was not extended to the municipal courts. It must have been for some practical reason and if a study could be made into the merits by any other agency and the matter taken to a higher court, to any place, which could decide this situation definitively, because *we understand that this will create a difficult administrative situation,* but our duty is to apply the law just as we understand it. The Act, in our opinion, is clear in that sense.

"PROSECUTING ATTORNEY: On this point I wish to state to the court that the position of the Prosecuting Attorney ought to be correct, and I believe that the position of the Prosecuting Attorney must be correct, and if there is no way out we must make a way because I think that to permit this, to tolerate this is simply to undermine little by little the culture of this country, it is an assault against the fundamental principles that a human being must express himself in his own language, that we are the majority, I do not see why a minority must impose its foreign language on us. We have our minds set, with due respect to the court, and we ask the court to order the stenographer to transcribe the record of the whole proceeding, of all the arguments had during the hearings of the motion, because we intend to go to the Supreme Court by way of certiorari and we shall do everything possible, everything within our reach to see that the certiorari reaches the Supreme Court and to see that the Supreme Court issues a certiorari, and if the Supreme Court should decide against us we shall find the means to have it reviewed.

"THE COURT: It is fair to explain, for the purpose of the record, *that any person, no matter his nationality, is within his full right to make use of all such powers as are granted by law,* and even this judge, if it were before the bar, and being able to speak English or Spanish indistinctly, because the fault does not lie with the person who is making use of the right which the Legislature granted him. Now, if the legislators believe that this situation is not correct, they are the ones who must legislate. I do not believe that we should do so. We wish to explain that our position is not to criticize neither the Legislature nor any other government. This is in connection with the statements made by our colleague, since *Mr. Rout is perfectly within his right to address this court in English because that Act has authorized him to do so.* We are giving this explanation because it might be understood that we are judging here an ideological question which is not the reality. We are judging here a right, whether or not it is granted by the Legislature of the Commonwealth of Puerto Rico." (Italics ours.)

We issued the writ of certiorari at the request of the Secretary of Justice.

I

It is a fact not subject to historical rectification that the vehicle of expression, the language of the Puerto Rican people —integral part of our origin and of our hispanic culture— has been and continues to be Spanish. So far during the 20th century the continuous reclamation exercised by these roots and the reality of our cultural and ethnic formation have made Spanish prevail without ostensible loss in the more intimate and representative manifestations of our daily life: home, school, religion, business, literature, politics, labor relations, and general activities of government. On the other hand, the resulting need of our citizenry for a greater capacity to transmit and receive ideas in the English language, for the better understanding of our fellow citizens of the United States, both here and there, and the demands of an economy in rapid growth due to the impact of active programs of industrialization, housing, tourism, and others of diverse kinds, including projects matched with federal funds, have required a continuous effort of improvement in the processes of adjustment which that new social and economic reality brings forth with regard to the means of expression by which people of common citizenship, who to a greater or lesser degree are not always bilingual, communicate with and understand each other.

II

The determining factor as to the language to be used in judicial proceedings in Commonwealth courts does not arise from the law of February 21, 1902,[4] which Mr. Rout invoked

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[4] Section 1 of the aforesaid Act of February 21, 1902 (1 L.P.R.A. § 51) provides: "In all the departments of the Commonwealth Government and in all the courts of this island, and in all public offices the English language and the Spanish language shall be used indiscriminately; and, when necessary, translations and oral interpretations shall be made from one language to the other so that all parties interested may understand any proceedings or communications made therein."

in support of his petition that the trial be held in English because he did not have good command of Spanish.[5] It arises from the fact that the means of expression of our people is Spanish, and that is a reality that cannot be changed by any law.[6]

Spanish is the language used in judicial proceedings in more than 15,000 criminal cases and more than 32,000 civil cases decided in 1963–64 by the Superior Court and in more than 220,000 criminal cases (including 145,000 traffic cases) and more than 28,000 civil cases decided over the same period by the District Court. The determining factor is established by the necessity for gathering in the trial of all accused persons those ingredients of due process of law, of fair and impartial trial, of efficient defense and of equal justice guaranteed by the Constitution and the laws, regardless of the language used in the proceedings.

For this the citizen has, among others, the right to be informed of the nature of the charges against him and of being faced with the prosecution witnesses, besides having the right to communicate with his lawyer during the trial, for which it is indispensable that he understand what is happening in the trial. If the accused does not know the language in which the proceedings are being conducted, it is imperative, by the natural reason that serves as a basis for the con-

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[5] Mr. Robert H. Rout was admitted to the Bar in Puerto Rico by this Court by motion and without examination under the provisions of the former Rule 8(b) of our Rules. He took his oath in Spanish on January 31, 1959. In the affidavit in support of his motion he stated that he lived in Puerto Rico since February 1, 1958 and that he had the intention of continuing his residence here with his family.

[6] Section 42 of the Federal Relations Act provides that all pleadings and proceedings in the District Court of the United States for Puerto Rico shall be conducted in English; and § 44 establishes as one of its requirements for acting as jury in said court that he shall "have a sufficient knowledge of the English language to enable him to serve as a juror." These requirements are in harmony and maintain the tradition that all judicial proceedings shall be conducted in the English language throughout the federal jurisdiction.

stitutional guarantees of due process of law, of fair trial, of efficient defense and of equal justice that he be provided the means to understand and be aware of the steps in the process in which his freedom may be at stake. Among these means is the designation of translators to render into his language anything that happens in court in a language different from his own.

[1-3] As regards judicial proceedings in court, the Act of February 21, 1902, in providing that "the English language and the Spanish language shall be used indiscriminately" can only have a directive scope, *cf. RCA Communications* v. *Registrar*, 79 P.R.R. 73 (1956), and does not grant either the accused or his lawyer the right to choose the language in which the trial is to be conducted. The direction of proceedings in court and the adoption of measures that will guarantee a fair trial to the accused is up to the judges, not the lawyers. Spanish being the language of Puerto Ricans, judicial proceedings in our courts must continue in Spanish, but judges will take whatever steps they consider necessary to protect the rights of any accused who does not know our language sufficiently by keeping him—and his lawyer, of course, since that is part of his right to efficient defense—informed, by means of translators or other efficient means, of all that happens in the trial, and to have it so shown in the record.

For the reasons stated, the order of the trial court ordering that the proceedings in the case at bar be conducted in the English language shall be set aside and the case remanded for further proceedings not inconsistent with this opinion.

STATEMENT OF FRANCISCO DE JESUS SCHUCK, SECRETARY OF JUSTICE, COMMONWEALTH OF PUERTO RICO, ACCOMPANIED BY GABRIEL GUERRA-MONDRAGON, DEPUTY ADMINISTRATIVE OFFICER, COMMONWEALTH OF PUERTO RICO

Mr. DE JESUS. I am Francisco de Jesus Schuck, Secretary of Justice of the Commonwealth of Puerto Rico. I am pleased today to present the views of the Commonwealth of Puerto Rico in support of an amendment to authorize the use of Spanish in the U.S. District Court for the District of Puerto Rico.

This amendment was offered to Senate bill 1724 and provides for the use of Spanish as the language of the U.S. District Court for the District of Puerto Rico in all appropriate instances. Members of juries and petit juries will no longer be required to be fluent in English in the cases that will be conducted in Spanish. The amendment also provides for the translation of proceedings for appeals to the circuit court and for the preservation of English as the language of the district court in all cases where it is proper.

As you know, Puerto Rico is the only political unit under the American flag where Spanish is the predominant language instead of English. In 1965, Luis Negron Fernandez, Chief Judge of the Supreme Court of Puerto Rico, said: "It is a fact not subject to historical rectification that the vehicle of expression, the language of the Puerto Rican people—integral part of our origin and our hispanic culture—has been and continues to be Spanish . . . the means of expression of our people in Spanish, and that is a reality that cannot be changed by any law."

The 1970 U.S. census data details the ability or lack thereof of Puerto Ricans to speak English. A significant number of Puerto Ricans do not speak English. I will be glad to submit afterward table 42. That is the source where we obtained the figure that approximately more than 50 percent of the Puerto Rican population at this point does not understand or speak English.

This reality creates a peculiar situation for the U.S. District Court for the District of Puerto Rico. All pleadings and proceedings in court must be conducted in English, which is a second language to its judges and an unknown one to most of the defendants.

The English requirement of the district court was but one example of the U.S. policy to make English the official language of Puerto Rico. Another example was the requirement until 1949 that English be the official language of instruction in Puerto Rico's public school system.

This policy was wisely changed. Spanish is presently the official language of instruction, while English is compulsorily taught as a second language. This change is a recognition of Spanish as the official language of Puerto Rico, and the uniqueness of our characteristics within the American system.

In order to understand the unique language problems facing the U.S. District Court of Puerto Rico, one should consider its history.

The present U.S. District Court of Puerto Rico is a direct successor of the U.S. Provisional Court, established by Brigadier General Davis in General Order No. 88, June 27, 1899. In section 34 of the Organic Act of 1900 the district court of the United States for

Puerto Rico was created. In addition to the ordinary jurisdiction of district courts of the United States, it had jurisdiction "of all cases cognizant in the circuit courts of the United States." The district judge was appointed by the President with the advice and consent of the Senate for a term of 4 years, "unless sooner removed by the President." By an act of Congress on March 2, 1901, a special jurisdiction was added to the court in which civil cases could be tried by citizens of the United States without any residency requirement in Puerto Rico. It must be remembered that U.S. citizenship was granted to Puerto Ricans in 1917. The special jurisdiction of the court was repealed by Public Law 91–272 of June 2, 1970.

From the Organic Act of 1917 until the present, the law requires that: "All pleadings and proceedings in the district court of the United States for Puerto Rico shall be conducted in the English language." This provision is part of the Puerto Rican Federal Relations Act. Since January 28, 1952, all the U.S. district judges appointed have been Puerto Ricans. Today the U.S. District Court for Puerto Rico has three judges and, as this committee knows, a fourth judge was requested and was not authorized. The judges of the court have the same tenure and rights as all other U.S. district judges pursuant to Public Law 89–571. The qualifications of jurors for the U.S. District Court for Puerto Rico is the same as other district courts pursuant to Public Law 93–274.

Today a significant part of the Puerto Rican population does not speak English. Spanish is the vernacular language of Puerto Rico, while English, as noted earlier, is taught as a second language in the schools. In Puerto Rico knowledge of the English language is unequally distributed in the population. The urban poor and rural sectors of the population possess less knowledge of the English language than other parts of the population.

More important, a sampling conducted by Chief Judge Cancio revealed that more than 78 percent of the defendants in criminal cases in the U.S. District Court of Puerto Rico are non-English speaking. The local courts conduct their proceedings in English. The decisions of the Supreme Court of Puerto Rico are published both in English and in Spanish. The appeals from the Supreme Court of Puerto Rico to the Supreme Court of the United States are translated into English without major difficulties. Many of the appeals are matters of law which do not require a translation of the trial transcript. The three judges of the U.S. District Court of Puerto Rico can speak Spanish as well as English. The same is true of the U.S. Attorney General and his staff in Puerto Rico. Finally, the bar examinations in Puerto Rico are conducted in Spanish.

Non-Spanish-speaking visiting judges should present no problem. Either they could be assigned the still numerous cases which still will need to be conducted in English, or the proceedings can be translated as it now occurs.

The language barrier has created a number of very real problems for the Federal court system in Puerto Rico.

The right of a non-English-speaking defendant to a fair trial with due process of law is needlessly impaired by his inability to understand and cross-examine witnesses in his own language.

Juries are not adequately representative of the Puerto Rican population because the majority of the urban poor and residents of rural areas are not able to speak English and are, therefore, prevented from serving on juries. This discriminates against significant segments of the population, and it has thus been argued, is a denial of due process of law.

Current procedures are needlessly cumbersome. Hon. Jose V. Toledo has recently described them in the following terms:

> Proceedings in the court are not translated simultaneously. When the witness testifies in Spanish, he is interrupted at the end of each phrase by the interpreter who states for the record the testimony in English. When the witness is English-speaking, the interpreter sits next to the defendant and interprets the proceedings to his ear. Translators are not used for the benefit of parties in civil cases, and when a translator is translating for a witness, the defendant in criminal cases does not have the benefit of having the questions of law raised or the remarks made by the court to the attorneys translated for his benefit. No record is ever made of the translation. What saves this system from being completely inadequate is the fact that the judges and attorneys in this court are normally bilingual and are constantly checking on the translations to correct any mistakes, and they normally make sure that the defendant in criminal cases knows what is going on.

The current language requirement limits the number of lawyers who will practice in the Federal court. Since English is taught in Puerto Rico as a second language, many attorneys do not feel they can adequately represent their clients in an English-language proceeding. This has the effect of limiting the right of selecting an attorney of their own choice for many defendants and litigants.

The proceedings are now unnecessarily expensive because translation is required even when all the parties are Spanish speaking. The most important economy will not be on a straight-cost basis, but on the time now unnecessarily consumed by the burdensome procedure of translating the proceedings and of not using the vernacular language of those involved.

The Puerto Rican people are asking that the proceedings in the U.S. District Court for the District of Puerto Rico be conducted in Spanish when appropriate. The bar association and all three Federal judges in Puerto Rico have strongly supported the proposed use of Spanish in the Federal court. Hon. Hiram Cancio, Chief Judge of the U.S. District Court, supported the proposal in his testimony before this subcommittee last year. Finally, members of all parties support the use of Spanish in the proceedings of the U.S. District Courts.

In conclusion, I believe the strength and virtue of federalism is its ability to find unity in diversity. Today, as always, the best way to promote great friendships is to recognize basic differences.

Spanish is the language of Puerto Rico. The United States District Court proceedings that will normally be conducted in Spanish should be conducted in Spanish. The Court proceedings that normally are conducted in English should continue to be conducted in English. The qualifications of the judges and attorneys involved allow the flexibility that will be necessary for the success of this proposal.

In 1959, a bill was presented on behalf of the government of Puerto Rico, asking approval of a similar proposal. It was an unsuccessful attempt.

Today, the time is ripe for action. The people of Puerto Rico are firmly committed to this proposal. Action must be taken not only because it is a convenient move, but simply because it is right.

Finally, on May 7, 1973, Senator John Tunney of California introduced S. 1724, the Bilingual Courts Act. This bill will provide for simultaneous translation in those proceedings where the parties or witnesses do not speak and understand English with reasonable facility. If this procedure is used in the United States District Court for the District of Puerto Rico, simultaneous translation would be required in a large number of cases. This would delay proceedings and make them exceedingly cumbersome and is not adequate to meet the special needs of Puerto Rico.

We are submitting a number of documents which will assist you in your consideration of this problem.

Thank you, and I will be happy to answer any questions that the chairman will have.

Senator BURDICK. Mr. de Jesus, thank you for your comprehensive statement on this matter.

In your statement, you include a copy of the decision in *People* v. *Superior Court*, in which the Supreme Court of the Commonwealth of Puerto Rico, in 1965, held that proceedings in the Commonwealth court must be conducted in Spanish, and that if a party does not understand Spanish, it is up to the judge to provide translators. In view of that decision, what would the Commonwealth courts do if both parties spoke English only?

Mr. DE JESUS. Well, I must admit that I do not have knowledge that any such situation has arisen. If that situation should come up, however, the court in that case correctly stated that the trial judges must take whatever safeguards are necessary in order to protect the rights of the parties involved. So I think that if such a situation should come up, probably the entire proceeding would have to be translated into Spanish.

However, I must again repeat that we have not heard of any case or situation that has come up during the time that our memory can have knowledge of.

Senator BURDICK. I think the case is quite clear. It says that the proceeding must be held in Spanish. It does not make any exceptions.

Mr. DE JESUS. Yes, that is right. But my point is that the Puerto Rican courts have never been obliged to confront themselves with a situation where both litigants only had a command of the English language.

This would be very simple to understand; I would say more than 98 percent of the Puerto Rican population speaks Spanish. Whenever a trial involves a person who is a continental living in Puerto Rico—and again, I must repeat, this would be the very rare exception to the rule—the continental will have knowledge or understand the Spanish language, or he or she would be able to have a command of the Spanish language.

Senator BURDICK. Your answer is that if both of them spoke English, the proceedings would still be held in Spanish?

Mr. DE JESUS. From the way that I read the Supreme Court decision, they would be translated into Spanish. However, if you will recall, the

1902 statute, which was the object of the decision, was interpreted by the Supreme Court to be discretionary upon the courts to conduct their trials in English, if the occasion would require it. However, it was deemed that, because of the interests of justice in that case, the case called for the proceeding to be conducted in Spanish.

However, if I may add, I would be very glad to consult the Puerto Rican Courts Administration so that they can provide the necessary information to illustrate to this committee on the point that you have raised; that is, what is the Puerto Rican experience in the Puerto Rican courts where two litigants are only familiar with the English language, and what safeguards have the Puerto Rican courts taken to safeguard the best interests of justice? I would be very glad to submit that information to you later.

Senator BURDICK. Let me read what you quoted in your own statement. On page 2, you quote from the language of the chief judge of the commonwealth court:

"It is a fact not subject to historical rectification that the vehicle of expression, the language of the Puerto Rican people—an integral part of our origin and our hispanic culture—has been and continues to be Spanish . . . the means of expression of our people is Spanish and that is a reality that cannot be changed by any law."

Mr. DE JESUS. Yes, and I abide by that.

Senator BURDICK. Well, then would it be mandatory in the situation that I gave you to have a Spanish trial?

Mr. DE JESUS. If you will recall, the statute said that the official language of the courts in Puerto Rico was English or Spanish indiscriminately. The parties in that case took exception to the ruling made by the trial judge, which said that the proceeding had to be conducted in English. So, the net result of the decision is that the 1902 statute, which as far as I understand has never been repealed, is directive, as far as those instances where proceedings ought to be conducted in English.

Senator BURDICK. Well, let me read from *The People* v. *Superior Court*, 92 PRR 580, on page 590:

". . . as regards judicial proceedings in court, the act of February 21, 1902, in providing that the English language and Spanish language shall be used indiscriminately, can only have a directive scope . . . . and does not grant either the accused or his lawyer the right to choose the language in which the trial is to be conducted. The direction of proceedings in court and the adoption of measures that will guarantee a fair trial to the accused is up to the judges, not to the lawyers. Spanish being the language of Puerto Ricans, judicial proceedings in our courts must continue in Spanish, . . ."

Mr. DE JESUS. But my position is in no way contradicting yours.

Senator BURDICK. To come back to my hypothetical, where I had both parties English speaking, would you still have to have a Spanish trial?

Mr. DE JESUS. No. I am saying that the court in that instance will take whatever measures must be taken in order to safeguard the rights of the parties; and I said that one of two things can happen. If the statute is directive in scope, the court can either direct the proceed-

ing to be conducted in English in that very peculiar instance; the other measure that it can take is to conduct the trial in Spanish, providing translators for the litigants. Those are the two possibilities which, I think, can be taken under the decision of the Supreme Court.

Senator BURDICK. As I understand the decision, it must be in Spanish, and the English-speaking parties can be taken care of by translation, but the basic proceeding must be in Spanish.

Mr. DE JESUS. All of the proceedings in the Puerto Rican court are in Spanish, because ninety-eight percent of the Puerto Rican population speaks Spanish, and that is the official language of the Puerto Rican government. So it must follow that the proceedings must be conducted in Spanish.

Senator BURDICK. What provision is made in that case, where you have the parties that are both English speaking? What provision is made for having only jurors that understand English?

Mr. DE JESUS. Sir, I must repeat that the situation you are pointing out is so peculiar that, as far as I can say, no issue has been taken upon whether—what measures, what specific measures, would be taken in that peculiar instance. That is why I must say that I will be very glad to submit a statement to this committee after consulting the Puerto Rico administrator's courts to see what has been the experience in these reduced number of cases, if any; because I do not know if there has been any case just like the one you had described.

Senator BURDICK. Well, the record that I have seen here, and the testimony given before this committee, indicates that the young people now are learning English in the schools and that the number of people speaking English is increasing year by year. It is not unreasonable to assume that you might have two English-speaking parties to a lawsuit. It is not unusual at all.

Mr. DE JESUS. I am not talking about whether it is reasonable or not. I am saying experience demonstrates that, as far as I know, no situation has come up.

Senator BURDICK. Yes, but what if it does come up?

Mr. DE JESUS. I think we are speculating, and I was just giving you my interpretation of the Puerto Rico Supreme Court decision.

Senator BURDICK. You have not answered my question about jurors.

Mr. DE JESUS. In a criminal case?

Senator BURDICK. No. Let's assume a civil case.

Mr. DE JESUS. Sir, we do not have any juries in civil cases in Puerto Rico.

Senator BURDICK. What about an English-speaking defendant in a criminal case, then?

Mr. DE JESUS. Well, that was the situation that I was addressing myself to, where a court will have to devise the measures that will be taken in that particular trial, in order that the English-speaking defendant knows what is happening. And that could be done two ways: either by translating the proceedings into English, providing him a translator, an interpreter, or by conducting the proceeding in English.

Senator BURDICK. What about the jury?

Mr. DE JESUS. The jury will have to be cognizant in the English language in such a situation.

Senator BURDICK. Then you will have to have a panel of English-speaking prospective jurors and a panel of Spanish-speaking prospective jurors.

Mr. DE JESUS. Well, it is the same as in the Federal court. We have Puerto Ricans sitting as jurors who speak both English and Spanish.

Senator BURDICK. But you would have to have a dual wheel to get jurors, would you not?

Mr. DE JESUS. Well, I do not think so. I think that Chief Judge Toledo said that there could be a way of having only one wheel.

Senator BURDICK. But right now, you could not give me a specific answer to the question: How would you work that out?

Mr. DE JESUS. In the Puerto Rican court, if such a situation arises, my answer is that if that situation has come up, I will provide you with how the situation has been coped with. And then I can say also, for the record, that if such a situation should come up in the future, that I cannot say specifically how the court will deal with it, except that I am sure that the proper safeguards will be taken to deal with that situation. But, being such an exceptional case, I do not think that it should be illustrative of the administration of justice in Puerto Rico. I do not think it is illustrative of what the situation is.

Senator BURDICK. Do you really think it is such an exceptional case to contend that an English-speaking defendant may find himself in the courts? Is that unusual?

Mr. DE JESUS. Sir, I am saying that the case you are pointing out is so unusual that I do not know of any particular situation where this case has come up.

Senator BURDICK. The opinion in *People* vs. *Superior Court* points out another practical problem, with respect to court reporters. The opinion mentions that there is only one court reporter in the metropolitan area that is capable of reporting both the English and the Spanish language. How many court reporters in Puerto Rico are bilingual?

Mr. DE JESUS. I cannot say if all of them are, or more than 50 percent are.

Senator BURDICK. I believe the judge who preceded you said he did not know of any.

Mr. DE JESUS. No, I believe what he stated was something different, Mr. Chairman. Perhaps it was my interpretation. He said that the mechanism used cannot be used indiscriminately for English and Spanish purposes. But that does not mean that the person as such is not bilingual.

Senator BURDICK. But the reporter could not take both the Spanish language, the Spanish testimony, and the English testimony?

Mr. DE JESUS. He would need another machine, a different machine.

Senator BURDICK. Do you have reporters like that?

Mr. DE JESUS. I do not know, sir, if we do have that bilingual reporter.

Senator BURDICK. Well, you have been very helpful. Thank you very much.

Mr. DE JESUS. Thank you, sir. If I may state for the record, Mr. Chairman, that we would gladly welcome you to Puerto Rico, so that you can witness for yourself how these proceedings are conducted in our Federal court down there.

Senator BURDICK. I have been to Puerto Rico a number of times. Maybe I should go down and attend court.

Mr. DE JESUS. Thank you.

Mr. WESTPHAL. And you will mail that table 42 and the census data to us?

Mr. DE JESUS. Yes, I will, and I will try to submit that information where we have to two English-speaking litigants.

[The material discussed above, which was submitted to the subcommittee at a later date, follows:]

Commonwealth of Puerto Rico
GENERAL COURT OF JUSTICE
OFFICE OF COURT ADMINISTRATION
San Juan, Puerto Rico

CERTIFICATION

I, Manuel A. Ranero Cruz, Acting Administrative Director of the Courts, hereby certify that during Fiscal Years ended June 30, 1972 and June 30, 1973 the Superior and District Courts of the Commonwealth of Puerto Rico paid fees for translation services from the english language to the spanish language at court hearings, rendered on behalf of 192 and 93 witnesses, respectively. The following is an analysis of this information by Court Part:

Part	Superior Court		District Court	
	1971-72	1972-73	1971-72	1972-73
Aguadilla	5	1	-	-
Arecibo	-	1	-	-
Bayamon	7	2	-	-
Caguas	-	-	-	-
Guayama	1	-	-	-
Humacao	-	-	-	-
Mayaguez	-	-	-	-
Ponce	-	-	-	-
San Juan	179	89	-	-
Total	192	93	-	-

Issued in San Juan, Puerto Rico, this 8th. day of the month of February, year 1973.

M. A. Ranero Cruz

Manuel A. Ranero Cruz
Acting Administrative
Director of the Courts

Senator BURDICK. At this time, there will be included in the hearing record a statement from Congressman Edward R. Roybal, of California; a statement from Senator Joseph Montoya, of New Mexico; a statement from the United States Commission on Civil Rights; and the prepared statement of Mr. Martin H. Gerry, Acting Deputy Director and Assistant Director for Policy, Planning and Program Development of the Office for Civil Rights of the Department of Health, Education, and Welfare, who unfortunately was not able to testify before the subcommittee today as planned. There will also be included in the record letters from Judge Paul Benson, from the Catholic Community Services of Colorado Springs, Colo., from the Catholic Charities of Rockville, N.Y., and from the Human Relations Commission of Fort Wayne, Ind.

This meeting is now adjourned.

[Whereupon, at 2:30 p.m., the subcommittee recessed.]

OCTOBER 10, 1973.

STATEMENT IN SUPPORT OF THE BILINGUAL COURTS ACT SUBMITTED BY EDWARD R. ROYBAL

Mr. Chairman, I am pleased to appear before the committee in support of a "Bilingual Courts Act." I especially welcome the opportunity to associate my views with those of the distinguished witnesses who have appeared in support of this legislative approach.

Together with Mr. Edwards of California I introduced in May of this year a similar measure in the House of Representatives, H.R. 7728. This bill represents a well conceived legislative response to the difficulties experienced by many Americans who, because of language, are effectively excluded or severely handicapped in receiving equal justice through our formal legal system. These individuals, whether seeking redress of wrongs inflicted upon them or defending themselves in civil or criminal actions, are in many cases compelled to participate in legal proceedings where the language used is totally alien to them. Such a situation poses an intolerable affront to the basic notions of justice and fair play implicit in our ideal of "a nation of laws" and renders meaningless our Constitutional guarantees.

It is obvious that the right to effective representation of one's interest in a court of law requires at the very minimum that a person be able to understand the language of the courtroom proceedings. The Bilingual Courts Act promises realistically to remedy the disadvantage frequently faced by our nation's language minorities in working within the federal court system. By making available simultaneous translation and recording of courtroom proceedings in both criminal and civil cases, Congress will have taken an important step in ensuring full equality and due process before the federal courts.

Recent census data indicates that a great number of Americans will benefit from this enlightened legislation. Of the more than 5 million Mexican Americans living in the Southwest, many are bilingual and have only a limited ability to communicate in English. The same is true for the more than 2 million Puerto Ricans living in the United States, mostly concentrated in northeastern states. Further, in the past decade or so more than 600,000 Cubans have emigrated to our shores, more than 40 percent of whom reside in Florida. Although the Spanish speaking minorities account for the majority of non-English speaking persons in minorities are concentrated in various regions throughout the country: Asian Americans in California, Native Americans in the Continental United States and Alaska, the French speaking in Maine and Louisiana, and a variety of different nationalities in Hawaii. In short, existing evidence makes clear that hundreds of thousands of Americans are critically in need of bilingual courtroom facilities to assure equitable treatment under the law.

It is imperative that our national government take immediate and constructive action to insure that justice is not denied these individuals in the federal courts because of linguistic or cultural differences. To ignore this obligation would represent a callous retreat from this nation's commitment to equality

before the law for all our people. It would inevitably fuel cynicism and distrust in these minorities for our traditional legal institutions. Cynicism, fear, and distrust are invariably by-products of a legal system which champions the rights of some while neglecting those of others. Passage of the Bilingual Court Act would demonstrate to these groups that their government is positively concerned with their rights and welfare and committed to ending the causes of many injustices they now suffer.

Apart from simple commonsense notions of justice and fair play, legislation mandating simultaneous translation of bilingual proceedings finds compelling support in basic individual safeguards of the Constitution. The Sixth Amendment guarantees that in "all prosecutions the accused shall enjoy the right to . . . be confronted with the witnesses against them; . . . and to have the assistance of counsel for his defense." The fundamental rights of confrontation and counsel in criminal matters becomes a little more than a cruel hoax and empty gesture to a defendant unable to comprehend the charges of his accursers or consult with counsel relative to his defense. In effect, the accused is relegated to a position of mindless presence in proceedings which will ultimately determine whether he is to remain a free member of society. Or as so aptly stated by the Alabama state court in *Terry* v. *State*, 21 Ala. App. 100 (1925), "Mere confrontation of the witnesses would be useless, bordering upon the farcical, if the accused could not hear or understand their testimony." Only through the aid of simultaneous translation may such persons adequately communicate with the court and exercise the right to cross-examine witnesses, to test their credibility, their memory, and the accuracy of their testimony against the defendant.

Similarly, the Fifth Amendment to the Constitution supports the application of the Bilingual Courts Act to both criminal and civil proceedings. The Fifth Amendment provides that "No person shall . . . be deprived of life, liberty, or property without due process of law." It cannot seriously be doubted that any legal proceeding, whether criminal or civil, which places a person or his property in jeopardy without insuring understanding participation in the trial process is so devoid of basic and fundamental fairness as to be contrary to the due process clause. And civil cases, no less than criminal proceedings, threaten a person with a loss of important personal and property rights and may lead to drastic personal consequences. Thus, the Fifth Amendment requires the same concern for the right of parties to both civil and criminal actions, and, in the case of the non-English speaking, must provide adequate interpretive facilities.

It may be regretted that current judicial authority fails to clearly establish a right to simultaneous translation in all federal court proceedings. The Supreme Court has not ruled directly on the issue and lower court rulings are indecisive at best. This must not, however, deter Congress from legislating in an area where action is greatly needed. Here, as in other issues of urgent national concern, Congress together with the courts, has the responsibility to protect individual liberties and ensure that the civil rights of substantial numbers of Americans are no longer prejudiced in our courts.

Although some steps have been taken to provide for interpreters in actions before federal and some state courts, these provisions generally make the appointment of an interpreter discretionary with the trial judge. (See, Rule 28(b) of the Federal Rules of Criminal Procedure; 18 U.S.C. 3006A(e); Rule 43(f) of the Federal Rules of Civil Procedure.) The U.S. Civil Rights Commission, in its 1970 Report, found that the "makeshift" bilingual facilities prevailing in the courts of the Southwest were wholly inadequate to meet existing needs. In the five states surveyed by the Commission's report, for instance, only three full-time Spanish-speaking interpreters were found to be employed in the federal courts. Two of these were employed in the Texas courts and the other in the California district courts. And even where professional interpreters were employed, they were generally criticized as being inadequately trained in legal matters for work as courtroom interpreters. Moreover, current legislation fails to establish uniform procedures for governing how bilingual facilities are to be utilized or for assuring that they are available in all cases where actually needed.

The Bilingual Courts Act proposed by H.R. 7728 represents dramatic advance over earlier Congressional attempts to provide bilingual courtroom facilities and remedies many deficiencies found in existing legislation. The Act clearly spells out the responsibilities of the federal courts and standardizes procedures to insure that competent interpreters will be available upon request in cases involving non-English-speaking parties and witnesses. First, the Act embodies specific legislative criteria for identifying those judicial districts where the need

for additional bilingual services is greatest. Section 2 limits the Act's application to judicial districts where 5 percent or 50,000 of the residents, whichever is less, lack reasonable facility in English. In this manner, the Act minimizes the initial implementation costs for a bilingual court program while concentrating available resources to assure maximum impact in districts where significant numbers of non-English speaking persons reside. Secondly, the Act would require equipping at least one courtroom in each qualified bilingual district with facilities appropriate for recording and simultaneous translation of proceedings to and from English by electronic or other means. Finally, procedures would be established under the Act for determining adequate qualifications and certification of interpreters and other necessary personnel.

I am hopeful that Congress will act to meet these objectives and reaffirm its commitment to end the inequalities of our present court system in favor of one which guarantees equal justice under the law.

[H.R. 7728, 93d Cong., 1st sess.]

A BILL To amend title 28, United States Code, to provide more effectively for bilingual proceedings in certain district courts of the United States, and for other purposes

Be is enacted by the Senate and House of Representatives of the United States States of America in Congress assembled, That this Act may be cited as the "Bilingual Courts Act".

FACILITIES AND PERSONNEL FOR BILINGUAL PROCEEDINGS

SEC. 2. Section 604(a) of title 28, United States Code (relating to the duties of the Director of the Administrative Office of the United States Courts), is amended—

(1) by redesignating paragraph (12) as paragraph (16); and

(2) by inserting immediately below paragraph (11) the following new paragraphs:

"(12) Determine from time to time, from the best and most current data available, each of those judicial districts in which at least 5 per centum or fifty thousand of the residents of that district, whichever is less, do not speak or understand the English language with reasonable facility, and certify each such district as a bilingual judicial district by certificate transmitted to the chief judge of the distric court for that district;

"(13) Prescribe, determine, and certify, for each such certified bilingual judicial district, the qualifications of persons to serve as interpreters in bilingual proceedings (as provided insection 1827 of this title) in that district who have a capacity (A) for accurate speech and comprehension of speech in the English language and in the non-English language, and (B) for the simultaneous translation from either such language to the other;

"(14) Prescribe from time to time a schedule of reasonable fees, at rates comparable to reasonable rates of compensation payable to expert witnesses of substantially the same degree of technical skill and experience, for services rendered by such interpreters;

"(15) Provide in each such bilingual judicial district appropriate equipment and facilities for (A) the recording of proceedings before that court, and (B) the simultaneous language translation of proceedings in such court.

CONDUCT OF BILINGUAL PROCEEDINGS

SEC. 3. (a) Chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1827. Bilingual proceedings

"(a) (1) Whenever a district judge determines, upon motion made by a party to a proceeding in a judicial district, which has been certified under section 604 (a) of this title to be a bilingual judicial district, that (A) a party to such proceeding does not speak and understand the English language with reasonable facility or (B) in the course of such proceeding testimony may be presented by any person who does not so speak and understand the English language, that proceeding shall be conducted with the equipment and facilities authorized by section 604(a)(15) of this title. Any such proceeding or portion of such proceeding (including any translation relating thereto) shall be recorded verbatim. Such

recording shall be made in addition to any stenographic transcription of the proceeding taken.

"(2) After any such determination has been made, each party to the proceeding shall be entitled to utilize the services of the interpreter, certified pursuant to section 604(a) of this title, to provide a simultaneous translation of the entire proceeding to any party who does not so speak and understand the English language and who so speaks and understands such non-English language, or of any portion of the proceeding relating to such qualification and testimony, or to the translation of such document, from such non-English language to English and from English to such non-English language.

"(b) The party utilizing the services of a certified interpreter provided under this section shall pay for the cost of such services in accordance with the schedule of fees prescribed under section 604(a)(14) of this title, except that—

"(1) if the services of an interpreter are utilized by more than one party to the proceeding, such cost shall be apportioned as such parties may agree, or, if those parties are unable to agree, as the court may determine;

"(2) if the United States (including any department, agency, instrumentality, or officer or employee thereof) is a party utilizing the service of an interpreter, the cost or apportioned cost of the United States shall be paid by the Director of the Administrative Office of the United States Court from funds appropriated to him for that purpose; and

"(3) if the services of an interpreter are utilized by a party determined by the court to be an indigent, the cost or apportioned cost of such party shall be paid by that Director out of funds appropriated to him for that purpose."

(b) The analysis of chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following new item:

(b) The analysis of chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1827. Bilingual proceedings.".

APPROPRIATIONS

SEC. 4. There are hereby authorized to be appropriated to the Administrative Office of the United States Courts such sums as may be necessary to carry out the amendments made by this Act.

EFFECTIVE DATE

SEC. 5. The amendments made by this Act shall take effect on the first day of the seventh month beginning after the date of enactment of this Act.

STATEMENT OF SENATOR JOSEPH M. MONTOYA

FEBRUARY 5, 1974.

Senator Burdick, Members of the Committee: As an original co-sponsor of this legislation and as a co-sponsor of the Amendment proposed by Senator Tunney on September 28, 1973, I am pleased to have this opportunity to express to the Committee my full support for S–1724, the Bilingual Courts Bill.

My state, New Mexico, has been a model and an experimental laboratory for this long-overdue federal legislation. I am understandably proud of that fact. More than fifty percent of our population is made up of people whose cultural and lingual heritage is not English.

Because our need was so obvious and so widespread, our state court system has used interpreters, at state expense, for many years. Our Constitution provides for interpretation in judicial proceedings, wherever needed, and a genuine effort is made to see that the language barrier provides no "chilling effect" on minority-language individuals either as litigants in civil suits or in seeking justice in criminal cases.

That does not mean, however, that equality under law is protected and provided for in every case. I do not want to mislead you. Many years of prejudice and inequality, pervading every area of social commmunication and social activity, make it difficult to assure even-handed justice to all persons, in New Mexico as well as in other states. In the city of Albuquerque the police department has recently completed a training program under the Pilot Cities Program

to provide 150 bilingual law officers. This program was originated because of the many complaints by Spanish-speaking citizens that their first contact with the legal system was often through a police officer who could not understand them. Surely it is even more important that communications be clear and fair in the courtroom.

As has been pointed out by Senator Tunney, we are only now beginning to reach a national understanding of the fact that real equality can never be provided minority children without support for bilingual-bicultural education. Most educators and educational administrators now accept that fact. Congress has recognized the need in the Bilingual Education Act, although we have never funded the programs sufficiently to make real impact on the problems of minority children.

However, acceptance of the value of and need for this kind of educational equality has not yet provided the texts, teachers and new teaching systems which would be needed if we were to do an efficient job in the field of bilingual-bicultural education.

I suspect that some of the same problems will arise when we try to correct the judicial system to provide for real equality under the law by recognizing the citizen's right to understand and be understood in a court of law. The legislation you are considering today makes provision for the certification of interpreters by the Director of the Administrative Office of the United States Courts. I think that is a wise and proper provision. But we should be aware that trained and fully qualified translators must be available to the courts so that the practical requirements of this legislation can be met.

Mr. Chairman, I urge the Committee to act quickly on this legislation, and to recommend it strongly to the Senate. It is tragic to have to admit, as an American, that there exists within the federal judicial system of the United States an unequal protection under law, and unequal opportunity for justice, or an unequal provision in defense of personal or property rights of American citizens.

It would be even more tragic if we failed to provide the corrective legislation needed as proof positive of our commitment to fair treatment to every part of our multi-cultural and multi-lingual nation.

STATEMENT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS ON S. 1724, AS AMENDED: A BILL TO AMEND TITLE 28, UNITED STATES CODE, TO PROVIDE MORE EFFECTIVELY FOR BILINGUAL PROCEEDINGS IN ALL DISTRICT COURTS OF THE UNITED STATES

The United States Commission on Civil Rights supports S. 1724, the "Bilingual Courts Act," as amended, introduced by Senator John Tunney, and urges its enactment. This statement will discuss the need for the "Bilingual Courts Act," constitutional bases and legal precedents which support its enactment, and proposed changes which the Commission believes will strengthen this important piece of legislation.

The American citizen who does not speak English has long been at a disadvantage in this society, for we are not a bilingual nation. In order to bridge this language barrier, a number of steps have been taken, both privately and publicly, to provide translation services for those persons who cannot otherwise understand the English language—bilingual clerical help to assist customers, bilingual directional signs to assist the driver and pedestrian, bilingual directional signs to assist the driver and pedestrian, bilingual instructions for voters who cannot read English, and an occasional translator to explain to an arrestee the charges against him. More such assistance is needed. This Commission is therefore pleased to support Senator Tunney's legislative effort to provide assistance to that substantial number of Americans who have been denied equal access to the Federal court system because they can neither understand nor communicate in English.

Most numerous among those who do not speak English in the United States are the Spanish-speaking Americans. In its 1970 Supplementary Report on Persons of Spanish Ancestry, the Bureau of the Census reported 8,000,000 persons whose mother tongue is Spanish.[1] Many children of Spanish-speaking

[1] Of the Puerto Ricans over 10 years of age counted in that group, only 30 percent were able to read and write English.

parents attend schools where the language of instruction is English, and this Commission has recently released a study on Mexican/American education in the five Southwestern States which indicates that the ability of these children to function in English remains limited.[2]

The problems of the non-English speaking American are of special concern to the United States Commission on Civil Rights. In its 1970 report, *Mexican Americans and the Administration of Justice in the Southwest*, the Commission addressed the need for court interpreters:

> Interpreters are not readily available in many Southwestern courtrooms:
> (a) in the lower courts, when interpreters were made available, they are often untrained and unqualified; (b) in the higher courts, where qualified interpreters were more readily available, there has been criticism of the standards of their selection and training skills.

In view of this need, the Commission made the following recommendation:

> The States in the Southwest should establish programs for the recruitment, training, and employment of court interpreters to be used in areas where there are large concentrations of Mexican Americans.

Spanish-speaking Americans are not the only non-English speaking citizens who find themselves at a disadvantage in dealing with English speaking administrators of justice. During our Southwest Indian Hearings we learned that many Indians in the Southwest have great difficulty in copping with a law enforcement system which operates primarily in English. Similar language problems were uncovered when members of the Chinese, Japanese, Korean, Philippine and Samoan communities testified recently before the California State Advisory Committee to the U.S. Commission on Civil Rights. These Americans are not being treated fairly before the law, for they can understand neither the law nor its process in a justice system which functions almost exclusively in English. The Bilingual Courts Act represents a positive response to the problems of non-English speaking Americans. It is a first and important attempt both to provide for adequate interpreter services in the Federal court system and to set guidelines for the administration of those services.

This legislation is necessary even in those few areas of the country where there is some bilingual capability among court personnel (judges, attorneys, prosecutors, etc.). The use of such personnel as interpreters is patently inadequate, for they are rarely professionally trained in translation skills. But a more important argument against using such personnel as interpreters is one of fairness to the party or witness who does not speak English. The judge or attroney who tries to interpret the proceedings in addition to performing in his or her professional capacity, is placed in the position of playing two roles. Each is a demanding one and neither will receive his or her best efforts. As one recognized scholar has indicated:

> As to the adequacy of interpretation by counsel understanding the language, it is respectfully observed that the process of counsel stopping at every question and answer . . . would be intolerable to the courts and disconcerting to the counsel.[3]

In order to guarantee that the non-English speaking party is given as fair a trial as possible under the circumstances presented by his or her lack of English, it is absolutely essential that the interpreter be unbiased, disinterested, and fully qualified to carry out his or her official duties.

Congress and the courts have previously recognized a variety of precedents establishing a limited right to translation assistance in the courtroom. In his Statement to this Subcommittee, Senator Tunney noted the enactment of statutes allowing for the discretionary appointment of interpreters.[4] Under Rule 28(b) of the Federal Rules of Criminal Procedure the court is permitted to appoint an interpreter at the government's expense in criminal cases. In such cases involving indigents, the Criminal Justice Act of 1964 (18 U.S.C. 3006A(e)) provides that court appointed counsel may obtain expert or "other" services "necessary for an adequate defense." The rule is similar in civil cases; Rule 43(f) of the Federal

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[2] See also: Lau v. Nichols, 42 U.S.L.W. 4165 (U.S. Jan. 21, 1974). 2,856 students of Chinese ancestry in the San Francisco public school system do not speak English, and only 1,000 of these children are presently receiving supplemental courses in English.

[3] 5 Wigmore, Evidence § 1393 at 119, note 4 (3d ed. 1940).

[4] Hearings on S. 1724 Before the Subcom. on Improvements in Judicial Machinery of the Senate Com. on the Judiciary, 93d Cong., 1st Sess., Oct. 10, 1973.

Rules of Civil Procedure permits the court to appoint and set the compensation for an interpreter. The proposed Bilingual Courts Act goes beyond existing law to establish translation as a right for any participant in a Federal court action who cannot otherwise understand and communicate in English. In establishing this right the Act goes far toward guaranteeing the basic and fundamental fairness required by the due process clause of the Fourteenth Amendment,[5] and toward safeguarding the Sixth Amendment right to be confronted with adverse witnesses.[6]

Discussion in the case law is sparse on the constitutional right to interpretation assistance. This issue was squarely addressed, however, in *Negron* v. *New York*, 434 F. 2d 386 (2d Cir. 1970). Defendant could speak no English, had a court appointed attorney who could speak no Spanish, and was afforded translation only to the extent of periodic summaries provided by an interpreter for the prosecution. After conviction, and subsequent exhaustion of the direct review process,[7] defendant resorted to filing a pro se writ of habeas corpus alleging denial of constitutional rights based on the inherent unfairness of a trial in which he was unable to participate. He was released on the basis of lack of adequate translation for those portions of his trial conducted in English. Defendant's frustrated attempts over a three year period at seeking review of what was finally held to be a blatant injustice are an eloquent indication of the need for this legislation. The right to translation/interpretation sufficient to insure the understanding and ability to communicate of the part(ies) at bar must be clearly established. To allow less is to deny the constitutional rights of due process and confrontation of witnesses.

Chairman Burdick, in his Opening Statement on S. 1724 hearings clearly sets out the holding in the *Negron*[8] case:

> The court held that the Sixth Amendment to the Constitution requires that non-English speaking defendants be provided with a competent translation of the proceedings. The court reasoned that the services of a translator were required, at government expense, if the constitutional right to be confronted with the witnesses against (the defendant) and to have the effective assistance of counsel are to be protected.[9]

Although the *Negron* case is a criminal action, the Commission strongly supports the intent expressed in S. 1724 to extend the right of translation to cover civil court actions. We are convinced that participants in any Federal court action must be assured the right to understand the proceeding in which they are involved. In order that such intent be effectively implemented, we suggest that there be no distinction drawn in this legislation between civil and criminal actions as to the types of translation services provided.

As presently written, subsection (a)(1), under the new section 1827, mandates oral simultaneous translation in any criminal action upon the court's determination that a party or witness does not have the present ability to understand the proceedings in English. Subsection (a)(2), however, requires only that the translation be oral in any civil action, and allows the court discretion to determine whether that oral translation shall be simultaneous, consecutive, or summary, with special consideration to be given a party requesting simultaneous translation. This distinction should be eliminated; the party or witness appearing in a Federal court action, be it criminal or civil, must be given the fullest opportunity to understand, and to participate in, the proceeding which may so vitally affect his or her future. The result of a civil case can be as onerous as that of a criminal action; financial losses resulting from a tort or contract action can have an extraordinary affect on the individual. For the person who cannot speak English, the court process must be incomprehensible; to understand the process, the person must have complete and simultaneous translation of what is being said. Whether a court action is criminal or civil has no qualitative bearing on a non-English speaking person's ability to undertsand. There must, therefore, be no difference in the extent of translation services provided to him or her.

Because of the national scope and comprehensive nature of this legislation, the Commission believes that the provisions of S. 1724 must be uniform in their

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[5] Pointer v. Texas, 380 U.S. 400 (1965).
[6] U.S. v. Barracota, 45 F. Supp. 38 (S.D.N.Y. 1942).
[7] Petitioner's conviction in New York State Supreme Court aff'd per curiam 29 A.D. 2d 1050 (April 1968). Leave to appeal denied by New York Court of Appeals, July 1968. Cert. denied, 395 U.S. 936 (June 1969).
[8] Negron v. New York, 434 F. 2d 386 (2d Cir. 1970).
[9] Hearings on S. 1724 Before the Subcom. on Improvements in Judicial Machinery of the Senate Com. on the Judiciary, 93d Cong., 1st Sess., Oct. 10, 1973.

application. As presently written, this legislation provides that the court will determine when a party or witness is so unable to comprehend the proceedings as to need translation assistance. Such determination is crucial to the person whose language ability is being assessed, and will bear heavily on the ultimate fairness of the proceeding. It is, therefore, of critical importance that there be uniformity in the procedures utilized by courts to assess language ability. As noted earlier, court personnel are rarely trained as language specialists. The court may, therefore, need the pre-trial assistance of such language specialists. The judge will then have reliable information before him or her on which to make an informed determination. The use of such specialists will also save the time a judge would otherwise be forced to spend in court making such a determination.

It is recognized that the courts operate under financial constraints and that the employment of language specialists, in addition to interpreters, may not be feasible. In that event, it is suggested that there be developed a standardized oral testing procedure to determine the English language capability of parties or witnesses which can be used by the judge in the courtroom, in the absence of more adequate testing techniques which could be used under less pressured circumstances.

In conclusion, let us consider the position of the non-English speaking person in relation to that of the person incompetent to appear in court by reason of insanity. The handicaps are analogous. In effect, if made to stand trial without any assistance, neither would be "present" at his own trial—one because of linguistic infirmity, the other because of mental incapacity. Federal law provides that the mental incompetent be tested by experts, and if found incompetent, that there be a court hearing on the question. We suggest that the same safeguards must be provided for the person with linguistic infirmity. Just as the declared incompetent is referred for psychiatric assistance when he cannot appear in court, the person who cannot understand the proceedings without assistance, must be given assistance sufficient to make it possible for him to participate in the proceedings.

The Commission thanks the Subcommittee for this opportunity to express its views on S. 1724, the Bilingual Courts Act.

PREPARED STATEMENT OF MARTIN H. GERRY, ACTING DEPUTY DIRECTOR AND ASSISTANT DIRECTOR FOR POLICY, PLANNING AND PROGRAM DEVELOPMENT OF THE OFFICER FOR CIVIL RIGHTS OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Members of the Subcommittee, my name is Martin H. Gerry, and I am currently the Acting Deputy Director and the Assistant Director for Policy, Planning and Program Development of the Office for Civil Rights. Because of my personal interest and experience in administering Civil Rights compliance programs that involve issues closely related to those before the Subcommittee in its consideration of S. 1724, I have been asked by Senator Tunney to provide the Subcommittee with my views on S. 1724: "A Bill to amend Title 28, U.S. State Code, to provide more effectively for bilingual procedure in certain district courts of the United States." The views set forth in this statement are my own and do not necessarily reflect the views of the Department of Health, Education and Welfare, which I understand has not officially been asked to testify before the Subcommittee.

Let me first outline my personal involvement in issues closely related to those being considered by the Subcommittee in its deliberation on S. 1724. During the fall of 1969, I was asked by the Director, Office for Civil Rights, to review the status of the Department of civil rights compliance programs pursuant to Title VI of the Civil Rights Act of 1964, in order to determine what new program development actions should be taken to expand the Office's enforcement program for Elementary and Secondary Education. For several months thereafter, I reviewed the Departmental regulations, existing policy statements, and the substance of the day-to-day compliance program of the Office and concluded that two closely related major policy development thrusts should be made by the Office.

First, special attention needed to be given to the expansion of Civil Rights protection to include non-Black ethnic minorities—more specifically, Spanish-surnamed persons, Native Americans, and Asians. Second, compliance activities

should be expanded to include matters of discrimination in the provision of basic education services, as well as those related to the assignment of students and teachers. As a result of this analysis, I drafted a civil rights policy memorandum which was signed by the Director, Office for Civil Rights on May 25, 1790 and published in the Federal Register on July 18, 1970 (35 Fed. Reg. 11595) (I have attached a copy of this memorandum to my testimony). [See Prepared Statement Exhibit 1 *infra.*] The purpose of this memorandum was to set forth the basic rights of non-English speaking children to meaningful educational services including, where appropriate, participation in bilingual/bicultural education programs. It reflects the concept that school districts have an affirmative duty to provide minority children with educational services in a language they can understand and in a cultural environment compatible with their educational development.

The Department's authority to issue this memorandum and its applicability to local school districts have recently been considered and supported unanimously by the U.S. Supreme Court in *Lau* v. *Nichols* (Slip. op. 72–6520, January 21, 1974).

At the request of the Director, Office for Civil Rights, over the last three years, I have supervised the development of the investigative data collection and data analysis systems used for compliance reviews in the area.

As Chairman of a Department Task Force, I worked with several experts in the area of educational psychology on the development of civil rights guidelines designed to eliminate discrimination in the assignment to classes for the educable mentally retarded of children whose primary language skills are in a language other than English. A general discussion of that issue is set forth in an article which I have written for publication in the *Journal of School Psychology* later this month, and which I have also attached to my testimony. [See Prepared Statement Exhibit 2 *infra.*]

Discrimination resulting from language incompatibilities is not confined to the issue of basic educational service or the question of bilingual education. Office for Civil Rights reviews have documented several cases of discriminatory classification and assignment which have directly resulted from breakdowns in communication between non-bilingual, English-speaking psychometrists and Spanish-speaking children being evaluated for assignment to special education classes for the mentally retarded. Several reviews have raised questions about both the procedural and substantive fairness—in due process terms—of disciplinary standards and procedures utilized by school districts. These standards are often communicated only in the English language to persons with primary language skills in other languages.

Disciplinary proceedings are also often held solely in English, even though the student and his parents possess little or no oral fluency in that language. In several cases, the Office has required that school districts comply with Section 4 of the May 25th memorandum (notification and involvement of parents) by communicating with non-English speaking parents in a language other than English. In each of these areas considerations of both justice and equality have dictated a conclusion that the rights of non-English speaking students can not be adequately protected in an environment where linguistic dysfunction is prevalent.

In the summer of 1971, I was asked by the Director, Office for Civil Rights to expand my program development efforts to include issues of language discrimination related to the delivery of Health and Social Services. Since that time, I have been involved in the development of civil rights compliance programs addressed to eliminating communication barriers which exist in welfare service programs and mental health service programs. In the course of this activity, I have supervised compliance reviews of two state welfare systems. In both states, large numbers of Spanish-speaking clients constituted a major proportion of state welfare service population. In both states, California and Connecticut, the Office for Civil Rights found that Spanish-speaking persons are being discriminated against in the delivery of public assistance benefits and social services because of their national origin. Findings reveal that because of the language and culture of many Spanish-surnamed persons, including their limited knowledge of the English language and the failure of the state welfare department to adequately take account of that fact, Spanish-speaking clients are being denied both equal and effective social services. I have attached copies of the letters of findings sent by OCR to both states. [See Prepared Statement Exhibit 3, *infra.*]

In conducting these reviews, the Office has reviewed Fair Hearings case files maintained by the Welfare Department. These files, in many cases, contain actual verbatim transcripts of Fair Hearings held by state officials. The Office for Civil Rights, in its discussions with state officials, has consistently taken the position

that because of the importance of full and free communication between social worker and client, it is of critical importance that counseling-oriented casework be conducted in the primary language of the recipient. In several instances, our review of Fair Hearings files reveal that clients who could not understand communication in English were not provided with interpreters during the Fair Hearings. The transcripts in many places indicate that clients were, from a communication standpoint, excluded from any active participation in the Fair Hearings process itself. Many cases demonstrate that injustices have occurred in the administration of the welfare system as a direct consequence of the communication barriers that existed in the eligibility determination process.

For the last year I have been directly involved in the planning and implementation of civil rights compliance reviews of Federally-funded mental health facilities. In several instances these reviews have focused on the question of whether meaningful mental health services are being provided by non-bilingual, English-speaking professionals to patients who speak and understand little or no English. In a letter to the Acting Director of the Department of Health for the State of California (a copy of which is attached to my testimony), from the Office for Civil Rights on January 18, 1974, specific deficiencies in the delivery of mental health services to Spanish-speaking clients were cited. In one state hospital, for example, the review revealed that Spanish-speaking patients had to make use of bilingual fellow patients in order to communicate with institution staff.

The issues that we have been pursuing with respect to elementary and secondary education and the delivery of health and social services have a common theme. In my judgment, the equal protection clause of the 14th Amendment, as implemented by Title VI of the Civil Rights Act, clearly requires that substance or quality of services provided by institutions of the state to members of a particular racial/ethnic minority group not vary because of race, color, national origin (or its accompanying language system). This is the interpretation that the Office for Civil Rights has followed in the development of its enforcement policies.

In light of my experience in the development and implementation of these policies, I feel confident as a matter of professional judgment to strongly support the adoption of S. 1724. As a mattr of basic civil rights, it seems self-evident to me that defendants both in criminal and civil procedure be entitled as a matter of right to oral translation of all testimony, argument, instructions to the jury, and other communication that takes place in the courtroom. As the civil rights policies which have been developed by the Office clearly indicate, identical treatment of dissimilarly situated persons in no way can be characterized as "equal." To conduct hearings in English for an English-speaking person assures meaningful communication and understanding. To conduct hearings in the English language for defendants without sufficient facility in the English language to comprehend the communication is to make a mockery of the courts in much the same way that Justice Douglas found in *Lau* v. *Nichols*, that the instruction in English of children who cannot speak or understand English makes a "mockery of public education."

In no sense can the basic guarantees of the Bill of Rights and the common law tradition be maintained for a defendant who has no way of understanding what is transpiring around him. If a defendant cannot even understand the words of his accuser, how can it be said that he has been offered the right to directly confront him. If, as Prof. John Rawls suggests in his book, *A Theory of Justice*, justice is fairness, then a requirement that defendants be provided with meaningful access to the basic communication involved in a trial must certainly be viewed as both just and fair. To permit some to have this access because of ethnicity and language and to deny that same access to others because of a different ethnicity and language is not only unjust and unfair but also discriminatory because of its inherent inequality. Just as a deaf person would certainly be entitled to translation in sign language, a non-English speaking person must be entitled to oral translation in a linguistic environment in which he would otherwise be "deaf". The fact that no one is adversely affected or otherwise disadvantaged by the provision of such oral translation, argues persuasively that this legislation assures the granting of critically important rights to members of one group without a concurrent diminution of the rights of any members of any other groups. There is no weighing of interests to be made, no social calculus to be performed. The interests of all members of the society should be served, within the

Common Law tradition of justice, by allowing defendants to fully comprehend the charges against them, the testimony of witnesses and the arguments of counsel.

By understanding, a defendant can better prepare his counsel for effective cross-examination, better evaluate the need for his own testimony, and better understand the legal issues which will determine the outcome of the proceeding. In other words, the effect of the proposed legislation would be entirely positive, the purpose wholly defensible, and the impact clearly in furtherance of justice. The types of communication involved in court proceedings, in my judgment, as a member of the bar, by its very nature, requires both precision and detail. As persons have a right to bilingual instruction in the provision of basic education and the right to meaningful social services and mental health counseling, there must certainly be a similar right extended to the criminal or civil defendant. The connotative as well as denotative aspects of testimony require a thorough familiarity with the languages to be translated from and into. I would urge that true bilingual fluency, as opposed to some bilingual capability, become the standard for court interpreters. These persons should be highly talented professionals capable of grasping both the literal meaning of the testimony or proceedings and the legal and institutional significance thereof.

My support for the purposes of this legislation clearly leads me to suggest to the Subcommittee that the fifth paragraph of the 14th Amendment authorizes the Congress to implement the provisions of that Amendment by appropriate legislation. In my opinion, the Subcommittee should consider the possibility of extending the requirement of S. 1724 to all courts, both civil and criminal, at the state and municipal level in order to implement both due process and equal protection guarantees of the 14th Amendment.

Again, I would urge upon the Subcommittee that this legislation is more in the effectuation of a right than it is in the granting of a privilege. I appreciate the opportunity to present my views to the Subcommittee and would be happy to respond in writing to any questions which members of the Subcommittee may wish to direct to me.

PREPARED STATEMENT EXHIBIT 1

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., May 25, 1970.

To: School Districts with more than 5 percent national origin-minority group children.

From: J. Stanley Pottinger, Director, Office for Civil Rights.

Subject: Identification of discrimintation and denial of services on the basis of national origin.

Title VI of the Civil Rights Act of 1964, and the Departmental Regulation (45 CFR Part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance review conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portugese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

(1) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the languague deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system in inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

School districts which receive this memorandum will be contacted shortly regarding the availability of technical assistance and will be provided with any additional information that may be needed to assist districts in achieving compliance with the law and equal educational opportunity for all children. Effective as of this date the aforementioned areas of concern will be regarded by regional Office for Civil Rights personnel as a part of their compliance responsibilities.

PREPARED STATEMENT EXHIBIT 2

CULTURAL MYOPIA: THE NEED FOR A CORRECTIVE LENS

Summary

School districts throughout the nation have, for many years, been misplacing disproportionately large numbers of minority children into special education classes for the mentally retarded. These children—"six-hour retardates"—are often capable of functioning normally outside the school setting, but are labeled as "retarded" by their teachers.

The Office for Civil Rights on May 25, 1970, issued a Memorandum to school districts designed to prohibit discrimination against national origin minority children which results from a failure by school districts to recognize the differing linguistic characteristics and cultural identity of such children in the planning and operation of education programs. Specifically, the Memorandum prohibits the assignment of children to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills.

A task group composed of Mexican American and Puerto Rican educators, psychologists, and community and civil rights leaders was appointed by the Secretary of Health, Education, and Welfare to develop educational policy to implement this anti-discrimination provision. The task group, through a working committee, consulted experts in the field and analyzed the process by which many minority children are improperly labeled as mentally retarded.

As a result of this analysis, the committee recommended that additional policies be developed by the Office for Civil Rights to adequately notify school districts and members of the general public of the types of discriminatory practices that might be occurring and setting forth model procedures which school districts could follow in an effort to eliminate discriminatory practices which might currently exist. The procedures recommended by the working committee include the utilization of socio-cultural background information and adaptive behavior data in the assessment process. Further, they envision the direct involvement

of a community-based parent committee designed to ensure that the cultural and linguistic characteristics of minority children are not ignored or misused so as to bring about improper placement. The purpose of these procedures is to ensure that a comprehensive assessment of the educational needs of children—as compared with a labeling process—occurs. These procedures contemplate that children will vary in their incentive-motivational, learning, and communication styles, and reflect the belief that any non-discriminatory system for determining the need of such children for services appropriate to the classification "mentally retarded" should take this variance into account. Finally, these procedures require school systems to develop and implement diagnostic evaluation and prescriptive teaching strategies to meet the educational needs of all children who reach the evaluation stage—both the "six-hour" retarded child pushed out of the classroom for reasons not attributable to intellectual capacity and the child for whom the term "mentally retarded" may be more appropriate.

Introduction

School districts throughout the nation have, for the past several years, been misplacing disproportionately large numbers of minority children into special education classes for the mentally retarded [1]—Black and Native American children in both rural and urban areas, Puerto Rican children in the Northeast and Middle West, and Mexican American children in the Southwest.

The President's Committee on Mental Retardation (chaired by the Secretary of Health, Education, and Welfare) reviewed the problem over three years ago, and concluded that many of these minority children were "six-hour retardates"—capable of functioning normally outside the school setting, but labeled as retarded children by their teachers:

> As used herein the term "special education classes for the mentally retarded" refers to any class or instructional program to which students are assigned after an evaluation of a student's intelligence or aptitude which purports to reveal a substandard level of intelligence or educational potential, including, but not limited to, classes designated as educable mentally retarded (EMR), educable mentally handicapped (EMH), minimally brain injured (MBI), special learning disabled (SLD), educationally handicapped (EH), and trainable mentally retarded (TMR).
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> We now have what may be called a 6-hour retarded child—retarded from 9 to 3, five days a week, solely on the basis of an IQ score, without regard to his adaptive behavior, which may be exceptionally adaptive to the situation and community in which he lives.[2]

The Chairman of the Conference, Mr. Leonard Mayo, summarized the bias in present assignment practices:

> . . . in many cases we are placing a large number of children in so-called special classes either because they are unresponsive in the so-called regular classes, or because, according to the tests which we give them, it is indicated that they are retarded, and the tests we give them . . . are often more related to our world than to theirs.[3]

Dr. Wilson Riles, Superintendent of Public Instruction of the State of California, specifically related these biased assignment practices to racial and ethnic segregation:

> If the child—black or white or brown—is not very tidy, clothes a little tattered, if he is inarticulate in the English language, many teachers' first reaction is that the child must be mentally retarded.[4]

With regard to the types of policies which are needed in order to assure a non-discriminatory approach to minority children being assessed for possible mental retardation, Dr. Edmund Gordon, Chairman of the Guidance Department, Teachers College, Columbia University, stated:

> To give meaning to the concept of educability in populations where there is deprivation of developmental and educational opportunity, several educational preconditions are indicated. These include: (1) provision for a more appropriate distribution of emphasis between the affective cognitive, and conative aspects of learning; (2) a shift in emphasis in educational appraisal from quantitative measures and status prediction to qualitative

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[1] "Special education classes for the mentally retarded."
[2] A Report on a Conference on Problems of Education of Children in the Inner City, August 10–12, 1969; President's Committee on Mental Retardation, front piece.
[3] Ibid., p. 14–15.
[4] Ibid., p. 15.

measures and dynamic prescription; (3) increased attention to individually prescribed learning experiences; and (4) greater concern for insuring that the learning experience is relevant to the general experience of the learner.[5]

In spite of the nationally-accepted finding by recognized psychological, anthropological, and sociological associations that the occurrence of mental retardation is *not* related to race or ethnicity, minority group children are being placed in EMR classes in disproportions of two-, three-, and four-to-one.

The United States Civil Rights Commission has reported that in the five Southwestern states (California, Arizona, New Mexico, Colorado, and Texas), Mexican American and Black students are systematically over-represented in special education classes for the mentally retarded in a manner which correlates with race and ethnicity of the children so assigned, *independent* of either their socio-economic status or the socio-economic status of the school they attend.[6] Further, the Commission finds that the percentage of Chicano and Black students classified as "EMR" remains constant *regardless* of socio-economic status while the percentage of Anglo students classified as EMR varies in inverse proportion to socio-economic status.[7]

Civil rights policy—background

On May 25, 1970, the Office for Civil Rights (OCR) of the U.S. Department of Health, Education, and Welfare issued a Memorandum to School Districts,[8] addressed to the Identification of Discrimination and Denial of Services on the Basis of National Origin.

The Memorandum was the product of months of research, evaluation, and discussion concerning the need for immediate civil rights enforcement action addressed to the elimination of various types of discrimination against national origin minority children practiced within the public schools.[9] More specifically, the Memorandum prohibits the use of cultural and linguistic differences of minority children as a means of segregating or denying such children equal access to the full benefits of the educational system and reflects the belief that school districts have a constitutional and statutory obligation to administer their educational programs with sufficient flexibility to assure equal access of all children to the programs' full benefits. Accordingly, school districts must adapt their educational approach so that the culture, language, and learning styles of all children in the school (including but not limited to those of the Anglo children) are accepted and valued. As a result, minority children are not penalized for cultural and linguistic differences, nor asked to bear the unfair burden of conforming to a school culture by the abandonment of their own.

With specific reference to discrimination in the assignment of national origin minority children to special education classes for the mentally retarded, the Memorandum sets forth in Section 2:

> (2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculculate English language skills.

Immediately after the release of the Memorandum, a departmental task group was created to assist in its implementation and to develop additional policies setting forth possible programs of remedial action pursuant to each area of the Memorandum. A substantial majority of the task group is composed of Mexican American and Puerto Rican educators, psychologists, and community and civil rights leaders.

The task group held its first meeting in Denver, Colorado, in 1970 to discuss its responsibilities and determine policy development priorities. It was decided that the most urgent focus for the initial attention of the task group was the sufficiency of present OCR policies relating to the discriminatory assignment

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[5] Ibid., p. 17.

[6] Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest, April 1971, Volume 1 (Report of the U.S. Commission on Civil Rights, Mexican American Study Project).

[7] Ibid.

[8] The Memorandum was subsequently published in the *Federal Register* on July 18, 1970.

[9] The creation of racially identifiable special education classes for the mentally retarded may, of course, also result from the creation of discriminatory attendance areas or feeder patterns.

of minority group children to special education classes for the mentally retarded.[10] A working committee of the task group[11] was appointed to assess the need for further policy development.

Educational and social science experts consulted by the committee during this assessment process viewed the substantial over-representation of minority children in special education classes for the mentally rearded as symptomatic of two major educational problems:

1. A failure to understand, value, and utilize the unique cultural and linguistic backgrounds of minority children; and
2. A conscious or subconscious effort to retain minority groups in subordinate status.

One of these persons, Dr. Jane Mercer, University of California, Riverside, who has extensively researched the subject through field studies in California and has presented her findings to the President's Committee on Mental Retardation,[12] explains her approach to an examination of the process by which children become labeled as mentally retarded:

> From a social system perspective, mental retardation is defined as an achieved social status, a social position which a person can achieve just as surely as a person can achieve the status of teacher or of social worker. Thus, we can describe how a person becomes mentally retarded just as we can describe how a person becomes a teacher. If we regard mental retardation in this way, we can ask, "How does a person become mentally retarded in the community? How does he get labeled by other people as a mental retardate?"[13]

After setting forth the results of a careful analysis of the factors which caused or contributed to the implacement of disproportionately large numbers of Mexican American and Black students, Dr. Mercer summarizes the major conclusion of her study as follows:

> . . . the major conclusion reached was that pluralistic diagnostic procedures which take the sociocultural characteristics of the individual's background into account when evaluating the meaning of a particular IQ or adaptive behavior score would produce greater convergence between clinical diagnosis and social system definitions. Such procedures would eliminate the ethnic disproportions which result from present clinical procedures which do not take sociocultural factors into account . . .[14]

On the basis of data recently collected by OCR from several school districts, minority students misplaced in special education classes for the mentally retarded appear to actually take on the symptoms of mental retardation—to fill the prophecy. In an analysis of the educational performance of minority children enrolled in the EMR program of one district, OCR observed that a majority of the children assigned to EMR classes over a three-year period had lost reading skills in absolute terms—in other words, in 1970 a majority of the children assigned could not read a book which they were able to read in 1967.

The committee concluded that the discriminatory over-inclusion of minority students in special education classes for the mentally retarded may be viewed as resulting from two separable but closely related processes: (1) the discriminatory referral of minority children for testing and evaluation (the population evaluated), and (2) the discriminatory effects on culturally different (minority) children of the present testing and evaluation instruments and procedures.

The need for an expansion of existing policy

As originally drafted, Section 2 of the May 25th Memorandum reflected an accurate assessment of the linguistic (cultural) basis of current assignment prac-

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[10] The task group decided that the question of the discriminatory assignment of Black children to special education classes for the mentally retarded should be included in any policy development effort because of the similarities between the nature and extent of current policies and practices which discriminate against Black children and those which discriminate against other minority children.

[11] Members of this committee included Dr. Alfredo Castaneda (Stanford University), Dr. Edward De Avila (Bilingual Childrens Television Project, Oakland, California), Dr. Uvaldo Palomares (Institute for Personal Effectiveness in Children, San Diego, California), Dr. Manuel Ramirez (University of California, Riverside), Mr. Felipe Montez (United States Civil Rights Commission, Los Angeles), Mr. Henry Casso (University of Massachusetts, Amherst), Mrs. Dorothy D. Stuck (Office for Civil Rights, Dallas, Texas), and the author.

[12] "The Epidemiology of Mental Retardation in an American City," Jane R. Mercer.

[13] Ibid., p. 4.

[14] Ibid., p. 15.

tices but failed, however, both to articulate the full dimensions of the socio-cultural discrimination involved or to offer any guidance as to what a truly non-discriminatory assignment mechanism would resemble. Moreover, the provision reflects the simplistic notion that civil rights compliance could automatically be achieved by using foreign language translations of the individual IQ test currently being used in their English versions. Further, although the Section refers to "criteria which essentially measure or evaluate English language skills" rather than just to tests which measure such skills, the committee concluded that too little attention had been paid to the total cultural bias of the assignment process as reflected in other criteria; for example, the observable classroom behavior of the child (including the general educational performance and group achievement test scores) upon which many teacher referrals are predicated.

As a result of committee discussions, it was concluded that further action by OCR was needed (i) to adequately identify (and thus to put school districts on notice of) the various discriminatory aspects of the assignment process, and (ii) to identify a non-discriminatory system of assignment for use by school districts found to be in non-compliance. The working committee then turned its attention to the task of drafting a document which would be specifically addressed to meeting these needs.

An Examination of Current Objective Standards

Almost every state utilizes the results of individually administered IQ tests as the primary "objective" criterion for assessing the suitability of special education assignment status. These test results usually contain a "Verbal" and "Non-Verbal" (Performance) intelligence quotient which is nothing more or less than a ranking of the *relative* right/wrong or good/bad performance of individuals on a set of demand-response decision-making predicaments.

The actual assignment of a score reflects the arbitrary decision to use a bell-shaped curve to express the performance of a given individual not against some objective standard but in relation to all other individuals of a given age level.

One of the most frequently noted justifications for the over-inclusion of minority children in special education classes for the mentally retarded is the fact that, as a group, minority children tend to score approximately one standard deviation below non-minority children (as a group) on individually administered intelligence tests. The evidence gathered by the committee, however, reveals that this seemingly "objective" validation of current assignment practices may well be invalid with respect to most minority children because of the existence of a group of closely related factors:

1. *The tests don't measure "intelligence,"* i.e., the actual mental ability or capability of an individual, but in fact measure many other items all of which have very important cultural influences, including (a) the compatibility between the language and cultural referents of the test/test items and the person being tested, e.g., the organizational assumptions of the test as compared with the organization of the thought process (the nuclei around which ideas and "facts" are grouped) of the persons taking the test, (b) the skill of the test administrator in utilizing appropriate language systems and behavioral mechanisms for communicating the decision-making predicaments *and in* attributing the *appropriate* significance to the response or non-response of the person being tested, (c) the familiarity of the person being tested with the type of behavior which the test expects and values, e.g., quick response, Aristotelian logic, (d) the comfort or discomfort which the person being tested has with the testing situation in terms of anxiety, hostility, relaxation, escape, etc. (e.g., adult questions child, or Anglo male adult [authority figure] questions minority child), (e) the motivation which a person being tested has to identify *success* or *failure* in the testing situation as a desirable or potentially obtainable goal or likely outcome, e.g., the mental set of failure-orientation.

2. The persons administering the tests often expect failure and reflect that expectation on the numerous subjective evaluation tasks imposed by the test instrument on the administrator.

3. A disproportionately high number of minority children are "referred" (primarily by classroom teachers) for individualized testing, thus causing a substantial *racial skew* in the populations to which the individualized test instrument is actually applied, thus reinforcing the expectation of failure as discussed in 2.

4. A breakdown of communication between minority parents and school officials and a concomitant failure by the school officials to make appropriate inquiries result in a failure to recognize important physical (e.g., vision, hearing, etc.) and emotional characteristics of the children to be tested.

For the foregoing reasons, the committee concluded that a simple modification of the primary "objective" standard in current use (e.g., changing the IQ score or test required for placement of minority children) is impractical because of the impact of these factors. Accordingly, the committee believes that the current state of the art concerning the "testing" of minority children dictates the development of a set of minimal process-oriented requirements related to the collection and evaluation of a wide range of relevant data (rather than the mere modification of existing "objective" standards).

After careful consideration of both the underlying educational and psychometric issues involved and the practical problems facing school districts seeking to develop and implement non-discriminatory assessment and assignment procedures, the committee has prepared an outline of procedures which, in the judgment of the committee, sets forth a process (for assessment and assignment) containing adequate safeguards for the protection of minority children who might become involved in assessment/assignment mechanisms operated by local educational agencies. It should be emphasized that these procedures represent only one acceptable alternative and do not preclude a local educational agency from developing and proposing other procedures which can be shown to be equally effective in safeguarding children against discriminatory and potentially discriminatory practices. Further, it should be emphasized that the Office for Civil Rights would only *require* new non-discriminatory procedures from school districts where the existence of current discriminatory assessment and assignment policies has been determined.

The recommended process

In preparing an outline of desirable procedures with respect to the evaluation of children from cultural environments different from those upon which most intelligence tests are predicated, the committee gave particular attention to the concept that a thorough evaluation of the adaptive behavior [15] of a child can significantly improve the reliability of the evaluation of minority children for assignment to special education classes for the mentally retarded.

The committee concluded that the following procedures constitute an acceptable minimum assurance of non-discriminatory evaluation and assignment of racial or national origin minority students to special education classes for the mentally retarded: [16]

1. Before a student may be assigned to a special education class for the mentally retarded,[17] the school district should gather, analyze, and evaluate adaptive behavior data and sociocultural background information, as defined below, relating to the non-school environment of the student being reviewed for assignment. The concept of adaptive behavior reflects the position of the American Association on Mental Deficiency and, as used herein, specifically refers to:

> The degree with which the student is able to function and participate effectively as a responsible member of his family and community.

Information pertaining to the incentive-motivational and learning styles unique to the student should be collected. The incentive-motivational style of a child means those attributes of the child which characterize the manner in which he is most likely to be motivated to learn. The learning style of a

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[15] In preparing the outline, the term "adaptive behavior" is used as defined by the AAMD: "Adaptive Behavior" is "a composite of many aspects of behavior and the function of a wide range of specific abilities and disabilities. Behaviors which have been subsumed under the designation intellectual, affective, motivational, social, motor, etc., all contribute to and are a part of total adaptation to the environment." *Manual on Terminology and Classification in Mental Retardation,* American Association on Mental Deficiency, 1973 Revision, p. 19.

[16] Section 901(a) of Title IX, the Education Amendments of 1972, 86 Stat. 235, Pub. Law 92-318, prohibits discrimination on the basis of sex in the operation of public elementary and secondary schools. It is important to note that a final policy position reached by the Office will include safeguards designed to protect males or females from discriminatory treatment on the basis of sex. Because of the recent passage of this legislation, final recommendations with regard to these safeguards have not yet been made. To date, data collected from school districts with respect to the sex composition of special education classes for the mentally retarded would indicate a substantial over-representation of male students.

[17] See p. 1, *supra.*

child characterizes the type of learning activity (e.g., physical contact, memorization, etc.) most likely to bring about the acquisition of new information or new or better skills to process information. In addition, information related to the child's language skills and preferences, inter-personal skills, and behavioral patterns established between the child and his parents, other adult family members, siblings, neighborhood peers, and fellow students, should be solicited.

The socio-cultural background information gathered should include data related to family socialization practices (e.g., the types of social relationships within the extended family pattern characteristic of Chicano families) which may assist in the formulation of new teaching strategies and approaches which are compatible with the incentive-motivational and learning styles (defined above) of the child.

2. If the process for assignment of students to special education classes for the mentally retarded involves a teacher referral or recommendation for individualized testing and evaluation, before such a referral or recommendation is made, the teacher or other professional making the referral or recommendation (e.g., a school social worker) should, in addition to observing school behavior and assessing academic performance, gather and analyze, with the assistance and advice of the school psychologist (or other certified test administrator appointed by the school district), socio-cultural background information and adaptive behavior data.

If it is determined that it is appropriate to refer the student for individualized testing, a narrative report (in writing) should be prepared and submitted to the persons, committee, etc., responsible for making the assignment. The report should include a summary of the observable school behavior, academic performance, socio-cultural background information, and adaptive behavior data and should indicate what testing or evaluation instruments will be employed, together with a description of the behavior which the proposed tests or other evaluations will attempt to measure.

If a referral or recommendation for testing and evaluation is made by any other person, the teacher and school psychologist should communicate in writing to the appropriate school official a similar report, based on observation of the behavior and environment of the child.

3. Before the testing and evaluation of a student may be approved, the school district should ensure that the student has been provided with a thorough medical examination covering, as a minimum, visual, auditory, vocal, and motor systems (school districts may use past medical reports if they have been appropriately updated). A written medical report setting forth the results of such examination should be maintained by the school district and made part f the student's permanent record.

4. If state law or local school district policies require that parental permission be obtained before the testing of the student, a full understanding of the significance of granting permission and the implications of the process which may follow, should be communicated to the parents in person and in the language of the home to permit full communication, understanding, and free discussion. If permission to test also implies permission to place the student in a special education class, this must be clearly communicated to the parents. If parental permission is not required by state law or local school district policies, a full understanding of the implications of the assignment process should be communicated to the parents in person and in the language of the home to permit full communication, understanding, and free discussion.

5. Before a student may be given any individually administered intelligence test as part of the evaluation/assignment process, the student should be familiarized with all aspects of the testing procedure and the testing situation must be made compatible with the student's incentive-motivational style, i.e., it must make him feel at ease. Furthermore, the school district must utilize test administrators who possess language skills and sufficient awareness of cultural differences to permit such administrators to effectively communicate instructions to and understand the responses (verbal and nonverbal of the student to be tested.

6. A school district which assigns students to special education classes for the mentally retarded should be required to assure that cultural factors unique to the particular race or national origin of the student(s) being evaluated which may affect the results of testing or findings with regard to adaptive behavior are adequately accounted for. The formation and utilization of a board composed, in part, of parents of children attending the schools of the district and broadly representative of the ethnic and cultural makeup of the student body and which is assigned major responsibilities in the operation of the procedures set forth in this subsection (below) should provide an adequate assurance of consideration.

For each child being reviewed for possible assignment to a special education class for the mentally retarded, the school district should make adequate provision that there has been a careful review of any recommendation for preassignment testing and evaluation and any decision to assign students to special education classes for the mentally retarded in light of the cultural and linguistic environment of the child. More specifically,

(i) a written report and recommendation for testing (which would be maintained in the permanent records of the district), including a description of the techniques used to familiarize the child with the testing situation, and a report as to the adaptive behavior data and socio-cultural background information, which has been gathered, should form the basis of any action by the district to further evaluate the child for assignment to a special education class for the mentally retarded (or any surrogate established by the school district) ;

(ii) a recommended educational strategy (in writing) should be prepared by the school district which sets forth the specific curriculum and instructional methodology, diagnostic evaluation instruments, etc., which will be employed to meet the educational needs of the student whether assigned to a special education class for the mentally retarded or returned to the regular school program.

If, based on the foregoing data collection and analysis procedures, it can be reasonably concluded that on the basis of either (1) the psychometric indicators interpreted with medical and socio-cultural background data, or (2) the adaptive behavior data, that the assignment of the student to a special education class for the mentally retarded is inappropriate, the proposed assignment process should be terminated and the student should be returned or assigned to the regular school program in at least the same class level from which the student was initially referred, accompanied by a recommended medification in the regular school program, if indicated.

7. Students currently assigned to special education classes for the mentally retarded should be retested with an individually administered test instrument following the procedures outlined above. Medical examinations should be readministered if previous examinations were inadequate. The parents of each student should be interviewed in order to obtain socio-cultural background information and adaptive behavior data. If, based on the data collection and analysis required by the reevaluation procedure, it can be reasonably concluded on the basis of either (1) the psychometric indicators interpreted with medical and socio-cultural background data, *or* (2) the adaptive behavior data, that the current assignment of a student to a special education class for the mentally retarded is inappropriate, then the student should be reassigned to the regular school program and provided with supplementary transitional educational programs in order to overcome the educational effects (including lowered achievement levels and negative self-concept development) of previous discriminatory practices.

Students assigned to special education classes for the mentally retarded pursuant to the non-discriminatory assignment or reevaluation procedures set forth above, should be carefully reevaluated at least once each year.

The following impact chart has been prepared to set forth with respect to each of the recommended procedures a summary of the proposed change in procedure or standard, a description of the current procedure or standard, and a brief statement of the rationale for the proposed change:

IMPACT CHART

Current procedure or standard	Proposed change in procedure or standard	Rationale
Student is referred by teacher to psychometrist for testing with only brief note as to low achievement or poor behavior. Only other data utilized is student's academic record and standardized test results.	In addition to student's academic record and standardized test results and before a formal referral for testing may be made, the teacher must, in concert with the school psychologist: (1) Gather, analyze, and evaluate adaptive behavior data related to the child. (2) Gather, analyze, and evaluate sociocultural background information related to the child, including data related to incentive-motivational and learning styles and linguistic competencies of the child.	Adaptive behavior data and sociocultural background information are essential to a nondiscriminatory evaluation because they allow the evaluation to understand (a) the total behavior of the child, (b) the cultural and linguistic distance of the child from the assessment instruments to be used, and (c) the incompatibility, if any, between the learning, communication, and incentive-motivational styles of the child and the teaching style utilized by the referring teacher.
Teacher is not actively involved in evaluation and assessment process after brief referral form is completed and child is scheduled for testing.	Teacher has main responsibility for gathering additional data before formal referral.	Teacher may learn enough in the process of gathering data to: (1) Realize that the child's "problem" is not retardation but instead relates to an incompatibility between the culture, language, or learning characteristics of the school environment or teaching styles of the classroom. (2) Learn enough about the real problem to devise, with the assistance of the school psychologist and the assessment board, an educational strategy to meet the needs of the child within the regular classroom. Teacher may acquire a general sensitivity to and understanding of the cultural, linguistic, and behavioral, characteristics of the minority community indispensable for an effective educational approach to all the minority children in the classroom.
Some States require medical examinations of differing degrees of thoroughness. Many States require no medical examination before placement.	Before the testing and evaluation of a student may be approved, the school district must provide the student with a thorough medical examination covering as a minimum visual, auditory, and motor systems. A written report of the results of this examination must be submitted to the psychologist.	Many cases of "pseudo" retardation are undiagnosed medical conditions such as aphasia, dyslexia, poor hearing, malnutrition, etc.
School psychometrist makes decision as to test instruments to be used on basis of student's academic record, standardized test scores, and referral form.	School psychometrist and teacher must submit a written narrative report which includes: (1) A summary of adaptive behavior and socio-cultural background information; (2) A statement of what test instruments are to be used in light of this data to evaluate the child; and (3) A description of the behavior which the evaluation will attempt to measure.	In order to assure that the teacher and school psychometrist have followed the data gathering and analysis requirements, it is necessary to require a written report be prepared and kept on file for subsequent review). The school psychometrist is required to justify in writing the evaluation instruments he proposes to use in light of the child's cultural and linguistic background and learning and incentive-motivational styles. The written report (signed and on file) will operate to relieve the school psychometrist of internal political pressure for assignment from teachers and others by forcing professional accountability into the process. The competence of the psychometrist to assess the relevant cultural and linguistic biases of the test instruments can be reviewed in advance.

IMPACT CHART—Continued

Current procedure or standard	Proposed change in procedure or standard	Rationale
Most children are given tests without any attempt to familiarize them with the testing situation, the language of the test, or the behavioral expectations of the test. Test administrators rately possess language and cultural skills sufficient to permit either effective communication of instructions to minority children or the understanding of both the verbal and nonverbal responses of the children to test item or the testing situation.	Children must be familiarized with all aspects of the testing procedure and the testing situation must be made compatible with the child's incentive-motivational style, i.e., it must make him feel at ease. Furthermore, the school district must utilize test administrators who possess language skills and sufficient awareness of cultural differences to permit such administrators to effectively communicate instructions to and understand the responses (verbal and nonverbal) of the child to be tested.	The proper assessment of children can only occur if the maximum effort is made to remove racially and ethnically discriminatory barriers from the testing situation. The goal of the test activity is presumably not to measure success with the testing environment and language of the test and administrator, but to measure the cognitive skills of the child.
Most school districts make no provision for the involvement of parents and other community members in most stages of the evaluation and assignment process.	School districts which assign students to special education classes for the mentally retarded must assure that cultural and linguistic factors which affect psychometric evaluation and review of adaptive behavior data are carefully considered. Such an assurance can be accomplished in part by the formation and utilization of an assessment board.	The creation and operation of an assessment board broadly representative of the communities served by the school is essential to protect children from being misplaced in special education classes.
Parental permission, where it is required to be obtained by State law, is usually obtained by informing parents (often unable to communicate effectively in English) that assignment is "better for the child" with no attempt to communicate the real pros and cons of the situation.	If State law requires that parental permission be obtained before the testing of the student, a full understanding of the significance of granting permission and the implications of the assignment process which may follow must be communicated to the parents. Where State law does not require that parental permission be obtained before testing and/or the placement of the student, parents must be given a full understanding of the significance and the implication of the process.	Parents of children being considered for assignment can only fully exercise their political and educational rights if they are fully aware of the dimensions and implications of the assignment process.

Conclusion

Today the educational needs of thousands of minority children are being overlooked in a massive and often confused labeling process in voguge in many of the nation's elementary and secondary schools. The development and implementation of relevant and meaningful educational programs for all children (regardless of race or ethnicity, IQ level, or physical handicap) has been frustrated for the sake of insidiously convenient labels.

Special education classes for the mentally retarded—which have been created in many cases only after years of tireless struggle by parents and community leaders concerned about the creation of educational environmentals suited to the needs of truly mentally retarded children—have become dumping grounds for children *unwanted* in the regular classroom. As a consequence, and in a corollary process to the abandonment of meaningful educational services for culturally and linguistically different children, the delivery of meaningful educational services to truly mentally retarded children has been severely impeded. The current confused and discriminatory assessment and assignment process serves the interests of *none* of the children involved. The need for procedures which force teachers and school districts to account for the quality and appropriateness of services being provided both to truly mentally retarded children and to the pseudo-retarded children has never been greater.

The procedures discussed above are not assumed to provide a magical solution to current problems, but it is hoped that they may provide a focus for a reasoned discussion of the specific corrective steps which should be taken at the school district level—now!

PREPARED STATEMENT EXHIBIT 3

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., November 15, 1973.

MR. DAVID B. SWOAP,
Director, Department of Social Welfare, State of California,
Sacramento, Calif.

DEAR MR. SWOAP: Thank you for your letter of September 19 summarizing several important efforts being made by both State and County agencies in California to improve the delivery of services to minority clients and to increase employment of minority staffs.

Let me also express my appreciation to you for the frankness and cordiality which characterized our meeting with Messrs. Newlin and Moose of your staff on September 5, 1973. We were pleased to have the opportunity to informally discuss some of our preliminary findings and were encouraged to learn of the efforts undertaken by the department in the client service area. The courtesy and cooperation extended by the Department's personnel in both the state and county offices during our review of the Department's operations was much appreciated, as were your considerable efforts to distribute and collect for us a client service questionnaire completed by employees of eight county welfare agencies.

As you are aware, complaints were submitted to Secretary Richardson in early 1971 alleging that the California Department of Social Welfare and its constituent county agencies were failing to provide equal services to Spanish-speaking clients and potential clients on the basis of their national origin. We have completed our review pursuant to Title VI of the Civil Rights Act of 1964 of the issues raised in these complaints. This letter sets forth a summary of our findings relating to such issues.

Title VI and the Departmental Regulation, 45 CFR Part 80 (a copy of which has been provided to you), prohibit discrimination on the grounds of race, color, or national origin by recipients of Federal financial assistance. The Regulation provides that no person shall, on account of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to the provision of services in a discriminatory manner in the operation of any federally-assisted program. More specifically, the Regulation prohibits the operation of any such program in a manner which has "the effect of subjecting individuals to discrimination because of their race, color, or national origin or [has] the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect[s] individuals of a particular race, color, or national origin." 45 CFR 80.3(b)(2).

Due to our limited staff capability, and because of the size, both in terms of staff and current caseload, of the California Department of Social Welfare, the Office found it necessary to select specific California counties to constitute a sample for purposes of reviewing compliance by the state with the requirements of Title VI in the area of client service. Eight counties were selected by the Office after consultation with your Department as the initial sample for the statewide evaluation: Alameda, Los Angeles, San Diego, San Joaquin, San Mateo, Santa Clara, Sonoma, and Tulare. According to data derived from 1970 Fourth Count Census Data, the population of these eight counties represents 59.1% of the total persons in the state; 75.3% of the total Black persons in the state; and 63.4% of the total Spanish-speaking persons in the state. Moreover, according to 1970 Fourth Count Census Data, persons in the eight counties listed above represent approximately 59% of the state's Spanish-speaking persons with income below poverty level and approximately 51% of all persons with income below poverty level. Basic caseload data were also obtained for 26 additional counties within the state (a list of counties is attached). Persons in these counties represent 18.4% of the state's total population; 10.3% of the state's total Black population; and 16.3% of the state's total Mexican American population.

The Office has also reviewed and made use of data contained in reports of the Mexican American Project dated April 1971 and October 1971, published by the California Department of Social Welfare and the Annual Statistical Report of the State of California for 1969–70, as well as client service data supplied by

Alpha Beta Associates as of September 31, 1971 and January 31, 1972, for San Mateo, Santa Clara, Sonoma, San Diego, and Tulare Counties.

On-site reviews were conducted by members of our San Francisco Regional and Washington Office staffs in Sonoma, Alameda, San Joaquin, Santa Clara, and Los Angeles Counties. During these reviews, a large number of interviews with county employees, clients, and other interested community members and organizations were conducted. We have also reviewed client service questionnaires distributed and collected by our office at our request from employees of each of the eight counties listed above.

Unless otherwise noted, all other data forming the basis for the conclusions set worth in this letter were collected from sources within your Department, or its constituent agencies. The data so collected have been, in several instances, compared with Fourth Count Census Data relating to the social and ethnic characteristics of the minority populations of various counties within the state.

On the basis of this information, we believe that the current Title VI compliance status of the county welfare agencies in California is brought into question by the following findings:

1. Spanish-surnamed and Asian persons have been subjected to unequal treatment in the delivery of public assistance benefits and social services not because of a lack of eligibility or legal entitlement to benefits and services, but because of their national origin. Because of these clients' language and culture, their limited knowledge of the English language, and the failure of both state and county welfare departments to adequately take account of these characteristics, such clients frequently received inferior treatment and services. County departments failed to utilize staff with an understanding of the culture of, and with language skills necessary to communicate effectively to non-English-speaking persons.

2. Because of the use of the fixed caseload method (fixed number of cases for every eligibility and social service worker) for allocating human resources to clients, county welfare district offices in predominantly Black and Spanish-surnamed areas were providing inferior services to Black and Spanish-surnamed clients as compared to the services provided to clients in predominantly non-minority areas. The practice of providing an equal amount of professional staff time per case in minority and non-minority districts, despite a larger number of persons per case (and in most instances, a larger number of service needs as well) in predominantly minority districts, results in a substantial reduction in the time spent per client problem in such districts.

With regard to the first finding set forth above, our review indicated that county departments have, in many cases, failed to utilize culturally and linguistically competent client contact staff to serve both potential and currently enrolled non-English-speaking clients. Caseload data supplied by the state department and county welfare offices and Fourth Count Census Data indicated that as of January 31, 1972, within the eight-county sample large numbers of Spanish-surnamed public assistance cases, ranging from 51.5% in Alameda County to 94% in Tulare County, are Spanish-speaking. These data reflect, in summary, that a substantial percentage of all Spanish-surnamed persons in the aforementioned counties speak Spanish, not English, as the language of regular communication. As I am sure you are aware, several county welfare offices make use of a caseload data record system which separates all Spanish-surnamed clients into primarily English-speaking and primarily Spanish-speaking subcategories. As used in this letter, the term Spanish-speaking refers to persons who use Spanish as their primary language of communication.

Analysis of data obtained during the review revealed that in all counties and in most district offices, a substantial number of Spanish-speaking eligibility and social service cases do not receive services from a bilingual worker or agency-provided translator, or with the assistance of a bilingual friend or acquaintance. For example, in Los Angeles County's 22 Family District offices, approximately 49% of the Spanish-speaking eligibility cases were served by a bilingual worker, approximately 9% of the Spanish-speaking eligibility clients were served by an agency-provided translator, and approximately 2% of the Spanish-speaking eligibility cases were served by a bilingual friend or acquaintance. Consequently, 3,118 clients or 40% of the Spanish-speaking caseload in the 22 Family District Offices did not receive welfare services in Spanish from any source—either a bilingual caseworker, agency-provided translator, or bilingual friend or acquaintance. None of the 22 Family District Offices showed the

capability, in terms of bilingual/bicultural staff, to serve the Spanish-speaking eligibility clients which they reported. In this regard, we were particularly encouraged to learn per your September 19 letter of substantial gains made by the Los Angeles County Department of Public Social Services in the employment of Spanish-speaking eligibility workers since the date of our review.

In the other seven counties in which this analysis of bilingual client service capability was undertaken, the percentage of Spanish-speaking eligibility cases not served by bilingual staff ranged from 64.4% in San Diego County to 95.1% in Tulare County, and averaged 82%; the percentage of Spanish-speaking cases unserved by a bilingual eligibility worker, agency-provided translator, or bilingual friend or acquaintance ranged from 50% in Santa Clara County to 92.4% in Sonoma County, and averaged 55%.

A similar pattern of inadequate bilingual staffing with regard to Asian clients occurred in several district offices in Los Angeles County. For example, in the Metro North Adult District Office, data supplied by staff in questionnaires indicated that of 231 current Japanese eligibility cases, 131 or 56.7% had primary language skills in Japanese, and that of 558 current Chinese eligibility cases, 393 or 70.4% had primary language skills in Chinese. According to data supplied in the questionnaires, only 32 (11 Japanese and 21 Chinese) of these 524 non-English-speaking clients were served by a bilingual eligibility worker. County-wide data related to service to Asian clients by the Adult District Offices showed that of 334 (of 779 total) Japanese clients with primary language skills in Japanese, only 62 or 18.6% were served by a bilingual worker; and that of 502 (of 838 total) Chinese clients with primary language skills in Chinese, only 22 or 4.4% were served by a bilingual worker.

The failure of the county departments to provide linguistically competent initial client contact staff, i.e., telephone operators and receptionists, resulted in Spanish-speaking potential clients receiving markedly different treatment than other potential clients. Spanish-speaking clients have often been told to come back at another time, which imposes greater time delays, more required visits to the department's office and, as a result, the additional burdens of child care, transportation, and expenses, Spanish-speaking clients have also been told to come back with a child or neighbor who could translate, thereby deterring them from returning because of an understandable reluctance or refusal to have to disclose to children, neighbors, and acquaintances private information which the welfare department, by its own criteria, rightfully regards as highly personal and confidential. Spanish-speaking clients have also been asked to wait long periods of time in order for a translator to be located and have, in many instances, been confronted with a breakdown of communication, thereby deterring enrollment or causing hardships not suffered by non-minority clients.

The inability of non-Spanish-speaking eligibility workers to communicate with Spanish-speaking clients has resulted in (1) the failure by eligibility workers to make available upward adjustments or emergency financial allocations to such clients when their changing circumstances allowed such changes; (2) the exclusion of many eligible Spanish-speaking clients from social services because of the eligibility worker's inability to identify the social service needs; and (3) reductions of benefits and, in some cases, termination of assistance to Spanish-speaking clients with whom non-Spanish-speaking eligibility workers could not effectively communicate. Further, the failure of non-Spanish-speaking social service workers, people who are responsible for evaluating clients' service needs and aiding in the provision of such services, to understand the important welfare-related problems of many Spanish-speaking clients has resulted in the failure of such clients to receive needed social services. As in the case of the initial client contact staff, the use by non-Spanish-speaking eligibility and social service workers of children or neighbors of clients and potential clients as translators has the effect of defeating or substantially impairing the objectives of the program with respect to many Spanish-speaking clients. We, therefore, concluded that the failure of the county departments to provide adequate numbers of Spanish-speaking eligibility caseworkers and social services workers resulted in the discriminatory treatment of Spanish-speaking clients.

Our review of the eight county welfare offices also revealed that little effort had been made to allocate currently available Spanish-speaking, Japanese-speaking, and Chinese-speaking staff so as to reduce as much as possible the number of non-English-speaking public assistance cases unserved by bilingual staff. For example, in San Joaquin County, there were 10 Spanish-speaking eligibility workers serving a total of 276 Spanish-speaking cases. Even utilizing

a reduced caseload (75% of regular caseload because of the increased difficulty involved in dealing with only Spanish-speaking clients), a total of 980, or 704 more, Spanish-speaking clients than served could be served. Our study of Tulare County indicated that there were 15 Spanish-speaking eligibility workers with an average caseload of 36.4 Spanish-surnamed cases and 111 non-Spanish-speaking eligibility workers with an average Spanish-surnamed caseload of 35.6. With regard to social services in Tulare County, the 16 Spanish-speaking social service workers had a lower average Spanish-surnamed caseload (23.1) than the 55 non-Spanish-speaking social service workers (24.2). To the extent that Spanish-speaking personnel were not assigned to each identifiable unit within the department, i.e., telephone, reception, eligibility intake, ongoing eligibility, and each of the categorical social service units, there was a denial of service to Spanish-speaking persons.

From information gathered during the review, we have concluded that, in most of the county offices which we have reviewed, the absence of any form of agency-provided cultural awareness training for client contact and supervisory personnel resulted in a significantly lower level of understanding by staff of the unique characteristics of Spanish-speaking clients—such as religious beliefs, family life, self-concept, and similar areas—than the level of staff understanding of such matters with regard to non-Spanish-speaking clients. As we know you will recognize, an understanding of the cultural background of clients has an important and legitimate bearing on whether and how welfare benefits should be delivered. The lack of such understanding on the part of the staff of county welfare offices has, in our opinion, been a material factor in the current lack of delivery or differential delivery of benefits to the Spanish-speaking community.

We were pleased to learn in your September 19 letter of the significant effort made by the State Personnel Board to secure affirmative action plans from virtually all of the county welfare departments as well as the special minority employment effort underway in San Bernadino County. However, as we have indicated in our previous discussion and as you note in your September 19 letter, we do not intend to suggest or otherwise imply that the County Departments can only provide adequate services to Spanish-speaking and other non-English-speaking clients by utilizing only client contact staff who are members of the same ethnic groups. Rather, it is our intention to stress that in addition to utilizing staff who possess fluency in a language other than English, it is important that such staff, regardless of their own racial/ethnic identity, possess a familiarity and understanding of the total cultural environment of the clients they are to serve.

With regard to the second finding set forth above, our review indicated that county welfare agencies have provided inferior services to minority clients served by district offices in predominantly Black and Spanish-surnamed areas. As a result of the method for assigning staff positions and the size of case-loads, the use of the fixed caseload method (by which a fixed number of cases is determined for every eligibility and social service worker) regardless of the number of persons per case (and, thus, the number of service needs per case) resulted in a substantial reduction of the time spent per client and per client problem in predominantly minority districts. For example, in Los Angeles County, according to county welfare officials, fixed caseloads were established for all district offices as follows: 9 intake eligibility cases per day; 130 ongoing eligibility cases per month; 60 social service cases per month. Based on the data collected during our review, including interviews with county welfare officials in both predominantly minority and predominantly non-minority district offices, it has been determined that:

1. The average number of persons per case in predominantly minority district offices is substantially larger than the average number of persons per case in predominantly nonminority offices.

2. The number of client service problems per case for both the ongoing eligibility service and social services provided by the agency are substantially greater in predominantly minority as compared to non-minority areas.

Further, the language problem detailed in our first finding exacerbates the caseload assignment system, in that the task of determining intake eligibility for Spanish-speaking persons is substantially more difficult than for English-speaking persons, and in that the use of translators reduced the actual amount of communication by at least 50%. The utilization of a system in which the allocation of staff time is based on the number of cases as opposed to the number

of persons or client problems has resulted in the provision of inferior services to clients in predominantly minority areas. Additionally, data revealed that under the policies of the Los Angeles County Department of Social Services, district directors could not adjust the requirements for new staff (additional staff positions) based on the number of persons or the number of client problems or on the number of potential cases, persons, or client problems existing within the district but unserved by the district office. This policy acts to compound the provision of inferior services to minority clients based on the fixed caseloads method discussed above.

Our review of the eight county welfare systems referred to above revealed that the location of district offices and sub-offices has, in many instances, resulted in a disproportionately heavy transportation/access burden on minority as compared with nonminority clients and potential clients. In order that the location of district offices and sub-offices not have the effect of defeating or substantially impairing the accomplishment of the objectives of the program (including access to enrollment and knowledge of program benefits) as respects minority persons, we believe that county offices must carefully analyze the impact of the location of current offices and any new district offices or sub-offices (or relocation of current offices or sub-offices) in terms of access by minority and potential clients. In addition, we believe county offices should prepare and submit to the California Department of Social Welfare a report setting forth such an analysis which would be maintained in the files of that agency for an indefinite period of time.

As you will have noted already, our review concentrated on the difficulties experienced by the Spanish-speaking client, with references made in less systematic fashion to Asians and Blacks. The complaints filed with us required us to address the issue of discrimination against Spanish-speaking clients; problems encountered by other minorities were revealed through the same data, and are pointed out here so that you may have a fuller picture of our findings.

Because we know that you share our concern not only for the compliance of the various county departments of social welfare with the requirements of Title VI of the Civil Rights Act, but also with the basic issues related to the delivery of services to minorities raised in the findings set forth above, we were pleased to learn during our September 5 meeting of your current effort to develop a statewide plan to improve client services (particularly with respect to client communication) in the county welfare offices. We recognize that the data and other information which has formed the basis for our findings may be somewhat dated and that subsequent actions at both the county and state levels, such as those outlined in your letter of September 19, may have already contributed significantly to the attainment of the comprehensive client service program contemplated by this letter. From our discussions with you, we anticipate that both the thrust and the specific elements of the state-wide plan will be adequate to correct the deficiencies identified herein. We will appreciate the opportunity to review the Plan currently under development within the next 90 days. Let me renew our offer of immediate assistance with regard to the preparation and design of appropriate elements of the Plan, more specifically, those provisions relating to:

1. The provision of services to Spanish-speaking and non-English-speaking Asian eligibility and social service clients and potential clients by bilingual, culturally aware client contact personnel.

2. The allocation of staff and caseloads on the basis of the number of clients (client service needs) rather than on the number of cases.

3. The preparation of written reports analyzing the impact of the location (or relocation) of county offices on the access to such offices of minority clients and potential clients.

During the course of our review, we became aware of the significant efforts currently underway on a county-wide basis in Santa Clara County to correct many of the deficiencies identified in this letter. These efforts and those in Los Angeles and San Bernadino Counties cited in your September 19 letter as well as our discussions with you and members of your staff, lead us to believe that through aggressive leadership at the state and county level a substantial improvement in the delivery of services to such clients can be achieved.

Sincerely yours,

PETER E. HOLMES,
Director, Office for Civil Rights.

List of 26 counties for which basic caseload data was obtained: Butte; Colusa; Contra Costa; El Dorado; Glenn; Imperial; Inyo; Kern; Kings; Lassen Madera; Modoc; Placer; Plumas; Sacramento; San Benito; San Bernadino; Santa Cruz; Siskiyou; Stanislaus; Sutter; Tehema; Tuolumne; Ventura; Yolo; and Yuba.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
GOVERNMENT CENTER,
Boston, Mass., 31 de agosto de 1973.

SR. NICOLAS NORTON,
Comisionado, Departmento Estatal de Bienestar, Estado de Connecticut, Hartford, Conn.

APRECIADO SR. NORTON: Déjeme expresarle mi agradecimiento por la cortesia extendida por Sra. Carolina Packard y otros miembros del Departmento durante nuestras reuniones con representantes de el Departamento el dia 18 de junio de 1973 y en fechas subsiguientes. Déjeme tambien expresarles mi agradecimiento por la cortesia y cooperación extendida por el personal en cada una de las oficinas de distrito durante nuestra inspección de las operaciones estatales en general. Su asistencia al facilitarnos la compliación de información localizada centralmente en relación con (Vistas Imparciales, Control de Calidad, y Fraude) e información almacenada en la computadora es muy apreciada.

Como usted bien sabe, quejas fueron enviades al Administrador de la Oficina de Servicios Sociales y Rehabilitación en abril de 1972 alegando que el Departamento de Bienestar Público de Estado de Connecticut y sus oficinas de distrito no estaban proveyendo servicos iguales a los clientes hispano-parlantes y clientes potenciales basado en origen nacional. En carta fechada el 9 de noviembre de 1972 de el Señor José P. Mirabella, Comisionado Regional, de SRS, a el Sr. Henry C. White los resultados de una investigación hecha conjuntamente entre la oficina Regional de SRS y la oficina Regional de Derechos Civiles (OCR) en Boston fueron hechas accesibles al Departmento Estatal de Bienestar Público.

En esta carta, el Sr. Mirabella informaba que la oficina de Derechos Civiles habia expresado seria preocupación en que los hechos revelades por la investigación eran indicativos de un estado de asuntos inconsistentes con los requisitos del Título VI de la ley de Derechos Civiles de 1964. La carta continúa citando ejemplos específicos de el fracaso de el departamento en proveer services ó la provisión de servicios inferiores a clientes hispano-parlantes como resultado de el fracaso del personal haciendo contacto con los clientes de comunicarse efectivamente con estos clientes. La carta tambien tenía preguntas a cerca de el fracaso de el Departamento en hacer accesible oficiales de Vistas Imparciales hispano-parlantes y una traducción palabra-por-palabra (comparada con un resumen) de las declaraciones hechas por los clientes. Más aún, la carta nota que la mayoria de las formas usadas por el Departamento no estaban imprimidas en Inglés y Español, situación que entendemos ha empezado a remediarse recientemente.

El 2 de mayo de 1973, miembros del personal de nuestra oficina se reunieron con miembros del personal de su oficina para enicíar una inspección activa de las operaciones del Departamento bajo el Título VI.

Otras reuniones subsiguientes se llevaron a cabo el 18 de junio, el 22 de junio y el 20 de julio de 1973. Ya hemos completado nuestra investigación bajo el Título VI de la ley de Derechos Civiles de los asuntos presentados por los querellantes. Esta carta presenta un resumen de nuestros descubrimientos y nuestras conclusiones relacionadas con dichos asuntos.

El Título VI y el Reglamento Departamental, 45 CFR Parte 80 (copia del cual usted fue provisto), prohibe la descriminación a causa de raza, color, u origen nacional en contra de recipientes de asistencia financiera federal. El Reglamento provee que ninguna persona será descriminada a causa de su raza, color u origen nacional será excluido de participar en, ó será negado los beneficios de, ó será sujeto a la provisión de servicios en una forma descriminadora en la operación de culaquier programa que este recibiendo ayuda financiera federal. Más específicamente, el Reglamento prohibe la operación de cualquier programa en tal manera que tenga el "efecto de someter individuos a descriminación a causa de su raza, color u origen nacional o [tiene] el efecto de frustrar o impedir substancialmente el llevar a cabo los objetivos de el programa como respecta a individuos de una raza particular, color, u origen nacional." 45 CFR 80.3(b)(2)

Investigaciones fueron conducidas por miembros del personal de nuestras oficinas en la Región y en Washington en la oficina central de el Departamento, cada una de las siete oficinas de distrito, y en el Departamento Estatal de Per-

sonal en Hartford. Durante estas investigaciones, un gran número de entrevistas con empleados del departmento, clientes, y otras personas interesadas de la comunidad tuvieron lugar.

Además de esto, hemos revisado un sinnúmero de expedientes e informes mantenidos por el Departamento Estatal de Bienestar, incluyendo, pero no limitandose a las listas de pago por distritos, número de casos de niños y el número de casos bajo los Servicios Protectivos del Departamento de Bienestar (en todos los distritos); expedientes de caso de Vistas Imparciales y el resumen de todos los casos durante el periodo de julio a diciembre de 1972; hojas de trabajo en el Departamento de Control de la Calidad durante el periodo de enero a junio de 1972; Informes Mensuales (mayo de 1973) de familias y niños atendidos; Informe de Aplicaciones e Informe de los casos activos para cada una de las oficinas de distrito; lista de los empleados hispano-parlantes preparada por el Departamento Estatal de Bienestar (abril 27, 1973) y varios informes sometidos por el Departamento a SRS durante 1972 y 1973. A menos que así se indique, todo el resto de la información formando la base para las conclusiones presentadas en esta carta fueron obtenidas de fuentes dentro de su Departamento.

A base de esta información hemos concluído que el Departamento de Bienestar del Estado de Connecticut no está en acuerdo con el Título VI de la ley de Derechos Civiles de 1964, por las siguientes razones:

1. Personas que poseen apellidos hispanos están siendo descriminados en el rendimiento do los beneficios de asistencia pública y servicios sociales por causa de su origen nacional. Porque el idioma y la cultura de estas personas, el conocimiento limitado de el idioma inglés, y el fracaso de el Departamento de Bienestar Estatal en tomar en consideración adecuadamente estas carasterésticas, dichas personas con frecuencia, reciben tratamiento y servicios inferiores. Además de esto, el fracaso del Departamento de emplear suficiente personal bilingue que asegure tratamiento igual para los clientes hispano-parlantes actualmente recibiendo ayuda es aumentado por el fracaso consistente de las oficinas de distrito en utilizar al máximo el personal bilingue actualmente en el departamento para disminuir el número de clientes hispano-parlantes que no son atendidos.

2. La práctica actual de las oficinas de Distrito de poner una cantidad igual del tiempo del personal profesional en servicios sociales en cada oficina de distrito sin tomar en consideración el número de personas por caso y el número de servicios necesitados por cada persona, resultando en una reducción substancial en el tiempo promedio invertido por cada problema de cada cliente de grupos minoritarios comparado con los clientes de grupos no minoritarios.

Con relación al primer punto presentado arriba, nuestra investigación indica que varias de las oficinas de distrito de el Departamento estan fallando en el uso de personal cultural y linguísticamente competente para servir a clientes hispano-parlantes potenciales o ya elistados. Una revisión de la información de censo en su cuarto cotejo de 1970 e informes de Control de Calidad, tambien como numerosas entrevistas con empleados del Departamento, representantes de grupos y locales, La Comisión de Relaciones Humanas de Connecticut y grupos organizaciones de la comunidad establece que un porciento substancios de todas las personas con apellidos hispanos en el estado hablan Español, no Inglés, como el idioma regular de comunicación. Como está usado en esta carta, el término hispano-parlante se refiere a personas que usan el Español, como su primer idioma para la comunicación.

Analisis de la información obtenida durante la investigación reveló que en las oficinas de distrito un número substancial de hispano-parlantes con casos de eligibilidad y servicios sociales no reciben servicios de un trabajador bilingue o intérprete provisto por la agencia.

En la oficina de Distrito I (Hartford) un total de 3,352 casos de asistencia pública hispano-parlantes están registrados en los casos de pagos por ayuda. La lista de empleados hispano-parlantes del Departamento para abril 27 de 1973 indicaba que 9 empleados hispano-parlantes están asignados a la oficina de la calle Principal (Main) (que da servicios virtualmente a todos los clientes de asistencia pública de habla hispana en el distrito), 2 empleados de habla hispana están asignados a la oficina de Manchester, 5 empleados hispano-parlantes están asignados a la oficina de la Avenida Asilo (Asylum Avenue) (eligibilidad para boletos de alimentos, actividades interinas, recursos teléfono y unidades para la revisión de pagos), y 2 trabajadores hispano-parlantes en la unidad de Servicios Protectores de la oficina de la Calle Barbour. De las 9 personas asignadas a la

oficina de la Calle Principal, la lista informa que ellos incluyen 2 profesionales: 1 trabajador de Caso I y 1 Técnico de Eligibilidad III, 2 Ayudantes Domésticas, 3 intérpretes, 1 recepcionista y 1 Ayudante de Beneficencia.

Entrevistas en Español llevadas a cabo en esta oficina revelan que las 2 Asistentes Domésticas son fluentes en Español pero con frecuencia están asignadas fuera de la oficina. Ninguna de los otros 2 profesionales asignados a la oficina de la calle Principal parecen poseer suficiente fluencia en Español para llevar a cabo una conversación sencilla con un cliente hispano-parlante. La recepcionista puede comunicar solamente direcciones sencillas. Solamente 4 no-profesionales (3 intérpretes y una Ayudante de Bienestar) están accesibles para prestar servicios a cualquier cliente hispano-parlante o cliente potencial. Mientras estas persons están haciendo un esfuerzo muy diligente para servir como traductores a tantos clientes como les es posible, ninguna de las 3000+ clientes de asistencia pública hispano-parlantes actualmente registrados reciben los servicios de un profesional bilingue y la gran mayoría de estos clientes no pueden no siquiera ser provistos de los servicios de un traductor or intérprete.

Mientras uno de los dos profesionales "hispano-parlantes" asignados a la oficina de Manchester es fluente en Español, empleados de esa oficina informaron que tienen muy pocos casos de clientes con apellidos hispanos. En la oficina de la Avenida Asilo, de los dos profesionales "hispano-parlantes", uno es fluente en Español pero trabaja en la unidad encargada de la revisión de ingresos (Actividad Interina) en vez de en la unidad de eligibilidad de entrada. Los dos "hispano-parlantes" asignados a la oficina de la calle Barbour son fluentes en Español pero empleados estatales en dicho oficina indicaron que por lo menos 4 ó 5 profesionales son necesarios para servir adecuadamente al número de clientes hispano-parlantes actualmente registrados.

Una investigación similar de la capacidad para servir a los clientes fue llevada a cabo en cada una de las otras 6 oficinas de distrito. En el Distrito II (New Haven), III (Bridgeport), VI (Waterbury), and VII (Middletown) donde un número de 500 a 2,218 clientes de asistencia pública hispano-parlantes registrados actualmente el mismo patron de incapacidad para rendir servicios adecuados a los clientes existe. En el Distrito VI, por ejemplo solamente un interprete hispanoparlante está disponible para prestar servicios a 523 clientes hispano-parlantes recibiendo pagos de asistencia y 279 casos de servicios sociales para clientes hispano-parlantes. La falta de capacidad para prestar servicios a los clientes es particularmente evidente cuando se compara con el límite de 60 casos activos para Servicios Preventiros y Servicios a Niños y 30 casos activos para Servicios Protectovos. Nuestra investigacion indicó que el primero de junio fueron registrados 112 casos de Servicios Protectores con clientes hispano-parlantes, 48 casos de Servicios de Niños y 116 casos de Servicios Protectores tambien hispanos.

Ninguna de las oficinas de distrito con un número apreciable de clientes con apellidos hispanos demostró la capacidad, en términos de personal bilingue y bicultural para prestar servicios a clientes hispano-parlantes actualmente registrados y comunicarse con clientes en eligibilidad y servicios sociales.

Aunque, requerido por esta oficina repetidas veces, información relacionada con el idioma principal y necesidades de servicio a clientes y clientes potenciales de origen Italiano, Francés, o Polaco la misma no ha sido recopilada o informada a nosotros por el Departmento Estatal de Bienestar Público. Una revisión de la informacíon de el censo de 1970, cuarto cotejo, indica que un número más significante de personas cuyos habilidades idiomáticos estan en estos idiomas debian estar representadas en el número de casos actualmente registrados.

Un analisis del total de casos que su Departamento ha provisto domuestra una baja-representación de clientes con apellidos hispanos recibiendo servicios sociales de el Departmento comparados con el total de casos actualmente recibiendo pagos de asistencia e información relevante sobre la población pobre. Por ejemplo, en la oficina de Distrito III (Bridgeport) en mayo 31 de 1973 las familias con apellidos hispanos constituian aproximadamente 23% del total de casos en AFDC y solamente 16% del total de casos de Servicios Preventivos, 10% del total de casos en Servicios Protectores y 12% del total de casos en Servicios para Niños. Disparidades similares existen en otras oficinas de distrito sirviendo un número apreciable de clientes con apellidos hispanos.

Entrevistas revelan que esta disparidad se atribuye por lo menos en parte a la falta de abilidad del personal en servicios sociales, eligibilidad y actividades interinas para comunicarse en Español y como consecuencia la interrupción

de comunicación ocurre en todos los niveles de contacto entre las oficinas de distrito y clientes potenciales de servicios sociales de habla hispana.

El fracaso de las oficinas de distrito para proveer personal de contacto inicial linguísticamente competente (operadores de teléfono, recepcionistas y personal de otros unidides) con frecuencia resulta en que clientes potenciales hispano-parlantes reciben trantamiento marcadamente diferente a otros clientes. A los clientes hispano-americanos con frecuencia se les manda a volver otro dia, lo que impone más tardanza, más visitas a las oficinas del departamento y como resultado más problemas de cuidado de niños, transportación, y gastos. Con frecuencia a los clientes hispano-parlantes se les dice tambien que vuelvan con un muchacho o un vecino que pueda traducir, por lo tanto impidiendo que ellos regresen por una repugnancia que se entiende, o negativa a decirle a muchachos, vecinos, o amistades información privada que el Departmento de Bienestar por su propio criterio considera muy personal y confidencial. Los clientes hispano-parlantes frecuentemente esperan largos periodos de tiempo hasta que se pueda localizar un traductor, por lo tanto impidiendo el registro o causando contratiempos sufridos por clientes de grupos no-minoritarios. En el contacto inicial entre el cliente potencial y el departamento de bienestar, la barrera del idioma ha causado una interrupción en la comunicación relacionada con eligibilidad general para benificios y los procedimientos para registración que ha impedido que clientes hispano-parlantes se registren para beneficiós a los cuales están destinados a recibir por ley.

La falta de abilidad de los trabajadores de eligibilidad no hispano-parlantes par acomunicarse con clientes de hable hispana ha resultado en (1) fracaso por parte de trabajadores de eligibilidad para procesar aplicaciones a tiempo, explicar servicios financieros disponsibles, hacer determinaciones apropriades de eligibilidad y calcular niveles propios de asistencia; (2) el fracaso de la unidad de actividad interina para hacer ajustes necesarios o alocaciones por "acontecimientos catastróficos" que tienen estos clientes cuandos circumstancias cambiantes permiten o requieren dichos ajustes o alocaciones; (3) denegación innecesaria, reducción de beneficios y terminación de asistencia a clientes hispano-parlantes; y (4) la exclusión de muchos clientos hispano-parlantes elegibles de los servicios sociales por la inabilidad de los trabajadores sociales para identificar las necesidades de servicios sociales de los mismos.

Más aún, el fracaso de los trabajadores sociales no hispano-parlantes de entender los problemas importantes relacionados con el bienestar de muchos de los clientes hispano-parlantes ha resultado en el fracaso de dicho cliente a recibir los servicios sociales necesarios. Como en el caso del trabajador que tiene el contacto inicial con el cliente usando niños o vecinos del cliente para determinar eligibilidad y el trabajador de servicio social que no habla español y su traduccion tiene el efecto de frustrar o deteriorar substancialmente los objectivos de el programa con respecto a muchos clientes hispano-parlantes.

Nosotros hemos concluido que el fracaso en proveer un número adecuado de trabajadores de hable hispana en todos las areas antes mencionadas ha resultado en el tratamiento descriminatorio a los clientes hispano-parlantes.

Nuestra revisión de las hojas de trabajo de Control de Calidad y los resúmenes de las Vistas Equitativas demuestran consistentemente una proporción más alta en la computación de beneficios y determinación de errores de eligibilidad en los casos de clientes hispano-parlantes que en la de clientes anglos. Por ejemplo, con relación a los programas de adulto, la muestra activa del expediente de Control de Calidad demostró un 67% en la proporción de errores para personas de apellidos hispanos comparada con los clientes anglos. Comparados con la clientes Anglos, los clientes de apellidos hispanos tenía substancialmente una proporción más alta de bajos-pagos y una proporción significantemente atol en sobrepagos. De los 96 casos revisados de Vistas Imparciales a clientes de apellidos hispanos (en el periodo de julio a diciembre de 1972), 33 (34% de total de casos) claramente indicaban que el problema de interrupción de comunicación (frecuentemente no solamente relacionado con la acción disputada por el Departamento sino tambien al proceso de Vistas Imparciales en si) era el centro de la disputa de las Vistas Equitativas. Además de esto 48 casos (50% de el total de casos) el record de un caso fuertemente sugería que los problemas de comunicación con el cliente habían contribuído significativamente a una computación impropria de beneficios o a la determinación de eligibilidad.

En uno de los casos revisados, el oficial de Vista Equitativa declaró que la mayor parte de la dificultad de este caso parecia haber surgido por el fracaso

del apelante y su familia en comunicarse adecuadamente con el Departamento. Ell continuó poniendo la culpa de la interrupción en la comunicación en el cliente (en vez de en el Departamento) diciendo "Aunque se reconoce que es un gran obstáculo para la apelante comunicarse con su conocimiento inadecuado del Inglés, por lo menos ella tiene dos niños que pueden comunicarse en Inglés quienes pudieron asegurarse de que sus problemas y necesidades eran conocidos." Otro caso investigado documenta acciones adversas tomadas por el departamento como resultado de una interrupción en la comunicación. En varios casos, a clientes hispano-parlantes totalmente lisiados les fueron negados beneficios por que le pareja de revision medica no-bilinque no pudo verificar hechos criticos, particularmente historiales clinicos. A muchos clientes hispano-parlantes se les nego beneficios proque, por ejemplo, trabajadores de eligibitdad no pudieron obtener información coherente de las necesidades del cliente. Como resultado de comunicaciones orales o escritas, por ejemplo, trabajadores no entendieron el número de cuartos en el apartamento del cliente, la identidad del vendedor de muebles, el hecho de que al cliente lo iban a deshauciar y tenia que mudarse, etc.

Nuestra investigación de los oficinas de distrito tambien reveló que muy poco esfuerzo se habia hecho para alocar personal hispanoparlante actualmente disponible para reducir lo más posible el número de casos de clientes hispano-parlantes no atendidos por personal bilingue. Entrevistas con la mayoría de la empleados hispano-parlantes reveló que muy poco o ningùn esfuerzo se ha hecho para asignar dichos trabajadores a clientes de servicios sociales de habla hispana. (75% de el total de casos regulares por la dificultad envuelta en tratar con clientes de habla hispana solamente.) Neustra revisión indica que un número significante de clientes hispano-parlantes de los que están siendo atendidos acutalmente podria servirse a través de una relocatión de el personal bilinique existente actualmente. Muchas de las personas nombrados por el Departamento Estatal de Bienestar en la lista de abril 27, 1973 indicaron que sus abilidades linguisticas eran muy pocas veces utilizados o utilizados solamente a cuando clientes hispanoparlantes eran asigados al azar al total número de sus casos.

En oficinas de distrito serviendo un número considerable de clientes hispano-parlantes, donde el personal de habla hispano no esta asignado ó accesible a cada unidad identificable en dichas oficinas (teléfono, recepción, eligibilidad, actividad intereria, boletos de alimentos, unidad recurso, y cada uno de los servicios sociales categoricos y unidades de WIN), hay una denegación ilegal de servicios a personas hispano-parlantes. Nuestra preocupación sobre la actual falta de servicios a clientes administrados por personal biiingue es aumentado por el crecimiento rapído en el número de clientes potenciales de habla hispana a trevés del estado.

Por medio de información compilada durante nuestra encuesta, hemos concluído que, en la mayoría de las oficinas de distrito, la ausencia de entrenamiento para despertar conciencia cultural provista por la agencia para personal de contacto con los clientes y supervisores, ha resultado en un nivel significativamente bajo de entendemiento entre el personal de las características unicas de los clientes hispano-parlantes—tales como creencias religiosas, vida familiar, concepto propio, y otras areas similares—que el nivel de entendimento de el personal en las mismas areas con relación a los clientes no-hispano-parlantes.

Como sabemos, ústed comprenderá, que el entendimiento del comportamiento del cliente tiene un importante y legítimo peso en cómo y sí se deben dar los beneficios de bienestar. La falta de dicho entendimiento do parte de algunos de los miembros del personal de los oficinas fracaso actual en llevar a cabo en forma diferente, beneficios a la comunidad hispano-parlante. Un episodio particularmente alarmante revelando no solamente falta de conocimiento y sensitividad sino tambien una abierta falta de interés hacia las necesidades de los clientes hispano-parlantes, se puede notar cuando un alto oficial del Departamento durante una discusión con dos miembros de nuestro personal en la oficiana Central en Hartford, dicho oficial de lestado abiertamente derogá a los miembros de grupos minoritarios (en general) en una forma que creó cierta preocupación de neustra parte hacia la dedicación de ese oficial hacia el concepto de igualdad de oportunidades. En contraste directo, neustra discusión con otras oficiales indicó un interés genuino por los clientes y los necesidades de los mismos. Neustra preocupación es que las actitudes de una persona en una posición clave puede deschacer lo esfurezos conciensudos muchas otros para asegurar un redimiento de servicios libre de descriminacion cultural y racial.

Con relación al segundo punto hallado y presentada anteriormente, nuestra investigación indica que como resultado de el uso del método de un número de casos fijos (por el cual un número de casos fijos (por el cual un número fijo de casos es determinado para cada trabajador social sin tomar en consideración el número de personas por caso y el número de servicios necesitados por persona) ha ocurrido una reducción substancial en el tiempo dedicado a cada cliente y a cada problema de clientes minoritarios comparada con otros clientes no-minoritarios. Basado en la información compilada durante nuestra investigación, incluyendo entrevistas con Personal del Departamento, la interrupción en la comunicacion detallada en nuestro primer punto presentado parence aumetar el probelema creado por el sistema actual de asignar casos en total, en el que el uso de traductores reduce la cantidad actual de comunicación dentro de un periodo de tiempo dada por lo menos up 50%. Nuestra investigación indicó que el número promedio de personas por caso no-minoritario, y que el número do problemas de servicio por cliente por cada caso minoritario en ambos servicios de eligibilidad y servicios sociales provistos por la agencia es significativamente mayor que el número de promlemas de servicio en clientes de grupos no-minoritarios por caso. Por lo tanta, la utilización de un sistema en el que la alocación del tiempo del personal está basado en el número de casos y no en el número de promlemas por cliente, ha resultado en la provisión de servicios inferiores a clientes minoritarios en violocián al Título VI de la ley de Derechos Civiles de 1964.

Como ya usted habrá notado, nuestra investigación ha sido concentrada en las dificultades experimentadas por clientes de habla hispana. Las querellas sometidas a nosotros requerian que nos refirieramos al punto relacionado a los servicios rendidos a clientes hispano-parlantes. Sin embargo, en el curso de la investigación las preguntas hechas y los puntos hallados con relación a las prácticas actuales del departamento y como ellas tienden a tener un impacto o no en otros grupos minoritarios fueron identificadas y son expresadas aquí para que usted pueda tener un cuadro más amplio de estos puntos.

En este sentido debemos renovar nuestro petición de que el Departamento compile y nos someta información a cerca de la localización y número de clientes por categoría de programa cuyo idioma principal y habilidades son Italiano, Francés o Polaco. Además, requerimos y no hemos recibido una lista del personal de la agencia por oficina de distrito y categoría de trabajo que posea fluencia oral en estos idiomas.

Porque sabemos que usted comparte nuestro interés y preocupación no solamente porque el Departamento Estatal de Beneficencia funcione de acuerdo con los requisitos del Título VI de la ley de Derechos Civiles pero tambien con los puntos basícos relacionades con la rendición de servicios a grupos minoritarios presentada en los puntos hallados anterinmente, nosotros anticipamos su cooperación en el desarrollo de un plan estatal por el cual acción apropiada será tomada por el estado para corregir las deficiencias identificadas. Nosotros tenemos que requerir que este plan sea preparado y sometido a nosotros dentro de 90 dias. Nosotros estamos preparados para darles ayuda immediata con relación a futuras discusiones sobre los problemas presentados y la preparación y diseño de remedios apropiados. Para que el plan llene los requisitos establecidos por el Título VI de la ley de Derechos Civiles, debe enumerar los pasos específicos que va a seguír para proveer:

1. Servicios bilingues y biculturales (incluyendo los contactos básicos con los clientes) a clientes hispano-parlantes en todas las areas de servicio, incluyendo programas para identificar y proveer asistencia y servicios sociales a clientes elegibles hispano-parlantes quienes no han recibido dichos servicios o asisteneia.
2. Alocación de personal y número de casos basado en las necesidades de los clientes en vez de en el número de casos.

Durante el curso de nuestra investigación, pudimos estar conciente de el esfuerzo significante de muchos empleados (en mucho casos, individualmente) para corregir muchas de las deficiencias identificadas en esta carta. Estos esfuerzos nos llevaron a creer que a través de un liderato agresivo en el nivel estatal los servicios prestados a clientes podrían mejorarse y llevarse a cabo.

Sinceramente,

JOHN G. BYNOE,
Director, Regional de Derechos Civiles.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
GOVERNMENT CENTER,
Boston, Mass., December 28, 1973.

Mr. NICHOLAS NORTON,
Commissioner, State Welfare Department, State of Connecticut, Hartford, Conn.

DEAR COMMISSIONER NORTON: Thank you for your letter of November 26, in which you advised us of the actions the Connecticut Welfare Department plans to take to comply with Title VI of the Civil Rights Act of 1964. We would like to thank you for the courtesy which has characterized our relationship with you and your staff during the last few months.

Your letter sets out eight areas in which you are making or will make constructive changes. These areas of proposed action represent a significant step by the Department in the development of the comprehensive client service plan which we requested in our letter of August 31. However, while we believe your letter constitutes a partial outline for a comprehensive plan, additional, and in some cases, more specific commitments must be made before we can conclude that your agency is currently in compliance with Title VI.

As you know, both HEW and the State Welfare Department are defendants in the pending suit, *Sanchez* v. *Norton*, et al. The judge has ordered that unless an acceptable compliance plan is worked out among the parties by January 28, 1974, a trial will begin at the beginning of February. It would, of course, be in the best interests of both of our agencies to approach the trial with an acceptable Title VI compliance plan in hand.

As you will recall, during our meetings in Hartford on September 25, 1973, and October 11, 1973, at the request of state officials we outlined, at length, a suggested approach to the development of a comprehensive plan which would meet the requirements of Title VI of the Civil Rights Act of 1964.

Your November 26 letter appears to follow the general outline presented in our discussion but lacks both completeness and specificity in several important areas. In order to assist you in expeditiously completing a revision and expansion of the outline plan presented in your November 26 letter, we have enclosed a written outline of the approach discussed in Hartford. This outline together with the comments set forth below should permit the State Welfare Department to appropriately revise and expand the November 26 outline plan:

1. In order to meet the current litigation schedule we must receive the final plan (as revised and expanded) no later than January 15, 1973. Accordingly, all projected activity completion dates with regard to the identification of the essential elements of the plan (per our attached "Suggested Approach" and/or indicated in your November 26 letter) must be completed prior to that date.

2. The task outlined in Subsection 2 of the November 26 letter ("Determination of Existing Capability") and Step 2 of the Suggested Approach (attached) appears to have been already completed. You submitted a list of Spanish-speaking staff as of April 27, 1973, to us and we subsequently updated and corrected certain entries on the list and made this information available to you in writing during our meeting in Hartford on October 11, 1973. Any additional updating due to new staff or changes in staff assignment which have occurred since that date would appear to be easy to accomplish.

3. The names, positions classification, district or subdistrict—office location of all Spanish-speaking staff who will be relocated, should be indicated together with their new position classification and office location, and the number of Spanish-speaking clients each will be serving.

4. The mthod that will be used in each district office to allocate Spanish-speaking clients to Spanish-speaking staff should be described in detail.

5. Where Spanish-speaking staff will be available in offices with small Spanish-speaking caseloads, their specific job assignments, and the number of clients each will serve should be indicated and a policy as to how such Spanish-speaking staff will assist other non-Spanish-speaking staff in client service tasks where effective oral communication is essential must be included. Your program to locate and hire additional interpreters by May 30, 1974, must be thought of as an interim step toward the development of a professional staff with bilingual capacity.

6. A specific commitment must be made to provide professional services to Spanish-speaking clients by employing Spanish-speaking personnel in professional and non-professional public contact positions in numbers proportional

to your Spanish-speaking caseload. We further expect that the size of the Spanish-speaking caseload and concomitant proportions of personnel will be reassessed periodically. In our view, for compliance with Title VI, your department must formulate procedures to implement this commitment within six (6) months for all non-professional public contact staff and eighteen (18) months for professional social workers, by which times all necessary recruiting, hiring, career development, language, or any other method you decide to utilize would be completed and the personnel involved would be in place.

During the period in which the above staffing plan is being implemented, we anticipate a proportional number of interpreters or translators would be used to provide essential communications. However, their use would be limited to an interim measure until professional staffing was completed. Career development programs which moved interpreters and translators into professional roles would, of course, be satisfactory in meeting the needs for more bilingual professional staff.

The personnel changes necessitated by compliance with Title VI are the responsibility of the Connecticut Welfare Department as recipient of Federal assistance. While we recognize that the procedures of the State Personnel Department must be taken into account, they cannot ultimately be considered a legal impediment to compliance with Title VI.

A potential method for compliance flows from an analysis of labor turnover in the Connecticut Welfare Department. In reviewing your submitted Form SRSNCSS Form 113T, dated August 13, 1973, we note that there were 472 separations of personnel and 348 accessions for Fiscal Year 1973. Given this rate of turnover of personnel in the Connecticut Welfare Department, we think that one reasonable method for achieving compliance within an eighteen-month period without having to expand your present labor force is to fill 50 percent of your vacancies with Spanish-speaking personnel until proportional representation is achieved.

The number, position classifications, and district or subdistrict office locations for all these new Spanish-speaking staff must be identified and a projection for each office must be made as to when such staff will be available and the manner by which such staff capability will be developed, e.g., new hires, career development, language training, etc.

7. A description of the cultural awareness programs being initiated and/or expanded by the State Welfare Department should be included.

The second finding our August 31 letter regarding the current social services caseload assignment system (the assignment of fixed caseloads based on the number of cases rather than the number of persons or client services needs) is not now before the court. A plan to eliminate the discriminatory impact of this system must be submitted and accepted before final overall Title VI compliance can be achieved. However, a March 15, 1974, deadline for submission of this element of the final plan will be acceptable because this matter is not before the court and because of the time and effort which will be required to develop a final plan which addresses the first finding of our August 31 letter (and the matter in contention before the Court) by January 15, 1974.

We are confident that an acceptable plan addressed to the first finding presented in our letter of August 31, 1973, can be finalized and submitted to us by the State Welfare Department by January 15, 1974, which will lead to a substantial improvement in the delivery of services to non-English-speaking clients in Connecticut.

Sincerely,

JOHN G. BYNOE,
Director, Office for Civil Rights, Region I.

Enclosure.

SUGGESTED APPROACH FOR THE DEVELOPMENT OF A VOLUNTARY TITLE VI CLIENT SERVICE PLAN

STEP 1

For each District office and sub-office identify (a) the current number of Spanish-surnamed and total clients for each of the following programs, and (b) the % of total new clients during the last month(s) represented by new Spanish-surnamed clients:

Income maintenance

(1) Old Age Assistance.

(2) Aid to Blind.
(3) Aid to Families with Dependent Children.
(4) Aid to Disabled.
(5) Title XIX—Medicaid.
(6) Food Stamps.

Social services

(7) WIN Program.
(8) Protective Services.
(9) Preventive Services.
(10) Children's Services.
(11) Adult Services.

For Spanish-surnamed clients in each office, estimate the % of clients whose primary language skills are in Spanish.

STEP 2

For each District office and sub-office identify the current number of Spanish-speaking:

(1) Receptionists.
(2) Walk-In Unit Workers.
(3) Intake Eligibility Workers (including Food Stamps).
(4) Telephone Unit Workers.
(5) Interim Activity Unit Workers.
(6) Resource Unit Workers.
(7) Protective Services Workers.
(8) Preventive Services Workers.
(9) Children's Services Workers.
(10) Adult Services Workers.
(11) WIN Program Workers.

and determine the number needed to effectively serve the current Spanish-speaking clientele in each program area with a bilingual professional worker (i.e., not including interpreters, case aides, supply clerks, etc.).

It is understood that outside of Districts I, II, III, VI, VII sufficient numbers of Spanish-speaking clients may not exist in each program area to warrant a separate staffing goal. In such cases the plan should identify the system that will be used to provide bilingual services to such clients. Further, the estimate of short-run bilingual client service needs for the Reception, Walk-In & Intake Eligibility units should be based on the current rate of Spanish-speaking applicants rather than the overall caseload composition.

STEP 3

Based on Steps 1 & 2, formulate and implement (a) over a specified period of years a staffing plan which will ensure that permanent Spanish-speaking professional staff are routinely available to communicate with and provide services directly to eligible Spanish-speaking clients, and (b) immediately, a staffing plan by which a maximum utilization of current bilingual professonal and non-professional staff will be made in order to ensure that Spanish-speaking persons are available to assist Spanish-speaking clients in attempting to communicate basic data and needs to the welfare offices and non-Spanish-speaking professional staff attempting to provide services to Spanish-speaking clients.

In the development of the long-range plan described in Part A, serious consideration should be given to a variety of actions which could be taken to increase the bilingual professional client service capability of the Department, including:

(1) Reassignment of current Spanish-speaking personnel to offices and service programs where the greatest need exists;

(2) Allocation or reallocation (wholly or predominately) of Spanish-speaking caseloads to Spanish-speaking staff;

(3) Upward mobility/career development programs for currently employed Spanish-speaking non-professional and lower level professional staff including interpreters and case aides;

(4) Language training programs for currently employed non-Spanish-speaking staff, particularly in areas where only simple conversational skills are needed;

(5) Employment of new Spanish-speaking professionals as vacancies permit supported by new job classifications which include a language skill requirement.

In the development of the short-range plan described in Part B, serious consideration should be given to points (1) and (2) above augmented by the necessity of maximizing the utilization of case aides and interpreters.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE FOR CIVIL RIGHTS,
San Francisco, Calif., January 18, 1974.

WILLIAM MAYER, M.D.,
Acting Director, Department of Health,
Sacramento, Calif.

DEAR DR. MAYER: Charged with assuring compliance with Title VI of the Civil Rights Act of 1964, our office has been engaged in the civil rights review of DHEW-funded mental health programs operated by the State Department of Health, and wishes now to provide you with a summary of findings and recommendations resulting from this review.

Title VI of the Cvil Rights Act of 1964 and the Departmental Regulation, 45 CFR Part 80, prohibit discrimination on the grounds of race, color, or national origin by recipients of Federal financial assistance. Specifically, the Regulation prohibits the operation of any such program in a manner which has the "effect of subjecting individuals to discrimination because of race, color, or natural origin or (has) the effect of defeating or substantially impairing the accomplishment of the objectives of the program as respect(s) individuals of a particular race, color or national origin." 45 CFR 80.3(b) (2).

Because it gives a positive phrasing to the Regulation in the field of mental health services, we cite also the NIMH Community Mental Health Center Policy and Standards manual, page 2–10:

Psychological accessibility

There are many psychological factors to be considered in making a community mental health center accessible. The center must psychologically encourage optimum, effective use. For example, the architecture and decor of the facilities should be inviting, comfortable and acceptable; existing facilities selected for use by a center should have a good image in the community; the name of the center should be acceptable to the entire population of the catchment area.

Program planners must take into consideration the psychological factors essential to the development and operation of a program that will promote utilization by all cultural, racial, socio-economic, and age groups in the catchment area.

Cultural accessibility

Within all catchment areas there may be a variety of cultural groups and subgroups. Centers must be culturally accessible to such groups if they are to serve the entire catchment area. Among the factors to be considered are the life style, language, and religious beliefs of the catchment area population and programs should be developed that reflect the heterogeneity of the population to be served.

In a letter of July 14, 1971, to Andrew G. Robertson, then Deputy Director of the State Department of Mental Hygiene, I called the Department's attention to various deficiencies in the implementation of its Title VI Methods of Administration. In my letter of July 14, 1971, I also requested statistics concerning the Department's staff and client population by ethnic groupings. Mr. Robertson replied on August 16 and November 10, 1971, kindly providing the requested statistics regarding clients, along with a revised "Fair Practices Policy"; and on February 14, 1972, he provided OCR with updated statistics regarding the staff.

In his letter of November 10, 1972, Mr. Robertson stated: "We are aware that our staff has not reached an optimum ethnic balance. Within the restraints of the State Civil Service System, we are actively recruiting minority persons so that no client is denied equal services due to cultural or language barriers between

the staff and our clients." The revised "Fair Practices Policy" which he provided my office is thorough and, if followed attentively, would seem to be a most useful means toward assuring Department-wide Title VI compliance.

EMPLOYEES HOLDING REGULAR FULL-TIME CONTINUING POSITIONS

Job categories	Total employees	Minority group employees			
		Negro	Oriental	American Indian	Spanish-surnamed American
Executive-managerial	303	4	6		1
Professional-technical	13,135	750	233	11	391
Auxiliary-aide	173	9	5	1	1
Clerical-office	1,764	43	51	1	47
Custodial-service	4,120	462	69	8	251
Total	19,495	1,268	364	21	691

TOTAL PATIENTS TREATED DURING FISCAL YEAR 1970-71

	Total patients	Negro	Oriental	American Indian	Spanish surnamed American
Mentally ill	19,336	1,140	319	75	1,177
Mentally retarded	61,207	8,063	948	327	4,404
Total	805,43	9,203	1,267	402	5,581

The data he provided shows that since 1969 the Department has increased substantially the number of minority group persons in its staff, and this in a time when the total work force was decreasing. However, as visible in the chart on the following page, the percentages of minority group persons employed and served by the Department are, in general, still substantially less than their percentage representation in the California population, i.e. Spanish surname 16%, Black 11%, Oriental 2.7%, and Native American .4%. Underrepresentation of minorities is especially notable in the higher echelons of Department staff, though absent in the cases of Black custodial workers and Black and Indian mentally retarded persons.

In order to examine the reasons for underrepresentation of minorities in the Department's service population, as well as to ascertain whether the "Fair Practices Policy" and the points covered in my letter of July 14, 1971, are being understood and implemented on the level of services, my office undertook, in late spring of last year, an on-site review of Napa State Hospital, the Orange County Department of Mental Health, Sacramento County Mental Health Services, and the San Francisco office of the Alternate Care Services Unit (ACSU), now the Community Services Section of the Mental Disabilities Program, California Department of Health. Mr. James Whitsell, then Assistant Deputy Director, Division of Administration, Department of Mental Hygiene, kindly gave us clearance to contact and visit these programs.

Findings

(1) In our review my staff did not encounter explicit, deliberate exclusion of persons from Mental Hygiene services on the grounds of race, color, or national origin.

(2) However, none of the programs reviewed acknowledged having received from the State agency instruction on civil rights in delivery of services. Napa State Hospital officials were able to cite their implementation of the Affirmative Action Plan received from Dr. James Stubblebine in August 1972, but did not recall State emphasis on Title VI concern for equal access to services. Thus in all programs reviewed, correctly or incorrectly, the Department's civil rights instruction has been perceived as directed toward encouraging an entirely laudable fairness toward a multi-ethnic labor pool rather than toward the cultural accessibility referred to by the NIMH guidelines.

The August 1972 Affirmative Action Program does state on page 3, "Each facility shall conduct social awareness programs designed to assist all employees to understand ethnic and cultural differences of various groups." Implementa-

tion of this provision clearly would have relevance for equal access to services, and so of course can hiring of disadvantaged and minority group persons, as demonstrated especially by the Orange County Department of Mental Health among programs we reviewed. However, our finding is that generally at the local level there is not yet adequate emphasis on or comprehension of the requirement of Title VI that federally supported *services* (as well as employment) be accessible equally to clients regardless of their race, color, or national origin.

(3) There are deficiencies in delivery of mental health services to minority group members, most demonstrably where a language other than English is required to establish rapport with clients. All programs we reviewed reported questionable procedures for communicating with the Spanish-speaking. Even the Santa Ana office in Orange County, the office which demonstrated the greatest Title VI sensitivity among the programs reviewed, has no Spanish-speaking receptionist, and the office's director states that Spanish-speaking clients approaching the agency must wait for the receptionist to "grab someone" on the staff who speaks Spanish and is available at the moment. (Santa Ana school officials report a Spanish-surname school population of about 35%, and Spanish is heard frequently in Orange County, for example, from kitchen workers in large hotels.) In Napa State Hospital we found that Spanish-speaking patients must often communicate with the institution through a bilingual fellow patient.

Naturally the Spanish-speaking are not the only ethnic minority or non-English-speaking group in California. However, they are almost never statistically insignificant, and thus provide a test for the Title VI sensitivity of service agencies. Since the Spanish-surname group is the largest minority in California, we consider inability to communicate in Spanish an important deficiency in any California service agency. Lack of Spanish-speaking staff able to achieve rapport with the principally Mexican American Spanish-speaking in California must diminish the Department's credibility and accessibility to this group, and may account for much of this group's underutilization of Mental Hygiene services.

With regard to Blacks, the Department's programs also face difficulties establishing credibility and accessibility of services. Orange County Department of Mental Health, alone of the programs we visited, has dealt energetically with this problem, and reports that it took Black staff a long period of time to convince the Black community that the mental health agency is not interested in using Blacks as "guinea pigs." Sacramento County seems, of the programs reviewed, to have the most serious deficiencies in this aspect of rapport with the community, and is also apparently the most deficient in services to the Spanish-speaking. Both Blacks and Spanish-surname persons "underutilize" Sacramento County Mental Health services, enrolling as clients in less than 50% of their strength in the community.

We find it inconsistent that Sacramento County describes its minority groups ("Blacks, Mexican Americans [Chicanos], and Asian Americans") as suffering more mental illness than the rest of the population, while stating in the same sentence of its program description that these groups "underutilize present services." Unless the agency is stating that it documents but does not treat mental illness of minority group persons, the judgment that minorities suffer more mental illness would seem to be based on something other than the agency's experience with the community.

Recommendations

Our recommendations for remedying what appears to be mutual ignorance and prejudice between minority groups and the general run of mental health programs can be summed up perhaps by the one recommendation to give the problem more attention and resources. We do offer the following more specific recommendations, however, in part as a means of conveying more of the information which we gathered through our review. We rely on your staff to develop other recommendations than those mentioned here.

(1) The Department and its vendors should emphasize its policy of recruiting members of minority groups to their staffs, but should do so with delivery of services in mind. For example, minority group potential employees who can offer the agency the most in rapport skills (e.g. fluent Spanish) should be given preference. This will be especially important in view of recommendation No. 2.

(2) The Department's programs and vendors should enlist all available resources to study and improve the relationship between mental health programs and minority groups so that what Sacramento County's program calls the "underutilization" of services by minorities will be in the smallest degree possible the result of ignorance and insensitivity on the part of the agencies. Locations and

names of facilities, waiting room atmosphere, and any other relevant aspect of the agency's work style should be examined with the help of minority staff, clients, and community representatives. This critical effort will hopefully be conducted in such a way as to provide in-service training on Title VI for all staff and a more meaningful role for community advisory groups.

(3) Staff, vendors and the general public should be reminded that the Department intends its services to be accessible and acceptable to all persons, regardless of our recognized national difficulties with intergroup ignorance and prejudice. Dissemination of the information that the Department intends to follow the letter and spirit of Title VI can, of course, occur in various forms. Public service announcements on the mass media and brochures can be quite useful. However, we note that Sacramento County has a program-description brochure in Spanish (translated by persons outside the agency), but has insufficient staff who can actually speak with Spanish-speaking clients. The brochure in effect promises what the agency cannot yet provide, namely, adequate communication in Spanish. If the brochure encouraged any Spanish-speaking persons who do not find someone at the agency to communicate with them to file a Title VI complaint, the brochure would be more complete, but it would probably also be clearer that the brochure is acting to produce more complaints than rapport.

(4) All programs and vendors should be cautioned against haphazard collection of ethnic data on clients. Accurate data will of course be indispensable as agencies try to measure their progress toward making services more accessible and acceptable to minority groups. We would like to note especially that Sacramento County keeps no ethnic data on clients served in two major subdivisions of the County which are served by agencies under contract with Sacramento County Mental Health Services. The County program has the obligation of monitoring Title VI compliance by its sub-contractors and must therefore maintain as close a check on their Title VI performance as it does on its own.

We realize that even with the implementation of these recommendations by the agencies, minority group persons may not necessarily avail themselves of mental hygiene services in the same proportion as the rest of the population. There will doubtless always be unanswered questions regarding cultural differences in defining and treating mental illness. But we are convinced that once the agencies understand better the different ethnic groups and their relationship to them, the agencies' services will improve, and misconceptions and barriers to service will be set aside.

We request that within 60 days you respond to our findings and recommendations with a plan for remedying the deficiencies in the Department's Title VI compliance which we have called to your attention. Meanwhile, my staff will be happy to make every effort to provide technical assistance and consultation should you request them.

In view of the reorganization of California public health, mental health and Medi-Cal programs, it is now necessary for your Department to draw up new Title VI Methods of Administration covering the State Department of Health. These Methods of Administration, as explicated in more detail in my letter to Mr. Robertson of July 14, 1971, should outline the following: (1) to whom (or what position) the Department will assign the responsibility for coordinating the State agency's implementation of Title VI; (2) the Department's system for disseminating Title VI information to staff, vendors and the general public; (3) the Department's method for assuring the Title VI compliance of vendors and its staff; (4) the Department's procedures for handling complaints of discrimination. We request that these new Methods of Administration be completed within 60 days also.

Sincerely,

FLOYD L. PIERCE,
Director, Office of Civil Rights, Region IX.

U.S. DISTRICT COURT,
DISTRICT OF NORTH DAKOTA,
Fargo, N. Dak., July 13, 1973.

Hon. JOHN V. TUNNEY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TUNNEY: The Bilingual Courts Act is an necessary bill, well addressed to the problem of persons handicapped by language disabilities. While the

Act will not affect the District of North Dakota, I appreciate the need to provide a means of adequate information to non-English speaking litigants.

North Dakota has a substantial Indian population with which the federal courts are in frequent contact. Most of the Chippewa and Sioux Indians in our state speak and understand English. On those few occasions where an interpreter is necessary or desired, there is no problem in obtaining one acceptable to both sides. In a criminal case, I have found that the defendant is more comfortable with a interpreter of his own choosing. It has been my experience that Indian interpreters are experienced and well qualified to convey to a litigant both federal procedures and Constitutional rights.

This experience reveals to me the necessity of S. 1724 in areas where the source of competent interpreters is limited, and the number of cases involving large numbers of non-English speaking is large.

Very truly yours,

PAUL BENSON.

CATHOLIC COMMUNITY SERVICES,
Colorado Springs, Colo., January 15, 1974.

Senator BURDICK,
Senate Judiciary Committee,
% U.S. Senate, Washington, D.C.

DEAR SENATOR BURDICK: We urge your favorable and immediate action on the Bilingual Courts Act (S. 1724) as amended.

We will be looking forward to your positive action on your part.

Sincerely in Christ,

Sister CLARITA TRUJILLO.

CATHOLIC CHARITIES, DIOCESE OF ROCKVILLE CENTRE,
Rockville Centre, N.Y., January 14, 1974

Re S. 1724, Mr. Tunney.

Hon. JAMES O. EASTLAND,
Chairman, Senate Committee on the Judiciary, U.S. Senate Building, Washington, D.C.

DEAR MR. EASTLAND: We would like to express our whole-hearted support of the Bilingual Courts Act which would provide by law translators for any defendant who does not speak or understand English sufficiently to proceed with testimony.

This long awaited measure will save many of our Puerto Rican citizens from injustices which exist presently.

Thank you.

Very truly yours,

FRANK GUERRERO, *Coordinator.*

THE CITY OF FORT WAYNE,
METROPOLITAN HUMAN RELATIONS COMMISSION,
Fort Wayne, Ind., January 10, 1974.

Senator BURDICK,
Russell Building,
Washington, D.C.

DEAR SENATOR BURDICK: The Fort Wayne Metropolitan Human Relations Commission recommends strongly that you take favorable and immediate action on the Bilingual Courts Act (S. 1724) as amended.

The staff of the Metropolitan Human Relations Commission has provided more than 200 hours of free translating service to non-English speaking persons facing action by the courts.

We have sponsored grants thru L.E.A.A. and several other governmental agencies to address this problem. It is heartening to see that the Senate is concerned about equal justice for all citizens and passage of this bill would insure that right.

Sincerely,

JIM GRAHAM,
Deputy Director.

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