



**National Association of Judiciary Interpreters
& Translators**

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Hon. Brian Frosh
Chairman, Senate Judicial Proceedings Committee
2 East Miller Senate Building
11 Bladen Street
Annapolis, MD 21401-1991

RE: Senate Bill 256 (An Act concerning Criminal Procedure – Dismissal of Criminal Proceeding – Failure to Provide Interpreter)

Dear Senator Frosh:

On behalf of the National Association of Judiciary Interpreters and Translators (NAJIT), I write to offer our Association's view on Senate Bill 256. NAJIT is the largest judiciary interpreting and translation association in the world. Our association was founded in 1979 and currently has over 1,300 members who work daily to bridge the language gap in state and federal courthouses and in a variety of legal and quasi-legal settings across the country. Because of our profession and our national involvement, our members are in a unique position to hear of issues regarding interpreters and translators not only throughout the country but around the world.

In late July of 2007, we heard with chagrin of the Maryland case in which the criminal charges against Mahamu Kanneh were dismissed after nearly three years because the judge ruled that Mr. Kanneh's right to a speedy trial had been compromised – in part because the court was unable to secure the services of an interpreter proficient in Vai, Mr. Kanneh's native language. Mr. Kanneh had been accused of rape and molestation of a 7-year old girl, so the dismissal of his case was particularly disturbing to all. The fault in this case was with an inadequacy of the court's resource inventory, not with the process. But the legislation now proposed will penalize the LEP (Limited English Proficient) individual for the court's lack of resources.

SB 256 directs that a court may not dismiss a case similar to Mr. Kanneh's case without first holding hearings and making certain findings, which this legislation specifies. It is apparently a reaction to, but it is not a solution for, the court system's inability to cope with the need to provide language interpretation for its defendants. Interpretation is not a luxury, but a necessity if we are to maintain the fundamental rights of a defendant – as guaranteed by the 5th, 6th, and 14th amendments to the Constitution; by case law extending from *ex rel* Negrón; by Title VI of the Civil Rights Act of 1964; and by Executive Order 13166 – to be meaningfully present at his trial, to hear and confront the witnesses against him, to communicate with his counsel so as to aid in his defense, and to testify in his defense if that is his desire.

Each defendant has a right to a speedy trial that he, and only he, may waive. Even if he does not affirmatively assert this right, it is his. It is not up to the legislature or the court to waive this right. If

interpretation can not be provided, for whatever reason, it becomes impossible to fulfill the speedy trial requirement. If there is an alternative to dismissal in such a case, we do not see it.

SB 256 might have established procedures for finding, recruiting, training, and retaining competent interpreters, especially in less common languages. It might have fostered relationships with organizations such as NAJIT, which would facilitate efforts to find interpreters. Instead, it casts a bureaucratic hurdle in the way of judges who need aid and guidance, not stumbling blocks. Worse, SB 256 unnecessarily and unconstitutionally disadvantages LEP defendants as compared to English-speaking defendants.

On August 9 of 2007, shortly after learning of the Kanneh case, NAJIT and our sister organization, the American Translators Association (ATA), issued a joint statement on the matter. A copy is attached, and may also be referenced at http://www.najit.org/Advocacy/NAJITATAStatementFinal_07302007.pdf. Two paragraphs from that statement bear repeating here:

We need to begin to develop the connective tissue between professional organizations of language providers and governmental agencies. We need to promote the flow of best practices and information so that the language communication barriers can be resolved quickly and effectively. We need national standards. We need to support funding for court interpreter programs such as Senator Kohl's bill, S. 702, to authorize the Attorney General to award grants to state courts to develop and implement state court interpreter programs.

We need to support the recruitment and training of interpreters and to certify interpreters in many languages other than Spanish. We need to create and fund certification exams in languages for which certification does not currently exist. Lastly, we need to offer incentives to recruit and retain already certified and qualified interpreters and translators.

We hope that the Maryland legislature can see its way clear to taking realistic steps toward preventing such apparent miscarriages of justice in the future. We stand ready to work with the Maryland Legislature and Judiciary to help solve this difficult issue but must condemn the SB 256 legislation.

“There is nothing easy about any trial where liberty is at stake and a victim is at loss. It is even less so when there are multiple languages involved. However, fundamental due process requires a level playing field, and that all persons answering to the law of the land be given a similar opportunity to answer.”

— Commonwealth of Kentucky, Fayette Circuit Court, Division Five (Opinion)

Sincerely,

Isabel Frammer
Chair of the Board of Directors
National Association of Judiciary Interpreters and Translators