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OPINION COMMITTEE

RQ-0554-JC

FILE # ML-42621-02  
I.D. # 42621

May 13, 2002

Attorney General John Cornyn  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711

Dear Attorney General Cornyn:

I am requesting an Attorney General's written opinion pursuant to Government Code §402.043 on the following question:

*Is a witness's testimony before a grand jury part of a "criminal proceeding", thereby requiring appointment of a licensed court interpreter to translate for witnesses who do not understand the English language? See TEX. GOV'T CODE § 57.002.*

We can find no authority specifically addressing the situation. Neither the legislation nor the administrative rules directly address the issue. See TEX. GOV'T CODE ANN. Chap. 57 (Vernon Supp. 2002); 16 TEX. ADMIN. CODE Chap. 80 (Supp. 2002) (Tex. Dep't Licensing and Regulation, Licensed Court Interpreters). Similarly, the Texas Department of Licensing and Regulation does not provide a dispositive answer in its website. See <http://www.license.state.tx.us/court/lcifaq.htm> (providing civil and criminal trials, administrative hearings, depositions, mediations and arbitrations are court proceedings.)

The specific facts arise from a recurring practice utilized prior to the promulgation of the provision requiring that interpreters be licensed. See TEX. GOV'T CODE. § 57.02. Often a grand jury requires testimony from a Spanish-speaking witness. Unless the witness is the accused, a Spanish-speaking investigator with the District Attorney's office volunteered any necessary interpretation. However, the new law provides both administrative and

criminal penalties for providing unauthorized interpreting services without a license. *See* TEX. GOV'T CODE §§ 57.049, 57.050. Our concern, thus, is whether appointment of an interpreter, utilized before a grand jury, must be a licensed court interpreter.

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Under some circumstances, a licensed court report must be appointed to translate for witnesses who do not understand English:

#### Appointment of Interpreter

(a) A court shall appoint a certified court interpreter [sign language] or a licensed court interpreter [foreign language] if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or **criminal proceeding in the court**.

(b) A court may, on its own motion, appoint a certified court interpreter or a licensed court interpreter.

TEX. GOV'T CODE § 57.002 (emphasis supplied). But while the statute is applicable to criminal proceedings, it does not clearly encompass the grand jury process.

The grand jury's constitutional function is to determine whether sufficient cause exists to believe a person has committed an offense before he is held liable to defend against a prosecution by the State. *See* TEX. CODE CRIM. PROC. ANN. art. 20.09 (Vernon XXX); *see also Branzburg v. Hayes*, 408 U.S. 665, 701, 92 S. Ct. 2646, 33 L. Ed. 2d 626 (1972) (The role of the grand jury is an important investigatory tool of effective law enforcement necessarily.) Presentation of a complaint to a grand jury occurs prior to the initiation of formal charges and the commencement of a prosecution. And, the term "criminal proceeding" typically has been construed as the point an accused is formally charged. *See e.g., Griffith v. State*, 55 S.W.3d 598, 603-04 (Tex. Crim. App. 2001) (criminal proceedings are initiated by way of formal charge, preliminary hearing, indictment, information, or arraignment.); *Tigner v. State*, 928 S.W.2d 540, 544-46 (Tex. Crim. App. 1996) (concluding the term "proceeding" includes all the steps between official accusation and final judgment); *Huynh v. State*, 901 S.W.2d 480, 481 (Tex. Crim. App. 1995) (criminal proceedings formally initiated in the courts by a charging instrument). Nonetheless, the meaning of a criminal proceeding will depend upon the context of a statute. *See Howland v. State*, 990 S.W.2d 274, 275-77 (Tex. Crim. App. 1999).


The context of the statute does not clarify the issue. Excluding grand jury testimony from the scope of the court interpreter statute is consistent with the general view, that occurrences in the grand jury precede the initiation of criminal proceedings. Similarly a grand jury provides a unique investigatory function and its deliberations are secret. Both factors separate grand jury deliberations from the ambit of typical criminal proceedings and suggest that utilization of a licensed interpreter, pursuant to the new legislation, is not required.

The grand jury's function is only to make a preliminary assessment of probable cause, and may or may not result in the initiation of criminal proceedings. Thus, the grand jury's deliberations are not determinative of an accused's guilt. And, issues regarding any perceived inaccuracy in interpretation or the competency of the interpreter are cognizable both at trial and in an appeal of a case. See *Garcia v. State*, 887 S.W.2d 862, 875 (Tex. Crim. App. 1994), *cert. denied*, 514 U.S. 1021, 115 S.Ct. 1368, 131 L.Ed 223 (1995); *Kan v. State*, 4 S.W.3d 38, 41-43 (Tex. App. – San Antonio 1999, *pet. ref'd*). Further, the Licensed Court Interpreter provisions, now in effect, ensure the availability of a licensed interpreter in a trial.

Additionally, to ensure the integrity of both the accused and grand jurors, the proceedings of the grand jury are secret. See TEX. CODE CRIM. PROC. ANN. art. 20.02; *Stern v. State ex rel. Ansel*, 869 S.W.2d 614, 622-23 Tex. App. – Dallas 1994, *writ denied*). The confidential nature of the process ensures that transcriptions of grand jury testimony may only be obtained by a defendant after a court has determined he has a particularized need. See TEX. CODE CRIM. PROC art. 20.02 (d); *Bynum v. State*, 767 S.W.2d 769, 781-83 (Tex. Crim. App. 1989). Thus, grand jury deliberations are not documents assessable to the public, and they form only a preliminary inquiry into criminal allegations. Both factors, combined with the additional expenses assessed to the taxpayers of the county, suggest that grand jury deliberations do not fall within the scope of the Licensed Court Interpreter provisions.

I appreciate your help in this matter. If you have any questions regarding this request, feel free to give my office a call.

Sincerely,



Tom O'Connell  
Criminal District Attorney  
Collin County, Texas