



## Interpreter Shortage in CA Juvenile Justice System: Family Advocacy and Greater Language Access in the Juvenile Justice System

By **Shilpa Ram**

Carolina Macias<sup>1</sup> sat on a bench outside the courtroom, nervously awaiting her son Felipe's upcoming hearing. Although she could get by in English, she had great difficulty following the legal jargon used in the courtroom. Just before the start of Felipe's hearing, an attorney advocate<sup>2</sup> addressed Felipe's probation officer and requested a Spanish-language interpreter for Ms. Macias. The probation officer said that she could not go find an interpreter for Ms. Macias because she needed to watch Felipe, and added that Ms. Macias did not need an interpreter. Having heard the exchange, Felipe's lawyer echoed the probation officer: Ms. Macias spoke English and did not need an interpreter. After the hearing, Ms. Macias encountered the only Spanish-speaking interpreter in the building and related what she understood from the hearing.

Ah, sí. *Un aplazamiento*," the interpreter told her, using the Spanish word for "continuance," and explaining the term. Ms. Macias nodded

vigorously. Now she understood.<sup>3</sup>

Felipe's hearing was routine and over in a matter of minutes. However, the question arises of what would have happened had this been a lengthy proceeding with real consequences for Felipe? For example, what if the court needed to make a determination about Ms. Macias' fitness to care for Felipe if he were released? Ms. Macias' ability to understand the proceeding and provide input would have been critical to the judge making a well-informed decision.

Given the large number of non-native English speakers in California, there is a clear need for broad interpretative services, especially since parental support and advocacy in juvenile proceedings is critical to the well-being of detained children. However, given the shortage of court interpreters, confusion over the role of probation officers to serve as or secure interpreters, poor telephone facilities in detention centers, and irregular family visitation procedures, limited interpretation can be a major obstacle to family involvement in juvenile rehabilitation and ultimate determination of their case.

### Court Interpreters: A Critical Shortage

California's tremendous diversity poses considerable challenges, especially with regard to fair and equitable treatment in judicial proceedings. Of the approximately 34 million people who call California home, 26 percent were born abroad.<sup>4</sup> Two hundred and twenty languages are spoken in California, and 40 percent of California residents speak a language other than English at home.<sup>5</sup> In a recent survey, more than 6 million of the 31 million Californians over the age of five claimed to speak English "less than very well".<sup>6</sup> The Judicial Council of California maintains that courts must provide interpreters to witnesses, victims, and defendants with limited English proficiency.<sup>7</sup> Although the need for court-certified interpreters is increasing, the supply of trained interpreters has decreased over the past 10 years.<sup>8</sup>

As of March 2007, there were only 1,596 certified and registered court interpreters for all languages in the state of California, a number that has decreased precipitously in recent years. The number of certified

1 All of the names of the family members portrayed in this article with children in the juvenile justice system have been changed to protect the families' privacy.

2 Angela Chan, a staff attorney and Soros Fellow at the Asian Law Caucus, was Ms. Macias' attorney advocate in this case. As an attorney advocate, Ms. Chan represents parents who are limited English proficient to challenge the language and cultural barriers that they may encounter in trying to advocate for their children in the juvenile justice system.

3 Event witnessed by Shilpa Ram, law clerk, National Center for Youth Law, in San Francisco, CA (Jun. 26, 2007).

4 California Commission on Access to Justice, *Language Barriers to Justice in California 11* (2005), [http://calbar.ca.gov/calbar/pdfs/reports/2005\\_Language-Barriers\\_Report.pdf](http://calbar.ca.gov/calbar/pdfs/reports/2005_Language-Barriers_Report.pdf)

5 *Id.* at 15.

6 *Id.* at 18.

7 Administrative Office of the Courts, *Fact Sheet 1* (2007), <http://www.courtinfo.ca.gov/reference/documents/factsheets/ctinterp.pdf>

8 California Commission on Access to Justice, *supra* note 5, at 16.

Spanish-speaking interpreters alone has dropped from 1,526 in 1995 to 1,095 in 2007.<sup>10</sup> Meanwhile, the need for interpreters has increased considerably in recent years. A study published in 2000, which considered interpreter usage in the mid- and late 1990s, noted that among certified languages,<sup>11</sup> the use of Spanish and Cantonese interpreters increased by 19 percent and 57 percent respectively within a five-year period.<sup>12</sup> Among languages that were not certified at the time, the results were even more startling: a 91 percent increase in Mandarin interpreter usage and a 137 percent increase in the use of Punjabi interpreters.<sup>13</sup>

Eric Bishop, Program Director of the College of Extended Learning's Spanish/English interpretation program at San Francisco State University, believes that the shortage of court-certified interpreters is attributable to multiple factors, language skills, preparation, compensation, and training chief among them.<sup>14</sup> Candidates' difficulty in mastering both a second language and English, their lack of preparation for the exceptionally difficult Court Interpreter Certification Exam, and their struggle to execute different kinds of interpreting techniques under pressure—such as consecutive and simultaneous interpretation, and sight translation—may result in their having to retake either the oral or written portion of the exam.<sup>15</sup> As of 2002, the pass rate for the exam was only 14 percent.<sup>16</sup>

Those who do pass the exam often opt for private work. This

is primarily due to their level of certification, individual preference, and compensation.<sup>17</sup> Certified court interpreters are paid \$147 per half day or any portion thereof, and \$265 per full day. However, certified interpreters in the private sector earn up to \$495 per day in private agencies and \$725 per day on a private or independent basis.<sup>18</sup>

### Consequences of the Court Interpreter Crisis

Frequent interpreter shortages and delays often necessitate the use of unqualified interpreters in juvenile and criminal proceedings where certified interpreters are unavailable. For example, Southern California counties only furnish qualified Mandarin interpreters in 15 percent of cases,<sup>19</sup> and the Superior Court of Los Angeles, typically short 15-20 interpreters each day, has to postpone up to 40 proceedings every day due to a lack of a certified interpreter.<sup>20</sup> Such interpreter shortages and delays may dissuade individuals with limited English proficiency from seeking relief in the courts and reduce their faith in the judicial system's capacity to render favorable and equitable outcomes.<sup>21</sup> If it is so difficult to procure qualified interpreters for parties to a proceeding, it is undoubtedly even more difficult to secure qualified interpreters for parents.

In situations where even non-certified interpreters are unavailable, families sometimes propose informal interpreters such as neighbors, children, relatives, or friends. However, interpretation carried out

by unqualified individuals may lead to significant errors.<sup>22</sup> Eric Bishop of San Francisco State University cites an instance in which he interpreted for a witness who was the alleged victim in a domestic violence case. The police officer wrote in the police report that the defendant had choked the witness. As it turned out, the police officer had misunderstood her words because of the close association between the words neck (*cuello*) and collar (also *cuello*) in Spanish. "No, he just grabbed the collar of my shirt," said the witness. As a result of the witness' clarification, which Bishop interpreted for the court, the charges against the defendant were reduced from a felony to a misdemeanor.<sup>23</sup>

### The Right to an Interpreter: California and Federal Law

The California Constitution stipulates that "[a] person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings."<sup>24</sup> The constitutional right to an interpreter extends to juvenile offenders.<sup>25</sup> However, although parents are considered parties to juvenile proceedings, based on the considerable investment they have in the parent-child relationship, and in maintaining custody of their children,<sup>26</sup> they do not fall within the class of people protected by the aforementioned constitutional provision.<sup>27</sup> Still, though limited English proficient or deaf parents have no constitutional guarantees to an interpreter, both the California Evidentiary Code and the California

9 California Federation of Interpreters, A Report to the Legislature on the California Market Place for Certified and Registered Interpreters & Impacts on Justice 3 (2007), <http://www.cfnews.org/print/CAInterpMarketplace20070320.pdf>

10 *Id.*

11 There are 13 languages certified by the California court system: American Sign Language, Arabic, Armenian (Eastern), Armenian (Western), Cantonese, Japanese, Korean, Mandarin, Portuguese, Russian, Spanish, Tagalog and Vietnamese.

12 *Id.*

13 *Id.*

14 Telephone Interview with Eric Bishop, Director of Spanish/English interpretation program at San Francisco State University, in Oakland, CA (Jul. 9, 2007).

15 Become an interpreter—Common Questions, <http://www.courtinfo.ca.gov/programs/courtinterpreters/becoming-faq.htm> (last visited Aug. 1, 2007).

16 Kristina Horton-Flaherty, Dearth of Qualified Interpreters Raises the Courtroom Language Barrier, *The California Bar Journal*, Cal.St.B.J. (2002), <http://www.languagefrontier.com/CABarArticle.htm>

17 E-mail from Eric Bishop, Director of Spanish/English interpretation program at San Francisco State University, to Shilpa Ram, law clerk, National Center for Youth Law (Aug. 6, 2007, 09:59 PDT) (on file with author).

18 California Federation of Interpreters, *supra* note 10, at 4.

19 California Federation of Interpreters, *supra* note 10, at 6.

20 *Id.*

21 *Id.*

22 *Id.*

23 Telephone Interview with Eric

Bishop, *supra* note 14.

24 Cal. Const. art. I, § 14.

25 *In re Dung T.*, 160 Cal.App.3d 697, 708 (1984).

26 *In re Robert*, 68 Cal.App.3d 705, 717 (1977).

27 *In re Byron S.*, 176 Cal.App.3d 822, 831 (1986).

Rules of Court state that a minor has a right to the full participation of his or her parent at adjudication and dispositional hearings.<sup>28</sup>

One might assume that federal law requires that parents have access to an interpreter. Title VI of the Civil Rights Act of 1964, which affords explicit protection to individuals with limited English proficiency, states in part that no one shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”<sup>29</sup> As a result of Title VI, recipients of federal funding are forbidden from “engaging in policies, practices, or procedures that have the effect of excluding or limiting participation by persons of limited English proficiency in their programs and activities.”<sup>30</sup> Title VI is an example of a federal statute that protects limited English proficient individuals’ access to such services as “education, health care, social services and voting.”<sup>31</sup>

### The Role of Probation Officers in the Interpreter Shortage

According to California state statutes, the goals of the juvenile justice system are twofold: to allow for the safety and protection of both the public and the minor; and to bolster and strengthen the minor’s family connections whenever possible.<sup>32</sup> Indeed, the system prides itself on striving to offer minors the “custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents.”<sup>33</sup> Probation officers (POs) are nominated by the juve-

nile justice commission of a given county and appointed by the judge of that county.<sup>34</sup> Given that the system’s goals are to protect public safety, redress the injuries that the victim has suffered and serve the best interests of the charged minor all at the same time the duties and responsibilities of POs are complex and confounding.

In light of such conflicting responsibilities, should POs be called upon to interpret for children and families when there is an interpreter shortage? Angela Chan, a Soros Fellow and staff attorney at the Asian Law Caucus specializing in language access in the juvenile justice system, doesn’t think so. Ms. Chan cites POs’ institutional bias, lack of familiarity with legal terminology, and general inability to comprehend and cover the spectrum of registers of speech (i.e., more sophisticated speech occupying the higher register and less formal speech occupying the lower register) as three of the primary reasons why they are often minimally effective in their interpretation.<sup>35</sup>

Even if POs do not interpret for the families of juveniles in detention, they could – or some would argue, should -- play a role in securing interpreters where necessary. However, given the reality of the juvenile justice system, families cannot rely on POs to do this. POs receive relatively low pay to work long hours and handle large caseloads.<sup>36</sup> Because of the many demands on their time and energy, POs are often unwilling, or unable, to take on the task of getting interpreters for their charges’ families, especially when interpreters are so hard to find.

### Solutions to the Interpreter Crisis

Addressing the problem of the court interpreter shortage in California, although vital, is not easy. Various programs and solutions need to be explored with the aim of relieving the current crisis – for example, increasing the number of court reporters through better training, providing incentives to young people to volunteer their services, and empowering parents to stand up for their needs and insist on getting interpreter services.

### Initiatives to Increase the Number of Court Interpreters

The Judicial Council and the California Court Interpreters’ Association have focused on various education and training initiatives designed to increase the number of people who successfully enter the field of interpretation and reduce the incidence of unqualified interpreters. The Judicial Council has developed workshops targeted to those individuals who have failed the interpreter exam and meet certain criteria.<sup>37</sup> Carlos Cerecedo, former President of the California Court Interpreters Association, was a key figure in the development of the country’s first bachelor’s degree program in interpreting and translating at California State University, Long Beach.<sup>38</sup>

### Develop a National Corps of Young Interpreters

“Teach for America,” the national teacher corps, has made strides in addressing considerable teacher shortages in underserved areas by recruiting talented recent college graduates to teach for two

28 cal. evid. code § 754 (1965).

29 California Commission on Access to Justice, *supra* note 5, at 23.

30 *Id.* at 21.

31 *Id.*

32 cal. welf. & inst. code § 202 (2002).

33 *Id.*

34 cal. welf. & inst. code § 270 (2003).

35 Interview with Angela Chan, Soros Fellow and Staff Attorney, Asian Law Caucus, in San Francisco, CA (Jun. 22, 2007).

36 Probation Officers and Parole Agents, <http://www.calmis.ca.gov/file/occguid/PROBOFF.HTM> (last visited Jul. 31, 2007).

37 California Bar Journal, *supra* note 16.

38 *Id.*

years in America's inner-city schools and providing them with intensive training before their tenure begins. In exchange for their services, young teachers receive loan forbearance and/or educational awards in addition to their full-time salaries, which they may use in their pursuit of graduate education.<sup>39</sup>

"Interpreters for America," complete with intensive training and mentorship, might bring young bilingual college graduates into courtrooms. At least in the short term it would address the interpreter shortages that persist in this country, while enabling young people to use their talents to assist families in their struggle to advocate for a family member in the juvenile justice system.

### **Conclusion: Ms. Macias' Struggle Continues**

Ms. Macias is a fixture in her son's life— traveling great distances on multiple forms of public transportation to attend his hearings, trying to help him make difficult choices about his case and about his future.

*Shilpa Ram, a summer 2007 law clerk at NCYL, was a "Teach for America" corps member and bilingual English-Spanish 4<sup>th</sup> and 5<sup>th</sup> grade teacher in South Central Los Angeles. She graduated from law school in May 2008.*

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<sup>39</sup> Teach For America, <http://teachforamerica.org/>