

正義

*Justice*

의의

ความยุติธรรม

Justicia

**Published by the California Commission on Access to Justice**

For more information or for additional copies of this report, contact

The California Commission on Access to Justice

c/o The State Bar of California

Office of Legal Services, Access & Fairness Programs

[www.calbar.ca.gov](http://www.calbar.ca.gov)

正義 *Justice* 의리 ความยุติธรรม *Justicia*



# LANGUAGE BARRIERS TO JUSTICE IN CALIFORNIA

A REPORT OF THE CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

**SUMMARY EDITION**

**Published by the California Commission on Access to Justice**

Tony L. Richardson, Chair  
Kirkland & Ellis  
Los Angeles

Toby J. Rothschild, Vice Chair  
General Counsel  
Legal Aid Foundation of Los Angeles

Mary C. Viviano  
Director, Legal Services Outreach  
Office of Legal Services,  
Access & Fairness Programs  
State Bar of California  
180 Howard Street  
San Francisco, California  
mary.viviano@calbar.ca.gov

The full version of this report is available online at:  
[www.calbar.ca.gov](http://www.calbar.ca.gov)

To order copies of this or the full report contact:  
Chris Zupanovich, Program Coordinator  
Office of Legal Services, Access & Fairness Programs  
State Bar of California  
chris.zupanovich@calbar.ca.gov



The California Commission on Access to Justice gratefully acknowledges Bingham McCutchen and the State Bar of California for their support of the Commission's work and their assistance in the production of this report.

# Language Barriers to Justice in California

A Report of the California Commission on Access to Justice

**SUMMARY EDITION**

**September 2005**

**“Lack of comprehension is perhaps the greatest single barrier to justice. A failure to understand the system, the law or the language of legal proceedings renders justice incomprehensible at best. At worst, it can result in severe injustice.”**

Justice in the Balance 2020

## **Language Access Committee of the California Commission on Access to Justice**

Geoffrey L. Robinson, Chair  
Bingham McCutchen  
Walnut Creek

Joseph L. Chairez, Vice Chair  
Baker & Hostetler LLP  
Costa Mesa

Ramon Alvarez  
Alvarez Lincoln/Mercury  
Riverside

Marcia Bell  
Director  
San Francisco Law Library

Stephanie L. Choy  
Executive Director  
Public Interest Clearinghouse

Donna Clay-Conti  
Senior Attorney  
Administrative Office of the Courts  
San Francisco

Hon. Manuel Covarrubias  
Superior Court of Ventura County

Robin Crawford  
Law Office of Robin Crawford  
Pacifica

Bonnie Rose Hough  
Supervising Attorney  
Administrative Office of the Courts  
San Francisco

Hon. Kenneth M. Kawaichi, Ret.  
Mediator and Arbitrator, JAMS  
San Francisco

Karen Lash  
Program Counsel  
Equal Justice Works  
Washington, D.C.

Cristina Llop  
Director, ACCESS Center  
Superior Court of San Francisco

Sylvia Martin-James  
Retired Educator  
Riverside

Angela Oh  
Oh & Barrera, LLP  
Los Angeles

Gary Phillips  
Communications Director  
Legal Aid Foundation of Los Angeles

Toby J. Rothschild  
General Counsel  
Legal Aid Foundation of Los Angeles

Karin Wang  
Vice President of Programs  
Asian Pacific American Legal Center  
Los Angeles

### **Staff**

Mary C. Viviano  
Director, Legal Services Outreach  
Office of Legal Services, Access & Fairness  
Programs  
State Bar of California

Chris Zupanovich  
Program Coordinator, Legal Services Outreach  
Office of Legal Services, Access & Fairness  
Programs  
State Bar of California

Melinda Myers Vaughn  
Report Designer and Editor  
University of Southern California



**“Important rights to equal justice are ... infringed in any ... court proceeding in which a language-handicapped person is unable to participate fully and fairly. There is no place anywhere in the American Courts for unequal treatment because of a language handicap.”**

— Report of the Judicial Division to the ABA Board of Governors in Support of  
Resolution No. 109 (August 1997)



# Language Barriers to Justice in California

Excerpted from a Report of the California Commission on Access to Justice

California is home to one of the most ethnically and racially diverse populations in the world. Of the state's 34 million people, about 26 percent (roughly 8.8 million people) are foreign born. Californians speak more than 220 languages, and 40 percent of the state's population speaks a language other than English in the home.<sup>1</sup> This extraordinary diversity is among the state's greatest assets — a cross-pollination of ideas, traditions, backgrounds and cultures that has helped make California an international leader in business, the arts, entertainment, engineering, medicine, and a host of other fields.

The state's diversity also poses unique challenges for the delivery of government services — particularly for the courts. For Californians not proficient in English, the prospect of navigating the legal system is daunting, especially for the growing number of litigants who have no choice but to represent themselves in court and therefore cannot rely on an attorney to ensure they understand the proceedings. Nearly seven million Californians cannot access the courts without significant language assistance, cannot understand pleadings, forms or other legal documents, and cannot participate meaningfully in court proceedings without a qualified interpreter.<sup>2</sup>

The right to have a state-funded interpreter in a criminal proceeding has long been recognized by the courts; however, in most civil proceedings — even those affecting fundamental rights — California does not recognize the right to an interpreter,<sup>3</sup> and there are not adequate funds to pay for interpreters. An overwhelming number of Californians believe that interpreters should be made available to assist non-English speakers in all court proceedings and that interpreters should be provided free of charge to low-income



Nearly seven million Californians cannot access the courts without significant language assistance.

<sup>1</sup> U.S. Census Bureau, California Quick Facts, available at <<http://quickfacts.census.gov/qfd/states/06000.html>> (hereinafter 2000 Census)

<sup>2</sup> Roughly 20 percent of Californians (almost seven million people) speak English less than “very well,” which effectively precludes meaningful participation in a judicial proceeding without substantial language assistance. U.S. Census Bureau, American FactFinder, available at <[http://factfinder.census.gov/servlet/BasicFactsTable?\\_lang=en&\\_vt\\_name=DEC\\_2000\\_SF3\\_U\\_DP2&\\_geo\\_id=04000US06](http://factfinder.census.gov/servlet/BasicFactsTable?_lang=en&_vt_name=DEC_2000_SF3_U_DP2&_geo_id=04000US06)> (hereinafter 2000 Census, American Fact Finder).

<sup>3</sup> *Jara v. Municipal Court for the San Antonio Judicial District of Los Angeles*, 21 Cal. 3d 181 (1978), cert. denied, 439 U.S. 1067 (1979).



**The starkest consequence of linguistic barriers to the courts is simply that justice is unavailable. The very people who are arguably most in need of help from the courts are unable to obtain that protection.**

non-English speakers.<sup>4</sup> The California Legislature has acknowledged the need for language services in the courts in order to provide equal access to justice for all.<sup>5</sup>

The court system has struggled to meet that need but, for all practical purposes, Californians continue to face a dire and unmet need for language assistance in the courts. The unfortunate reality is that courts are caught in an impossible position. Limited court resources, a lack of qualified interpreters, and the absence of funding for payment of interpreters for low-income litigants make it impossible to provide interpreters for the vast majority of civil proceedings. Court interpretation is extremely difficult and takes a rare combination of skills, experience, and training. Anecdotal and informal survey information indicates that courts rarely appoint interpreters in civil cases unless parties pay for them because no funds are available to compensate the interpreter. Another significant problem is the unavailability of court documents in other languages. Most forms and pleadings provided by California courts, while critical to many basic court proceedings, are provided only in English. Even where forms are available in other languages, all documents completed and submitted in any judicial proceeding must be, by law, in English.<sup>6</sup> For people with limited English proficiency, the very basic process of filling out paperwork becomes a daunting task.

In recent years, demand for interpreter services has grown steadily while the number of interpreters available to meet that demand has dropped by more than 35 percent.<sup>7</sup> Efforts to attract, train, retain and better compensate interpreters have made some progress but have not succeeded in adequately expanding the pool of properly qualified court interpreters.<sup>8</sup> As a result, the courts often must rely on untrained interpreters — in some civil and family law cases, even family members or children — which can lead to faulty translations and threaten the court’s ability to ensure justice.

The starkest consequence of linguistic barriers to the courts is simply that justice is unavailable. The very people who are arguably most in need of help from the courts are

<sup>4</sup> Judicial Council of California Advisory Committee on Racial and Ethnic Bias in the Courts, *Fairness in the California State Courts: A Survey of the Public, Attorneys and Court Personnel* (1994) at 4-79 (*hereinafter Fairness in the California Courts*).

<sup>5</sup> CAL. GOV’T CODE § 68560(e) provides: “The Legislature recognizes that the number of non-English-speaking persons in California is increasing, and recognizes the need to provide equal justice under the law to all California citizens and residents and to provide for their special needs in their relations with the judicial and administrative law system.”

<sup>6</sup> CAL. CIV. PROC. CODE § 185 provides: “Every written proceeding in a court of justice in this state shall be in the English language, and judicial proceedings shall be conducted, preserved, and published in no other.” This provision implements the California Constitution’s requirement that “All laws of the State of California, and all official writings, and the executive, legislative, and judicial proceedings shall be conducted, preserved, and published in no other than the English language.” CAL. CONST. art. IV, § 24.

<sup>7</sup> *2000 Language Need and Interpreter Use Study* (Prepared by Walter R. McDonald and Associates for the Judicial Council of California, September 29, 2000) (*hereinafter Interpreter Use Study*).

<sup>8</sup> Under California law, to be qualified to interpret in California courts an interpreter must be certified to interpret in one of 13 designated languages or registered to interpret in other languages. Both require passing a state exam and meeting specified professional, ethical and educational requirements (see Appendix 3).

unable to obtain that protection. In routine civil proceedings, such as evictions, repossessions, creditor/debtor cases, wage garnishments, and family law matters, they cannot effectively defend themselves or assert their legal rights. And the court system itself can appear unfair and unbalanced when, because of inability to comprehend the process, defendants with limited English proficiency<sup>9</sup> cannot meaningfully participate in court proceedings, and thereby lose legal rights, property, livelihood or shelter.

**Recommendations**

Federal and state laws provide for equal access by people of limited English proficiency to a wide range of public and private health and social service programs and activities.<sup>10</sup> California statutes also mandate language assistance — including appointment of an interpreter — in adjudicative proceedings before state agencies, boards and commissions.<sup>11</sup> Californians overwhelmingly agree (85 percent) that the courts must ensure that an adequate number of interpreters are available to assist non-English speakers.<sup>12</sup> In keeping with these fundamental policies — supported by a majority of the population — the following steps should be taken to ensure access to the judicial system for all Californians:

- **Adopt a comprehensive language access policy for courts.** California should explicitly recognize a right to equal access to the courts without regard to language proficiency. This statement of policy should be accompanied by specific plans designed to achieve the goal of guaranteeing such access, including adequate funding to provide for qualified interpretation and translation services; access to standard court documents (such as forms and instructions) in, at a minimum, those languages spoken by a significant number of the population using court services; and training and resources to assist court staff, administrators and judges in identifying and addressing language issues.
- **Develop specific recommendations for court officials and staff to implement the language access policy.** The Judicial Council<sup>13</sup> should ensure that adequate training packages and model protocols exist for court staff and judicial officers to:
  - (i) address language access issues, including cultural sensitivity training;



**A Family's Story:** Yao wanted to take her daughter to China to meet her gravely ill grandmother before she died, but could not get her a passport because of a misspelling on her birth certificate. She was not able to properly explain to court clerks what she needed and was referred to family law for a custody order. After months of delay, she learned she had not obtained the order she needed to get her daughter's passport. She couldn't wait any longer and went to see her mother without her daughter. Her mother died shortly thereafter without ever meeting her granddaughter.

<sup>9</sup> For purposes of this report, the term “limited English proficiency” means the inability to adequately understand or to communicate effectively in spoken and/or written English.

<sup>10</sup> See, e.g., 20 USC § 1703(f) (elimination of language barriers in schools); 42 USC §§ 1973(f)(4), 1973 aa-1a (electoral rights); 42 USC § 2000(d) (health care and social services); Dymally-Alatorre Bilingual Services Act, Gov't Code §§ 7290 et seq. These and other statutes provide an unqualified right to language assistance to those with limited English proficiency. Unfortunately, such assistance is often not available, usually because no funding exists to provide these services.

<sup>11</sup> CAL. GOV'T CODE § 11435.15

<sup>12</sup> *Fairness in the California Courts* at 4-79.

<sup>13</sup> The Judicial Council is the policy-making body for the California courts.



**Without a qualified interpreter, “the English speaking members of the court and the non-English speaking litigants or witnesses virtually do not attend the same trial.”**

– William E. Hewitt,

*Court Interpretation: Model*

*Guides for Policy and Practice in*

*the State Courts*

(National Center for State Courts,

1995)

- (ii) prioritize the goal of full language access;
- (iii) establish evaluation processes for language access measures; and
- (iv) encourage local courts to work with community-based organizations to address language access issues.

- **Reevaluate the system for training and certifying interpreters.** While rigorous standards for interpreter certification and registration are essential, and there have been significant efforts to increase the number of qualified interpreters, the current system is not providing adequate resources. Existing test approaches should be analyzed to determine whether fine-tuning could further improve them, and whether qualifications at levels below full certification can be identified for specific types of interpreting assignments. Different models of training, possibly including the concept of interim or apprentice interpreter status, should be evaluated and considered. Ongoing efforts to recruit, train and retain interpreters should be expanded. Adequate funding should be sought so that compensation can be set at levels that encourage people to pursue careers in court interpretation. The goal must be to have the highest quality of interpretation possible in every situation.
- **Evaluate the role of lawyers and bar associations, legal services programs, law schools and law libraries.** Lawyers can and should be better prepared to assist parties and witnesses with limited English proficiency. Legal services programs must continue their valuable efforts to improve services to their constituents and to train advocates and pro bono volunteers to serve communities that speak languages other than English. Law school curricula should include information to prepare students for situations involving parties with limited English proficiency, and law libraries should work to ensure adequate access to their resources for patrons with limited English proficiency.
- **Compile existing data and conduct additional research.** Far more information is needed to accurately assess the need for language assistance in the courts. Research should focus — with due attention to privacy issues — on quantifying the use (attempted and actual) of the courts by people speaking languages other than English; the rate at which non-certified or non-registered interpreters are being used in the courts; and the extent of problems (such as defaults and delays) caused by lack of language resources.

While this report paints, at times, a dispiriting portrait of the plight of limited-English litigants in the court system — a situation that continues despite the efforts of many both within and outside the court system — there is much more that can and should be done. This report is just one step in the process of building awareness and inspiring the many people who care about our state to work together to protect the accessibility and integrity of our courts.

## Language Spoken at Home

Total California population five years of age and over	31,416,629	100.0%
English only	19,014,873	60.5%
Language other than English	12,401,756	39.5%
Speak English less than "very well"	6,277,779	20.0%
Spanish	8,105,505	25.8%
Speak English less than "very well"	4,303,949	13.7%
Other Indo-European languages	1,335,332	4.3%
Speak English less than "very well"	453,589	1.4%
Asian and Pacific Island languages	2,709,179	8.6%
Speak English less than "very well"	1,438,588	4.6%

Source: 2000 Census, American FactFinder, Tables, available at <[http://factfinder.census.gov/servlet/BasicFactsTable?\\_lang=en&\\_vt\\_name=DEC\\_2000\\_SF3\\_U\\_DP2&\\_geo\\_id=04000US06](http://factfinder.census.gov/servlet/BasicFactsTable?_lang=en&_vt_name=DEC_2000_SF3_U_DP2&_geo_id=04000US06)>

## Number of Certified Court Interpreters by Language, 1995, 2000 and 2005

Designated Language	1995	2000	2005
Spanish	1,526	988	1,088
Korean	32	36	55
Vietnamese	47	36	38
Cantonese	31	22	23
Arabic	10	9	12
Japanese	10	8	12
Tagalog	7	5	3
Portuguese	2	4	7
<b>Total</b>	<b>1,665</b>	<b>1,108</b>	<b>1,238*</b>

Sources: Judicial Council Fact Sheet — Court Interpreters (August 2004) ; Master List of Certified Court Interpreters, available at <[www.courtinfo.ca.gov/courtinterpreters/ctintdb.cfm](http://www.courtinfo.ca.gov/courtinterpreters/ctintdb.cfm)>

\*Four new languages have been designated since 2000 and new interpreters have been certified in these languages: Armenian (Eastern), 3 interpreters; Armenian (Western), 1; Mandarin, 12; Russian, 10. These additional 26 certified interpreters bring the total for all designated languages for 2005 to 1,264.



**A Family's Story:** Estefani's grandparents needed to enroll her in school and get her health care, but could not do so without a court order. They went to the courts several times but were unable to accurately describe their situation in English. After many delays, including two hearings continued for lack of an interpreter, they learned they were pursuing the wrong order. Because the child's medical condition was worsening and the school year approaching, they nearly gave her up to foster care. They turned to a court self-help center, which, with the assistance of a volunteer interpreter, was able to help them get the proper order.

**A Family's Story:** Maria's bilingual husband was physically and verbally abusive, locked her in the house, and prohibited her from working or using the phone. In court, she was not assertive enough to let people know she didn't understand what was being said. Her husband dominated the proceedings and pretended to get her agreement on matters without explaining them to her. Finally, a court self-help center attorney took her aside and got the real story and helped obtain pro bono representation for her.

**A Family's Story:** An 18-month old child was brought to an emergency room with a skull fracture; his parents spoke only Quiche, a native language of Central and South America. The parents were unable to explain how the child suffered the injury. A juvenile dependency action was filed. After a lengthy trial, it was determined that the boy had probably lost his balance and fallen onto the metal foot pedal of an antique sewing machine, because he was just learning to walk. The court found that the injury was accidental and returned the child to the parents' custody. Unfortunately, the entire process took more than two months, during which time the infant was separated from his parents and placed in a home in which no one spoke his native language. Both the child and the parents were severely traumatized by the experience.

# About the California Commission on Access to Justice

The broad-based California Commission on Access to Justice is dedicated to finding long-term solutions to the chronic lack of legal representation available for poor and moderate-income Californians.

## Key Priorities and Projects

- **Resources/Pro Bono:** Increasing resources for legal services programs, including supporting the Equal Access Fund, the state appropriation to the Judicial Council for legal services to the poor, and working with all sectors of the community to expand pro bono and increase support for legal services to the poor.
- **Language Barriers:** Working to eliminate language barriers facing low-income Californians in the legal and judicial system.
- **Self-Help Resources:** Expanding the availability of self-help resources for self-represented litigants.
- **Court System Improvements:** Working collaboratively with the state and federal court systems to share best practices and establish procedures to improve access for those of limited means.
- **Benjamin Aranda Award:** Working with the State Bar, Judicial Council and California Judges Association to recognize judges for outstanding dedication to increasing access to the legal system.
- **Communication:** Increasing public awareness of the valuable work of legal services programs throughout the state.
- **State Planning:** Coordinating with other partners in the state justice community to oversee statewide planning so as to avoid gaps in the state's delivery system, particularly rural areas, and to ensure accountability of the legal services planning process.
- **Unbundling:** Expanding the availability of limited scope legal assistance, also known as "unbundling."
- **Technology:** Leveraging resources through developing and coordinating innovative uses for technology in the legal services setting.

## **Appointing Entities and Members, 2005 California Commission on Access to Justice**

### **Governor, State of California**

Robert L. Lieff  
Lieff, Cabraser, Heimann & Bernstein

Julie Paik, Deputy Director  
Child Support Services Department  
County of Los Angeles

### **President Pro Tem of the Senate**

Rozenia Cummings  
SBC Communications  
San Ramon

### **Speaker of the Assembly**

Vacant

### **California Attorney General**

Ramon Alvarez, President/CEO  
Alvarez Lincoln/Mercury/Jaguar  
Riverside

### **Judicial Council of California**

Honorable Steven K. Austin  
Superior Court of Contra Costa County  
Martinez

Honorable Ronald Robie  
Third Appellate District  
Sacramento

### **California Judges Association**

Honorable James Mize  
Superior Court of Sacramento County  
(Effective Sept. 2005)

### **State Bar of California**

Anthony P. Capozzi  
Law Offices of Anthony P. Capozzi  
Fresno

Joseph L. Chairez  
Baker & Hostetler LLP  
Costa Mesa

Kathryn Eppright  
Andre Morris & Buttery  
San Luis Obispo

Steven M. Gevercer  
Deputy Attorney General/Legislative Advocate  
Department of Justice  
Sacramento

Honorable Martin J. Jenkins  
U.S. District Court – Northern District  
San Francisco

Robert A. Long  
Latham & Watkins LLP  
Los Angeles

Douglas W. Otto  
Law Offices of Douglas W. Otto  
Long Beach

Tony L. Richardson – 2005 Chair  
Kirkland & Ellis  
Los Angeles

Toby Rothschild – 2005 Vice Chair  
General Counsel  
Legal Aid Foundation of Los Angeles  
Long Beach

### **Council of California County Law Librarians**

Marcia Bell, Director  
San Francisco Law Library

### **California Council of Churches**

Robin Clinton Crawford  
Law Office of Robin Crawford  
Pacifica, CA

### **League of Women Voters of California**

Sylvia Martin-James, Retired Educator  
Riverside

**California Chamber of Commerce**

Fred L. Main  
Vice President and General Counsel  
California Chamber of Commerce  
Sacramento

**California Labor Federation**

Marshall Walker, III  
Former President, Local 790 SEIU  
Oakland

**Consumer Attorneys of California**

David A. Rosen  
Rose Klein & Marias  
Los Angeles

**Ex Officio Members**

Kenneth Babcock  
Public Law Center  
Santa Ana

Honorable Terry J. Hatter, Jr.  
Chief Judge Emeritus  
United States District Court  
Los Angeles

Honorable Earl Johnson, Jr.  
Associate Justice, Court of Appeal  
Second Appellate District  
Los Angeles

Honorable James R. Lambden  
Associate Justice, Court of Appeal  
First Appellate District, San Francisco

Karen Lash  
Vice President for Programs  
Equal Justice Works

Honorable Jan Greenberg Levine  
Los Angeles County Superior Court  
Monterey Park

Jack W. Londen  
Morrison & Foerster  
San Francisco

Professor James Meeker  
School of Social Ecology  
University of California, Irvine

James Preis  
Mental Health Advocacy Service  
Los Angeles

Geoffrey L. Robinson  
Bingham McCutchen  
Walnut Creek

Harvey I. Saferstein  
Mintz, Levin, Cohn, Ferris, Glovsky Popeo  
Santa Monica

Honorable Ronald L. Taylor, Ret.  
Superior Court of Riverside County  
Riverside

Honorable Laurie D. Zelon  
Associate Justice, Court of Appeal  
Second Appellate District  
Los Angeles