

# ANNUAL REPORT

of the

AMERICAN BAR ASSOCIATION

Including Proceedings of the

ONE HUNDRED NINETEENTH ANNUAL MEETING

of the House of Delegates

held at

San Francisco, California  
August 5-6, 1997

---

Volume 122  
Number 2

---

HEADQUARTERS OFFICE  
750 North Lake Shore Drive  
Chicago, Illinois 60611

Article 28, successfully intervened.<sup>10</sup>

An *en banc* panel of the Ninth Circuit court of Appeals affirmed the lower court ruling on the grounds that Article 28 was overboard and far-reaching, in that it would affect the speech rights of all state and local employees, officials, officers, and non-English speaking Arizonans who had an interest in receiving all kinds of essential information.<sup>11</sup> The court noted that among its perhaps unintended but real effects would be to limit or chill the speech of teachers in the classroom, the translation of judicial proceedings in courtrooms, the issuing of state university diplomas in Latin, and the ability of judges performing weddings to “Mazel Tov.”<sup>12</sup> Even the State of Arizona had conceded that prohibiting the use of languages other than English would make the delivery of government services more inefficient.<sup>13</sup>

Ultimately, the Supreme Court held that the case was moot because the original petitioner no longer worked for the state and remanded the case to the district court for dismissal. However, the issues raised in *Ynguez* are very much alive.

## CONCLUSION<sup>14</sup>

Permitting government bodies to use languages in addition to English is not a grassroots effort to supplant the use of English in this country. No one can argue intelligibly that, in practical terms, languages other than English are primary in this country. Although anti-immigrant forces might suggest that this country is in danger of being overrun by non-English speaking populations that inevitably will bring the free flow of commerce to a standstill more than 98 percent of Americans, in fact, speak English fluently or are sufficiently proficient in English that language barriers do not impact their ability to “access justice.” Moreover, the majority of citizens that do not possess sufficient proficiency in English to acquire and maintain desirable employment have and continue to make strong efforts to develop sound English skills. According to the citizens groups that interact most frequently with immigrant populations, the overwhelming majority of immigrants devote substantial time and energy to the cultivation of . . .

REPORT NO. 1 OF THE  
JUDICIAL DIVISION  
PRESENTED JOINTLY WITH THE  
SENIOR LAWYERS DIVISION  
SECTION OF NATURAL RESOURCES,  
ENERGY AND ENVIRONMENTAL LAW  
AND THE  
SECTION OF TORT AND INSURANCE PRACTICE

### RECOMMENDATION\*

*RESOLVED*, That the American Bar Association recommends that all courts be provided with qualified language interpreters, in order that parties and witnesses with no or limited command of English may fully and fairly participate in court proceedings,

*FURTHER RESOLVED*, That court interpreters should be qualified through a mandatory certification program, should maintain their proficiency through mandatory continuing education, and should adhere to standards of professional conduct, and

*FURTHER RESOLVED*, That continuing education programs should be established for both judges and attorneys in the selection and use of court interpreters.

### REPORT

At the last census, nearly 32 million out of the population of the United States do not speak English at home, and it is believed that that number is increasing. See William E. Hewitt, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* 11 (National Center for State Courts 1995). Moreover, many participants in proceedings in American courts speak English not at all or to only a limited extent. These language-handicapped persons come to court, often involuntarily, as witnesses, as criminal defendants, and as parties in a whole range of other proceedings, including, for example, domestic relations matters, juvenile

<sup>10</sup>*Id.*

<sup>11</sup>*Id.* at 932.

<sup>12</sup>*Id.* at 932.

<sup>13</sup>*Id.* at 942.

<sup>14</sup>With the permission of the authors, portions of this report are based upon *The Continuing Struggle: Civil Rights and the Clinton Administration*, Chapter XV: The Debate over English-Only/Official English (1997), published by the Citizens' Commission on Civil Rights, Corrine M. Yu and William L. Taylor, Editors.

\*The recommendation was revised, amended and approved. See page 24.

and traffic cases and business disputes. Criminal defendants have a constitutional right to understand the charge against them and to be able to use intelligently the assistance of counsel. Important rights to equal justice are also infringed in any other court proceeding in which a language-handicapped person is unable to participate fully and fairly. There is no place anywhere in the American courts for unequal treatment because of a language handicap.

The Federal courts and a growing number of state court systems have instituted programs of certification and continuing education and prescribing codes of professional responsibility for court interpreters. See Gill and Hewitt, "Improving Court Interpreting Services: What the States

are Doing," *State Court Journal* (Vol. 20, no. 1) 34 (1996). Those and similar efforts for the improvement of court interpretation should be extended to all jurisdictions and courts, including administrative courts, and to all court proceedings, including court-annexed mediation and other alternative dispute resolution.

Respectfully submitted,

HONORABLE NORMA L. SHAPIRO  
*Chair*  
Judicial Division

JOHN H. PICKERING  
*Chair*  
Senior Lawyers Division

August 1997

#### REPORT OF THE

### JUDICIAL DIVISION NATIONAL CONFERENCE (

#### STATE TRIAL JUDGES

#### PRESENTED JOINTLY WITH THE

#### SECTION OF NATURAL RESOURCES,

#### ENERGY AND ENVIRONMENTAL LAW

#### RECOMMENDATION\*

*RESOLVED*, That the American Bar Association adopts the black letter of the Discovery Guidelines, dated August, 1997, in order to encourage state judicial rulemaking authorities to incorporate the Guidelines in applicable rules of procedures in an effort to improve the litigation process by curbing discovery abuses and promoting expert and delay reduction in civil courts.

#### DISCOVERY GUIDELINES

(AUGUST, 1997)

1. ALL PARTIES TO AN ACTION SHALL MAKE AUTOMATIC PREDISCOVERY DISCLOSURE OF ALL INFORMATION RELEVANT TO THE CLAIMS AND DEFENSES ASSERTED IN THE ACTION.
2. NO DISCOVERY SHOULD BE PERMITTED UNTIL COUSSEL FOR THE PARTIES HOLD A MANDATORY EARLY DISCOVERY CONFERENCE TO RESOLVE DISCLOSURE DISAGREEMENTS AND DEVELOP A BINDING DISCOVERY PLAN IN WRITING.
3. DISCOVERY SHOULD BE LIMITED UNLESS THE COURT ON MOTION OF A PARTY, DETERMINES OTHERWISE.
4. THE COURT SHALL PROMPTLY SCHEDULE A SUPERVISED DISCOVERY CONFERENCE AT WHICH COUNSEL SHALL SUBMIT A REASONABLE AND COMPREHENSIVE DISCOVERY PLAN, SUBJECT TO COURT APPROVAL WHICH SHALL DESIGNATE THE TIME, PLACE AND TIME DATES FOR EXCHANGE OF EXPECTED TRIAL WITNESSES; THE DATES AND SEQUENCE FOR DISCLOSURE OF EXPERTS AND WRITTEN REPORTS CONTAINING

\*The recommendation was withdrawn. See page 37.

Continuing debate on the motion as amended, the Chair recognized **Robert E. Juceam** of New York, American Immigration Lawyers Association Delegate, who rose to emphasize that the recommendation simply provides permission to the government to use languages in addition to, not as a substitute, for English. He submitted that this is sound policy and good government, and is precisely the kind of encouragement the ABA should give to a matter of law.

**Leonard L. Leob** of Wisconsin, Delegate-at-Large, spoke briefly to the resolution, reminding Delegates that they live in a nation of immigrants, and to remember from whom they descend and to honor them.

The Chair recognized **Kathleen B. Burke** of Ohio, State Bar Delegate, who rose to move an amendment deleting the words "permits the use of" and inserting the words "not prohibit employees from communicating in languages, in addition to English, to improve communication with government, to promote understanding of duties and responsibilities under the law, and to provide access to the justice system." She stated that the proposed amendment would reflect the intent of the drafters, yet it would not require or limit government from, in the instances that the opponents have cited, where it may be appropriate to require that documents be submitted in English, that that be done so.

**Robert Juceam** of New York was recognized, stating that it was the intent of the proponents that there be permitted when appropriate, communication in addition to English, whether it is government employees or those who seek government benefits. By voice vote, the House declined to adopt the amendment.

Further speakers in support of the resolution waived their right to speak, and Ms. Rogers waived her right to close. By voice vote, the recommendation was adopted as amended. It reads:

*RESOLVED*, That the American Bar Association supports the principle that federal, state, territorial, and local governments permit the use of languages in addition to English to improve communication with government, to promote understanding of duties and responsibilities under the law, and to provide access to the justice system.

Judicial Division, Senior Lawyers Division, Section of Natural Resources, Energy and Environmental Law, Section of Tort and Insurance Practice.<sup>20</sup> The Chair recognized **John H. Pickering** of the District of Columbia, who moved the joint resolution, as revised, which recommended that all courts be provided with qualified language interpreters, in order that persons with no or limited command of English may fully and fairly participate in judicial proceedings. He asked for the recommendation of the Board of Governors, and the Secretary reported that the Board of Governors had recommended its approval.

Mr. Pickering stated that the resolution was simply a matter of fundamental fairness in the administration of justice, recognizing that many people come into courts who do not speak English or who have limited or no knowledge of English, yet come as witnesses, as defendants, and as parties.

<sup>20</sup>The full joint report can be found at page 643.

**Duke W. Thomas** of Ohio, Member of the Board of Governors, was recognized to propose an amendment which would remove the words "through a mandatory certification program." He stated that court interpreters should be qualified and should maintain proficiency; however, mandatory certification programs do not work for every state and for every jurisdiction that has small minority populations within them. He moved the amendment. Robert E. Hirshon suggested the wording should be "That court interpreters should be qualified and should maintain. . . ." This wording was accepted by Mr. Thomas.

**Roy A. Hammer** of Massachusetts was recognized, and proposed an amendment to the proposed amendment as well as the motion in chief that the resolution be limited to Lines one through three, being the resolution that Mr. Pickering presented to the House. The first three lines state a general principle, he stated, and a recommendation that courts be provided with interpreters. The next four lines, at the point of the amendment, he said, get into mandatory requirements with respect to implementation of the first three lines. The Chair ruled that this would be a primary amendment and should be presented after a vote on the initial amendment.

Absent further debate, the House adopted the amendment to the resolution. Mr. Hammer then moved the amendment to retain the first three lines of the resolution and delete lines four through eight, opining that there is no need for the Association, in supporting the concept of having interpreters in the courts, to dictate how these programs should be implemented.

Chair Carlton clarified the wording of the resolution as it would be if amended as Mr. Hammer proposed, answering inquiries from the floor. Mr. Pickering stated that the amendment was unacceptable to the proponents, and submitted that language stating that interpreters should be qualified, should maintain their proficiency, and should adhere to standards of professional conduct is an appropriate detail.

A division was called, and by a standing vote of 173 in favor and 174 opposed, the amendment failed.

**Jeffrey L. Tolman** of Washington, State Bar Delegate, rose for the purpose of moving an amendment which would strike the word "mandatory" in line six. In small courts, it is very expensive and difficult to require certified interpreters, although they should, he said, be qualified. If certification is required, he asked, who will do it? "If we can make sure that they're qualified without any mandatory education, we will serve the purpose that every lawyer has and every judge has, and that is to make sure everyone in the court understands every word and every implication of the very important process they are a part of."

**Raquel A. Rodriguez** of Florida, Delegate from the Young Lawyers Division, rose in opposition to the amendment. With respect for the proponent of the amendment and his difficulties, from personal experience, she stated, there is a difference between having a really good, qualified interpreter and a very poor interpreter which can literally be the difference between whether one is condemned in a criminal proceeding, or whether one loses or wins a civil proceeding. She opined that it was critical that anyone doing any kind of court interpretation when people's rights and lives are at risk, be qualified, and if the mandatory language is removed from the resolution, the purpose of the resolution would be eviscerated.

**Adriane J. Dudley** of the Virgin Islands, Member of the Board of Governors, spoke in opposition to the amendment, stating that if the mandatory provision is removed, the purpose of the resolution is defeated.

In the absence of further debate, the vote was taken, and a division was called. By a standing vote, the House adopted the amendment.

Further speakers in support of the main motion waived their right to speak, and by voice vote, the resolution, as revised and amended, was adopted as follows:

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

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

The Chair recognized **Barbara Mendel Mayden**, Chair of the Committee on Rules and Calendar. Ms. Mayden moved to amend the roster of the meeting to seat an Alternate Delegate for the San Diego Bar Association. The motion was approved by voice vote. Ms. Mayden made several announcements, and moved that the meeting be adjourned until the morning of August 6. The motion was approved by voice vote.

### THIRD SESSION

**Beverly Hills Bar Association.**<sup>21</sup> Chair Carlton recognized **Daniel G. McIntosh**, Delegate from the Bar Association, who moved the resolution supporting legislation that would legalize physician-assisted suicide. He discussed the resolution and the differences between this recommendation and the joint recommendation to be presented by the Commission on Legal Problems of the Elderly, the Commission on Mental and Physical Disability Law, and the Senior Lawyers Division, which urges states to refrain from considering adoption of physician-assisted suicide legislation.<sup>22</sup> While the recommendation he presented for consideration urges that the states consider this issue, they should consider only the narrow form of physician-assisted suicide specified in the resolution, and as specified, minimum safeguards should be incorporated into any statute that would legalize this. The other recom-

mendation, he stated, would send the issue to the states with no comment except on record keeping. Mr. McIntosh stated that some would argue Association should consider only legal issues and does not have the expertise on this issue. He said that, in his opinion, the ABA has done a disservice with that argument, as lawyers know about crafting safeguards and provisions, and has more experience and expertise with issues like voluntary competency. Guidance and leadership is necessary in this issue, he stated. He asked the indulgence of the House in hearing several speakers in this debate and asked Delegates to focus on two realities: thousands of terminal adults are daily wrestling with the end of life pain, suffering and anxiety in many instances in which terminally ill adults choose to hasten their death a physician is today assisting them in doing so at a risk of being prosecuted under current laws. He stated that, whether the Association urges the state to take action in this area or not, physician involvement in hastening the death of a terminally ill patient will continue, and the Bar Association believe it would be far better for the states and territories to take up the issue now for the ABA to be in a position to be able to help them to provide safeguards. He called the attention of the Delegates to appropriate safeguards suggested in the recommendation to protect access to full medical care for patients are not privileged.

The Chair recognized **F. William McCalpin** of Missouri, who moved to substitute the revised joint resolution of the Commission on Legal Problems of the Elderly, the Commission on Mental and Physical Disability Law and the Senior Lawyers Division, which urged states to refrain from considering adoption of physician-assisted suicide legislation. He stated that it had been considered and modified by many important entities in the House, and should be considered as a legal issue. "Clearly, this issue is involved in the administration of justice in the courts of this country. I submit to you Resolution 102A Revised responds directly to the Supreme Court's opinion. He pointed out that the resolution is affirmatively non-directive and leaves entirely to the states whether or not to consider the issue and to consider the merits of the issue which are raised in the resolution. He also opined that ABA does have something to contribute to the public debate. Mr. McCalpin said that the recommendation takes no position expressly or implied whether or not physician-assisted suicide is desirable or needed or should be considered. It only offers areas of consideration which have been surfaced to the members of the Commission for consideration if a state chooses to consider the issue.

The Chair recognized **Daniel McIntosh** of California who rose in opposition to the motion to substitute. Mr. McIntosh yielded his time to **Keith Young**, Delegate from South Carolina. Mr. Young was recognized and introduced an amendment for the purpose of removing the possibility that anyone interpret the recommendation as an endorsement by the ABA of physician-assisted suicide. He opined that if the Association is not obligated to take on every social issue of the day, but rather should choose those issues on which lawyers have some special expertise or something to offer. One which lawyers do have special expertise in, he stated, is procedural and substantive process, and such safeguards are most needed on emotionally charged social issues such as the one now before the House. He called the attention of the Delegates to the wording of the amended recommendation, which

<sup>21</sup>The full report of the bar association can be found at page 735. Marvin E. Aspen of Illinois, Martin M. Doctoroff of Michigan, Sidney S. Eagles, Jr. of North Carolina, Donald B. Jarvis of California, Christel E. Marquardt of Kansas, Charles E. Patterson of California, Frederic B. Rodgers of Colorado, Sandra I. Rothenberg of Colorado, Norma L. Shapiro of Pennsylvania and Robert M. Summitt of Tennessee, abstained from voting with respect to this resolution.

<sup>22</sup>The full joint report can be found at page 665. Marvin E. Aspen of Illinois, Martin M. Doctoroff of Michigan, Sidney S. Eagles, Jr. of North Carolina, Donald B. Jarvis of California, Christel E. Marquardt of Kansas, Charles E. Patterson of California, Frederic B. Rodgers of Colorado, Sandra I. Rothenberg of Colorado, Norma L. Shapiro of Pennsylvania and Robert M. Summitt of Tennessee, abstained from voting with respect to this resolution.