

I. Executive Summary:

Language Barriers to Justice in California

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.¹ 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.²

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,³ 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



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

² 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> (hereinafter 2000 Census, American Fact Finder).

³ *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).

⁴ 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*).



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.⁴ The California Legislature has acknowledged the need for language services in the courts in order to provide equal access to justice for all.⁵

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.⁶ 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.⁷ 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.⁸ 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 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

⁵ 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.”

⁶ 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.

⁷ *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*).

⁸ 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).

appear unfair and unbalanced when, because of inability to comprehend the process, defendants with limited English proficiency⁹ 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.¹⁰ California statutes also mandate language assistance — including appointment of an interpreter — in adjudicative proceedings before state agencies, boards and commissions.¹¹ Californians overwhelmingly agree (85 percent) that the courts must ensure that an adequate number of interpreters are available to assist non-English speakers.¹² 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 Council¹³ 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;
 - (ii) prioritize the goal of full language access;
 - (iii) establish evaluation processes for language access measures; and

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.

⁹ 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.

¹⁰ See, e.g., 20 USC § 1703(f) (elimination of language barriers in schools); 42 USC §§ 1973(f)(4), 1973aa-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.

¹¹ CAL. GOV'T CODE § 11435.15

¹² *Fairness in the California Courts* at 4-79.

¹³ The Judicial Council is the policy-making body for the California courts.

(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.