

English-Language Access for Philadelphia's Spanish Speakers: A Simple Innovation to Reduce Juvenile Justice Placements?

Sam Rhoades 31 January 2010

Language access plays a role in the high rate of disproportionate minority contact experienced by foreign language youth in Philadelphia's juvenile justice system. As Philadelphia's immigrant population expands, thousands of parents send their children to English-speaking schools, while the parents themselves have limited English skills. Without innovative approaches to reach foreign language speaking parents, we risk losing important allies who can help to keep young people in classrooms and out of courtrooms.

Despite legal mandates (see Appendix), schools and juvenile courts continue to struggle with the comprehensive translation of key documents. Verbal interpretation is scarce and not always available.

Furthermore, while valuable resources exist, they operate in obscurity, and most people do not know how to utilize

them. This lack of access can frustrate linguistic minorities, disengaging them from a child's school and from the city's juvenile justice system.

Language barriers are not the fundamental explanation for disproportionate minority presence in juvenile and truancy courts. However, compared to entrenched problems of poverty and crime, filling the language gaps would be relatively easy. Addressing language barriers would increase the participation of foreign language speaking parents in schools and the juvenile justice system, subsequently decreasing truancy and delinquency. With a campaign aimed at educating individuals with limited English proficiency (as well as society as a whole) on language rights, creating exposure for the resources that already exist, and advocating for targeted improvements within existing resources, language access barriers might crumble.

A Morning in Family Court

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As young Madeline sits in the crowded waiting room of the Family Division of the Court of Common Pleas (Family Court), her father nervously rocks back and fourth against the wall. Clearly agitated, Mr. Perez explains in Spanish that he never quite understands what is happening when he joins his daughter in the courtroom. Born in Puerto Rico, Mr. Perez is fluent only in Spanish. Through his

broken English, he catches bits and pieces of the interaction between caseworkers and the judge, but usually he is little more than a spectator.

The judge is concerned that a lack of supervision may have led to Madeline's truancy and drug issues.

Madeline's case manager responds that Madeline has moved in with her father and her grandmother. At her new home, she receives emotional support and has been flourishing. The judge is not convinced. Unlike in hearings involving English-speaking parents, the judge doesn't ask Mr. Perez any questions, and Mr. Perez doesn't offer any answers. The plan had been for the bilingual case manager to provide live interpretation for Mr. Perez, but the case manager quickly is forced to assume an advocacy role in order to keep Madeline out of a detention facility.

The judge spares Madeline from out-of-house detention under the conditions that she maintain perfect attendance at school and does not fail another drug test. Outside of the courthouse, the family's lawyer explains — in English — and concludes, "This is serious. If you do not follow these orders, you will be removed from your father's house." Madeline shrugs and smiles. "Sure, whatever," she says. Mr. Perez simply nods, clearly bewildered.

The Latino Population: Issues and Background

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Experts expect the Latino population to increase exponentially in the coming decades. A Pew Research Center concluded that between 2005 and 2050, "The Latino population will triple in size [and] Hispanics will make up 29% of the U.S. population" (Cohn and Passel 2008: 1). The Pew Center estimates that new immigrants and their children will comprise 82 percent of the American population increase between 2005 and 2050. In Pennsylvania, the Latino population reached 232,262 in 1990 (U.S. Census Bureau 1990) and 394,088 in 2000 (U.S. Census Bureau 2000b). The majority of the state's Latino population is concentrated in Philadelphia, especially in the northeastern corridor of the city. Since the 2000 census, it is also believed that the city's Mexican, Colombian, and Brazilian populations have increased significantly. According to the Philadelphia Migration Center, between 2000 and 2005, more than 30,000 Latinos moved into Philadelphia (Katz and Creighton n.d.: 5).

Experts estimate that as many as 54.8 million citizens over age five speak a language other than English at home (Duong and Jammal 2007: 4). Limited English Proficiency (LEP) is defined as the inability to "speak, read, write, or understand the English language at a level that permits the individual to interact with housing providers, medical

institutions, immigration officials, or social service agencies" (Duong and Jammal 2007: 4). Between 11 million and 21 million citizens speak English either "not very well" or "not at all" (Duong and Jammal 2007: 4). Statistics and fieldwork suggest that in Pennsylvania, parents are more likely to lack English proficiency than children (U.S. Census Bureau 2000a). According to the 2000 Census, of Latino Philadelphians aged five and over, 110,498 (7.8 percent of Philadelphia's total population) spoke Spanish at home. Of this group, 45,884 Hispanic Philadelphians possessed limited English proficiency. Combining speakers of Asian and Pacific Island languages, Indo-European languages, and Spanish, a total of 113,672 Philadelphians speak English less than "very well." Nearly 1 in 10 Philadelphians are of limited English proficiency (U.S. Census Bureau 2000c).

Nationally, as of the year 2000, Latino youth were three times more likely to be incarcerated than white youth, and Latinos made up 24 percent of youths charged with felonies and tried as adults (Cintrón 2005: 32). In Philadelphia, the lack of tracking by ethnicity makes it difficult to draw firm conclusions about the overrepresentation of Latino youth in the justice system. Nevertheless, available statistics suggest disproportionate Latino involvement throughout the juvenile justice system, as evidenced by arrest rates, state facility admission rates, average rates of incarceration, and disparate punishments for similar crimes (Villarruel and Walker

2002; Cintrón 2005; Morín 2005; McLusky 2002). A 2007 article in *Philadelphia Weekly* concluded, "In Pennsylvania, Latino youths are arrested four to five times as often as whites" (Kilpatrick 2007). In 2002, Human Rights Watch determined that in Pennsylvania, Latino youth had an index of over-representation in detention centers of 4.5 — where an index of 1.0 means that the proportion of youth at that stage of the system is the same as the proportion of that group in the general population (Villarruel and Walker 2003).

Clearly, we cannot conclude that the high Latino arrest rates are solely the result of a lack of Spanish-language access. Nevertheless, statistics indicate overrepresentation and excess punishment of Latinos throughout the juvenile justice system, and many parents of these young people do not speak English.

In addition, many professionals interviewed for the project reported in this article expressed frustration with the disengagement of Latino parents from the schools of their children. "For me," said a Latino juvenile justice coordinator in Pennsylvania, "I feel like I can only maintain contact with parents through elementary school. Anything past elementary school, you generally don't see very much parental involvement." A bilingual truancy court management coordinator added, "If you go to back-to-school night, you might only see two or three parents attending." Another bilingual case manager explained that, "sometimes, teachers will ask if they can just deal with me

as opposed to trying to talk to parents or grandparents who cannot speak English. I wonder what these teachers do when I'm not there." Sometimes, Spanish-speaking parents feel disrespected by the schools. "The school treated me like, 'You've been in America for 20 years, why can't you speak English,'" said one parent. In addition, Spanish-speaking parents receive letters and report cards in English. They struggle to follow the district's English-language calendar, and they sign documents that they cannot read. Some Latino parents do not get word of a child's truancy until a court summons arrives in the mail. Usually, the only translation these parents get comes from their children, whose analysis is biased.

The lack of significant Spanish-language access — oral and written — makes it harder for parents to maintain a relationship with their child's school. This lack of relationship can easily facilitate a youth's lack of interest in school and eventual involvement with the juvenile justice system. A program coordinator felt strongly about this issue, stating:

If a child is beginning to get involved in dangerous activities at school, or is establishing truant habits, parents who just speak Spanish cannot contact the school. They cannot complain to the schools, or ask for any kind of help. These parents can't even stay informed with how their kid is doing, because the schools do not have adequate Spanish translation and initial documents are only available in English. Parents will be informed of

the decisions through letters in English. These letters mean nothing to Spanish-only parents.

The School District of Philadelphia does have a Spanish-language telephone hotline. The (215) 400-4000 phone number allows LEP individuals to speak to a Spanish representative. However, the caller must navigate through an English-language menu, undermining LEP parents' attempts to contact their child's school. None of the Spanish-speaking parents interviewed for this project were aware of this hotline.

Truancy Court Issues and Background

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Facing language barriers, some Latino parents have simply given up on their relationship with schools. One Spanish-only father could not name the school his daughter attended. Without parental supervision and support, students can drift into truant behavior. Truancy can act as a direct feeder into the juvenile justice system through Truancy Court, or it can lead to an indirect introduction into the juvenile justice system, as a young person who is not accounted for during the day is more likely to become involved in illicit activity. While Kensington has seen some improvement in attendance since the dropout rate skyrocketed to 45.7 percent in the 1999-2000 school years, the Latino neighborhoods in eastern North Philadelphia still suffer from some of the

highest dropout rates in the city. The 2005-06 dropout rate was 35.9 percent, considerably higher than Philadelphia's overall average of 23 percent (Philadelphia Safe and Sound 2006: 14).

If a student accumulates eight or more unexcused absences, the school refers the matter to Truancy Court, which is held at a number of different sites around the city. Truancy Court often results in a 30-, 60-, or 90-day monitoring period during which the case manager is responsible for collecting daily reports from the schools, documenting the youth's attendance and behavior. Any delinquent behavior or truancy during this time span compels the case manager to forward the case to the Department of Human Services, which might reassign it to Family Court where consequences are more severe.

According to a Latino juvenile justice network operations coordinator in Pennsylvania, "once a child has a probation officer, all bets are off. Any little offence, even just an argument at school, can be a violation of probation." A bilingual truancy court case management coordinator echoed these sentiments, stating, "If you are monitoring a kid for 9 days and find him smoking pot, you have no choice but to refer him/her to DHS [Department of Human Services]." She concluded, "If you could address truancy adequately, you would reduce [dependent] placements."

Family Court Issues and Background

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Family Court hears cases where the youth is charged with a criminal act. Family Court requires interaction between the judge, parents, and case managers. Parental involvement generally leads to more favorable rulings for the youth, but language barriers prevent Spanish-speaking parents from participating. These barriers are easily obscured as the youth in question is typically fluent in English. The assistant chief of the Juvenile Unit of the Philadelphia Public Defender's Office points out, "It's the parents that don't speak any English. It's the parents who need the translation, but nobody stops to check if the parent needs interpretation."

When a youth does not speak English, the need for interpretation is obvious and is quickly provided. However, a parent's lack of English proficiency can slip through the cracks and go unnoticed. A bilingual public defender explained:

At Family Court, a full-time interpreter is always available. But people don't know to ask for it. If people don't ask, the interpreter won't be called into court. When I have a Spanish-speaking family, I always ask if the parents speak English. But if the attorney does not inquire, no interpreter will be provided. I don't think many attorneys realize that they need to do this. Especially private lawyers — they are often in a hurry. For them, time is money. Sometimes you might have to wait an hour for the interpreter. Sometimes,

when you stop the hearing to make the request eyes will roll, or you will hear sighs from the pit staff, but who cares? It's that important.

Sometimes, a lack of English proficiency is not immediately visible. The public defender explained: "I see a lot of Latino people who have learned some English. Maybe they can speak a few words, or answer a simple question. When this happens, the court as an entity assumes that they are fluent in English. It is often apparent to me that these parents are far more comfortable in their native tongue, especially when it comes to legal talk, which can be challenging enough for someone fluent in English."

According to the public defender, if individuals pursue their rights, Family Court will likely accommodate them. "Judges have always complied with my requests for interpretation," he explained. "I've found the judges in Philadelphia tend to bend over backwards for language access issues. The key is for Latino parents, case managers, and counsel to understand what is available, and to ask."

At the time this research was conducted, Philadelphia's Family Court employed one full-time Spanish-language interpreter. This interpreter is assigned on a first-come first-serve basis, and his services cannot be reserved in advance for a particular case. He believes that he is not overworked and that he has no problem meeting the

demand for his services. However, he described a loose process for determining who requires interpretation. "The court crier will ask the family on the way to the courtroom if they need interpretation," he explained. Unfortunately, this process rarely identifies parents who need interpretation. One bilingual case manager said, "I have never seen a translator in Family Court. Every time I've been to Family Court, either the youth or the case manager interprets for the parent." This unofficial interpretation occurs when anyone except the court-appointed interpreter translates for a youth or a guardian during a hearing. Unofficial interpreters are often case managers, family members, neighbors, and at times, the youth himself. The Spanish-language interpreter at Family Court believes that "Incidents of unofficial translation occur very rarely" and that "when judges see unofficial translation occurring, they will stop the hearing and call me." However, at no point during this research did a judge ever stop a hearing to request official interpretation.

Unofficial interpretation poses a risk for families and young people. According to the Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, when unskilled interpreters appear in court, the LEP party is likely to comprehend only a part of what is occurring. The interpreter may fail to interpret some portion of the case, may fail to summarize what is being said, or may interpret erroneously. The interpreter may give legal advice to the

litigant, answer on his or her behalf, or change the meaning of what he or she has said. The Family Court Spanish-language interpreter agreed, adding, "Unofficial interpreters do not understand the importance of translating word for word, especially during legal hearings. You have to interpret exactly what a person says, because the nuances are key to understanding." LEP parents noted that some case managers who speak Spanish as a second language can be difficult to understand in the courtroom.

Perhaps the most important interaction during Family Court occurs between the judge and the case manager, as judges often trust the case manager's assessment of the situation. A case manager's job is to argue for the best resolution for the family and the youth. In LEP cases, case managers must interpret the judge's words to the parents, while simultaneously trying to understand those words themselves and formulate a response. During crucial portions of the hearing, the case manager cannot translate because he is immersed in the dialogue with the judge, and the parent is left without interpretation.

Possible Social Innovations

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Philadelphia's Chief of Juvenile Probation is aware of the problem, and he is taking progressive steps to address it. "In Family Court, our translation services are the best they have ever been, but we still have significant room for

improvement. I would say that 2 out of 10 families receive the translation services that they require," he said. He has ensured that his juvenile probation staff maintains a number of Spanish-speaking officers. "My Spanish-speaking staff has increased in the last few years, but I still see a shortage of bilingual staff and probation officers," he explained. While he would like to carry between ten and fifteen Spanish-speaking staff members, he currently has seven.

Unlike many of the deep-seated problems plaguing inner-city Philadelphia, language access can be addressed relatively easily, and at a modest cost. One conclusion from this report is that few individuals and families are taking advantage of existing resources. Families have become accustomed to unofficial interpretation while the official court interpreter sits alone in his office, believing he has the situation under control. Parents must be educated about resources such as the school district's Spanish hotlines. Case managers must understand the disadvantages of unofficial interpretation, as well as the availability of a Family Court interpreter. Case managers and social workers are in the best position to spearhead an information campaign, as they have access to families, schools, and the juvenile courts, given the appropriate tools.

Finally, to the extent that funding is required, message control is very important. Many citizens are suspicious of increasing use of Spanish in the United States. These

people may be unresponsive to calls for improved Spanish-language access. In framing the issue, we must remind the public that the young people are learning English. The question is not what language they will speak as adults, but rather what kind of adults they will become. Even the most stubborn Anglophile would admit that involved parents improve a child's chance at success.

Sam Rhoades is a Junior Stoneleigh Fellow. Stoneleigh Center fellowship allows individuals to work with a nonprofit organization to develop and implement new approaches to policy or practice, or to continue research begun through a senior thesis or capstone project.

Appendix: Language Rights

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Constitutional Rights to Language Access

The highest courts of the United States, along with the nation's executive and congressional bodies, have ruled that an obligation exists to provide language access. According to a Pennsylvania Supreme Court Committee investigation conducted in 2003, "Substantial legal authority exists to support the proposition that the U.S. Constitution and the Civil Rights Act of 1964 obligate the state to provide comprehensive language services to make the court accessible to LEP persons."

The Civil Rights Act of 1964 "prohibits discrimination based on race, ancestry, national origin or ethnicity." The court ruled that because language can be indicative of nationality and ancestry, any discrimination based on language would violate Titles VI and VII of the Civil Rights Act.

Title VI ensures language access for LEP individuals in any program that receives federal funding. Title VI forbids recipients of funding from "restricting an individual in any way of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" (Duong and Jammal 2007: 10). This provision ensures Spanish-language access in public schools, government-run placement facilities, and government funded, post-placement therapy centers, as well as in law enforcement agencies.

The Pennsylvania Supreme Court has ruled in favor of plaintiffs arguing that their rights to language access had been denied in the courtroom. The Court overturned a guilty verdict rendered in the 1976 case of *Commonwealth v. Pana*, after determining that the trial judge "improperly refused to permit the defendant to testify in Spanish through an interpreter, thereby interfering with his right to testify" (Final Report n.d.: 21).

Executive Order 13166

On August 11, 2000, President Bill Clinton issued

Executive Order 13166, which reaffirmed the government's obligations to LEP individuals. The order held each individual agency responsible for guidelines to ensure that existing regulations were being enforced.

The summary ensured an obligation for written materials to be provided in all regularly encountered languages. According to the government's web page:

It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group. A document will be considered vital if it contains information that is critical for obtaining the federal services and/or benefits, or is required by law (Commonly Asked Questions n.d.).

Executive Order 13166 also affected the standards for oral interpretation:

A recipient that limits its language assistance to...written material may not be allowing LEP persons effectively to be informed of or to participate in the program (Commonly Asked Questions n.d.).

Pennsylvania courts receive funds from the U.S. Department of Health and Human Services, as well as from the Department of Justice, and are required to comply with Executive Order 13166 (Final Report n.d.: 21).

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