

019

From: Daniel Sanabria <dsanabriamoraes@gmail.com>
Sent: Wednesday, May 29, 2019 9:51 AM
To: Comments Mailbox; Yolande P. Marlow
Subject: [External]Comments before the Supreme Court Justices re:
Interpreting/Translation/Transcription Standards for LEP Individuals

CAUTION: This email originated from outside the Judiciary organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

As per the Supreme Court Clerk's request yesterday, please see the updated comments (below) with the appropriate citations, which appear at the end of the email.

May I ask for a receipt confirmation of this email at your earliest convenience? Thank you again for your time and for allowing me to speak yesterday.

Honorable Justices,

I had the opportunity to read the 2017-2019 Report from the Supreme Court Committee on Minority Concerns, and despite the Committee's duty to advise on matters affecting the Judiciary and "how it can best assure fairness, impartiality, equal access, and full participation of racial, ethnic and religious/cultural minorities and the economically disadvantaged," no recommendations were made on enforcing key aspects of the Judiciary's Language Access Plan when it comes to foreign language interpreting and translation on criminal matters.

Respectfully, I would like to direct your attention to the issue of deficient interpreting/translation standards in the state criminal justice system, specifically; the issue of substandard language interpretation of an LEP individual's statements while being interviewed by law enforcement officers throughout New Jersey, as well as the non-existing standards on foreign language transcription/translation of an LEP individual's statements.

According to two unpublished opinions (State v Dong B. Lin (decided April 12, 2018) and State v Zeng L. Chen (decided April 12, 2018), a police officer from the Piscataway Township Police Department who spoke Mandarin Chinese was used to provide English-Chinese interpretation. That officer testified under oath that he did not translate portions of the Miranda rights notice word for word because "during the translation from language to language, often...there isn't exact words" (State v Dong B. Lin) and "there's certain things that I couldn't translate word for word, so I did the best that I could to convey the message." (State v. Zeng L. Chen). Similarly, in State v A.M. (decided April 1, 2019), a bilingual Spanish-speaking Detective acknowledged in testimony that he "paraphrased" the defendant's answers. In State v Carlos M. Hernandez-Escobar (decided October 15, 2018), the court determined that a Spanish-speaking officer, Detective Vanessa Jimenez, misled the defendant, a 29-yr old Guatemalan immigrant, about his potential immigration consequences while interpreting and summarizing the comments made by an officer from the Hunterdon County Prosecutor's Office.

Given that the Judiciary enacted a Code of Professional Conduct for Interpreters, Transliterators, and Translators, which promote a “faithful and accurate conveyance of messages” (Canon 2), “Unobtrusiveness” (Canon 4) and “Professional Standards and Development” (Canon 9), why is the Judiciary allowing law enforcement authorities in New Jersey to utilize “putative interpreters[1]” who have not been adequately approved/certified by the AOC’s Language Services Section? “Substandard interpretation subjects the LEP individual to an abridged or distorted version of the proceedings that could result in irreversible legal consequences and harm.” (Dueñas-González, Vásquez, & Mikkelson, 2012, p. 5), and “Without a qualified interpreter, when (LEP individuals) tell their stories, more likely than not, substantial portions of their testimonies will be distorted by unqualified interpreters who omit information present in the original testimony, add information not present, or alter the tone and intent of the speaker.” (ibid)

Additionally, in *State v Luis H. Elias-Velasco* (decided December 14, 2018), it was noted that, the existence of an English/Spanish transcription/translation notwithstanding, the State would not stipulate to the transcript’s accuracy, and therefore, was not entered into evidence, despite the fact that at the Miranda hearing, the State’s transcript of the interview was prepared by a certified translator from the Bergen County Prosecutor’s Office. The video of defendant’s statement was played for the jury during Detective Santiago’s testimony; however, the translator who prepared the English transcript was not called to testify as to its accuracy.

Despite the fact that the Judiciary published the “Transcript Format for Judicial Proceedings” on March 19, 2014, it does not address the need for standardized non-English transcription and translation, and the courts have not adopted a statewide standard when it comes to foreign language transcription and translation, either.

Your Honor, with all due respect, I would like to make the following suggestion: Given that the Office of the Attorney General of New Jersey recently launched a statewide initiative “to promote public safety and strengthen the public’s confidence in the criminal justice system,” (New Jersey Attorney General’s Office, 2019) I recommend that the Judiciary spearheads the creation of an Inter-Branch Committee, one that will work with the New Jersey Division of Law and the New Jersey Attorney General in addressing the above-mentioned deficiencies. This Inter-Branch Committee would recommend the revision of cases where issues related to foreign language transcriptions and translations played a crucial role in the final outcome of the case, address the logistical and administrative issues in standardizing statewide regulations on transcriptions and translations related to criminal matters, and ultimately, help strengthen the public’s confidence in the criminal justice system.

I believe that the Judiciary is on the right track towards ensuring fair and equal access to justice for all. Nevertheless, there are areas for improvement, and as a resident of New Jersey and a veteran of the United States Marine Corps, I feel it is my obligation and duty to point out these troublesome aspects in the state’s overall dispensation of justice.

Thank you for your attention to this matter.

Sincerely,

Daniel A. Sanabria-Morales, MS

Email: dsanabriamorales@gmail.com

Works Cited

Dueñas-González, R., Vásquez, V. F., & Mikkelsen, H. (2012). *Fundamentals of Court Interpretation: Theory, Policy, and Practice*. Durham, NC: Carolina Academic Press.

New Jersey Attorney General's Office. (2019, April 11). AG Grewal Announces Creation of Statewide Conviction Review Unit and Statewide Cold Case Network. Retrieved from NJ Department of Law & Public Safety - Office of the Attorney General: <https://www.nj.gov/oag/newsreleases19/pr20190411a.html>

Cases Cited

STATE OF NEW JERSEY V DONG B. LIN a/k/a LIN DONG BIAO (Superior Court of New Jersey – Appellate Division – Docket No. A-4559-14T3)

STATE OF NEW JERSEY V ZENG L. CHEN a/k/a ZENG B. CHEN (Superior Court of New Jersey – Appellate Division – Docket No. A-4929-14T3)

STATE OF NEW JERSEY V A.M. (A-76 September Term 2017 – 080744)

STATE OF NEW JERSEY V LUIS H. ELIAS-VELASCO (Superior Court of New Jersey – Appellate Division – Docket No. A-5299-15T3)

[1] “Putative interpreter” is a term coined by Pilar Cal-Meyer, M.A., Massachusetts Certified Interpreter and a pioneer in the field of Forensic Transcription/Translation, “referring to police personnel with insufficient target language proficiency or interpreting skills who interpret for or directly interrogate LEP suspects.” (Dueñas-González, Vásquez, & Mikkelsen, 2012, p. 967)