

July 9, 2004

Coordination and Review Section – NYA
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dear Sir or Madam:

Please consider this a formal complaint pursuant to Title VI of the Civil Rights Act of 1964, 42 USC 2000d; your Department's regulations implementing that law, 28 CFR 42.104(b)(2); and your Department's "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 67 FR 41455 (June 18, 2002) [hereinafter "DOJ Guidance"].

The complaint is against the State of Rhode Island for failing to provide appropriate language interpreter services in criminal court proceedings to Limited English Proficient [LEP] persons. Upon information and belief, the State of Rhode Island, including the state judicial system, receives federal funding which subjects its relevant programs to the requirements of Title VI. Although the Rhode Island judiciary and legislature have taken an important step this year in an attempt to address this problem, LEP criminal defendants continue to lack the appropriate interpreter services that Title VI requires. As an organization long concerned with the civil rights of both criminal defendants and LEP individuals, the Rhode Island Affiliate of the American Civil Liberties Union [RI/ACLU] requests that your Division investigate the problems being faced by LEP defendants in Rhode Island, and issue a Letter of Findings requiring the state to take additional steps to ensure compliance with Title VI in this area.

HISTORY

The RI/ACLU believes that all parties would benefit from the Civil Rights Division's intervention at this juncture in light of both the long-standing nature of the problems being faced by LEP defendants and the fiscal constraints and priorities with which state officials must contend. As far back as 1987, then-Chief Justice of the R.I. Supreme Court Thomas Fay recognized that the lack of interpreters for LEP defendants was an issue for this state's courts. In appointing a commission to recommend improvements to the state's judicial system, the Chief Justice listed as one of the commission's priorities the need to address how to better help non-

English-speaking litigants. In a newspaper article at the time, he was quoted as stating: “The Superior and Family Courts have a very difficult time getting interpreters for [LEP litigants], and it is unclear to many of the judges whether some people for whom English is a second language really understand what’s going on in the courtroom.”¹

We do not know the results of that commission’s activities, but as an apparent follow-up to the concern he publicly expressed in 1987, the Chief Justice appointed in 1991 an Ad Hoc Task Force on Limited English Speaking Litigants. The state judiciary’s annual *Report on the Judiciary* for 1991 and for 1992-93 briefly describes some of the Task Force’s activities and its goal to “help the court meet the growing demand for qualified language interpreters.”² We are unaware of any formal report issued by the Task Force regarding its work.

In 1994, a “User Friendly Committee,” established by a new Chief Justice, Joseph Weisberger, was appointed to improve communication with the public. According to the 1995 *Report on the Judiciary*, one of its specific goals was to “address[] the special needs of non-English-speaking litigants and witnesses.” Again, we have no specific knowledge of the Committee’s accomplishments in that particular regard, although the 1996 *Report on the Judiciary* does mention the establishment of an information desk at the state’s busiest courthouse, sustained by two years of funding to support “two part-time, bilingual staff people who are stationed on the first floor of the building to assist people in locating courtrooms and to respond to their questions.”

In 1999, the state legislature stepped in and enacted a statute formally recognizing the need for court interpreters for LEP criminal defendants, and establishing a certification process for those interpreters. Public Law 99-340. (Appendix C.) The legislative declaration of intent stated:

It is hereby declared to be the policy of the state of Rhode Island to guarantee the rights of persons who, because of a non-English speaking background, are unable to readily understand or communicate in the English language, and who consequently need the assistance of an interpreter be fully protected in legal proceedings in criminal matters before the Rhode Island superior court, the Rhode Island district court, and in juvenile matters in the Rhode Island family court. Court interpretation requires not only a full command of two (2) languages, but also a knowledge of courtroom procedure, legal vocabulary, the overall court and legal systems, and an understanding that the role of an interpreter consists not of abridging or editorializing, but of exactly interpreting every word that is spoken without emendation or amendment.

It is the intent of the legislature, by the enactment of this chapter, to provide interpreters to non-English speaking persons in criminal proceedings before the state courts in Rhode Island and to establish a procedure for the certification and appointment of interpreters. [R.I.G.L. §8-19-1.]

¹ “Justice Fay Names Panel to Offer Improvements in R.I. Judicial System,” by Tracy Breton, *Providence Journal*, February 26, 1987. (Appendix A.)

² Pursuant to statute, the state judiciary submits an annual report to the legislature containing “appropriate statistics bearing on the condition of the dockets of state courts and such other information as may reflect the administration of the state court system.” R.I.G.L. §8-15-7. The excerpts from the reports cited in this letter are attached as Appendix B.

Substantively, the statute covers LEP defendants whose native language is Spanish, Portuguese, Cape Verdean or Cambodian. The statute provides that courts “*shall*, in the absence of a written waiver by [such a criminal defendant], appoint a state certified interpreter to assist such person during the legal proceeding.” R.I.G.L. §8-19-3(a)(emphasis added). The statute also authorizes the appointment of “qualified,” but non-certified, interpreters in certain circumstances, establishes a compensation scheme for appointed interpreters, and provides for the establishment of a certification process for interpreters. The Act’s effective date was July 1, 2000. The Year 2000 annual *Report on the Judiciary* mentions passage of the statute and announces that in light of that law,

the courts ... have embarked on a training and certification program. The Community College of Rhode Island [CCRI] will offer a certificate program to train potential interpreters ... Graduates from this program and persons presenting similar qualifications will be in the best position to become certified as court interpreters. The task force is currently investigating testing procedures for a proposed start date for the certification process in late 2001.

It appears, however, that the training program did not actually begin until 2003. The headline of a December 2002 newspaper article, “Courts Struggle with Shortage of Translators,” suggests the lack of progress made since the 1999 law was enacted. In that article, the Presiding Justice of the R.I. Superior Court explains how it was occasionally possible for LEP defendants to be kept in jail for as much as an extra week because of the need to continue a case in order to await interpreters to translate proposed plea bargains. The state’s Public Defender, John Hardiman, echoed that concern, noting that “[c]ases are being continued and people are being held just because they don’t speak English.” At the time, the Public Defender’s office, which provides indigent defense representation for the entire state, had only one interpreter on staff.³

The article went on to note: “To get by, the courts rely on a combination of freelance interpreters, bilingual relatives, interpreters from international organizations and, sometimes, by asking for volunteers from the audience.” This somewhat haphazard approach to dealing with LEP defendants remains in place to this day. According to information posted earlier this year on the website of the state judiciary as background for its FY 2005 budget request, “Currently, the Judiciary either pays for independent interpreters (when available) or uses bi-lingual clerks (when available) or family members or friends (if available).”⁴

A recent article from *Rhode Island Lawyers Weekly* reiterates the concerns of judges and the criminal defense bar about the problems being faced by the courts in providing adequate interpreter services. The problems remain especially acute at the arraignment process, a critical juncture for any defendant facing criminal charges. R.I. Superior Court Judge O. Rogeriee Thompson, who served as the Chairperson of the judicial task force first established in 1991 to try to address this issue and who also helped with the creation of the CCRI interpreter program, is quoted as saying the issue has reached a “crisis point.”⁵

³ “Court Struggles with Shortage of Translators,” by Bruce Landis, *Providence Journal*, December 5, 2002. (Appendix D.) The Public Defender has since been able to hire one additional interpreter.

⁴ Quoted from <http://www.courts.state.ri.us/Source_Cites-SOJ_2004.htm>. The inadequacy for Title VI purposes of the use of bilingual clerks or family members and friends for court interpreting is discussed *infra*.

⁵ “Funding for Court Interpreters Has Bar Worried,” by Lisa K. Bruno, *R.I. Lawyers Weekly*, April 12, 2004. (Appendix E.)

THE FISCAL YEAR 2005 STATE BUDGET

The expected adoption later this month of the state's Fiscal Year 2005 budget will mark an important step in efforts by the state judiciary and legislature to more systematically address the long-standing problems facing LEP defendants in Rhode Island.⁶ For the first time, the judiciary's budget will include funding for the hiring of staff interpreters. However, for reasons explained below, this initiative far from resolves the problems being faced by LEP defendants.

It is worth emphasizing that the road to obtaining this new funding has been a rocky one. In anticipation of the graduation of the first set of students this year from the CCRI interpreter program, the state judiciary requested approximately \$425,000 in the FY 2005 state budget to pay for six interpreters, an office and support staff.⁷ However, those individuals would all be Spanish-language interpreters, even though, as recognized by R.I.G.L. §8-19-1 *et seq.*, there is a substantial non-English-speaking Southeast Asian, Cape Verdean and Portuguese population represented in the court system. Spanish-language interpreters were chosen by the courts because Latinos are the largest and fastest-growing segment of the minority population in Rhode Island.⁸

Even the limited scope of the judiciary's request was considered too much by the executive branch. Citing fiscal constraints, Governor Donald Carcieri's proposed FY 2005 budget, submitted to the state legislature in early March 2004, included none of that money.⁹

On May 26th of this year, the Governor partly retreated from that position. Announcing "unexpected increases in state revenues," the Governor indicated a receptiveness to restoring to his proposed budget \$220,000 for the hiring of three interpreters for the judiciary, approximately half of what the judiciary had requested. At the same time, the Governor announced other proposed budget expenditure increases of more than \$45 million, \$23.1 million of which would be for *new* initiatives.¹⁰

Last month, rejecting the Governor's recommendation, the General Assembly restored the \$425,000 requested by the judiciary. Formal adoption of the budget containing this funding, following a July 1 Gubernatorial veto, is expected in a few weeks.¹¹ As important a step as this is, it clearly remains insufficient to address the violation of LEP defendants' rights that are occurring in Rhode Island's courtrooms in violation of Title VI.

⁶ The General Assembly actually approved the budget on June 24th. For reasons unrelated to this particular funding allocation, the Governor vetoed the budget on July 1. The General Assembly is expected to override that veto later this month.

⁷ Although news reports and testimony from court officials consistently refer to the \$425,000 budget request as being for six interpreters, information on the state judiciary's web site specifies that the requested \$425,000 was to hire five "Deputy Clerk Interpreter positions" and one "Coordinator of Interpreter Services." See <http://www.courts.state.ri.us/Source_Cites-SOJ_2004.htm>. For convenience, this letter refers to six interpreters.

⁸ See footnote 5, *supra*.

⁹ "Adios to Money for Interpreters," by Edward Fitzpatrick, *Providence Journal*, March 4, 2004. (Appendix F.)

¹⁰ "Carcieri Unveils New Health Care & Property Tax Relief Initiatives," May 26, 2004, News Release from Governor's office, available at: <<http://www.governor.ri.gov/pr.php?ID=269>>.

¹¹ Under a separate amendment contained in the FY 2005 budget, to which the Governor did object, the Governor will no longer have any authority over the Judiciary's budget, as it will be submitted directly to the R.I. General Assembly for consideration. See Article 45, 04-H 8219 Substitute A as amended.

First, no state official that we know of has suggested that funding six interpreters will resolve this ongoing problem. Indeed, according to Superior Court Judge Thompson, the number of interpreters requested was determined after a survey of various courts revealed the minimum number of interpreters needed, and “The six doesn’t even represent the system-wide need.”¹²

Even more to the point, the interpreters for whom funding has been allocated will be equipped to address the problems faced by only one set of LEP defendants – those whose native language is Spanish.¹³ Yet as far back as 1987, the courts recognized the need for interpreters for the state’s not-insignificant Southeast Asian population,¹⁴ and the state legislature, through its 1999 law anticipating the DOJ Guidance on the issue, designated that LEP defendants speaking at least two other languages – Cape Verdean and Portuguese – be provided formal rights to certified interpreter services. R.I.G.L. §8-19-2(1).

Just as importantly, the funding at issue here is purely discretionary. The difficult path that the judiciary’s request for the \$425,000 took this year highlights the uncertain future that continued level funding for interpreter services faces – much less the expanded funding that is essential to ensure that *non-Hispanic* LEP defendants receive adequate services.

To their credit, the judiciary has been struggling since at least 1987 to do the right thing, and the state legislature enacted a law in 1999 that, on its face, significantly mirrors Title VI’s goal. But five years after that law’s passage, its implementation is only just beginning. Focusing on the budgetary process, each branch of government notes that another bears some responsibility for this state of affairs. Explaining why it had not begun implementing the 1999 statute sooner, the judiciary pointed to the other governmental branches for not providing funding until now.¹⁵ Even as the General Assembly appropriated the requested \$425,000 for court interpreters this year, House Finance Committee members highlighted the state’s difficult fiscal situation, and thus sought and obtained assurances from the judiciary that there would not be efforts to expand the program in the near future – even though it is clear that the limited scope of the funded program cannot meet Title VI’s standards.¹⁶ The executive branch cited similar fiscal constraints in cutting funding for the interpreter program from its proposed FY 2005 budget altogether, and further argued that the judiciary should, in any event, be able to pay for appropriate interpreter services from funds in its own general budget.¹⁷

In short, in light of the limited scope of the funding authorized by the state for this upcoming fiscal year; the vagaries inherent in the state’s budget process; the state’s unknown fiscal situation in future years; the expectation of state officials that no further expansion of the

¹² See footnote 5, *supra*.

¹³ In addition, we assume it will be some time before the courts formally implement a formal certification process. Thus, even if the courts hire an interpreter staff in the near future, those employees will not be “certified” interpreters, which is actually the more critical criterion. As the DOJ standards note, “Where individual rights depend on precise, complete and accurate interpretation or translations, particularly in the context of courtrooms..., the use of certified interpreters is strongly encouraged.” 67 FR 41461.

¹⁴ See footnote 1, *supra*.

¹⁵ See footnote 3, *supra*.

¹⁶ See footnote 6, *supra*.

¹⁷ “Court Interpreter Program Won’t Translate Into State Jobs,” by Karen Lee Ziner, *Providence Journal*, May 22, 2004. (Appendix G.)

interpreter program will take place soon; and the long history that has only now gotten the state to the point of hiring a minimal court interpreter staff, it is complainant's belief that intervention by the Civil Rights Division is critical to the systematic and full resolution of this long-standing problem. Intervention is further warranted because, as explained in the following section, there can be little doubt that the present status of interpreter services for LEP defendants in Rhode Island – and its status for the foreseeable future – does not meet DOJ standards.

DOJ STANDARDS

The DOJ Guidance notes that “a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance.” 67 FR 41459. There can be no question that the activity involved here – ensuring adequate services for LEP criminal defendants who face a possible loss of their liberty – is of the highest importance and impact and should be viewed accordingly in the analysis.

DOJ's Guidance establishes a four-factor analysis that agencies can use to help determine the level and type of interpreter services that should be provided in any given program. It should be self-evident from the candid comments made by participants in the system that Rhode Island's current provision of service to LEP defendants is inadequate. A brief review of the four factors confirms that understanding.

The four factors to be considered are: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. *Id.* They are briefly reviewed individually below:

(1) *The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee.* The DOJ Guidance notes: “One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population.” *Id.* According to Rhode Island's former court administrator, the courts deal with more than 20,000 LEP criminal defendants a year.¹⁸ In accordance with the census data, the largest percentage of these individuals are Hispanic and Southeast Asian, although we understand that services for other languages, such as Russian, are also in demand. More specifically, 2000 census data show that Rhode Island has an 8.7% Hispanic population, the 12th highest percentage in the country. The Hispanic population in Rhode Island almost doubled between 1990 and 2000.¹⁹ Rhode Island has a 2.7% Asian population, which is 17th highest in the country.²⁰

¹⁸ “Will Justice Be Lost Without Translation?”, by Edward Fitzpatrick, *Providence Journal*, March 18, 2004. (Appendix H.)

¹⁹ *The Hispanic Population: Census 2000 Brief*, U.S. Dept. of Commerce, May 2001, Table 2. Available at <<http://www.census.gov/prod/2001pubs/c2kbr01-3.pdf>>.

²⁰ *The Asian Population 2000: Census 2000 Brief*, U.S. Dept. of Commerce, February 2002, Table 2. Available at <<http://www.census.gov/prod/2002pubs/c2kbr01-16.pdf>>.

In terms of language ability, the 2000 census estimates that approximately 20% of Rhode Island residents speak a language other than English at home, and 8.5% of the state's total population speaks English less than "very well." Of the state's Spanish-speaking population, *over half* speak English less than "very well." The same is true of the state's Asian population.²¹

(2) *The frequency with which LEP individuals come in contact with the program.* The DOJ Guidance notes: "Recipients should assess as accurately as possible the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. ... The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily." 67 FR 41460. In light of the estimated figure, quoted above, suggesting that the courts handle at least 20,000 LEP defendants a year, it is obvious that the LEP problem is one that occurs on a daily basis in Rhode Island's courts.

(3) *The nature and importance of the program, activity or service provided by the program to people's lives.* The DOJ Guidance states: "The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed." *Id.* The DOJ Guidance in numerous places recognizes that the provision of interpreter services to LEP criminal defendants is of the utmost importance. When one considers that court officials and the Public Defender confirm that, however sporadic it may be, some criminal defendants have spent days in jail because they do not speak English, the inappropriateness and inadequacy of the current situation cannot be disputed.

(4) *The resources available to the grantee/recipient and costs:* The DOJ Guidance explains: "A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets.... Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource-limitations are well-substantiated before using this factor as a reason to limit language assistance." *Id.* The amount of funding at issue for appropriate interpreter services under Title VI would constitute a minuscule portion of the budgetary resources of the State in general and the Judiciary in particular. The Governor's proposal in May for *new* funding initiatives totaling over \$23 million demonstrates that the resources are available to address this issue, but that the state has instead chosen to fund other programs at the expense of the rights of LEP defendants.

In specifically analyzing the four factors in the context of the courts, the DOJ Guidance advises, among other things, that: "At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individuals must and/or may be present," 67 FR 41471, and that, "In a courtroom or administrative hearing setting, the use of informal interpreters, such as family members, friends and caretakers, would not be appropriate." As acknowledged by participants in the state's criminal justice process, these minimal standards are not being met in Rhode Island.

²¹ <http://www.census.gov/population/cen2000/phc-t20/tab04.pdf>

The state judiciary itself continues to candidly recognize these deficiencies. In noting the courts' current use of "bi-lingual clerks (if available) or family members or friends (if available)" to deal with on-going interpreter service needs, a state judiciary document acknowledges that "Court interpretation requires the full command of two languages, skill in simultaneous and consecutive interpretation, as well as the knowledge of courtroom procedure, legal vocabulary, the overall court and legal system, and an understanding that the ethical role of the interpreter consists not of abridging or editorializing, but of exactly interpreting every word that is spoken without emendation or amendment."²²

Likewise, the DOJ Guidance often notes the importance of trained, *certified* interpreters. As the DOJ standards note, "Where individual rights depend on precise, complete and accurate interpretation or translations, particularly in the context of courtrooms..., the use of certified interpreters is strongly encouraged." 67 FR 41461. Thus, although the R.I. District Court (which hears less serious crimes than the R.I. Superior Court) has made commendable efforts on its own to try to address this problem, its use of two office clerks with no formal interpreter training to serve as Spanish and Portuguese translators for defendants simply cannot suffice in light of the liberty interests at stake.²³

CONCLUSION

In seeking the Division's intervention, we wish to emphasize that we do not question the good faith of the parties involved. As previously noted, the judiciary has recognized and tried to deal with this problem for well over a decade. The state legislature's passage of the 1999 law demonstrated a recognition of the importance of this issue, as does its new appropriation to fund an interpreter staff for the 2005 fiscal year. Indeed, this funding is an extremely significant step. Nonetheless, the result remains: LEP individuals in Rhode Island find themselves severely disadvantaged when they enter the criminal justice system and continue to face the potential loss of their liberty because of their LEP status. Without DOJ intervention, we fear that budgetary priorities will continue to stymie implementation of a court interpreter system that meets Title VI standards.

In his annual State of the Judiciary address to the Rhode Island General Assembly in March of this year, the Chief Justice of the R.I. Supreme Court noted that interpreters "are desperately needed to serve the diverse, multilingual population of our state." Referring to the Governor's rejection of the judiciary's FY 2005 request for funds to hire court interpreters, the Chief Justice asked, "How will we answer those in the minority community when they ask why we have not honored this commitment?"²⁴ Ultimately, as Superior Court Judge Thompson noted, "This whole issue goes to the notion of fundamental justice being done."²⁵

²² See footnote 4, *supra*.

²³ "Bilingual Workers Serve as Interpreters," by Tom Mooney, *Providence Journal*, March 18, 2004. (Appendix I.)

²⁴ "State of the Judiciary," Chief Justice Frank J. Williams, *Journal of the Rhode Island Senate*, Vol. 131, No. 19, March 4, 2004, p. 15

²⁵ See footnote 4, *supra*. Of course, this problem also has the effect of seriously eroding confidence in the judiciary among those who find themselves participating in it. A report commissioned by the R.I. Supreme Court and released earlier this year discussed the results of focus group meetings with members of racial minorities who were brought into the court system. The report documented widespread concern among Hispanic and Southeast Asian participants about the inferior treatment they felt they received in the courts, due at least in part to the significant language

We therefore urge the Civil Rights Division to investigate this matter and take action to ensure that LEP criminal defendants in Rhode Island will have access to trained and qualified interpreters in *all* stages of judicial proceedings in order to meet the standards imposed by Title VI and the Department's regulations and Guidance.

Thank you in advance for your attention to this matter. We would appreciate being kept apprised of any actions taken by your Division in this regard.

Sincerely,

Steven Brown
Executive Director

Enclosures

cc: R. Alexander Acosta, Civil Rights Division, DOJ
The Hon. Donald Carcieri, Governor
The Hon. Frank J. Williams, Chief Justice, R.I. Supreme Court
The Hon. Joseph Rodgers, Jr., Presiding Justice, R.I. Superior Court
The Hon. Albert DeRobbio, Chief Judge, R.I. District Court
The Hon. William J. Murphy, Speaker of the House
The Hon. Joseph Montalbano, Senate President
The Hon. Patrick Lynch, Attorney General