

TESTIMONY OF

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**“United States Trustee Program:
Watch Dog or Attack Dog?”**

Hearing before the
Subcommittee on Administrative and Commercial Law
House of Representatives Judiciary Committee

October 2, 2007

Chairwoman Sánchez, Ranking Member Cannon and Members of the Subcommittee, thank you for the opportunity to appear before you today.

My name is Paul Uyehara and I am a senior attorney with Community Legal Services of Philadelphia. I have handled consumer bankruptcy cases for the past fifteen years at CLS, Philadelphia Legal Assistance and the Consumer Bankruptcy Assistance Project. Since 2000, I have worked in the CLS Language Access Project, where I focus my work on advocacy for clients with limited English proficiency (LEP), while maintaining a reduced bankruptcy caseload. Today I also am testifying on behalf of the National Association of Consumer Bankruptcy Attorneys (NACBA). NACBA's 2700 members represent a large proportion of the lawyers who file bankruptcy cases in the United States Bankruptcy Courts.

My testimony is divided into two parts. Drawing upon the collective experience of NACBA's members, I first will detail the problems consumer lawyers have encountered with the United States Trustee program. Secondly, I will discuss particular failings of the Executive Office for US Trustees in addressing language-based discrimination in the bankruptcy system.

Making Bankruptcy More Difficult and Costly for Consumer Debtors

For a number of years, NACBA has voiced concern about the direction of the United States Trustee ("UST") program under this administration. The program was intended to be a neutral administrator and monitor of the bankruptcy system. Independent regional United States trustees were modeled on the U.S. Attorney system, with the expectation that these appointees would exercise independent judgment in carrying out their duties.

Unfortunately, developments in the United States Trustee program in recent years have

mirrored those that occurred with respect to U.S. Attorneys. The program appears to have been redirected to serve the political purposes of the administration, and of its close allies in the financial services industry. Instead of focusing on making the bankruptcy system work better, it has expended resources in ways that have increased the cost of bankruptcy and placed great burdens on families already stressed by job loss, medical problems, divorce, or often a combination of these.

Instead of acting as a neutral player in the system, the UST program has focused solely on ferreting out alleged abuses by debtors, seeming to presume every debtor is dishonest, while doing nothing about readily apparent abuses by creditors and their attorneys. It has touted as its greatest achievements the amounts of debt it has prevented from being discharged, even though almost none of that debt was rendered collectible as a result. And those U.S Trustees who have not been zealous enough in carrying out the directives from Washington have been forced out or are not being reappointed.

The principal results of the United States Trustees' efforts have been to deny a financial fresh start to families who desperately need it by further increasing the costs of bankruptcy and attempting to make consumer bankruptcy a minefield of "gotcha" traps to trip up unsophisticated debtors, especially those without lawyers. This has occurred through the numerous burdensome document requests made of debtors, above and beyond the fifty to seventy pages of documents that must be filed in every case. It has occurred through motions or demands for changes in filed documents based on insignificant alleged defects or errors by debtors. It has occurred through aggressive and wasteful questioning of debtors at creditors' meetings. It has occurred through numerous trustee's motions to dismiss cases for minor alleged errors or defects.

And all of these actions have forced consumer bankruptcy lawyers to constantly look over

their shoulders and spend inordinate amounts of time trying to prevent any possible entry of data that might trigger UST action and cause much greater expense and delay in a case. For example, the six page means test form, much more complicated than a Form 1040 tax return, can take hours to complete. The attorney must calculate the income a debtor has received over the preceding six months, and actual average monthly expenses for a variety of items. In most cases, the result is that the debtor is hundreds or thousands of dollars under the threshold of disposable income that would trigger a presumption of abuse. Rather than this cumbersome and unnecessary process, in cases where the debtor is nowhere close to the amounts where it would make a difference, an attorney ought to be able to make reasonable and defensible estimates of some of these figures without necessarily looking at every utility bill, every paycheck, every medical bill, every telephone bill, every charitable contribution, every school expense, and every other item that must be tabulated in the means test. If the results are a few dollars off, it is just not going to make any difference.

But many, probably most, attorneys feel they must go through all of these documents because they are afraid of allegations of malfeasance that could be made by the United States trustee. As discussed in my testimony below, some UST's regularly request attorneys to provide documentation far and above what the statute or the rules require, which could be used to make these kinds of accusations, even if it makes no difference in the outcome of the case. And auditors employed by the UST demand even more documents, which can result in publicly filed accusations that debtors have made material misstatements, even if the alleged errors (which often are not even errors at all) would make no difference in any outcome of the case. Naturally, requiring this extraordinary and unnecessary degree of precision in preparing all of the papers raises costs dramatically. Along with the already considerable additional paperwork required by the 2005 law, such requirements have

made it impossible to handle bankruptcy for the modest fees, affordable to most financially troubled families, that prevailed before 2005. And *pro bono* programs have also suffered, finding it much harder to recruit volunteer attorneys willing to undertake the increased burdens and risks involved.

Burdensome Document Requests

It seems clear that United States trustees have been directed to make many more burdensome document requests of debtors under the new law. Compliance with these requests, above and beyond the numerous documents required in every case, can take hours of attorney time and even more time for their clients who usually must gather the documents from a variety of places. The United States trustee, to our knowledge, has done no cost/benefit analysis of these requests, which rarely turn up information significant enough to affect the outcome of a case. Indeed, there is no indication that the UST program has given any consideration at all to the burdens it imposes on a debtor when it takes only 30 seconds for the UST to send a form document request.

Moreover, most of these requests have come before the meeting of creditors, where the debtor can be questioned by the private trustee, and at which it would have become apparent that they were inappropriate. In New York, for example, we have had reports that the UST has instructed trustees to refuse to complete the processing of case for any above-median debtors if they do not provide two years worth of tax returns and six months of paystubs, far more than the law requires, and more than is necessary in most cases to determine whether any abuse could be alleged.

Here are a few examples of such requests:

- California - Although the 72 and 75 year old debtors were in extremely poor health, the UST demanded all credit card statements for four accounts, as well as all invoices, for 12

months, and an explanation of “what happened to [all] the merchandise purchased with the debts,” since the inception of any of the debts. (See Exhibit A)

- Pennsylvania - Numerous credit account documents were requested from an 84 year old man, living only on social security and a pension annuity of \$72 per month, with no assets, seeking to discharge debts mostly incurred by his late wife.
- Connecticut - A disabled client was asked for all credit card statements for two years on nine accounts, all applications for any kind of benefits and statements regarding benefits for 12 month period, all insurance policies for a three year period, and numerous other documents. (Exhibit B)
- New Jersey - A single mother, hearing impaired survivor of domestic violence left with two young children and no child support, a below median income debtor, was asked to provide within 11 days “any and all documentation of credit card purchases” with no time limitation on how far back this documentation should go.
- Pennsylvania - A request for 12 months of credit card statements from an 80 year old man who lives with his children and whose only income is social security.
- Minnesota - attorneys report that they receive a document request like this in every case where the debtor is above median income. (Exhibit C)
- California - A debtor who was run over by a bus, was in a coma for 30 days, and lost his job and his medical benefits, was asked for more documentation.

It is obvious that in many of these cases, the UST did not even bother to think, or check any of the facts, before sending the letter requesting additional documentation. Instead, United States trustee personnel at this time appear to be operating under a contrary directive to make the process as

burdensome as possible in virtually each and every case. Why shouldn't they, if they are under pressure to send more of these letters and it takes so little time to add the debtor's name and case number to a form letter?

In addition to all of these document requests by the United States trustees, private trustees in some districts send similar burdensome document requests, and we believe they are encouraged to do so by the UST program. Attached is a letter (Exhibit D) sent to a couple where both were disabled, and one was in a nursing home. Because the Director of the United States Trustee Program had asked NACBA to report inappropriate conduct to the United States trustees, NACBA wrote to the United States Trustee, who supervises this trustee, regarding the burdensomeness of such requests. We recently received a response to our letter from the Director of the Executive Office of the United States Trustees, in which he does not seem to find anything troubling about the contents of the document request or about such document requests being sent routinely by trustees, although he did offer to discuss the issue further.

Insignificant or Nonexistent Filing Defects

Another persistent problem is UST nitpicking about supposed defects in the papers, which are usually not even mistakes. For example, we have had inquiries about paystubs for a debtor who stated on her schedules she was unemployed, but in any event whose income was obviously so low there could be no conceivable possibility of sufficient income to pay creditors. Other attorneys have reported dealings with the UST about a paystub that supposedly was not filed (but was) for a debtor with a biweekly gross income of \$220. Another lawyer reported a UST demanding that a debtor who had been divorced for 10 years state on her schedules that she was "divorced" rather than "single"

when the question simply asks for “marital status”.

Similarly, the UST has aggressively sought dismissal of cases for such minor defects or for minor issues with respect to the credit counseling requirements. Here are some reported examples:

- *In re Ruckdaschel*, 364 B.R. 724 (Bankr. D.Id. 2007) - The debtors received counseling 187 days before the petition and actually attempted a credit counseling plan, in which they paid over \$7,000 to creditors, as a result of the counseling. The petition would have been filed within the 180 days but the husband debtor had been incarcerated and the filing was delayed by prison mail. The UST moved to dismiss and the case was dismissed.
- *In re Clippard*, 365 B.R. 131 (W.D.Tenn. 2007) - A *pro se* debtor sought a deferral of her credit counseling and obtained it after she filed her case. The bankruptcy court found the debtor had substantially complied with the requirement and denied the UST's motion to dismiss her case. The UST appealed the decision and succeeded in having the *pro se* debtor's case dismissed.
- *In re Kernan*, 358 B.R. 537 (Bankr.D.Conn. 2007) - The debtor contacted one of the credit counseling agencies on the UST web site, but the counseling she obtained was not the correct special pre-bankruptcy counseling. When she learned of this, she obtained the correct briefing one day after her case was filed. Agreeing that these facts were accurate, the UST nonetheless filed a motion to dismiss the case. The court denied the motion and found that the motion was neither warranted nor mandated.

Wasteful and Redundant Attendance of UST Personnel at Creditors' Meetings

Yet another problem is the newly frequent appearances of UST personnel at meetings of

creditors, where a panel trustee is already present and capable of asking all necessary questions. Although, by its very definition, the meeting is designed for creditors to ask any questions they have, the UST seems to feel it must represent the interests of creditors even if they do not bother to attend. And why should creditors show up if they have the U.S. Justice Department there to represent them?

Nonattorney UST "analysts" now regularly appear to ask questions, often misguided or irrelevant, and there have been many instances of inappropriate comments or questioning by UST personnel, for example, asking a wheelchair bound debtor, who was on social security disability - "How do I know you are disabled?" Clients are brought to tears, and asked questions like "why they don't brown bag it" or why their expenses increase when they are working. A 69 year old woman with five stents in her heart was asked if she had a note from her doctor, and why she was planning to stop working. In one well-known Pennsylvania incident, a UST attorney grilled an elderly African-American woman so mercilessly that she, humiliatingly, lost control of her bladder.

More than a few people who have observed the UST program have suggested to us that such actions result from the fact that they are overstaffed, in light of the decreased number of bankruptcy cases, and do not have enough to do, especially because they appear to have hired a large number of new nonattorney "bankruptcy analysts" in the last few years. As discussed below, we believe there is a lot the UST could be doing to police actions of creditors, but for the tasks they have chosen to take on, which appear to focus only on debtors in consumer cases, there is undoubtedly validity in the notion that if they have time to do all of the things they are doing they are indeed overstaffed.

Problems with Audits Under United States Trustee Supervision

There are numerous problems that have arisen in the audit program instituted by the UST to

carry out the new audit provisions of the 2005 law. The auditors make burdensome document requests in every case, with no apparent consideration of the costs to debtors to comply. They sometimes accuse debtors, in public filings, of material misstatements when no misstatements have been made, or when the alleged misstatement was not material because it could have had no impact on the case. In some of these cases, the accusations are based on misunderstandings of bankruptcy law. But there is no review by the UST before these public accusations are made. In fact, the UST will not even disclose the directions it has given to auditors regarding what constitutes a material misstatement.

Sometimes auditors seem to not only misunderstand the law, but assume their view of the law is the only possible view. We have heard of a number of cases where auditors found material misstatements because income on the means test form (a six month backward-looking average) did not match the income on Schedule I (the current income). Debtors have been reported to have made material misstatements based on auditors' own misstatements of what was in the debtors' schedules.

For example, an auditor in state of Washington claimed a material misstatement, based on a differing interpretation of how to complete schedules. The UST demanded that the debtor amend the schedules, even though it would have had no substantive impact on the case in any event, and even filed a motion to compel the amendment. The court ruled that there was no need for the debtor to amend.

In one audit of a debtor in Minnesota the debtors listed as assets: BUSINESS EQUIPMENT INCLUDING COMPUTER, MONITOR, PRINTER, KEYBOARD, FAX, FLORAL SHOP SUPPLIES, FLORAL SHOP LIVE INVENTORY, FLORAL SHOP EQUIPMENT IN DEBTORS' POSSESSION. An audit found a material misstatement because these items were not listed on the

line of the schedules for Inventory, but instead on the line for Machinery, fixtures, and supplies used in business.

The important point for this Committee is that when the UST comes forward with some large percentage of cases that supposedly had material misstatements, as they will undoubtedly do, perhaps in seeking more funding, those numbers are meaningless because the process is so flawed. The real question is in how many of those cases did the court dismiss the case or deny a discharge because of the alleged material misstatement. From what we are hearing, in the vast majority of cases where a supposed material misstatement was found this has not happened because in fact there was no misstatement or it was not really material.

Overly Aggressive Litigation Tactics

Another common problem is the filing by the UST of a motion to dismiss for abuse, which requires many hours of work to defend, followed by the withdrawal of the motion at the last minute. An example is described in the attached letter from a Minnesota attorney who was required to devote 25 hours of uncompensated work to a motion filed against a single woman who worked full time as a patient attendant and in addition worked part-time cleaning offices to make ends meet. (Exhibit E) When the time for trial came, the motion was abruptly withdrawn.

In another Minnesota case involving a debtor couple in which the wife had had a major stroke, greatly reducing their income, the UST argued that her prognosis was good and the case did not present special circumstances because she might be able to return to work nine months later.

One more example of poor exercise of judgment by the UST in litigation strategy is explained below.

Failure to Police Abuses by Creditors and their Attorneys

NACBA has previously raised with this Committee the failure of the UST to do anything about pervasive abuses by creditors and has complained to the UST about this failure for years. Courts have found creditors regularly filing false proofs of claim, and even bogus affidavits in connections with motions for relief from stay, types of fraud that have caused many families to lose their homes. Our experience is that these abuses occur daily, and have occurred for years, with no action by the UST program. Had debtors' attorneys committed such actions even once, the UST would undoubtedly have sought harsh sanctions.

We understand that the UST program is now saying it will begin taking action on some of these problems, but what they will do remains to be seen. We hope that they will not just bring one or two highly publicized cases for the sake of saying they are doing something. So far, they have mainly participated in actions initiated by others, and in at least one case it appeared that they took the side of the mortgage company that had committed the abuses. In *In re Rivera*, 369 B.R. 193 (Bankr.D.N.J. 2007) the court, on its own initiative, discovered massive filing of false documents by a law firm representing mortgage companies. A mortgage company appealed the bankruptcy court's order sanctioning it. Then, the UST, which had not initiated the case, entered into a stipulation, apparently on orders from Washington, vacating "any and all injunctions" entered by the bankruptcy court, even though the local UST had previously stated that injunctive relief was "a given" in the case.

Language Access – Section 341 Meetings of Creditors

In March 2003, I filed a civil rights complaint against the UST in Philadelphia on behalf of a

limited English proficient (LEP) debtor and the Consumer Bankruptcy Assistance Project after he refused to provide the debtor with a Cambodian interpreter for her meeting of creditors (a copy of the complaint is attached as Exhibit F). At that time, I had been surprised to learn it was the policy of EOUST not to provide interpreters for LEP debtors, since that policy existed in violation of Executive Order 13166, 65 Fed. Reg. 50121 (August 16, 2000), which requires federal agencies to ensure that LEP persons have meaningful access to federal programs and services. Indeed, it became apparent at that point that DOJ had erred in issuing its Departmental Plan Implementing Executive Order 13166 by mischaracterizing EOUST as a management component which would rarely have contact with LEP persons.

In response to the complaint, EOUST issued a Language Assistance Plan (Exhibit G) on August 31, 2004 in which it acknowledged that it had been re-classified as a component which, through the local UST offices, provided services and might interact with significant LEP populations. The plan called for an LEP Pilot Project in seven UST offices, including the Southern District of Florida and the Eastern District of Pennsylvania, each of which would implement a language access plan, after which EOUST would review, revise and implement a plan nationally starting in September 2006. By September 2007, EOUST was required to have filed a progress report with the Civil Rights Division on the national implementation of the plan. The plan called for UST's to provide competent interpreters for LEP debtors at 341 meetings, to have language services available in UST offices, and to translate important documents such as the bankruptcy information sheets distributed to debtors at the meeting of creditors.

Although the plan is simple, seemingly easy to implement and contained generous deadlines, EOUST has failed miserably in executing the plan. It is over a year behind in transitioning from the

pilot program to the national one. It has not changed its published handbooks for trustees which contain incorrect statements of policy on UST responsibility to provide language access. Six of the seven pilot districts had no information readily available on their websites about the availability of interpreters. There has been some backsliding in at least one pilot location – Miami – where the UST is issuing notices to all debtors that it is not providing translation services, posted notices about the pilot program were removed, and a private interpreter is attending meetings to hire himself out to Spanish speaking debtors. This continued state of affairs was been brought to the attention of Clifford White personally in June at a meeting I attended together with NACBA national president Henry J. Sommer.

EOUST is continuing to engage in national origin discrimination by placing LEP debtors at a disadvantage in the bankruptcy system based upon their English language ability, despite the fact that its pilot program long ago demonstrated such discrimination could be easily remedied. These practices are contrary to EO 13166, the DOJ Plan, and the EOUST plan and should be terminated without further delay. In the absence of aggressive and good faith remediation by EOUST, Congress should consider amendments to the law to impose standards on the bankruptcy system.

Language Access to Bankruptcy Counseling

EOUST has compounded its errors regarding treatment of LEP debtors in the past three years as it created and supervised the system to provide pre-bankruptcy credit counseling and pre-discharge debtor education courses mandated by bankruptcy reform legislation. It has not complied with the requirements set by Congress in Sections 109 and 111 of the Bankruptcy Code. It failed to thoroughly review agency qualifications, force providers to adhere strictly to applicable standards,

ensure the counselors were qualified and trained, review materials and lesson plans for efficacy and, as a result, it failed to ensure that adequate counseling would be made available to LEP debtors. It appears to have done so consciously, ignoring complaints from consumer advocates and acting as if it had learned nothing from its experience with the complaint regarding language access for meetings of creditors. Most egregiously, EOUST has attacked debtors who were unable to obtain bankruptcy counseling as a result of EOUST's erroneous policy.

EOUST devised standards for approval of the non-profit credit counseling and financial management agencies, including extremely detailed application, bonding and certification forms. It reviewed the applications and approved a host of agencies to provide educational services to debtors. Throughout the process, EOUST ignored the importance of language in the determining agency qualifications to provide effective teaching to debtors. Despite the mandate that agencies have qualified counselors and provide adequate counseling, it set no requirements for reporting the language capacity of the staff, while it did ask detailed questions about the educational background, certifications, experience and criminal record of each credit counselor. Financial management agencies were required to certify compliance with the Americans with Disabilities Act, availability of parking and public transportation access, building codes and insurance at all physical teaching locations, but were not asked to certify compliance with federal language access standards.

The resulting system, as designed and managed by the EOUST, contained numerous foreseeable language barriers to the bankruptcy education programs, because the approved agencies had little or no language capacity, generally were not required to advertise what multi-lingual capacity was available and had not translated required reading materials. For a long period of time, EOUST did not release to the public what little information it had gathered about language capacity,

leaving debtors and their lawyers to tediously contact agencies one by one till they found one that could offer language appropriate services. Debtors without lawyers were faced with the additional problem of having to gather this information from providers unable to converse with them in their language. Lawyers who sought assistance from UST staff in overcoming language barriers created by EOUST policy were offered no assistance but were guaranteed a fight if their clients failed to strictly comply with the new counseling requirements. In violation of federal policy, UST staff and counseling agencies often advised debtors and their lawyers to bring a relative or friend to provide interpreting or translation help in order to complete the counseling sessions in English.

The net result of the mismanagement of the debtor education programs by EOUST is that LEP debtors were faced with a federally sanctioned language barrier. This barrier can delay, restrict or bar LEP debtors from filing bankruptcy or obtaining a discharge, and can subject them to reliance upon others to participate in counseling or to the absurdity of sitting through classes which they cannot comprehend and the dangers of debt management plans or other outcomes premised on faulty understanding of financial information from the debtor or advice from the counselor.

These errors were brought to the attention of EOUST by consumer advocates as early as the summer of 2005 before the counseling requirements went into effect, yet EOUST did nothing to change course. In May 2006, my office and 36 other advocacy, consumer and ethnic organizations including NACBA complained in writing to Director White about the problem and made specific recommendations to correct it (Exhibit H). We received no response to the letter. In September 2006, I filed comments on EOUST's proposed rule on application and approval procedures for counseling agencies which included detailed changes to ensure that the agencies complied with federal language access policy (Exhibit I). I received no response to the comment and the rule has

not been finalized.

During this period, I learned from a legal services colleague of the plight of Jean Raoul Petit-Louis, a Creole speaking debtor in Miami whose lawyer was unable to find a single credit counseling agency that could provide a pre-bankruptcy session in the one language he could comprehend. His lawyer sought assistance from the UST, who had no useful suggestions and knew of no agency that could provide counseling effectively. Left with no alternatives and needing to file a bankruptcy petition immediately to avoid his eviction, Mr. Petit-Louis' lawyer filed the petition and noted on it that her client could not find a counseling provider.

When the matter came before Bankruptcy Judge Cristol, he quite rationally determined that the debtor had to be permitted to proceed without counseling since it was undisputed that no counseling was accessible to him. Remarkably, the UST fought the judge's decision as if the integrity of the bankruptcy system depending on getting it overruled. Lawyers were dispatched from Washington to Miami from EOUST to take over the fight against the debtor. When Judge Cristol properly denied reconsideration, they appealed and vowed to persist until they won, determined to deny the debtor a discharge and ultimately forcing him to abandon his bankruptcy case. The shameless government lawyers never acknowledged that EOUST was at fault for the lack of language accessible counseling and that their position in court – that the debtor was at responsible for the errors of the government – was itself a violation of federal policy.

Finally, by the time NACBA met with Director White in June 2007, EOUST was at least making available information about which agencies could provide counseling classes in what languages. Yet is apparent that consumer choice continues to be severely limited for those who don't speak English or Spanish. In Maryland, English speakers can choose from 54 debtor education

providers, while those who speak, for example, Korean, have a choice of two providers. The language information is presented on the website in a cumbersome and misleading manner. The FAQ posted there continues to suggest that debtors use friends or relatives to interpret, in violation of federal standards and providers are doing little to let the public know of the availability of second language instruction. Ongoing problems were detailed in a letter in August to Mr. White (Exhibit J).

It remains essential for EOUST to change course on management of the counseling system by recognizing that it must require the counseling agencies to increase language capacity and to devise plans to provide services effectively to LEP debtors. At the same time, UST staff should be required to assist debtors who have difficulty locating counseling and, in the event that services are not readily available, they should assist debtors in securing a waiver rather than attacking them.

Conclusion

I must emphasize that these issues are not new. NACBA has attempted over the years to bring these problems to the attention of the agency with no meaningful results. For years, we were told that they did not want to get involved in abuses by mortgage companies because they were “two party disputes.” When we complained about particular UST actions, we were told they were only “anecdotal evidence”. When we have asked the UST to comply with the Justice Department’s own policy on language access, the program has stalled and dragged its feet.

Now, with the winds of change prevailing in Congress, the program is apparently attempting to at least appear more responsive. This Committee should demand concrete action to change the unfair and unbalanced approach of the UST in consumer bankruptcy cases. Like the U.S. Attorneys, the United States Trustee program should be above politics. There is strong evidence that this has

not been the case under this administration.

I appreciate the opportunity to present this testimony to the committee. We are available to you and your staff to further discuss these important issues and how to correct the problems we have highlighted. Thank you for listening.

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EMPLOYMENT

Senior Staff Attorney, Community Legal Services, Philadelphia, PA

Represent and advocate for limited English proficient (LEP) low income clients through the Language Access Project, with emphasis on language rights, consumer and bankruptcy matters. Advocacy includes administrative complaints, policy setting and collaborative projects seeking to provide meaningful access to services for LEP groups. Responsible for setting policy, training and monitoring our own services to LEP clients. Have presented in many local, state and national trainings on language access and engaged in consulting, supporting development of practice standards and building the National Language Access Advocates Network. **September 2000 to present.**

Staff Attorney, Philadelphia Legal Assistance, Philadelphia PA

Represented low income clients primarily in Chapter 13 bankruptcy and mortgage foreclosure litigation, including administrative, trial and appellate advocacy. Assisted in training and supervision of paralegals, law students and attorneys. **January 1996 - September 2000.**

Supervising Attorney, Consumer Bankruptcy Assistance Project, Philadelphia PA

Screened referrals of potential chapter 7 debtors, supervised law students, provided mentoring to volunteer lawyers, represented debtors, trained volunteer lawyers, law students and community agencies for pro bono project. **July 1996 to September 2000 (part time).**

Staff Attorney, Community Legal Services, Philadelphia, PA

Represented and counseled low income clients with specialization in bankruptcy, mortgage foreclosure, child custody and spouse abuse from Kensington office. Assisted in supervision of summer interns as well as custody and support clinic staffed by law students. Co-counsel in federal ADA class action against Philadelphia Municipal Court which resulted in successful settlement. **October 1992 - December 1995.**

Assistant City Solicitor, City of Philadelphia Law Department

Represented Departments of Licenses and Inspections, Health, Fire, Streets and Police in code enforcement matters in state and federal courts, before Board of License and Inspection Review and Tax Review Board. Advised City officials on questions of law and public policy. **September 1989-September 1992.**

Judicial Law Clerk, Hon. Raymond J. Broderick, U.S. District Court, Eastern District of Pennsylvania

Researched and drafted opinions, orders, jury instructions and sentences and attended conferences, hearings and trials. **September 1988 - September 1989.**

Senior Paralegal, Community Legal Services, Philadelphia, PA

Interviewed and advised clients, negotiated, drafted pleadings, represented tenants at

administrative hearings, taught tenants' rights classes and assisted in training and supervision of new legal staff for Landlord - Tenant Unit. From 6/87 to 8/88, also represented tenants in Municipal and Common Pleas Court eviction proceedings as a Certified Legal Intern. **April 1978 - August 1988.**

VISTA Paralegal, Delaware County Legal Assistance Association, Chester, PA

Represented unemployment compensation claimants at referee's hearings, prepared briefs and argued appeals to Unemployment Compensation Board of Review and assisted utility customers with shut-offs and billing disputes. **June 1977 - April 1978.**

EDUCATION

Temple University School of Law, Philadelphia, PA *J.D. Magna Cum Laude, 1988*

Honors: Dean's Honor List - all semesters
 Robert E. Lamberton Award - Constitutional Law
 American Jurisprudence Awards - Property, Constitutional Law
 Distinguished Classroom Performance - Introduction To Trial Advocacy

Oberlin College, Oberlin, OH *A.B., 1977* Major: Government

BAR MEMBERSHIPS

Pennsylvania, 1988 U.S. District Court, Eastern District of PA, 1991

New Jersey, 1988 U.S. District Court, District of New Jersey, 1988

U.S. Court of Appeals, Third Circuit, 2004

AFFILIATIONS

National Language Access Advocates Network (N-LAAN), founding member and coordinator, 2006 - present.

Southeast Asian Mutual Assistance Associations Coalition (SEAMAAC), Board member, June 2005 - present; Vice-Chairman, 11/06 - present.

Task Force on Equal Access to Courts by Limited English Proficient Persons, Philadelphia Bar Association, member, October 2004 - present; chair, January 2007 - present.

William M. Marutani Fellowship, Advisory Board and Selection Committee, member, 2003 - 2006.

Pa. Supreme Court Committee on Racial and Gender Bias in the Justice System, 2000 - 2003, member, work group on Litigants with Limited English Proficiency, lead drafter and editor of work group report, adopted by the full committee and published 3/03.

Philadelphia Police Advisory Commission, Commissioner, 2/94 - 12/03; chair, hearing panel; former chair, outside counsel committee.

Japanese American Citizens League, National Board member, 2003 - 2005; Governor, Eastern District Council, 2003 - 2005; *Pacific Citizen* Editorial Board member, 2000 - 2003; national chair, Constitution & Bylaws Committee, 2002, 2004 and 2006; Philadelphia Chapter,

President, 1997- 1999; Philadelphia Chapter Board, 3/93 - present.

Consumer Bankruptcy Assistance Project, Board of Directors, 2001 - present.

Stadium Out of Chinatown Coalition, Steering Committee, 2000.

National Association of Consumer Advocates, member, 2000 - present.

Asian Pacific American Access to Justice Summit, attendee, November, 1999.

National Association of Consumer Bankruptcy Attorneys, member, 1998 - present.

Eastern District of Pennsylvania Bankruptcy Conference, Pro Bono Committee Chair, 1997 - 2000.

National Organization of Legal Services Workers, U.A.W, member 10/92 - present.

Arbitrator, Philadelphia Court of Common Pleas, 1992 - 2000.

Mayor's Commission on Asian Pacific American Affairs, 10/88 - 11/93; Vice-chairman, 1992.

Asian American Bar Association of the Delaware Valley, member, 9/88 - present.

Asian Americans United, 4/85 - present.

Asian American Council of Greater Philadelphia, board member, 1979 - 80.

PUBLICATIONS

"Legal Help for Speakers of Other Languages: Three Ethical Traps," *Cornerstone* (magazine of the National Legal Aid and Defender Assoc.), May - August 2007.

"Beyond Policy: Next Steps for Providing Meaningful Services to Limited English Proficient Clients," Management Information Exchange *Journal*, Summer, 2007 (Co-author with Joann H. Lee).

"Funding the Mandate for Language Access," *Dialogue* (American Bar Association Division of for Legal Services magazine), Winter 2004.

"Making Legal Services Accessible to Limited English Proficient Clients," Management Information Exchange *Journal*, Spring, 2003

"Opening our Doors to Language Minority Clients," *Clearinghouse Review, Journal of Poverty Law and Policy*, March - April, 2003

TRAININGS, ADVOCACY AND CONSULTATIONS

Course Planner, National Legal Aid and Defender Association (NLADA) 2007 Annual Conference, Tucson, AZ.

Trainer, Mid-Atlantic Regional Training, farmworker advocacy program interns, Philadelphia, and Bridgeton, NJ, June 2007, "Language Access Advocacy" and "Interpreting Issues for Advocates."

Trainer, Pennsylvania Legal Aid Network Statewide Training Conference, Harrisburg, PA., June 2007: "Act 172 - Court and Administrative Proceeding Interpreters," "Collaboration with

Non-Lawyers: Working with Interpreters,” and “Introduction to Working with Interpreters.”

Grant reviewer, Ohio Legal Assistance Foundation for 2007 OLAF grants, May 2007.

Trainer, Philadelphia Municipal Court Judicial Conference, May 2007, “New Provisions for Interpreters - SB 669,” and “Sign Interpreters in the Court” (moderator).

Trainer, “Language Access Advocacy Training,” Legal Services for New York City, April 2007.

Trainer and course planner, ABA/NLADA Equal Justice Conference, March 2007, Denver: “Language Access Issues for Health Advocates and Legal Services Providers,” “Limited English Proficiency: Self-Help as a Tool for Access,” and “When Immigration and Pro Bono Intersect in Transactional Pro Bono Programs.”

Trainer, “Working with Interpreters: Ethical and Legal Mandates,” Maryland Legal Aid Bureau, Columbia, MD, December 2006.

Trainer, “Exploring Ethical Boundaries of Collaboration with Non-Lawyers,” Public Interest Law Day, Pa. Bar Institute, Philadelphia, December 2006.

Trainer and Track Leader, NLADA Annual Conference, Charlotte, November 2006. Coordinated planning for N-LAAN curriculum of seven language access workshops and an affinity group meeting and presented in: “Serving LEP Clients 101,” “Serving LEP Clients 301,” and “Introduction to Working with Interpreters.”

Presenter, “Language Access Advocacy” Organization of Chinese Americans National Convention, August 2006, Philadelphia.

Trainer, “Title VI Language Access Advocacy” and “Interpreting Issues for Advocates,” Mid-Atlantic Regional Training, Farmworker advocacy program interns, Philadelphia, June 2006.

Trainer, “Collaborating on Language Access Issues,” Association of American Law Schools Conference on Clinical Legal Education, New York City, May 2006.

Consultant, San Francisco Office of Citizen Complaints & Chinese for Affirmative Action, regarding drafting of Departmental General Order on Language Access Services for Limited English Proficient Persons to SFPD, 2006.

Advocate and lead drafter, proposed draft standard 1.7, which became Standard 4.6, Communication in the Primary Languages of Persons Served, Standards for Providers of Civil Legal Services to the Poor, (ABA Standing Committee on Legal Aid and Indigent Defendants), for ad hoc national legal services staff committee, December 2004 - March 2006.

Trainer, ABA/NLADA Equal Justice Conference, Philadelphia: “Providing Services to Language Minority Clients,” “Working with Interpreters,” “Strategies to Address Marginalized Client Communities through Leadership, Inclusion, Diversity and Cross-Cultural Competence,” and “Cultural Competence: Nuts and Bolts,” March 2006.

Trainer, “Language Access and Law Enforcement,” Lutheran Settlement House, Bilingual Domestic Violence Project, Philadelphia, February 2006.

“Language Access & Battered API Women with Limited English Proficiency” national advocates’ meeting, participant, Washington DC, January 2006.

Consultant, Legal Services of Greater Miami, Inc., in contested Chapter 7 bankruptcy proceedings which led to issuance of two court opinions, In re: Jean Raoul Petit-Louis, ordering waiver of credit counseling for limited English proficient debtor for lack of services in Creole,

December 2005 to January 2007. Organized national sign on letter to Justice Department complaining of failure to manage new counseling system so that it is accessible to LEP debtors, May 2006.

Advocate and counsel, as part of Language Access/Law Enforcement committee, Pa. Immigration and Citizenship Coalition, working with Philadelphia Police Department and Office for Civil Rights in the Office of Justice Programs, US Department of Justice, which resulted in December 2005 issuance of PPD Directive 71 on Limited English Language Proficiency, July 2004 to present.

Ad Hoc Advisory Committee, National Asian Pacific American Bar Association, Language Access to Justice Project, member 11/05 to present. Consulted with author and assisted in editing resulting report, "Increasing Access to Justice for Limited English Proficient Asian Pacific Americans, Report for Action" published March 2007.

Trainer, NLADA Annual Conference, Orlando, FL, "Updates in Serving Limited English Proficient Clients," "Access to Justice for Immigrants and Guestworkers," and "Law Enforcement and Language Access Issues Roundtable," November 2005.

Drafter, City of Philadelphia, Office of the Managing Director, proposed "Language Access Policy and Plan", May 2005.

"Court Interpreting Legislation," presenter, 2005 Spring Interpreting Program, Delaware Valley Translators Association, Philadelphia, April 2005.

"Cross-Cultural, Cross-Lingual Competence," panelist, "Curricular Choices for Practice in the 21st Century," Symposium, CUNY School of Law, New York, April 2005.

"Limited English Proficient Litigant Issues in the State Courts," testimony to the Pa. State House Democratic Policy Committee, York, PA, March 2005

"Bankruptcy and the Limited English Proficient Debtor" presented segment as part of half day "Minority Perspective on Bankruptcy: The Impact of Diversity," Pennsylvania Bar Institute (PBI), February 2005, Philadelphia.

Trainer, "Providing Legal Services to Limited English Proficient Clients: Implementing LSC's Guidance" NLADA Annual Conference, Washington DC, December 2004.

Advocate, field program staff committee, assisted in formulation and critique of Legal Services Corporation's 12/6/04 Program Letter 04-2 and Guidance for Serving Eligible Individuals with Limited English Proficiency, January 2003 - December 2004.

"How to Effectively Represent Limited English Proficient Clients in Hearings," PBI Public Interest Law Day CLE, October 2004, Philadelphia, moderator and co-planner.

Trainer, "Language Issues in Community Policing," police training sponsored by Commission on Crime and Delinquency and Police Victim Services Advisory Council, Philadelphia, October 2004.

Counsel, administrative complaint filed with Civil Rights Division, U.S. Justice Department on behalf of Huot Hoeung and the Consumer Bankruptcy Assistance Project and against the Executive Office for US Trustees regarding failure to provide interpreters for LEP debtors at mandatory meetings of creditors. Led to issuance of EOUST Language Assistance Plan 8/04 calling for pilot project to provide interpreters followed by national roll out of coverage. January 2003 - present.

"Interpreter Training for Bilingual Staff" Pa. Legal Services (PLS) Statewide Training Conference, Valley Forge, May 2004, course co-planner.

Trainer, "Hot Updates on the Law: Serving the Limited English Proficient Client," Pennsylvania Bar Association Pro Bono Conference, May 2004, Hershey, PA

"Language Access for Legal Services, Program Managers Training," planner and presenter, Pa. Legal Services Directors Meeting, Harrisburg, PA, March, 2004.

"Language Access and Title VI Requirements for Non-Profits," Philadelphia, January 2004, co-planner and trainer.

"Innovations in Civil Legal Services," presenter; and "Best Practices in Serving LEP Clients," panelist, NLADA Annual Meeting, Seattle, November 2003.

"Providing Language Assistance Services for Limited English Proficient Clients of Legal Services Offices," NLADA Substantive Law Conference, Los Angeles, 7/03, course co-planner.

"Legal Interpreting" training, sponsored by Health Promotions Council, co-trained at five 1.5 day sessions in Philadelphia, Harrisburg, Wilkes-Barre and Scranton, October 2000 - June 2003

"Advocating for Access to Interpreter and Translation Services for Limited English Proficient Clients in Legal Proceedings," PLS Statewide Training Conference, State College, PA May 2003, panelist.

"Collateral Damage: Homeland Security and Immigrant Rights" PBI Public Interest Law Day CLE training, 4/03, course co-planner

"Serving Limited English, Immigrant and Refugee Communities," PBI Public Interest Law Day CLE training, 6/7/02, panelist

"Strategies for Overcoming Language Barriers and Creating Access to Legal Services for Immigrant Clients," NLADA Annual Conference, Miami, 11/8/01, panelist

"Overcoming Barriers in Serving Immigrants and Refugees," National Consumer Law Center Consumer Litigation Conference, Baltimore, 10/27/01

"Providing Accessible Services to Limited English Proficient Clients," PLS Statewide Training, Gettysburg, 10/24/01, co-trainer.

"Language Access Rights Under the Civil Rights Act of 1964" CLE Training for Hispanic National Bar Association 2001 Convention, Philadelphia, October 18, 2001, co-trainer.

"Language Access in Health and Welfare Settings" training for elderly service providers for conference of Center on Ethnic and Minority Aging (CEMA) - Philadelphia, 5/17/01, co-trainer.

"Saving Homes: An Overview of Tools to Avert Mortgage Foreclosure," PLS Statewide Training Conference, Split Rock Lodge, 10/99 presenter.

"Pro Bono Representation of Chapter 7 Debtors," Trainer, Philadelphia Association of Paralegals, Educational Conference, 10/98.

"Fundamentals of Bankruptcy for the Consumer Credit Counselor," trainer for credit counselors, Philadelphia, 6/98.

GOLD and HAMMES, Attorneys
1570 The Alameda, Suite 223
San Jose, California 95126
(408) 297-8750

May 7, 2007

John Wesolowski, Esq.
Office of the U.S. Trustee
280 S First St #268
San Jose CA 95113

Re: [REDACTED]
[REDACTED]

Dear Mr. Wesolowski:

This letter is in response to your request for invoices and credit card statements.

While I imagine, with significant effort on the part of my clients and me, I might be able to get some of the information you request, I wish to share some information about the debtors which hopefully will cause you to withdraw your request.

My clients are 72 and 75 years old, with most of their income being Social Security benefits. Their health is extremely poor. The husband has been in the hospital I believe more than once in the last six months with one stay resulting in subsequent time spent in a convalescent home. The wife is struggling to deal with her own poor health as well as her husband's. It was very difficult for them to make it in to my office to prepare and sign papers for their bankruptcy.

With regard to their credit card bills, Mr. and Mrs. [REDACTED] have had significant balances on them for quite a few years. Like so many of my clients, they have always hoped for that "miracle" that would allow their debts to be paid off. That miracle did not come.

Yes, we could probably force them to get the assistance of their children to sort through old financial records – if they have them – to find sales slips for items which were purchased probably five or ten years ago. And, if you were to trace the current balances back to the actual purchases, you and we would probably find that of the \$27,000 owed to Bank of America, for example, the purchase prices probably total only \$5,000 or so. Very likely there have been balance transfers made in an attempt to keep interest rates low which ultimately resulted in much higher interest and additional fees.

Mr. and Mrs. [REDACTED], like most of my clients, have been treated and cheated mercilessly by the credit card companies. Will the U.S. Trustee's Office or any other federal agency take any action against the usurious interest and abusive collection practices by the credit card companies? Of course not. That's the way our federal government is these days – abuse the helpless and reward their corporate abusers.

These clients, like virtually all of my clients, tried everything they knew of to avoid filing bankruptcy. Does it really make any sense to punish them further by scaring them into having nightmares about going to jail? They've already had those nightmares. What do you and the U.S. Trustee's Office expect to get out of this demand for documents?

Let me know if you still believe you need the requested items.

Sincerely,

GOLD and HAMMES

Norma Hammes

Norma Hammes

c: Suzanne Decker, Trustee



U.S. Department of Justice

Office of the United States Trustee
District of Connecticut

One Century Tower (203) 773-2210
265 Church Street, Suite 1103 Fax: (203) 773-2217
New Haven, Connecticut 06510-7016

July 3, 2007

VIA FACSIMILE AND U.S. MAIL

Christopher Carrozzella
130 North Main Street
P.O. Box 37
Wallingford, CT 06492-0037

Re: [REDACTED]

Dear Attorney Carrozzella:

As part of the United States Trustee's Civil Enforcement Initiative, we are conducting an independent review of all chapter 7 filings. This case is being examined for a potential motion seeking dismissal pursuant to 11 U.S.C. § 707 and for the filing of a complaint objecting to discharge under 11 U.S.C. § 727(a). In order for us to complete our examination and determine whether further action is appropriate, we request that you provide us with the following documents:

1. All statements for financial accounts held by the Debtor for the two-year period preceding the filing of the bankruptcy petition including, but not limited to, checking, savings, certificates of deposit, securities, retirement, investment, and credit union accounts.

2. Credit card statements (bills) for the two-year period prior to the filing of the bankruptcy petition for the following creditors:

- a. Advanta Bank Corp. Account no. [REDACTED]
- b. Bank of America Account no. [REDACTED]
- c. Bank of America Account no. [REDACTED]
- d. Bank of America Account no. [REDACTED]
- e. BankCard Services Account no. [REDACTED]
- f. Chase Account no. [REDACTED]
- g. Chase Account no. [REDACTED]
- h. Chase Account no. [REDACTED]
- i. MBNA America Account no. [REDACTED]

3. All insurance policies and riders thereto under which the Debtor is an insured for the period

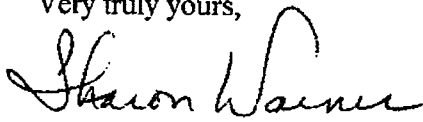
beginning three years prior to the filing of the bankruptcy petition through the present date including, but not limited to, homeowner, renter, life, motor vehicles, marine equipment, equine, jewelry, art, and collectibles.

4. All applications for benefits and statements regarding benefits received within the twelve-month period prior to the filing of the bankruptcy petition through the present date including, but not limited to, retirement, disability, unemployment, or worker's compensation.
5. If the Debtor is divorced or legally separated, copies of the decree of divorce or separation, financial affidavits, and any and all documents relating to court approved alimony (maintenance), child support and property settlement.
6. Statements reflecting any gaming or gambling activity, including winnings and losses, for the two years prior to the filing of the bankruptcy petition.
7. A copy of the Debtor's credit report.
8. Please identify and explain ~~the Debtor's~~ relationship to the Debtor. Please also identify the property for which the Debtor is obligated to Wells Fargo Home Mortgage as stated on Schedule H, and provide documentation of the Debtor's obligation of the debt, as well as documentation of the current amount of the debt.
9. If applicable, an explanation in writing detailing the extraordinary circumstances which precipitated the filing of the petition.

Please provide these items on or before **July 23, 2007**.

Thank you in advance for your anticipated cooperation.

Very truly yours,



Sharon Warner
Paralegal Specialist

cc: B. Amon James
Ronald I. Chorches



U.S. Department of Justice

Office of the United States Trustee

*Districts of Minnesota, Northern Iowa,
Southern Iowa, North Dakota and South Dakota*

Regional Headquarters

Law Building, Suite 400

225 2nd Street SE

Cedar Rapids, IA 52401-1400

(319) 364-2211

Fax (319) 364-7370

April 12, 2007

Janet Hong
101 2nd St. SE, Suite 600
PO Box 1307
Cedar Rapids, IA 52406-1307

Re: 

Dear Ms. Hong:

I am reviewing the bankruptcy schedules and Statement of Current Monthly Income and Means Test Calculation filed by the above debtor(s) for accuracy and repayment potential under 11 U.S.C. §707(b).

Please provide copies of the following documents regarding this bankruptcy estate so that I may complete the review:

- ~~1.~~ Copies of debtor(s)' pay stubs for the **7 months** prior to filing.
- ~~2.~~ The debtor(s)' previous two years federal and state income tax returns, including all supporting schedules, W-2's and 1099's.
- ~~3.~~ The current declarations sheet for home owners insurance with copies of all scheduled assets and riders, life insurance (except through employer) and auto insurance.
- ~~4.~~ A statement showing the origination date, term, amount, interest rate and current balance on any loans against the debtors' 401(k), if applicable.
- ~~5.~~ If the debtors' have a dependant for which they are paying/receiving support, provide a copy of the Order for Support.
- ~~6.~~ A payment coupon or statement showing the amount of the house payment or rent.

~~7.~~ Provide a payment coupon or statement showing the amount owing and number of payments remaining on all secured debt. Collins CU
Wells Fargo

If the debtor(s) have business debts or business income, please:

- ~~1.~~ Identify all business debts on Schedules D, E and F.
- ~~2.~~ Provide an itemization of any business expenses which are included on Schedule J, and 4b or 5b of Form B22.

If the debtor(s) have claimed expenses on Form B22 for the following, please provide:

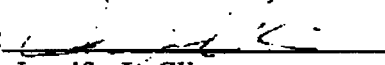
- ~~1.~~ If the debtor has expenses for education for employment or for a physically or mentally challenged child, provide documentation for those expenses.
- ~~2.~~ If the debtor has expenses for childcare, provide documentation for those expenses.
- ~~3.~~ If the debtor has expenses for telecommunication services, provide documentation for those expenses.
- ~~4.~~ If the debtor has expenses for contributions to the care of household or family members over 18 years of age, provide documentation for those expenses and an explanation of why those expenses are necessary.
- ~~5.~~ If the debtor has expenses for home energy costs in excess of the IRS allowance, provide documentation for those expenses.
- ~~6.~~ If the debtor has education expenses for dependent children under 18, provide documentation for those expenses.
- ~~7.~~ If the debtor has expenses for additional food and clothing above the IRS allowance, provide documentation for those expenses.
- ~~8.~~ If the debtor has expenses for continued charitable contributions, provide documentation for those expenses.

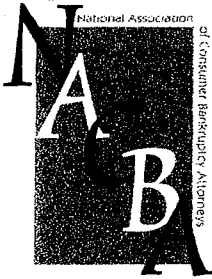
Please advise of any extenuating circumstances which this office should take into account when reviewing this case under §707(b). If possible, provide evidence of the extenuating circumstances, such as doctor's statements, notification of job termination, etc.

Please submit your response, the requested documentation and file any necessary amendments by April 26, 2007. Please do not submit originals. All documents will be shredded when this office has completed its review. Thank you for your assistance with this matter.

Sincerely,

HABBO G. FOKKENA
UNITED STATES TRUSTEE

By: 
Jennifer E. Cline
Paralegal Specialist



National Association of Consumer Bankruptcy Attorneys

Please respond to:

7118 McCallum Street
Philadelphia, PA 19119
215-242-8639
henry@henrysommer.com

OFFICERS

Henry Sommer
President

Carey Ebert
Vice President

John Rao
Secretary

James "Ike" Shulman
Treasurer

HABBO G. FOKKENA
UNITED STATES TRUSTEE (REGION 12)
225 SECOND STREET, SE, SUITE 400
CEDAR RAPIDS, IA 52401

Re: Burdensome trustee document requests

BOARD OF DIRECTORS

Edward Boltz
Raleigh, NC

William Brewer, Jr.
Raleigh, NC

John Colwell
San Diego, CA

Norma Hammes
San Jose, CA

Matthew Mason
Detroit, MI

Barbara May
Arden Hills, MN

Dear Mr. Fokkena:

I am writing to convey concern about burdensome document requests by a trustee under your supervision. Enclosed is one of those requests, which was made in a case where the debtors are both disabled and living on social security. The husband is in a nursing home and the wife is an amputee. I understand that much of their debt was incurred to pay medical expenses. The request was made before the meeting of creditors, at which the trustee could have assessed the case and learned these facts.

ADMINISTRATION

Maureen Thompson
Legislative Director
1901 N. Fort Myer Drive
Ste. 1012

Arlington, VA 22209

(703) 276-3251 Phone

maurent@hastingsgroup.com

Candace Lambrecht
Administrative Director
1501 The Alameda
San Jose, CA 95126
(408) 350-1173 Phone
admin@nacba.org

Tara Twomey

Amicus Project Director

tara.twomey@comcast.net

National Headquarters

2300 M St., N.W.

Ste. 800

Washington, D.C. 20037

(202) 331-8005 Phone

(202) 331-8535 Fax

Website: www.nacba.org

Blanket requests such as this one greatly increase the cost and burdensomeness of filing bankruptcy. It can take many hours of time for attorneys to gather all the information that is requested, and such information almost never has any substantive effect on a case such as this one.

It is my understanding that this particular trustee makes similar requests routinely in cases where they are not appropriate, perhaps in an attempt to curry favor with your office. You should send this trustee and others a clear message that such requests are not appropriate, and that more specifically targeted requests should be made only after a creditors meeting, where it can be determined what information, if any, could have a significant effect in a case.

As you may know, the United States trustee program, and your office in particular, have been criticized by our organization and others for needlessly adding to the costs and difficulties of filing bankruptcy cases. Please inform me whether you will be taking any remedial action to prevent such problems in the future.

Very truly yours,

Henry J. Sommer

cc: Clifford J. White, III, Director

EXHIBIT D

PATTI J. SULLIVAN
UNITED STATES CHAPTER 7 PANEL TRUSTEE
P.O. Box 16406, St. Paul, MN 55116
Telephone: (651) 699-4825
Facsimile: (651) 699-4831

August 8, 2007

AUG 10 2007

Barbara J. May, Esq.
2780 Snelling Avenue N.
Suite 102
Roseville, MN 55113

Re: 

Date of Filing: 07/31/07

Dear Ms. May:

As you know, I am the Trustee in the above matter. Please have the debtor provide me with the following information at your earliest convenience and, in any event, at least one week prior to the meeting of creditors to be held on August 28, 2007:

- 1) The debtors' bank account statements, along with registers or copies of cancelled checks, for the time period covering May 1, 2007 through August 15, 2007 for any and all accounts into which the debtors have deposited any monies or from which any of the debtors' bills have been paid for that time period.
2. The debtors' paycheck stubs covering the pay periods commencing two weeks prior to commencement of the bankruptcy case, and continuing through the pay period ending two weeks after commencement of the bankruptcy case.
3. Copy of the debtors' most recent year tax returns. PLEASE MAKE CERTAIN TO INCLUDE, IF APPLICABLE, A COPY OF THE PROPERTY TAX REFUND FORM.
4. If the debtors signed a mortgage in the last year, please have them provide me with a copy of that mortgage together with a copy of the settlement statement from the mortgage closing.
5. If the debtors have gone through a divorce in the last five years, please have them provide me with a copy of the decree of dissolution.
6. Copies of certificates of title for all vehicles, trailers, and boats. /
7. Copy of the declaration page from the insurance policy showing that all vehicles are covered with collision and comprehensive insurance.-
8. Copy of any appraisal for the debtors' home, completed in the last two years.
9. Copy of debtors' homeowner's policy with all endorsements.
10. Documents regarding liquidation of IRA's (i.e., statements reflecting withdrawals and copy of check (s) (front and back) used to pay for medical services along with invoices.

If the debtors made any payment on the home mortgage other than regular scheduled monthly payments in the last two years, please have the debtors provide a list of all such payments and the source of the monies for those payments.

The failure by the debtors to timely provide the information requested above may result in the meeting of creditors being continued. Please have the debtor mail all requested information, as our fax machine does not accept large faxes.

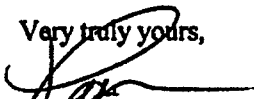
I enclose three copies of the tax stipulations for 2007. Please have the debtors sign all three copies and return them to me as soon as possible. Please remember that 58% of the federal refund and state income tax refunds are an asset of the estate. If the debtors receive the refund, they should not cash the check.

In addition, I hereby request that the debtor provides to me copies of their state and federal income tax returns for 2007, including the property tax return, as soon as they are filed. I enclose 3 stipulations for your clients' 2006 property tax refund, 100 percent of which is an asset of the estate. Please have the debtors sign all three copies and return them to me as soon as possible. If the debtors will not qualify for a property tax refund, please have them execute a statement indicating they will not qualify for a property tax refund when they provide copies of the returns.

All of the documents the debtors turn over are property of the bankruptcy Trustee. They will not be returned to the debtors. They will be destroyed two years after the debtors' bankruptcy case is closed unless the debtors make prior arrangements to pick them up from the Trustee's office. Be sure to make copies of any documents the debtors require before the debtors turn them over to me. Thank you for your consideration in this matter.

If you have any questions regarding this matter, please feel free to contact me.

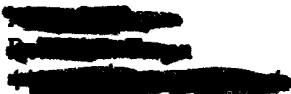
Very truly yours,



Patti J. Sullivan
Trustee in Bankruptcy

PJS:ldc

cc:



South St. Paul, MN 55075

IAN TRAQUAIR BALL

ATTORNEY AT LAW

12 SOUTH SIXTH STREET, SUITE 326
MINNEAPOLIS, MINNESOTA 55402

612/338-1313

February 11, 2007

Michael Ridgeway
Trial Attorney
Office of the U. S. Trustee
1015 United States Courthouse
300 fourth Fourth Street
Minneapolis, MN 55402

Dear Mr. Ridgeway:

I note that your are scheduled to speak at the MSBA Bankruptcy Law Section meeting on February 20, 2007 on miscellaneous Means Test issues in Chapter 7 bankruptcy proceedings. I hope you will have time to address a concern of attorneys who represent consumer debtors about the way in which the U. S. Trustee's office is conducting its adversarial proceedings regarding §707(b) objections so far.

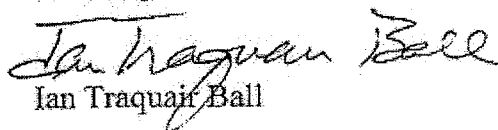
My own concern is based on my recent experience in a Chapter 7 case, [REDACTED], in which the U. S. Trustee objected to my inclusion of a homeowner association monthly assessment as part of the monthly secured debt expense listed in paragraph 42 of Form B22A. Omitting this expense would cause the debtor to be ineligible for Chapter 7 relief. The U. S. Trustee filed the requisite notice of presumption abuse, I filed a response in behalf of the debtor, and a hearing was scheduled before Judge Dreher. Although no discovery was ordered by the judge because the matter appeared to be purely a matter of law, I nevertheless obtained copies of the debtor's mortgage agreements, the homeowner association declaration, and association by-laws and made those documents available to the U. S. Trustee. I also provided the U. S. Trustee, at its request, with additional information regarding the association's monthly and annual expenditures. I met with my client in St. Cloud twice besides several phone conferences and I met with the U. S. Trustee's office on three separate occasions to make the documents available and to discuss withdrawal of its §707(b) objection. Each time I met or discussed the objection with the U. S. Trustee's office, I was advised that the U. S. Trustee intended to go forward with the objection. I then prepared a trial brief, as well as fact and exhibit stipulations, as ordered by Judge Dreher. On the afternoon of the day the trial brief and stipulations were due, I was advised by the U. S. Trustee that it had decided to withdraw its objection and that the hearing was canceled. Between the meetings with my client in St. Cloud and the meetings with the U. S. Trustee, phone conferences, case law research, and trial brief preparation, I spent a minimum of 25 hours responding to

U. S. Trustee's §707(b) objection. My client was a single woman working a full-time job as a patient attendant and a part-time job cleaning offices on weekends, living in subsidized housing, and could not possibly afford to pay me for the additional time this trial preparation required. I did it anyway because I believed she needed the representation. As it turned out, it was a complete waste of my time.

Since the [REDACTED] hearing was canceled, I have discovered that several other attorneys have had a similar experience with the U. S. Trustee's office: a notice of presumption of abuse is filed, a hearing is scheduled, the debtor's attorney responds, a trial order is issued, the debtor's attorney prepares the required exhibits and trial brief, and then shortly before the hearing, the U. S. Trustee withdraws its objection but does not concede the issue. The result is an unresolved issue with no direction from the bankruptcy court. Just as important, however, is the impression given that the U. S. Trustee, after filing a notice of presumption of abuse and scheduling an evidentiary hearing, is deliberately rejecting any substantive discussions with the debtor's attorney, in order to burden the debtor's attorney with the additional task of trial preparation even though the U. S. Trustee does not intend to go forward with the hearing. The effect, whether or not intended, is to discourage a debtor from contesting the U. S. Trustee because the debtor cannot afford the additional cost of representation that will not go to hearing anyway. The inability of Chapter 7 debtors to afford the extra cost, and the unwillingness of consumer bankruptcy attorneys to undertake such litigation repeatedly without compensation or adjudication, gives the U. S. Trustee an unfair advantage.

This letter is not a complaint about any of the personnel of the U. S. Trustee's office; I have great respect for every employee that I have dealt with in that office, including my experience in the [REDACTED] case. The letter is addressed to you because you are the U. S. Trustee representative chosen to discuss various §707(b) issues at the section meeting on February 20, 2007, and I want you to be aware of the very real concerns of the consumer debtor bankruptcy bar for the apparent disregard of the U. S. Trustee for the burdens it is deliberately or unintentionally placing on the debtor to respond to a presumption of abuse notice on the merits. I hope you will have time to comment on this issue on February 20, 2007.

Sincerely,


Ian Traquair Ball

cc: Habbo Fokkena
Stephen Creasey

COMPLAINT FORM

1. Complainants:

- a. (Ms.) Huot Hoeung
901 Emily Street, 2nd Fl.
Philadelphia, PA 19148
(215) 334-0537

- b. Consumer Bankruptcy Assistance Project
1424 Chestnut Street
Philadelphia, PA 19102
(215-523-9511)

2. Persons subject to discrimination, if different from above:

- a. Huot Hoeung (above)

3. Agency or Department or Program that discriminated:

Agency: U.S. Department of Justice
Component: Office of the United States Trustee
Individual: Frederic J. Baker, Sr. Assistant U.S. Trustee
Address: 601 Walnut Street, Rm 950 West
Philadelphia, PA 19106
Telephone: 215-597-4411

4A. Non-employment form of discrimination:

Race or Color _____

National Origin X (**Specify: Limited English Proficient**)

Religion _____ **Method of Payment** _____ (**Specify:** _____)

Age _____ (**Specify:** _____) **Sex** _____

Disability _____ (**Specify:** _____) **Other reason** _____ (**Specify**)

5. Contact information: Please contact complainants through counsel. Any communication to Huot Hoeung should be conducted in Khmer.

6. Additional contact information:

NA

7. **Counsel:**
Paul M. Uyehara
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
215-981-3718/3700 (tel)
215-981-0436 (fax)
puyehara@clsphila.org
8. **Dates the Alleged Discrimination Took Place:**
Earliest: 1/24/03
Latest: Ongoing
9. **Explanation of any Delay Beyond 180 Days in Filing Complaint:**
NA.
10. **Explain What Happened:**

The United States Trustee for Philadelphia refused to provide an interpreter for complainant Huot Hoeung, who speaks very little English and cannot read English, at her mandatory meeting of creditors in her bankruptcy case. He also uses documents and forms important to the bankruptcy process which are available only in English. Complainant Consumer Bankruptcy Assistance Project (CBAP) is a pro bono legal services agency serving a substantial population of limited English proficient debtors. CBAP has had to provide its own interpreters for the meetings. The U.S. Trustee has failed to establish any plan or protocol to provide meaningful access to limited English proficient debtors and claims it has no responsibility to provide any language services. Indeed, the U.S. Trustee manual, section 2-2.4.1, erroneously implies that the trustee has no obligation to provide interpreters for debtors and recommends, contrary to established principles in existing guidances, that attorneys and relatives should be used to interpret. Similar provisions are in the handbooks for the Chapter 7 and Chapter 13 Trustees.

The facts are set forth in detail in the attached statements of complainants Huot Hoeung and CBAP and counsel.

11. **Explain any Actions to Retaliate or Intimidate You in Connection with your complaint:**
NA
12. **Witnesses and Contacts to Support or Clarify Complaint: (in addition to complainants, counsel and subject)**

Gloria M. Satriale, Esq., Panel Trustee
1 McKinley Lane,
Chester Springs, PA 19425
(610) 827-4038

Janet Lewis, Bankruptcy Analyst
Office of the UST
601 Walnut Street, 950 West
Philadelphia, PA 19106
(215) 597-4411

13. Other Relevant Information:

Bankruptcy practitioners in at least two other districts reported to counsel that they have been unable to obtain interpreters from their U.S. Trustees as well. It has also been reported that the bankruptcy information sheet relied upon by the trustees may be available only in English and, in some jurisdictions in one or two other languages. It is believed that the experience of the complainant is indicative of a nationwide lack of a plan and policy for assisting LEP debtors.

14. Remedies Sought:

a. The Philadelphia office of the U.S. Trustee (UST) should immediately arrange for a qualified interpreter to be provided for Huot Hoeung at her 341 meeting.

b. The Executive Office of the U.S. Trustee should be mandated promptly to conduct an assessment of language needs and resources, create a national language access plan including provisions to provide for qualified interpreters for all LEP debtors in bankruptcy proceedings conducted by the UST, notify the public and bankruptcy bar of the plan, train staff, and monitor the implementation of the plan. The plan should include a protocol for translation of vital documents issued or used by the UST in communicating with debtors. Appropriate amendments should be made to the trustee reference manuals. The plans should be devised in consultation with interested stakeholders, including language access advocates, bankruptcy practitioners and LEP group representatives.

c. The DOJ Departmental Plan Implementing Executive Order 13166 should be amended to classify local offices of the UST as a "Category D" DOJ component which has regular interaction with significant numbers of LEP persons in matters of important individual interests, i.e., the administration of the bankruptcy system, which must develop and implement a language assistance plan.

15. Have you filed the same or other complaints with other offices of the Department of Justice?

Yes ___ No X

16. Have you filed, or do you intend to file, this complaint with any other Federal, State or Local Government agency?

Yes ___ No X

17. If your answer to the last question is yes, please provide details on the complaints filed:

NA

18. Please sign and date the complaint:

huot hoeng Dated: 2/28/03
HUOT HOENG (as explained by counsel and interpreted by telephone)

Mary Anne Lucey
MARY ANN LUCEY
Executive Director
Consumer Bankruptcy Assistance Project

Dated: March 3, 2003

STATEMENT IN SUPPORT OF COMPLAINT

1. My name is Huot Hoeung and I am the complainant in this matter.
2. My first language is Khmer (Cambodian). I grew up in Cambodia. I had no formal education there. I have been in the U.S. since 1984. I speak only a minimal amount of English and am uncomfortable conducting any important business matters in English. I do not read any English.
3. Because I had trouble paying my debts, I obtained help from Paul Uyehara to file a Chapter 7 bankruptcy for me. I was worried because people called me every day asking for money I could not afford not afford to pay. The bankruptcy was filed in January 2003.
4. I request a qualified interpreter to assist me with the meeting of creditors. I would not understand what is being said at the meeting without an interpreter. I want to be sure that I understand all the questions and that the trustee and my lawyer understand what I say.
5. I request that the trustee provide interpreter and translating assistance to all debtors who don't speak English well.
6. The contents of this statement were sight translated for me into Khmer by a telephone interpreter.

huot hoeung

HUOT HOEUNG

2/28/03

STATEMENT IN SUPPORT OF COMPLAINT

1. My name is Mary Anne Lucey. I am the Executive Director of the Consumer Bankruptcy Assistance Project (CBAP) located in Philadelphia. I have worked at CBAP for eight years.

2. CBAP is a pro bono, non-profit legal services provider which specializes in providing free attorneys for low income debtors in the City of Philadelphia who seek the protections afforded by a Chapter 7 bankruptcy. Most of our clients are represented on a pro bono basis by private bankruptcy practitioners. Some clients are represented by attorneys on our staff. Our staff consists of a director, a project coordinator/attorney, a part time attorney and a volunteer paralegal.

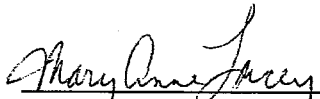
3. Huot Hoeung was referred to Paul Uyehara at Community Legal Services for bankruptcy assistance.

4. CBAP volunteers and staff file approximately 450 bankruptcy petitions per year. I estimate that some 15% of our clients are limited English proficient.

5. In our experience, the bankruptcy trustees have never offered to provide interpreters to any of our clients for the required meeting of creditors. Instead, they expect us to bring an interpreter for the trustee. In some cases, we have used friends or relatives to do the interpreting. In one of our cases, a volunteer interpreter we had arranged for failed to appear and we used the debtor's daughter to interpret for her as well as for another Spanish speaking debtor. We are aware of no effort by the panel or U.S. Trustees to assure that the interpreters are competent.

6. At each §341 meeting of creditors, all debtors are required to read and sign an oath to tell the truth during the meeting. The oath is available in English only. At each meeting, all debtors are also expected by the panel trustee to read a "bankruptcy information sheet" available in the waiting room before the meeting commences. During the meeting, the trustee will ask if the debtor has read the sheet and understood it. At least one panel trustee will interrupt the meeting and send the debtor outside if she reports not having read the sheet. The sheets are available in English only. No signs are posted in the meeting room in any language other than English.

7. The U.S. Trustee is willing to provide sign interpreters for hearing impaired debtors.



MARY ANNE LUCEY
Executive Director
Consumer Bankruptcy Assistance Project

Dated: March 3, 2003

STATEMENT IN SUPPORT OF COMPLAINT

1. My name is Paul M. Uyehara and I am the attorney representing the complainants in this matter. I also represent Huot Hoeung in her chapter 7 bankruptcy.
2. A meeting of creditors was scheduled for Ms. Hoeung for 2/11/03. I wrote to panel trustee Gloria Satriale on 1/23/03 to request that a qualified Cambodian interpreter be provided for the meeting. Ms. Satriale called me promptly and said that I needed to contact the U.S. Trustee's (UST) office to request an interpreter or that I could bring one myself and she would swear in the interpreter.
3. I then contacted the U.S. Trustee's office and was informed by an employee that I needed to speak to Janet Lewis, who was responsible for arranging interpreters. I spoke to Ms. Lewis, who initially told me that debtors are required to provide their own interpreters. She then referred to a policy from the U.S. District Court which she indicated was used as a model for the UST. However, she then acknowledged that the court's policy required interpreters for limited English proficient parties. At this point, she said she would need to consult with others about how to respond to my request. The next day, she called back to tell me that the office was under no statutory requirement to provide interpreters for LEP debtors.
4. On January 30, 2003, I spoke with Frederic J. Baker, the Senior Assistant U.S. Trustee, who repeated that his office had no statutory duty to provide interpreters and that no interpreters would be provided. He did say that my client was welcome to attend the meeting and that she could bring an interpreter of her choosing. Although I informed him that I believed his office was required by Executive Order 13166 and Department of Justice policy to provide interpreters for LEP debtors, he would not agree to investigate my claim and provided no specific statement of his office's policy as to providing language services to LEP debtors. He did offer to bring the issue to the attention of his superiors in Washington. I sent him a confirming letter that day, which is attached hereto.
5. On 2/10/03, Mr. Baker called and said that officials in Washington were reviewing the issue. He offered to proceed with the meeting with the debtor providing an interpreter, or to pass on a request to the panel trustee to continue the meeting. I told him we would like to wait for his office to provide an interpreter. Thereafter, an employee of the panel trustee informed me that the 341 meeting would be postponed until 3/27/03 pursuant to the request of the UST.
6. I have received e-mail from consumer bankruptcy practitioners which indicates that in at least two other districts, the UST also will not provide interpreters for section 341 meetings of creditors. An attorney from a third state stated that she is bilingual and routinely serves as an interpreter for her LEP clients at section 341 meetings. I also was told that some other districts also provide bankruptcy information sheets in English only. However, two colleagues reported that the sheets were available in one or two languages other than English. In my ten years plus experience as a consumer bankruptcy lawyer, the sheet, as well as the debtor's oath form, is provided in English only, as is another information sheet handed to the debtor at the conclusion of the meeting.

7. The published handbook for U.S. Trustees discussion on the treatment of LEP debtors in Chapter 7 cases is completely contrary to E.O. 13166, the spirit of the DOJ Title VI guidance, and commonly accepted practices on language access. The manual, section 2-2.4.1, suggests that the trustee has no obligation to provide an interpreter and recommends that the trustee use relatives or attorneys who happen to be present to interpret. Similar provisions are found in the handbooks for Chapter 7 and Chapter 13 Trustees.

8. The DOJ Departmental Plan Implementing Executive Order 13166 classifies the Executive Office of the UST as a Category A component which has little or no contact with LEP persons due to its internal or administrative function within DOJ. However, the local offices of the UST are responsible for supervising or conducting mandatory 341 meetings of creditors in all bankruptcy cases and regularly are involved in bankruptcy proceedings. UST staff therefore have regular contact with LEP debtors and creditors and should be classified as a "Category D" DOJ component, as are the local U.S. Attorneys.

9. The Bankruptcy Code provides critical protections for consumers by stopping harassment by collectors and providing a fresh start for those overwhelmed with debt. Some consumers file bankruptcy in order to avoid loss of their home to foreclosure, while others need the help to prevent loss of utility services. Many people are forced into bankruptcy as a result of marital separation, illness, loss of work, or the death of a family breadwinner.

All debtors in both Chapter 7 and 13 must attend a meeting of creditors presided over by a trustee and must "submit to examination under oath." 11 U.S.C. § 343. At least in Philadelphia, the oath is in writing and signed by the debtor. The meeting is tape recorded by the trustee. Bankruptcy Rule 2003(c). The debtor must cooperate with the trustee. 11 U.S.C. § 521(3). During the meeting, the trustee asks the debtor many questions under oath to ascertain that the voluminous bankruptcy schedules and statements filed by the debtor are accurate, that the case is being filed in good faith, and that the debtor has some understanding of the bankruptcy process. If any creditors attend, they can also question the debtor about the case and the debtor's intentions.

In Chapter 7 cases, the Code mandates that the Trustee provide important basic information to the debtor about bankruptcy. 11 U.S.C. § 341(d). In practice, that information is conveyed in Philadelphia by means of a bankruptcy information sheet distributed to all debtors at the meeting. The trustee questions each debtor to assure that she has read and understood the form. Another information sheet is handed out at the conclusion of the meeting. Should the debtor fail to attend the meeting (or, presumably, attend and fail to participate), the trustee can and will move to dismiss the case. Finally, making a false statement under oath in a bankruptcy is a federal felony punishable by 5 years imprisonment and a \$5,000 fine. 18 U.S.C. § 152.

Thus, the ability to participate in the meeting of creditors is essential to afford LEP debtors meaningful access to the bankruptcy system to the same extent that English proficient debtors can participate. Assuring that qualified interpreters are available to debtors is necessary so that the debtor can understand the proceedings. Qualified interpreters also help assure that the trustee is obtaining accurate information from the debtor. Neither of these purposes is well served by the current practice of allowing anyone to interpret, not providing any translations, and leaving trustees untrained in how to work with interpreters.

10. I believe that the Executive Office of the U.S. Trustee could benefit from consulting

with the consumer and creditor bankruptcy bars, language access advocates, and ethnic or community based organizations that serve LEP populations in devising remedies. The complainants and I would in particular welcome participation in the remedial process.



PAUL M. UYEHARA
Staff Attorney
Community Legal Services, Inc.

Dated: 3/3/93

1424 Chestnut Street, Philadelphia, PA 19102-2505
Phone: 215.981.3700, Fax: 215.981.0434
Web Address: www.clsphila.org

January 30, 2003

Frederic J. Baker, Esquire
Senior Assistant U.S. Trustee
601 Walnut Street, Room 950 West
Philadelphia, PA 19106

Re: Language Access to Section 341 Meetings

Dear Fred:

I write to confirm the substance of our telephone conversation of today and to request your assistance in obtaining further review of this important policy question. As I mentioned, I am representing a limited English proficient couple who have filed a chapter 7 bankruptcy. They are scheduled for a Section 341 meeting on February 11. I requested that your office arrange to provide a competent Cambodian interpreter for my clients so that they may participate in the meeting in the same manner that an English speaking debtor would. I should add that providing a competent interpreter will also assure that the panel trustee is able to obtain reliable answers from the debtors to her questions.

In our conversation you informed me that your office provides sign interpreters for hearing impaired debtors but does not provide interpreters for limited English proficient debtors. You suggested that the debtors were free to bring a relative or friend to interpret for them. You also declined to state specifically whether your position is set forth in an affirmative policy statement from the executive office for U.S. Trustees. If I misunderstood anything that you said, please let me know.

I mentioned to you that it is my belief that your office is obligated by provisions of executive order 13166 as well as the stated policy of the Department of Justice to assure that limited English proficient debtors can have meaningful access to all activities conducted by your office. The easiest way to access the executive order and various guidances and DOJ memoranda is to visit the web site at www.lep.gov.

I hope that you will reconsider this policy as to your office and also to follow through on your suggestion to have the matter further reviewed by senior staff in the United State Trustee Program in Washington. I will seek to bring the issue to the attention of DOJ staff as well.

Frederic Baker
January 30, 2003
Page Two

If you have any further thoughts on this matter, please don't hesitate to call me at 215-981-3718. Thank you for your attention to this matter.

Very truly yours,



PAUL M. UYEHARA

PMU:jmp

cc: Gloria Satriale

EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES

20 Massachusetts Avenue, NW

Suite 8000

Washington, D.C. 20530



**Language Assistance Plan
For Implementation Of
Executive Order 13166**

Sue Ann Slates, LEP Coordinator

August 31, 2004

**EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES
LANGUAGE ASSISTANCE PLAN FOR
IMPLEMENTATION OF EXECUTIVE ORDER 13166**

Sue Ann Slates, LEP Coordinator
August 31, 2004

1.0 PURPOSE

In compliance with Section 2 of Executive Order 13166, this Language Assistance Plan details the Executive Office for United States Trustees' (EOUST) initiatives and plans to improve access to the United States Trustee Program's (USTP) federally-conducted programs and activities by eligible individuals of limited English proficiency (LEP). For purposes of EOUSTs' Language Assistance Plan, the definition of "federally-conducted programs and activities" is identical to that used under the regulations implementing Section 504 of the Rehabilitation Act of 1973. 28 C.F.R., Part 39, Editorial Note; *Section 39.102 Application*. Neither Executive Order 13166 nor this Language Assistance Plan creates any new right(s), including the right to seek administrative or judicial enforcement, on the part of any person, including a person with limited English proficiency.

2.0 BACKGROUND

On August 11, 2000, the President issued Executive Order 13166, titled "Improving Access to Services for Persons With Limited English Proficiency." 65 FR 50121 (August 16, 2000). On the same day, the Assistant Attorney General for Civil Rights issued a Policy Guidance Document, titled "Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons With Limited English Proficiency" (DOJ LEP Guidance), reprinted at 65 FR 50123 (August 16, 2000). Subsequently, the Department of Justice (Department or DOJ) adopted final LEP guidance for recipients of federal financial assistance, titled "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (LEP Guidance for DOJ Recipients), reprinted at 67 FR 41455 (June 12, 2002).

Executive Order 13166 requires federal agencies to assess and address the needs of otherwise eligible persons seeking access to federally-conducted programs and activities who, due to limited English proficiency, cannot fully and equally participate in or benefit from those programs and activities. The DOJ LEP Guidance in turn advises each federal department or agency to "take reasonable steps to ensure 'meaningful' access [to LEP individuals] to the information and services they provide." DOJ LEP Guidance; 65 FR at 50124. This standard is achieved by balancing the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program; (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 and costs. 65 FR at 50124; 67 FR at 41459.

3.0 LEP STAKEHOLDER CONSULTATIONS

The Department has provided for a Stakeholder Consultation process to the DOJ Plan for Implementation of Executive Order 13166, which was incorporated in the guidance provided to agencies for ensuring equal access to federal government services by LEP populations. Entities or persons having a direct and substantial interest in the provisions of the DOJ Plan (Stakeholders) include both the individual components of the Department (entities responsible for implementing DOJ's Plan), as well as LEP communities (the intended beneficiaries of the language assistance initiatives set out in the DOJ Plan). The EOUST will not conduct further Stakeholder consultations in implementing its Language Assistance Plan.

4.0 DOJ PLAN FOR IMPLEMENTATION OF EXECUTIVE ORDER 13166

In an effort to implement Executive Order 13166, the Department identified five important elements of an acceptable Language Assistance Plan. The elements are:

- Assessment of LEP populations and language needs;
- Publication of a written Language Assistance Plan;
- Provision for appropriate staff training about the Language Assistance Plan;
- Public outreach and notice of the availability of language assistance; and
- Periodic self-assessment and self-monitoring.

4.1 EOUST Assessment Overview

The USTP's mission is to act in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system. It works to secure the just, speedy, and economical resolution of bankruptcy cases; monitors the conduct of parties and takes action to ensure compliance with applicable laws and procedures; identifies and investigates bankruptcy fraud and abuse; and oversees administrative functions in bankruptcy cases to promote and defend the integrity of the federal bankruptcy system. To that end, the EOUST, which is headed by a Director appointed by the Attorney General, directs policy and legal matters, oversees the Program's substantive operations, and handles administrative functions.

While the EOUST generally does not itself engage in activities having a direct and substantial impact on significant LEP populations, the local United States Trustee Offices (USTO) do perform services and collect information from and provide information to members of the general public. Depending on the geographic location, the population served can include significant LEP populations. Accordingly, the USTP has been identified by the Department's Civil Rights Division, Coordination and Review Section (CRT/COR), as a component whose mission or primary function is to serve the legal, investigative, and policy needs of the Department or the Executive Branch in a manner that involves (and in some cases is dependent upon) interactions with the public, including predictable and periodic interactions with identifiable LEP populations in the performance of its duties.

The EOUST developed and conducted a LEP survey, titled "Survey Regarding Language Assistance Services," of the EOUST and 95 USTOs to identify predominant LEP populations and languages, and to evaluate the extent to which the USTP has contact with LEP individuals, the need to provide language assistance to LEP persons nationwide, the resources available, and the current language assistance services being provided by USTP. The EOUST issued a report, titled "Executive Office for United States Trustees' Limited English Proficiency (LEP) Assessment Report," which provides an evaluation and analysis of the survey data.

4.2 EOUST Language Assistance Plan

In an effort to take reasonable steps to ensure "meaningful access," the EOUST proposes to implement the following Language Assistance Plan. The EOUST will establish a LEP Pilot Project in seven USTOs that serve and/or interact with significant LEP communities over a one-year period, from October 1, 2004, through September 30, 2005. For the purposes of the "EOUST Language Assistance Plan" and the "Uniform Language Assistance Initiatives," the acronym "USTO" refers only to offices that are taking part in the LEP Pilot Project. The EOUST will designate seven USTOs to participate in the LEP Pilot Project by the middle of September 2004.

4.2.1 Language Assistance Principles

As an initial matter, the EOUST and the USTOs involved in the LEP Pilot Project adopt the following language assistance principles for situations in which a LEP individual is seeking language assistance in order to participate in a meeting of creditors conducted by USTO staff or private trustees, or is seeking to obtain a direct EOUST or USTO service or benefit, or where there is potential for the direct imposition of a burden by the EOUST or the USTOs.

- LEP persons should be advised that for participation at creditors' meetings they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or that a competent interpreter will be provided by the USTP. The provision of this notice and the LEP person's election should be documented.
- The EOUST and the USTOs should take reasonable steps appropriate to each circumstance to ensure that they provide interpretation and translation services only through individuals who are competent to provide such services at a level of fluency, comprehension, and confidentiality appropriate to the specific nature, type, and purpose of information at issue.
- The EOUST and the USTOs should endeavor to expand the range or nature of language assistance measures (including the provision of services in languages in addition to those specified in EOUSTs' Language Assistance Plan) whenever experience, change in target or service population demographics, or new program-specific data indicates that the failure to do so may result in a denial of substantially equal and meaningfully effective services to a significant LEP population served by the EOUST or USTO.

- To the maximum extent practicable, limited English proficiency shall not act as a barrier or otherwise limit access to vital information, i.e., information publicly available in English as to when, where, or how to access benefits or services from the EOUST or the USTOs.

4.2.2 *Uniform Language Assistance Initiatives*

1. *Oral Information*

Each designated USTO will have in place personnel or language assistance resources capable of providing, within a reasonable period of time, information and/or instructions in appropriate languages other than English. Each designated USTO will complete the following tasks by the end of six months (March 2005):

- Have in place, wherever public contact occurs, bilingual or multilingual staff, appropriate translations of frequently requested information in commonly encountered languages (e.g., Bankruptcy Information Sheets^{1/}), or procedures for access to telephonic interpretation services for use by USTO personnel.
- Have in place, speaker telephones in all creditors' meeting rooms where possible, language identification cards, and a resource list for in-person and telephone language assistance services.
- As appropriate, the written procedures for accessing in-person and telephone language assistance resources will be: (1) inserted into every office telephone book (both written and electronic); (2) posted or otherwise made readily available (e.g., through a component Intranet system) at every point of public contact; and (3) distributed to every employee whose duties routinely include contact with members of the public.
- Complete and distribute to each duty station, facility or, as appropriate, work group, a listing of staff members assigned to that duty station, facility, or work group who have volunteered to provide temporary language assistance services for walk-ins, telephone calls, and correspondence to the USTO. Such staff members should be identified by name, office, physical location, business telephone number, work hours, language, and level of fluency. Bilingual and multilingual staff may assist with contacts made by LEP persons to the USTO. Because of a conflict of interest, however, UST staff will not act as interpreters for LEP debtors at meetings of creditors where the debtors are questioned under oath.

^{1/} Bankruptcy Information Sheets contain general information on chapters 7, 11, 12, and 13 of the Bankruptcy Code, describe how a bankruptcy discharge operates, and explain the criteria for reaffirmation agreements. These documents are currently available in English, French, Spanish, and Vietnamese and will be translated into additional languages as needed.

- In-person interpreters and telephone interpreters who provide language assistance services at meetings of creditors will be placed under oath along with LEP debtors.

2. *Electronic Information*

Each designated USTO that maintains a web page accessible to members of the general public should include information on the availability of language assistance through or by the USTO. Where documents in languages other than English are placed on or accessible through the web page, information on their availability should be included in the appropriate languages on the web home page or other initial point of access. This element of the Language Assistance Plan shall be completed by the end of six months (March 2005).

3. *Signage*

Where signage within a publicly-accessible duty station or facility maintained or administered by the USTOs is provided in English, it will also be provided, at a minimum and as soon as reasonably practicable, in the two most common non-English languages spoken in the area served by the duty station or facility. Based on currently available data, this will be required where more than 25 percent of the population within those language groups speak English less than well. Available data includes, but is not limited to, language and demographic census information pertaining to the area or region served. Currently, U.S. Census 2000 data is available concerning LEP populations broken down by state and locality for use by the designated USTO pilot districts. This element of the Language Assistance Plan shall be completed by the end of six months (March 2005). By the end of three months (December 2004), each designated USTO will develop and file with EOUST a signage implementation report and timetable.

4.2.3 *Component-Specific Language Assistance Initiatives*

In the discharge of its legal and civil enforcement activities, EOUST will complete and submit to CRT/COR a report of all designated USTOs' language assistance services to ensure that its LEP practices are consistent with the compliance standards for entities receiving federal financial assistance as set forth in the LEP Guidance for DOJ Recipients, reprinted at 67 FR 41455. This will be accomplished by the end of 24 months (September 2006).

4.3 **Staff Training**

Employees expected to implement the language assistance initiatives set out in EOUSTs' Language Assistance Plan should be knowledgeable about: (1) the nature and scope of language assistance services and the resources available through their employing component; and (2) the procedures through which they may access those services to assist in the discharge of their respective duties. By the end of six months (March 2005), all employees identified by USTOs as being critical to the implementation of the Language Assistance Initiative shall:

1. be provided with written information on the scope and nature of available or planned language assistance services and the specific procedures through which such services can be accessed at the employee's work location; and
2. develop and incorporate into new employee orientation and/or training programs a module on the nature and scope of language assistance services and the specific procedures through which each employee can access those services.

4.4 Outreach

LEP individuals in need of language assistance services should have reasonable notice of the availability of such services. Designated USTOs with significant LEP contacts will undertake appropriate written and oral outreach efforts designed to alert LEP communities and individuals as to the nature, scope, and availability of the language assistance services set out in EOUSTs' Language Assistance Plan. In the area of outreach, the EOUST and designated USTOs will take the following actions:

1. Where documents are available in languages other than English (e.g., Bankruptcy Information Sheets), the English version will include a notice of such availability in all languages in which the document is available.
2. Where documents are available for viewing or downloading through a component web page in languages other than English, an indication of such availability in each of the relevant foreign languages will be included on each web page.
3. To the maximum extent possible, the EOUST and designated USTOs will strive to inform Stakeholder organizations of the nature and scope of available language assistance services through appropriate oral and written means.

4.5 Monitoring

Language Assistance Plans should be periodically reassessed to ensure that the scope and nature of language assistance services provided under the Plan reflect updated information on relevant LEP populations, their language assistance needs, and the USTOs' experience under the Plan. Over the next 36 months, the EOUST will take the following actions to monitor the effectiveness of its language assistance initiative and to assess the possible need for enhancements or modifications to those initiatives.

1. By the end of 12 months (September 2005), the EOUST will devise, with consultation from the CRT/COR, appropriate methods to assess USTO activities under the Language Assistance Plan.
2. By the end of 15 months (December 2005), all designated USTOs will submit a LEP Pilot Project Report to the EOUST.

3. By the end of 18-21 months (March-June 2006), the EOUST will conduct a review of the LEP Pilot Project and the EOUSTs' Language Assistance Plan.
4. By the end of 24 months (September 2006), the EOUST will submit a report of the LEP Pilot Project to the CRT/COR. The EOUST will also develop a revised Language Assistance Plan for all USTOs with recommendations regarding a phased-in, nationwide expansion of the Language Assistance Plan.
5. By the end of 36 months (September 2007), the EOUST will provide a report to the CRT/COR on the progress of the phased-in, nationwide implementation of the Language Assistance Plan.

September 5, 2006

Executive Office for US Trustees
Credit Counseling Application Processing
20 Massachusetts Avenue, 8th Fl
Washington, DC 20530

Re: EOUST Docket 100
Comment on Proposed Rule

Dear EOUST Staff:

On behalf of an agency that serves low income debtors in bankruptcy, many of whom are limited English proficient (LEP), I submit these comments in an effort to assist your office in improving the application and approval process to minimize discrimination against LEP debtors. The comments are divided into sections which define the deficiencies in the current system and proposed rule, proposed changes to the rule, proposed changes to the forms and proposed changes in EOUST's management of the system.

EXISTING LANGUAGE ACCESS PROBLEMS IN THE SYSTEM

There are numerous debtors across the country who don't speak, understand or read enough English to benefit from participating in English only counseling programs. We have experienced a number of problems with providers and EOUST since last year with respect to language access. Those problems include:

- ▶ Lack of information on language services
 - ▶ As you know, the EOUST listings of approved providers disclosed no language information for six months or more after bankruptcy reform went into effect.
 - ▶ EOUST currently displays language information specific to each provider, but the information is not specific enough to allow clients to exercise informed choices about the nature of the services provided. Many entries are under the heading "languages other than English" which lists languages without identifying whether the services are direct counseling in a second language, in person interpreting, telephone interpreting or translation of a web based program.
 - ▶ Information on the EOUST lists is not reliable. Some providers have language capacity which is unknown to the public, the UST, and even some customer service staff of the provider, while others claim capacity that they cannot provide.

- ▶ The websites for many providers do not provide any readily locateable information about language services, including those which are listed as providing such services.
- ▶ Many providers have no language services. According to posted information, a large number of approved providers have no capacity to provide services in any languages other than English.
- ▶ Some providers offer services only in Spanish or a few other languages.
- ▶ Rather than assisting LEP debtors unable to locate counseling they can participate in, UST staff and EOUST have attacked debtors who filed when no services could be located, and have denied requests from counsel to provide referrals, provide interpreters or to waive the requirements.
- ▶ Some providers are expecting debtors to provide their own interpreters, without regard to whether the interpreters are competent or free.
- ▶ Availability of language services is much worse with financial management courses.
- ▶ LEP clients have fewer providers to choose from and, when interpreters are used, will generally require sessions that are much more lengthy and less informative than English speaking debtors.
- ▶ Some LEP clients have been delayed in filing or were unable to access the Bankruptcy Court due to the unavailability of counseling, have faced delay or denial of a discharge when debtor education couldn't be found, or faced other obstacles, delay and expense solely due to their English language ability.

The US Trustee is charged by numerous provisions of the bankruptcy code with the responsibility to create and monitor the credit counseling and financial management systems which provide effective services to debtors through a large number of agencies, most of which are non governmental organizations. Because these services are provided to the public only through agencies which are approved and monitored by EOUST using comprehensive and detailed criteria, the counseling system is appropriately viewed as a federally conducted program. Accordingly, EOUST is required by the provisions of Executive Order 13166, 65 Fed. Reg. 50121 (August 6, 2000) to ensure that LEP debtors can "meaningfully access" the educational programs which are being delivered pursuant to federal standards. The importance of non-discriminatory management of the programs cannot be overlooked. Consumers who are unable to access credit counseling are denied access to the benefits of the US Bankruptcy Courts and those unable to access debtor education courses are denied the benefit of a discharge of their debts. Others may face delay, difficulties and expenses based on their English language ability.

The process by which EOUST sets criteria for approval and standards for practice by agencies provides the means by which to ensure that the systems are conducted in a manner consistent with the Executive Order and DOJ policy. EOUST has inappropriately decided at the outset, and in drafting the rule, not to set language access policy for providers.

§ 58.15

This section establishes criteria for agency approvals and should be modified to mandate that

the agencies provide language appropriate services. A new section (j) should be added and reference made to it as a requirement in section (b).

(j) Language Access. Each agency must:

(i) Submit with each application for approval or re-approval the agency's written Language Assistance Plan which meets the standards set forth in the DOJ LEP Guidance, 67 F.R. 41455 (6/18/02) applicable to DOJ grantees, notwithstanding whether the agency actually receives financial assistance from DOJ;

(ii) At no charge to clients, provide language services so that LEP clients can meaningfully participate in counseling sessions;

(iii) In any print or electronic advertising of its services, including an Internet website, plainly disclose that the agency will provide free language services to LEP clients. The agency shall further disclose the specific languages other than English in which it is capable of providing uninterpreted counseling sessions.

§ 58.16

No changes are recommended here. However, I do recommend changes to the application forms as explained below.

§ 58.25

The qualifications for approval of personal financial management classes should be amended to cover language access requirements as follows:

(f)(5) The provider shall also devise plans to modify learning materials and methodologies so that limited English proficient debtors can meaningfully participate in the course. The plans should differentiate between the methods to be used when the course is taught directly in a language other than English and those to be used when an interpreter is involved.

(i) Language Access. Each provider must:

(i) Submit with each application for approval or re-approval the agency's written Language Assistance Plan which meets the standards set forth in the DOJ LEP Guidance, 67 F.R. 41455 (6/18/02) applicable to DOJ grantees, notwithstanding whether the agency actually receives financial assistance from DOJ;

(ii) At no charge to clients, provide language services so that LEP clients can meaningfully participate in debtor education sessions; and

(iii) In any print or electronic advertising of its services, including an Internet website, plainly disclose that the agency will provide free language services to LEP clients. The agency shall further disclose the specific languages other than English in which it is capable of providing uninterpreted counseling sessions. All language specific information shall distinguish between languages in which the agency can provide uninterpreted instruction in the client's primary language, those which will involve an interpreter, and shall further distinguish between instruction provided in-person, by telephone or by Internet.

[Renumber subsequent subsections.]

(k)(2)(vii) A statement that the provider will provide language services so that LEP clients can meaningfully participate in courses.

(viii) A list of the languages in which instruction can be provided directly by bilingual instructors without the use of interpreters and a list of languages which the agency can provide instruction through a qualified interpreter. Each list shall distinguish whether the instruction is provided in person, by telephone or by Internet.

FORMS AND INSTRUCTIONS

Application

Add new section 7.2.

- 7.2 Attach to Appendix E a report which tabulates, by counseling method and by language, the number of LEP clients served and the forms of language assistance provided.

Instructions - Credit counseling.

1. Section 4.4. Add to end of paragraph: The agency shall not charge LEP clients extra fees for language services.

2. Section 5.4. Language Access. The agency must make a good faith effort to hire bilingual counselors who can provide instruction in languages other than English, and bilingual non-instructional staff who can provide customer service to LEP clients or act as interpreters for other staff. In completing Appendix D, a counselor with Second Language Fluency is fully and demonstrably fluent in a language other than English, including terms likely to be used in the credit counseling course. Trained interpreters are staff, including counselors, who are available to provide interpreting services, demonstrably fluent and trained in interpreting techniques and ethics.

3. Section 8.1. The Agency must also disclose to LEP clients that it will provide free language services so that LEP clients can meaningfully participate in courses.

Appendix A

21. It will provide meaningful access to counseling to LEP clients and will implement the provisions of its written Language Assistance Plan, a copy of which must be submitted with the application.

Appendix C

The form currently and appropriately distinguishes between the languages available for each form of counseling - in person, telephone, telephone/internet and Internet. The form should be further improved to distinguish the manner in which each language is serviced for the methods other than Internet.

Direct second language instruction. Instructors demonstrably fluent in a second language provide counseling to the LEP debtor in his or her primary language, without an

interpreter. This method is faster and more accurate for the instructor as well as the client as compared to interpreted sessions.

Interpreted instruction. A monolingual instructor conducts the session in English with the assistance of a qualified professional interpreter in person or by telephone. This approach may take three times as long as direct instruction, is less accurate and more difficult for both instructor and client. With wireless equipment and extremely well qualified interpreters, simultaneous interpretation could be used in classroom settings and would largely reduce the extra time needed to complete the course.

Because of the dramatic differences in ease of use, time needed, and benefit, the availability of language services should be determined and published in much greater detail to allow informed choice by clients.

The last section of the page should be modified to allow space to specify what languages are available for in person counseling at each location.

Appendix D

A new section should be added to gather language information on counselors. Under Language Skills, two check boxes could be added: Second language fluency and Trained interpreter. This information should be expanded to gather data on non-counseling staff as well, since they may be involved in customer service and could act as interpreters. Note relevant instructions should be changed to explain this as noted earlier.

Appendix E

Add new box below the first one for "Total number of LEP clients counseled."

EOUST Management of System

As can be seen from the attached letter of May 18, 2006 from a large number of organizations, language access problems have been brought to the attention of EOUST for over a year with minimal response. The lack of response is exemplified by the office's failure in issuing these proposed rules to provide any guidance to providers to increase language services. In violation of EO 13166, EOUST continues to act as if language is the debtor's problem and that it has little concern or responsibility if LEP clients have less access to bankruptcy and bankruptcy counseling than English proficient clients. In the interests of justice and fair treatment, EOUST ought to be actively involved in managing the counseling system to eliminate language bias and should take responsibility to aid LEP clients who encounter language barriers in the bankruptcy system.

The existing EOUST website which lists available providers is poorly presented and extremely difficult to use, particularly with respect to language information. A more professional presentation would help all consumers by eliminating the following problems:

- ▶ The two lists exist as a single document covering all providers in all districts, with links to states rather than specific districts. This requires the user to scroll through the list, which has no markers identifying the district the user is in along the way

except when crossing into a new district, making it very easy to get lost and even end up in the wrong state. The list would be better if district links went to separate pages for each district.

- ▶ Consumers seeking to print a list of providers in their district cannot do so easily, since the website will prepare for printing a huge and redundant list covering the entire state. For Illinois, for example, the list is 100 pages long.
- ▶ The language data, as noted earlier, does not distinguish between interpreted services and direct services in the client's language.
- ▶ The language data is not consistently specific to the method of instruction and location. Thus, for example, an LEP client seeking Spanish in person counseling at location A may not realize that the agency only provides Spanish at location B, which is too far away.
- ▶ There is no method to conduct searches on the page to isolate a particular language, location, counseling method, etc.

EOUST needs to aggressively change its approach to language to conform to federal policy. This change would help the UST program in fulfilling its mission across the board. A change would not only reduce national origin discrimination in the bankruptcy world, it would also enhance the ability of trustees to gain accurate information from LEP debtors. Obviously, LEP debtors themselves would be placed in a better position to significantly benefit from bankruptcy counseling and debtor education.

Please feel free to contact me at puyehara@clsphila.org or 215-981-3718 to follow up on these concerns.

Sincerely,



PAUL M. UYEHARA
Staff Attorney
Language Access Project

Enclosure



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

August 24, 2007

Clifford J. White III
Director
Executive Office for US Trustees
US Department of Justice
20 Massachusetts Avenue, NW, Suite 8000
Washington, DC 20530

Re: Language Access Matters

Dear Mr. White,

I write to follow up on several issues discussed at our meeting on June 27 in Philadelphia, one of which you specifically requested.

1. Internet Listings of CC/DE Providers

Although there has been improvement since the launch of the credit counseling and debtor education programs, further improvement is called for in the language capacity of providers and the manner in which the lists are arranged on the EOUST web site. The provider lists now disclose the purported language capacity of each agency, and can be sorted by language.

Using the pull down menus for languages other than English and Spanish generates a national list of all providers for the language selected. This set up is cumbersome as it requires the user to slowly scroll down the list until the desired district is found. The system would be more user friendly if the selection could be made by district and language and linked to a list of only those providers.

The number of providers in languages other than English and Spanish is inadequate. Many limited English proficient (LEP) debtors will be forced to use a single provider as there is no choice. For example, only one provider provides classes in Arabic, even in a location such as Detroit that has a large Arab-American population. Korean and Mandarin speakers have only two national providers available for credit counseling, although there is a third Mandarin agency in some districts. English speakers, on the other hand, can choose from 21 competing credit counseling agencies in Alaska and 54 debtor education programs in Maryland. Were EOUST to be more demanding of providers, there would be more choice and competition.

The terminology in the lists is confusing. Most second language services are labeled "Translator Only." The term isn't defined anywhere, but presumably means that the counselor will use an *interpreter* (who will render what each says into the spoken language of the listener).

Clifford J. White III

August 24, 2007

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Since *translators* work only with written words, the term suggests that the paperwork will be available in the debtor's primary language, but the discussion will be conducted in English only. It is common for the uninitiated to confuse the terms interpreting and translation, but they are not the same.

Likewise, some listings say "Printed Materials Only," suggesting that handouts are translated into the debtor's language, but there is no way for the counselor to talk to that person. These listings are so dubious that they should not be permitted except for sessions done exclusively on the Internet. To the extent that specific Internet providers are set up to conduct all communications in writing with the debtor, sessions conducted without an interpreter can be meaningful. The web listings should always separately disclose if interpreting is provided for conversations and if Internet content and other materials are translated.

Equally problematic is the lack of other language information. The best method of conducting counseling for LEP debtors is to use bilingual counselors who are able to carry out the session in the debtor's primary language, without an interpreter. This is tremendously more efficient and economical for both the provider and the debtor, since using an interpreter will likely make the session run three times as long as a same-language session and can easily incur interpreter costs that far exceed the fee charged to the debtor. Although there is presumably a certain amount of bilingual capacity in a number of languages among existing staff, no listing states that services will be provided directly in any second language. The web site should inform debtors whether the session will be conducted by a person who speaks their language or through the use of an interpreter.

The FAQ section on the website continues to include erroneous information regarding the responsibility of providers to provide language services to LEP debtors. According to your web site:

Q: What efforts should approved credit counseling agencies undertake to accommodate clients who have no or limited proficiency in the English language?

A: Approved agencies should make every reasonable effort to accommodate clients with limited or no proficiency in the English language. Such accommodation may include providing services in the client's language; permitting community volunteers, friends, or family members of the client to attend the credit counseling session and provide translation; or referring the client to an approved agency that offers services in the client's language.

This public misstatement of policy continues to undermine EOUST efforts to provide language access. This language does not conform to the requirements of Executive Order 13166, the DOJ LEP Guidance or the DOJ Implementation Plan. Fundamentally, the FAQ response fails to recognize that it is the agency's responsibility to provide meaningful access to its services, not

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debtor's. The suggested use of informal interpreters provided by the debtor is contrary to this mandate and also will result in poor communication and incomplete disclosure by debtors of important information, thereby further degrading the purported benefit of the counseling sessions. And again, the inaccurate use of "translation" instead of "interpretation" should be eliminated.

2. Southern District of Florida. As I mentioned, operations in the Southern District of Florida need your immediate attention. There are three specific problems:

a. The notice regarding the pilot program was removed from the meeting rooms, leading practitioners to think that the UST has ceased providing language services at 341's.

b. The UST is issuing 341 notices to debtors which incorrectly advise that "Translation [sic] services are not provided." The forms should be immediately corrected to show that the UST will provide interpreters to LEP debtors and how to request that one be provided.

c. In Miami, a private Spanish interpreter is being permitted to be stationed in the 341 meeting rooms and to hire himself out to LEP debtors on a fee basis. In addition to demonstrating the UST's abdication of responsibility to provide language access to meetings of creditors, this practice also illustrates that the use of in-person interpreters should be considered where demand makes it economical. (In-person interpreting is generally more accurate than telephone interpreting.)

3. National provision of interpreter services at 341 meetings.

We discussed the fact that EOUST is not in compliance with its Language Assistance Plan, which required a report to COR last September on the outcome of the pilot program, with an update due next month on the national roll out of the 341 interpreter program. We look forward to an announcement from your office by next month about the national implementation of the program and again urge you to post the Language Assistance Plan on your web site.

I think I neglected to note two related matters at the meeting in June. First, the Chapter 7 and 13 Trustee handbooks have not been updated to correctly state the policy on providing interpreter services and delete the advice to the trustees to use inappropriate interpreters. In addition, only one of the pilot UST districts, the Eastern District of Pennsylvania, has information about interpreting posted on its web site. We hope these matters could be corrected promptly as well.

Finally, last September, I filed comments with your office regarding improvements to the interim final rules for application and approval of credit counseling and debtor education providers to improve language access. We hope they will receive serious consideration as the

Clifford J. White III
August 24, 2007
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rules are finalized.

Again, I appreciate the opportunity to meet with you and your staff in Philadelphia. My hope is that with your personal attention, EOUST will be able to move forward aggressively to ensure that language barriers to the bankruptcy system is minimized consistent with federal and departmental policy. I would be glad to discuss these matters again or provide further feedback if it would assist your office. I can be reached at 215-981-3718 or at puyehara@clsphila.org.

Sincerely,

A handwritten signature in black ink, appearing to read "P. M. Uyebara", with a long horizontal flourish extending to the right.

PAUL M. UYEHARA
Senior Attorney
Language Access Project

cc: Henry J. Sommer, NACBA
Kelly Beaudin Stapleton, United States Trustee

May 18, 2006

BY FAX: 202-514-0293

Wan J. Kim
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

BY FAX: 202-307-0672

Clifford J. White, III
Acting Director
Executive Office for United States Trustees
U.S. Department of Justice
20 Massachusetts Avenue, NW, Room 8000
Washington, DC 20530

Re: Bankruptcy Education Discrimination

Dear Assistant Attorney General Kim and Acting Director White:

On behalf of persons with limited English proficiency (LEP) who may need to avail themselves of bankruptcy protection, we request your urgent and cooperative response to address the discriminatory impact of a series of decisions made by the Executive Office for United States Trustees (EOUST). In violation of Executive Order 13166 and the Department of Justice (DOJ) Departmental Plan on language access, EOUST has failed to take reasonable steps to ensure that LEP persons have meaningful access to bankruptcy. Our organizations have a wide range of experience and concerns - advocating for bankruptcy debtors, protecting the civil rights of limited English proficient people and immigrants, representing low income clients and advancing consumer interests - and we all agree this issue merits immediate response in order to provide equal access to the bankruptcy system.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 resulted in a number of changes in bankruptcy practice when it went into effect on October 17. One dramatic change was the requirement that all debtors participate in "credit counseling" before filing a bankruptcy petition, 11 U.S.C. § 109(h), and that they complete a "personal financial management" course before obtaining a discharge of their debts, 11 U.S.C. §§ 727(a)(11); 1328(g). The two mandatory courses can be provided only by agencies approved by the regional offices of the United States Trustee (UST). 11 U.S.C. § 111. The UST has ongoing responsibility to monitor the approved agencies and the authority to disapprove of those not providing adequate services. 11 U.S.C. § 111.

In devising and implementing the process to receive applications from prospective counseling agencies, EOUST did not take into account the needs of LEP debtors. As a result, it

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approved lists of agencies without adequately ascertaining their capacity to provide meaningful access to LEP persons. Not surprisingly, the network of approved agencies has very little capacity to provide meaningful instruction to LEP debtors. By the end of March, EOUST had approved 142 credit counseling agencies and 241 debtor education agencies, most of which provide services nationwide by telephone or internet. While some approved credit counseling providers have some Spanish language ability, and a few claim capability in a limited number of other languages, most providers are able to deliver instruction only in English. Financial management course providers have dramatically less language capacity.

The end result is that LEP debtors are faced with barriers to entry to and exit from the bankruptcy system related solely and impermissibly to their English language ability. EOUST has designed, approved and continues to defend a system that results in national origin discrimination. Just as EOUST is implementing a program to provide interpreting services to debtors in section 341 meetings of creditors that will ultimately be applied nationwide, so should it move quickly to assure that similar services are provided in mandatory bankruptcy counseling so that can be of benefit to LEP debtors.

Since last summer, debtor advocates have repeatedly brought this problem to the attention of EOUST staff, including the LEP coordinator, as well as to regional UST's around the country. These officials have not acknowledged or addressed the discrimination which would likely flow from their failure to plan to provide effective services to LEP debtors. So far as we are aware, EOUST response has been limited to the following:

1. EOUST has inquired of the already approved agencies as to their language capacity. The information they obtained had not been released to the public until this month. The information is in a cumbersome format.

2. UST staff have refused requests to provide interpreters for LEP debtors so that they could participate in the courses. Some have advised lawyers to have the debtor bring a bilingual relative to interpret.

3. Rather than providing assistance, UST's have moved to dismiss bankruptcies filed by LEP debtors who filed a petition after being unable to find a provider.

4. One or more UST's have taken the curious position that if adequate services are being provided to non-LEP debtors by the agencies approved in a district, then the agencies must also be able to provide adequate services to LEP debtors as well. They have refused to issue a determination that, with respect to LEP debtors, the approved agencies are unable to provide

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adequate services, thereby allowing those debtors to file bankruptcy without completing debt counseling. 11 U.S.C. § 109(h)(2). The UST has taken this position even when there is no dispute that counseling is unavailable from any approved agency in a given language.

5. Even after the bankruptcy judge waived the debt counseling requirement for a Creole speaking debtor in Miami, after finding that no agencies could provide him with credit counseling, the UST moved for reconsideration. The motion will be heard on May 24.

EOUST staff may have unknowingly violated the provisions of Executive Order 13166 and the DOJ Departmental Plan at the outset. However, once informed of the issue, staff in EOUST and USTO's have, as far as we can tell, only compounded their errors. They are denying LEP persons meaningful access to the bankruptcy system. For these reasons, we felt it necessary and appropriate to bring this matter to your attention to get EOUST moving quickly in another direction. We ask that EOUST, in consultation with advocates and Civil Rights Division staff, immediately undertake remedial action including:

1. Add to the approval criteria for all counseling agencies a requirement that each provider must document its compliance with the DOJ guidance on language access as if it was a DOJ grantee. Apply the criteria to new applicants as well as to the annual review process for approved agencies.

2. Require all agencies to report their language capacity and reorganize published lists of approved agencies so that they are separated into language categories, e.g. English only; English/Spanish; and Other (specify).

3. Issue a determination that because adequate counseling is not available to LEP debtors, counseling requirements are waived for them pursuant to 11 U.S.C. §§ 109(h)(2), 727(a)(11) and 1328(g)(2). In the alternative, EOUST could agree to provide free, qualified interpreters for debtors as well as translation of written materials needed for the courses.

4. Require that UST's provide active assistance to LEP debtors when they encounter language barriers created by EOUST and cease moving for dismissal or denial of discharge when LEP debtors do not take credit counseling and financial management courses which are not accessible to them.

5. Publicize the changes in the counseling approval process and notify the public that EOUST will ensure that the bankruptcy education courses will be made accessible to LEP debtors or waived.

Re: Bankruptcy Education Discrimination
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6. Update the Language Assistance Plan for EOUST so that it covers all operations nationwide and make the plan available to the public. Make other changes as needed, provide training, public notice and vigorous monitoring of staff and counseling agencies to ensure that language access is provided nationwide in the services that are provided or overseen by EOUST and UST.

We would welcome the opportunity to meet with you to discuss urgent remedial action. We would be glad to assemble a volunteer committee to work with staff of both of your offices to implement these changes. Please direct communications to Paul M. Uyehara of CLS at 215-981-3718 or puyehara@clsphila.org.

Thank you for your consideration.

Sincerely,



CATHERINE C. CARR
Executive Director



PAUL M. UYEHARA
Staff Attorney

On behalf of the following organizations:

Arab American Action Network,
Chicago, IL

Asian American Justice Center
Washington, DC

Asian American Legal Defense and
Education Fund
New York, NY

Asian American Resource Workshop
Boston, MA

Asian Law Caucus
San Francisco, CA

Asian Pacific American Agenda Coalition
Boston, MA

Asian Pacific American Legal Center of
Southern California
Los Angeles, CA

Boat People SOS, Inc.
Falls Church, VA

Brennan Center for Justice at NYU School of Law New York, NY	Lawyers' Committee for Civil Rights Under Law Washington, DC
Center for Economic Progress Chicago, IL	Mexican American Legal Defense and Educational Fund Los Angeles, CA
Center for Responsible Lending Durham, NC	National Asian Pacific American Bar Association Washington, DC
Chinese for Affirmative Action San Francisco, CA	National Association of Consumer Advocates Washington, DC
Community Legal Services Inc. Philadelphia, PA	National Association of Consumer Bankruptcy Attorneys Washington, DC
Congreso de Latinos Unidos, Inc. Philadelphia, PA	National Association of Judiciary Interpreters and Translators Seattle, WA
Consumer Bankruptcy Assistance Project Philadelphia, PA	National Consumer Law Center Boston, MA
Consumer Federation of America Washington, DC	National Council of La Raza Washington, DC
Consumers Union of U.S., Inc. Yonkers, NY	National Health Law Program Los Angeles, CA
El Comité de Apoyo a Los Trabajadores Agrícolas (CATA), the Farmworker Support Committee Glassboro, NJ & Kennett Square, PA	National Immigration Law Center Los Angeles, CA
Hispanic National Bar Association Washington, DC	Neighborhood Economic Development Advocacy Project New York, NY
Japanese American Citizens League San Francisco, CA	Pennsylvania Immigration and Citizenship Coalition Philadelphia, PA
Law Center for Families Oakland, CA	

The Sikh Coalition
New York, NY

South Asian American Leaders of
Tomorrow
Silver Spring, MD

Southeast Asian Mutual Assistance
Associations Coalition
Philadelphia, PA

Voces Sin Fronteras/
Voices Without Borders, Inc.
Wilmington, DE

cc:

Members, Congressional Hispanic Caucus

Members, Congressional Asian Pacific American Caucus

Members, U.S. Senate Judiciary Subcommittee on Administrative Oversight and the Courts

Members, U.S. House Judiciary Subcommittee on Commercial and Administrative Law