

INTERVIEW WITH JUSTICE MARIANO-FLORENTINO CUÉLLAR OF THE SUPREME COURT OF CALIFORNIA

In his 2017 commencement speech at Stanford University, Justice Mariano-Florentino Cuéllar told a story about growing up on the Mexico side of a border town, wondering how fate sorted the babies to one side or the other. When he was fourteen years old, he moved to the United States, and a few years later he received his B.A. from Harvard College magna cum laude. He also earned an M.A. and a Ph.D. in political science from Stanford, and a J.D. from Yale Law School. He then clerked for Justice Mary Schroeder of the Ninth Circuit, after which he became a professor at Stanford Law School, focusing on immigration and administrative law. Justice Cuéllar also worked in the White House as a senior advisor to President Bill Clinton and special assistant in the White House Domestic Policy Council during the Obama administration. In 2014, Governor Jerry Brown appointed Justice Cuéllar to the California Supreme Court. As a Justice, he leads the Strategic Plan for Language Access in California Courts (“Language Access Plan”), whose mission is to increase language access to courts for non-English speaking individuals.

How did your experiences growing up Calexico, California - in a primarily Spanish speaking household - influence you as a young law student at Yale Law School? And how did it influence your decision to spearhead California’s Strategic Plan for Language Access at the California Courts (“LAP”)?

I’ve been fortunate to see the enormous opportunity California can deliver to its diverse population, but I also have a sense of the challenges so many Californians confront in making sure the state delivers on its promises. The contrasts are enormous – between Silicon Valley and the San Joaquin Valley on the other side of the mountain ridge separating the Central Valley from the coast, and between cities like San Francisco and the Imperial Valley on the U.S.-Mexico border. My family moved to California’s Imperial County in 1987 – then as now, one of the state’s poorest counties – when my father found a job teaching Spanish at the local public high school. Many of my classmates at Calexico High School were the children of farm workers. About 70 percent of the students were limited English speakers.

When I joined the court, I was committed not only to the job of deciding cases, but to helping the courts make access to justice a reality across the state. I was honored when the Chief Justice asked me to lead the Language Access Implementation Task Force. The work has been among the most gratifying parts of my service in California. Among California’s approximately

40 million people, almost 7 million are limited-English speakers. To put this in context, that's nearly as many limited English speakers as in New York, Texas, and Florida combined. In Los Angeles County alone, about 54 percent of residents speak a language other than English at home.

To meet the language access needs of this population, we've focused on changing not only the culture of the courts, but the budgets, rules, technology, and working relationships that underlie and sustain that culture. Working with trial court leaders, we've endeavored to guarantee interpreters in civil proceedings, change rules, expand availability of forms and use of signs, and increase outreach.

We've expanded funding for interpreter services and have expanded interpreter services to nearly all civil proceedings – critical cases including many domestic violence disputes, child custody, elder abuse, and evictions. Also, in 2015, the establishment of the *Language Access Toolkit* on the California Courts website provided a resource for the state's courts to find tools to improve language access. We conducted outreach to various communities, engaged with stakeholders, improved data collection, expanded multilingual signage at courthouses, designated representatives at each courthouse to coordinate language services, and created a new complaint form that provides an outlet for court users if needs are not met. In 2018, in Sacramento, Merced, and Ventura counties, we launched a pilot project to see if using remote video could help broaden access to interpreters in the future. When used appropriately, this technology has the potential to increase access to qualified interpreters, meet the need for languages spoken less widely, and reach residents in the most remote parts of the state. This was an important, foundational technology and access project, and other courts across the nation are looking to learn from the results of California's pilot. In Santa Clara, we've begun testing on how handheld tablets may help with digital translation at counters and in self-help settings. We're learning from other sectors such as health care and hoping to inspire court systems around the country to follow California's example.

But we have much work to do in the future. We have the right vision and we've taken a massive step implementing that vision in the last four years. Anyone who's worked in a complex organization understands that the third leg of any journey towards change is to sustain what's been accomplished so that culture, resources, and policy converge long-term. We'll have to do that during a time when courts have many competing priorities and the state will almost certainly need to weather an economic downturn.

In your experiences as both a practitioner and a judge in California, what have you observed are the central effects of the lack of language access, and why do you believe they have taken so long to be addressed?

Sometimes court proceedings are delayed. Sometimes the quality of adjudication declines because not everyone fully understands the proceedings. Often there's a risk that people with limited English skills outside the courts will begin to wonder if it makes sense to even go to court if they feel their needs won't be met.

But we also have to consider other realities that affect limited English speakers. One of these is how federal immigration agents enforce the law. Bear in mind that our state courts handle the bulk of all adjudication in the country – over 90 percent. I agree with our Chief Justice that it puts access to justice at risk to enforce immigration laws in our courthouses. We need to make sure we protect rights and access by having everyone understand that courts should be protected spaces. It would be tragic for vital witnesses in a criminal trial or victims of domestic violence who happen to be undocumented, for example, to avoid coming to court because they fear being ambushed by immigration agents in state court.

Do you believe these issues are particular to the culture of California, or is the LAP applicable to other state judicial branches? How have other states tackled the problem of lack of language access, if any have tried?

California's commitment to access to justice is fundamental to our court system, our government, and our relationship with our residents and the world. The extent of California's demographic diversity and its historical journey over the years surely have some effect on how we understand this commitment – and how we implement it.

That said, I believe all jurisdictions in America can articulate some version of this commitment. Those of us working to make our courts more effective in delivering on this promise are part of a larger community that can learn from examples across borders and divides. Just as we hope to inspire other jurisdictions with our actions to make real our commitment to access to justice, we're learning from other jurisdictions – from Colorado to Utah – that take seriously their responsibility to achieve access without regard to language ability or any other barrier.

Does that fact that California is the largest state court system in the world present any unique challenges to the implementation of the language access plan? How do you manage the diversity of viewpoints amongst all 58 trial courts in the state?

My colleagues and I never lose sight of how California's population, economic scale, and physical size make it somewhat unique. Within California's 164,000 square miles, we have 58 counties where the size of the bench ranges from 2 judges to over 500. We work closely with the presiding judges and court executives to consult on their various needs, to understand how rules and other policies affect different courts in distinct ways, and to solve

challenges ranging from local interpreter shortages to changing demographics of local court users. Crucial to these efforts have been three complementary strategies: creating a comprehensive strategy to gather data, engaging with stakeholders in different courts, and traveling when possible to talk directly to people in all corners of the Golden State.

How has the Judicial Council of California in general, and the Language Access Task Force in particular, measured the success of the plan’s implementation in California’s Superior Courts?

Although we have much work and deliberation ahead on this issue, we have four ways of assessing progress. First, we gather data on the extent of trial court capacity to provide interpreters. In the future, we will also be able to assess the extent to which the data matches with records of interpreter reimbursement and activity. Second, we have set up a complaint system for court users to raise concerns if they have difficulties related to language access. Third, we have a system of local language access representatives that help us understand local conditions and share insights or concerns. Fourth, we rely on stakeholder representatives, court users, interpreters, and others to convey their feedback.

Looking at the role of state rule-makers and local county actors, what consideration is given to the practical concerns of those expected to implement these new mandates (i.e. the LAP may diminish other services offered at the trial court level – given cost and administrative resource limitations)? How do you balance those concerns with the larger goals of language access?

This has been an area of great interest and concern for the task force. The task force and its many allies are passionate about language access, but also mindful of the full range of goals and concerns in the branch. We do our best to adjust rules and policies where doing so will accommodate practical concerns, so long as it doesn’t unduly water down our ability to implement the LAP. In some cases, we recognize that certain goals take time to achieve. And we add our voice to advocacy for branch-wide priorities with positive consequences for language access, like responsible use of technology and funding for courthouse construction.

What are some of the unique challenges, tied to the Latinx experience, that you have faced as a lawmaker and professor?

People who share some of my experiences seek me out as a mentor. I’ve sought to answer those calls whenever possible. Sometimes life experience lets you add some context, such as how some parts of the US-Mexico border work and feel, or how schools with large numbers of limited English speakers (or other categories of students who need some additional support) can encourage their best teachers. In all the settings where I’ve worked, I look

for and find allies who share my interest in facilitating inclusion, equity, and diversity. In handling issues with large impacts on Latinx communities, from education equity to immigration, I look for allies who can help me make the case that the entire country will benefit from a serious commitment to ensuring that no one gets shut out from opportunity, no matter where they're growing up, where they came from, or what language they speak at home.

What is on the legal horizon for the California judicial system? More specifically, how is technology and globalization changing the playing field for the lawyers and lawmakers in the state judicial branch system?

California is experiencing firsthand some of the powerful forces shaping the entire world: increasing reliance on complex and often poorly understood networked computers; the spread of information, memes, and attitudes across borders; innovation in health and computing; and challenges associated with income inequality, regional differences, safeguarding a fragile planet, making democracy work, and making sure everyone has a chance to participate in our civic institutions like our jury system. We have to face these challenges and opportunities with a mix of ambition and humility, remembering our interdependence with the rest of the country and the world, but also that California itself reflects the diversity of that larger world and we should do our best to learn from it.

