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LANGUAGE BARRIERS TO JUSTICE IN CALIFORNIA

A REPORT OF THE CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

Published by the California Commission on Access to Justice

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Language Barriers to Justice in California

A Report of the California Commission on Access to Justice

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 Barriers to Justice in California

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“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)

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



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

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), 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.

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.

II. Introduction

“And justice for all” — the promise that every individual will receive equal treatment under the law — is as central to the ideal of freedom as the right to vote.

Yet there continue to be significant barriers to equal access to justice. A large and growing barrier is the lack of English language proficiency. The complexities of the language and process of the law present multiple challenges for people of limited English proficiency: they cannot comprehend the pleadings and court forms they receive; they cannot follow the signs or directions posted at the court; they cannot communicate with clerks or court staff; and they cannot understand or participate in court proceedings, much less effectively present their cases.

Such language barriers are particularly acute in California, one of the nation’s most diverse states: Approximately 26 percent of the state’s population is foreign born, and nearly ten percent of the state’s population immigrated to California as recently as the 1990s.¹⁴ More than 220 languages are spoken in California, and an astounding 40 percent of the state’s households speak a language other than English in the home.¹⁵ According to the 2000 Census, nearly 20 percent of Californians speak English less than “very well.”¹⁶

What does this mean for the courts?

The growing number of Californians with limited English proficiency has sparked a significant increase in the need for language assistance in the courts — a daunting challenge at a time when resources are shrinking. Because there is no established constitutional right to an interpreter in a civil proceeding, and because the right to an interpreter in most civil cases is not protected by California law, language assistance is provided by the state in non-criminal cases only in very limited instances. Many with limited English skills are unable to pay for legal assistance and must attempt to represent themselves in court — a nearly impossible task for people who are unable to understand the proceedings. While the courts have made significant efforts to assist litigants with limited English proficiency, most crucial court forms and documents are available in



More than 220 languages are spoken in California, and 40 percent of the state’s households speak a language other than English in the home.

¹⁴ 2000 Census.

¹⁵ *Id.*

¹⁶ *Id.*

English only, and the number and availability of skilled interpreters has actually declined over the past decade, despite the burgeoning need.

Court interpretation is extremely difficult and requires considerable skill, training and experience. Development of an adequate pool of fully qualified interpreters presents a major challenge. Inadequate assistance for litigants with limited English proficiency affects the court's ability to function properly, causing delays in proceedings, inappropriate defaults, and faulty interpretation that can ultimately subvert justice. The inability to accommodate the language needs of litigants impairs trust and confidence in the judicial system and undermines efforts to secure justice for all.

Ensuring equal access to justice for all Californians has become a statewide priority, and, in recent years, California has taken unprecedented steps toward this vital goal. In 1996, the California Commission on Access to Justice was established to lead the access-to-justice effort. Composed of representatives of the Governor's office, the State Attorney General, the California Legislature, the state judiciary, the State Bar of California, and business, labor, and community groups, the Access Commission has launched a statewide effort to ensure equal access to justice for all Californians.

In its 2002 report on access to justice in California — “The Path to Equal Justice” — the Commission found that 72 percent of the legal needs of low-income families continue to go unaddressed.¹⁷ The report also found that people of limited English proficiency are among those most likely to need assistance in accessing the courts and those least likely to receive it. The language barriers, compounded by the lack of legal assistance, continue to keep the promise of justice beyond the reach of the state's most vulnerable populations.

To address this problem, the Commission on Access to Justice formed a standing committee on language access issues and commissioned this report to examine the scope and impact of language barriers in California's justice system and offer suggestions for ways to improve services for people with limited English proficiency. While this report focuses primarily on what can be done to address language barriers in our courts, other components of the justice system — including legal services programs, lawyer referral services, law libraries, law schools, bar associations and individual lawyers — also need to address language barriers if true access to justice is to be achieved. Suggestions for addressing language barriers in these other components of the judicial system are also being considered by the Commission, although they are not the focus of this report.

The California Commission on Access to Justice hopes this report proves to be an important step in the statewide effort to achieve access to justice for all Californians.

¹⁷ *The Path to Equal Justice*, California Commission on Access to Justice (2002)

III. The Context

As one of the nation's most diverse states and home to the country's largest immigrant population, California is in a unique position to enjoy the fruits of a multiplicity of cultures and traditions. The diversity of the state's population has long been one of its strongest and most enduring characteristics. In a state where more than 220 languages are spoken, this rich mix of cultures also presents unique challenges for ensuring equal access to state services. For people with limited English proficiency — nearly 20 percent of the state's population according to the 2000 Census¹⁸ — many services are simply inaccessible. This cannot continue to be the case with the state's court system. The courts hold authority over our most basic rights and privileges. Unless every Californian can fully understand and participate in judicial proceedings affecting his or her legal rights, our courts cannot serve their intended purpose and our democracy cannot keep one of its most important promises.

The right to have a state-funded interpreter in a criminal proceeding has long been recognized by the courts. In most civil proceedings, however — even those affecting fundamental rights — California does not recognize the right to an interpreter, and there are not sufficient 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, non-English speakers.¹⁹ The California Legislature has acknowledged the need for language services in the courts in order to provide equal access to justice for all, and the court system has struggled to meet that need; however, for all practical purposes, Californians continue to face a dire and unmet need for language assistance in the courts.



California's first constitution, drafted in 1849, provided that “All laws, decrees, regulations, and provisions emanating from any of the three supreme powers of this State, which from their nature require publication, shall be published in English and Spanish.”

¹⁸ 2000 Census.

¹⁹ *Fairness in the California Courts* at 4-79.



Overall, it is clear that California will experience steady increases in both the need for court interpreting services and the diversity of languages in which those services are needed.

A. The Growing Need

For many, California is emblematic of the American dream, a place of stunning natural beauty, a seat of international commerce, a land of unparalleled opportunity. For more than a century, the state has drawn people from all over the world who seek work, prosperity, and ocean breezes — and that trend is only growing. Nearly ten percent of the state’s residents immigrated to California from other countries between 1990 and 2000.²⁰ As a result, California is the most populous and demographically diverse state in the nation, a meeting place of cultures, ethnicities and ideas unlike any other in the world. California’s current diversity is a return to its early demographic history: approximately 25 percent of the state’s population is now composed of immigrants, a level similar to that of the late 1800s and early 1900s.

According to the 2000 Census, California has a population of approximately 34 million people.²¹ Over a quarter of Californians (roughly 8.8 million people) are foreign born; of these, about 56 percent are from Latin America (roughly 4.9 million people) and about 33 percent are from Asia (roughly 2.9 million people).²² Statistics show that the rate of immigration to California from abroad is increasing, particularly among groups less likely to speak English. The annual number of legal immigrants to California averages over 200,000 people; 1,807,953 people legally immigrated to California from other countries between 1990 and 1998.²³ Estimates of undocumented immigrants (principally from Latin American countries) coming to California directly or through other states are as high as 225,000 people per year.²⁴ Many of these documented and undocumented immigrants do not speak English proficiently.

Language Spoken at Home ²⁵

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%

²⁰ 2000 Census.

²¹ *Id.*

²² *Id.*

²³ Judicial Council of California Administrative Office of the Courts, *Report to the Legislature on the Use of Interpreters in the California Courts* (December 2002) at 15 (*hereinafter Report to the Legislature*).

²⁴ *Id.*

²⁵ 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>

California's high immigrant population means that the state is also extremely linguistically diverse. According to the 2000 Census, California is the nation's most linguistically diverse state, with approximately 224 distinct languages spoken.²⁶ Almost 40 percent of Californians (more than 13 million people) speak a language other than English at home.²⁷ This represents a four million increase since 1990.²⁸ While many in the state are bi- or multi-lingual, a startling number of Californians are not proficient in English. Roughly 20 percent of Californians (almost 7 million people) speak English less than "very well" — the minimum realistic threshold for meaningful participation in a judicial proceeding. More than four million California households are "linguistically isolated," meaning that no person in the household aged 14 or older speaks English at least "very well."²⁹ Roughly four percent of Californians (over 1.3 million people) speak no English at all. Of those who speak no English, roughly half speak Spanish, and the remainder speak any of more than 200 languages.³⁰

Millions of Californians are involved with legal proceedings every year. English proficiency is a prerequisite to engagement in the legal system. Survey data suggest that most Californians believe that people with a good understanding of English are treated better in the courts than people who speak little or no English.³¹ Without English proficiency, the prospect of navigating through the legal system is daunting, particularly since a high percentage of litigants represent themselves in court and therefore cannot rely on an attorney to ensure they understand the proceedings. Almost seven million Californians cannot gain access to 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.

B. The Applicable Law: The Criminal/Civil Distinction Regarding Interpreters

Despite the overwhelming need, courtroom language services are virtually unavailable to many Californians. While criminal defendants, witnesses, parties in small claims cases, and parties in a narrow class of civil cases have the right to an interpreter, no such right has been recognized for parties in most civil cases.

- Almost 40 percent of** Californians (over 13 million people) speak a non-English language at home:
- Over 25 percent of Californians speak Spanish at home.
 - Almost nine percent of Californians speak Asian and Pacific Island languages at home.
 - Roughly 14 percent of Californians speak English less than "very well" in homes where Spanish is spoken (more than 4.6 million people).
 - Roughly 4.6 percent of Californians speak English less than "very well" in homes where Asian and Pacific Island languages are spoken (more than 1.5 million people).

²⁶ 2000 Census.

²⁷ *Id.*

²⁸ *Report to the Legislature* at 15.

²⁹ *Id.*

³⁰ 2000 Census.

³¹ *Fairness in the California Courts* at 4-34.

1. The Case Law

Courts have generally held that the U.S. Constitution entitles criminal defendants with limited English proficiency to an interpreter supplied by the court.³² The California Constitution explicitly provides that a “person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.”³³

There is no corresponding right, however, in ordinary civil proceedings. In *Jara v. Municipal Court*,³⁴ the California Supreme Court held that non-English speaking indigent civil litigants do not have a right to have a court interpreter appointed at public expense. The court stated that litigants must rely on the court’s inherent authority to appoint an interpreter and waive fees if justice so requires.³⁵ Although the court acknowledged the standard set forth in *Boddie v. Connecticut*³⁶ — that absent a “countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard” — it found that this standard does not provide civil litigants with a constitutional right to an interpreter because “alternate sources for language assistance to communicate with counsel and other community professionals and officials” exist.

Jara limited the potential reach of an earlier case, *Gardiana v. Small Claims Court*,³⁷ which held, in the context of a small claims proceeding, that the court has a statutory duty to appoint an interpreter free of charge if it finds the litigant unable to speak or understand English. According to *Jara*, however, California law provides for court-appointed interpreters in civil cases only for witnesses, not parties. *Jara* also distinguished small claims proceedings as more informal and expeditious than other court proceedings. *Jara* reasoned that because attorneys are not permitted in small claims proceedings, non-English speaking small claims litigants are “effectively barred from access to the small claims proceedings” without an interpreter.³⁸

³² See *United States v. Carrion*, 488 F.2d 12, 15 (1st Cir. 1973) (“The right to an interpreter rests most fundamentally . . . on the notion that no defendant should face the Kafkaesque spectre of an incomprehensible ritual which may terminate in punishment.”); *United States ex rel. Negron v. New York*, 434 F.2d 386, 389 (2nd Cir. 1970).

³³ CAL. CONST. art. I, § 14 Even in criminal cases where the right to an interpreter is clear, there are significant difficulties ensuring the availability of interpreters in the needed language in a timely manner.

³⁴ *Jara v. Municipal Court for the San Antonio Judicial District of Los Angeles County*, 21 Cal. 3d 181 (1978), cert. denied, 439 U.S. 1067 (1979).

³⁵ *Jara*, 21 Cal. 3d at 183.

³⁶ *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971)

³⁷ *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412 (1976)

³⁸ *Jara*, 21 Cal. 3d at 185.

2. The Legislative Framework

Federal and state laws guarantee equal access by people of limited English proficiency to a wide range of public and private health and social service programs and activities. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) *et seq.*, and its implementing regulations prohibit recipients of specified federal financial assistance from engaging in policies, practices or procedures that have the effect of excluding or limiting participation by persons of limited English proficiency in their programs and activities.³⁹ These and other federal statutes protect access by those with limited English proficiency to education, health care, social services and voting.⁴⁰

Similar protection for access to public services in California is provided by the Dymally-Alatorre Bilingual Services Act,⁴¹ which contains a bold articulation of state policy in favor of equal access:

The Legislature hereby finds and declares that the effective maintenance of a democratic society depends on the right and ability of its citizens and residents to communicate with their government and the right and ability of the government to communicate with them.

The Legislature further finds and declares that substantial numbers of persons who live, work and pay taxes in this state are unable, either because they do not speak or write English at all, or because their primary language is other than English, effectively to communicate with their government. The Legislature further finds and declares that state and local agency employees frequently are unable to communicate with persons requiring their services because of this language barrier. As a consequence, substantial numbers of persons presently are being denied rights and benefits to which they would otherwise be entitled.

The intention of the Legislature in enacting this chapter is to provide for effective communication between all levels of government in this state and the people of this state who are precluded from utilizing public services because of language barriers.

The California Legislature has also demonstrated a clear understanding of the need to provide equal justice under the law to all non-English speaking persons:

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.⁴²

³⁹ As discussed later in this report, there is an open question as to whether Title VI, as interpreted by various federal agencies, requires state courts that receive federal funding to provide equal access to persons with limited English proficiency without additional cost.

⁴⁰ See 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).

⁴¹ CAL. GOV'T CODE §§ 7290 *et seq.*

⁴² CAL. GOV'T CODE § 68560 (e).

Federal and state laws guarantee equal access by people of limited English proficiency to a wide range of public and private health and social service programs and activities.



Survey data suggest that most Californians believe that people with a good understanding of English are treated better in the courts than people who speak little or no English.

California statutes mandate language assistance — including appointment of an interpreter — in adjudicative proceedings before state agencies, boards and commissions, including the Agricultural Labor Relations Board, the California Unemployment Insurance Appeals Board, the Board of Prison Terms, and the Public Utilities Commission.⁴³ Such assistance is required (at no charge to the parties) whenever “a party or the party’s witness does not proficiently speak or understand English.”⁴⁴ Every agency subject to the language assistance requirement must advise each party of the right to an interpreter at the same time the party is advised of the hearing date.⁴⁵ The State Personnel Board is charged with establishment of a list of certified administrative hearing interpreters who meet specified interpreting skills and linguistic abilities.⁴⁶

When it comes to civil judicial proceedings, however, California statutes provide parties the right to an interpreter only in a small subset of actions or proceedings, including those involving small claims, domestic violence, parental rights, dissolution of marriage or legal separations involving a protective order, and court-related medical examinations. In most but not all of these areas, the statute provides for a waiver of the court interpreter fees where the litigant cannot afford to pay for them.⁴⁷ Unfortunately, even for most of these proceedings, the statutory “right” is illusory because the statute adds that compliance with its terms is required only if adequate funds are available under the Federal Violence Against Women Act (VAWA, P.L. 103-322) or from “sources other than the state.”⁴⁸

By contrast, California law expressly mandates appointment of an interpreter for witnesses and the hearing impaired in all proceedings, criminal or civil. Under Evidence Code section 752, the court must appoint an interpreter whenever “a witness is incapable of understanding the English language or is incapable of expressing himself or herself in the English language so as to be understood directly by counsel, court and jury” Appointment of a translator is also required whenever “the written characters in a writing offered in evidence are incapable of being deciphered or understood directly”⁴⁹ Evidence Code Section 754 requires the appointment of a qualified interpreter in any civil or criminal proceeding (including small claims actions and any court-ordered or provided mediation or arbitration) “where a party or witness is an individual who is deaf or hearing impaired”⁵⁰ For these purposes, “interpreter” means an oral interpreter, a

⁴³ CAL. GOV’T CODE § 11435.15.

⁴⁴ *Id.*

⁴⁵ CAL. GOV’T CODE § 11435.60.

⁴⁶ CAL. GOV’T CODE § 11435.30.

⁴⁷ Statutes governing these proceedings are contained in Appendix 1.

⁴⁸ CAL. EVID. CODE § 755(e)

⁴⁹ CAL. EVID. CODE § 753.

⁵⁰ CAL. EVID. CODE § 754(b).

⁵¹ CAL. EVID. CODE § 754(d).

sign-language interpreter, or a deaf-blind interpreter, depending upon the need of the individual involved.⁵¹

3. Standards of Judicial Administration

The state's Standards of Judicial Administration offer instruction to judges for determining whether an interpreter is needed.⁵² Under Section 18, an interpreter is required if, after an examination of a party or a witness, "the court concludes (1) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel, or (2) the witness cannot speak English so as to be understood directly by counsel, court and jury."⁵³ The court is directed to examine the party or witness "on the record to determine whether an interpreter is needed if (1) a party or counsel requests such examination or (2) it appears to the court that the person may not understand or speak English well enough to participate fully in the proceeding."⁵⁴

However, the standards of judicial administration do not specifically provide for payment of interpreters or the source of such payment (except in the limited range of civil proceedings for which state law makes such provisions), and there is not adequate funding to cover the cost of such interpreters. Anecdotal evidence indicates that some judges do seek and obtain funding for interpreters in civil cases, although there is no reliable data on the frequency or source of such funding.

4. Title VI

No person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d)) Title VI authorizes and directs specified federal agencies "to effectuate the provisions ... by issuing rules, regulations, or orders of general applicability."

In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court interpreted regulations promulgated by the former Department of Health, Education, and Welfare to hold that Title VI prohibits conduct that has a disproportionate effect on persons of limited English proficiency because such conduct constitutes national-origin discrimination. *Lau* required a San Francisco school district that had a significant number of non-English speaking students to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

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.

⁵² See *People v. Carreon*, 151 Cal. App. 3d 559, 569-70, n. 3 (1984). (The Judicial Council's "authority to recommend standards of judicial administration not inconsistent with statute is now granted by article 1, section 6 of the California Constitution.")

⁵³ California Standards of Judicial Administration § 18(a)(1)-(2).

⁵⁴ *Id.*

“Few liberties in America have been more zealously guarded than the right to protect one’s property in a court of law. This nation has long realized that none of our freedoms would be secure if any person could be deprived of his possessions without an opportunity to defend them.”

— *Payne v. Superior Court*,
17 Cal. 3d 908, 911 (1976)

In August 2000, pursuant to Executive Order 13166,⁵⁵ the Department of Justice (DOJ) issued a general guidance document⁵⁶ setting forth principles for agencies to apply in developing guidance documents for funding recipients pursuant to the Executive Order.⁵⁷ Based on these principles, several federal agencies have established policy guidelines imposing responsibility on state recipients of federal funds to ensure that persons of limited English proficiency have meaningful access to services and benefits, including provision of language assistance at no charge.⁵⁸

It is an open question whether, as recipients of federal funding from the Department of Health and Human Services (in areas such as collection of child support) and other federal agencies and programs, state courts are bound by the above guidelines and must provide equivalent access to linguistic minorities without charge.⁵⁹ The issue is of consid-

⁵⁵ Executive Order 13166: *Improving Access to Services for Persons with Limited English Proficiency*, 65 Fed. Reg. 50,121 (August 16, 2000).

⁵⁶ Department of Justice Policy Guidance Document: *Enforcement of Title VI of the Civil Rights Act of 1964 — National Origin Discrimination Against Persons With Limited English Proficiency*, 65 Fed. Reg. 50,123 (August 16, 2000).

⁵⁷ On June 18, 2002, the U.S. Department of Justice published final guidance to DOJ recipients on the requirement under Title VI of the Civil Rights Act of 1964 and the Title VI regulations, to ensure such access. Department of Justice: *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* 67 Fed. Reg. 41,455 (June 18, 2002). The guidance is also available on <<http://www.usdoj.gov/crt/cor/13166.htm>> (the LEP portion of the of the Civil Rights Division’s Coordination and Review Section) or at <<http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.htm>>. See also Assistant Attorney General July 8, 2002, *Memorandum to Heads of Federal Agencies, General Counsels, and Civil Rights Directors concerning Executive Order 13166* (“Improving Access to Services for Persons with Limited English Proficiency”) available at <<http://www.usdoj.gov/crt/cor/lep/BoydJul82002.pdf>>.

⁵⁸ See 67 Fed. Reg. 4968 (February 1, 2002) available at <<http://www.hhs.gov/ocr/>>. Department of Labor LEP Policy Guidance, 66 Fed. Reg. 4596 (January 16, 2001) available at <<http://www.usdoj.gov/crt/cor/lep/dollep.htm>>.

⁵⁹ On December 1, 2003, a Deputy Assistant Attorney General of the Department of Justice Civil Rights Division wrote a general letter to all state court administrators regarding obligations under Title VI and Executive Order No. 13166, as recipients of federal funding, to ensure meaningful access by LEP persons to their federally assisted programs and activities. The letter stated:

“Most, if not all, state court systems receive, either directly or through individual sub-units, federal financial assistance from the Department of Justice (DOJ) or another federal agency. As you may know, recipients of such federal financial assistance must comply with various civil rights statutes, including Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000, et seq., and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c) (the “Crime Control Act”), which together prohibit discrimination on the basis of race, color, national origin, sex, and religion in programs that receive federal financial assistance. Under Executive Order 13166, reprinted at 65 FR 50,121 (August 16, 2000), each federal agency that extends federal financial assistance is required to issue guidance clarifying the obligation of their recipients to ensure meaningful access by LEP persons to their federally assisted programs and activities.”

Deputy Assistant Attorney General December 1, 2003, *Letter to State Court Administrators Regarding the Provision of Language Services to Persons with Limited English Proficiency*, available at <http://www.usdoj.gov/crt/cor/courtsletter_generic.htm>.

erable significance given the determination by DOJ and federal agencies that, in most cases, receipt of federal funds for a particular program or activity subjects all the recipient's operations to Title VI compliance.⁶⁰

An argument also could be made that standards of judicial administration, interpreted in light of the Dymally-Alatorre Bilingual Services Act and other state statutes, require courts to appoint interpreters in all proceedings involving persons with limited English proficiency.

The unfortunate reality, however, is that courts are caught in an impossible position. Limited court resources and the lack of qualified interpreters make it functionally impossible to provide interpreters in the vast majority of civil proceedings. Anecdotal evidence and informal surveys indicate that courts rarely appoint interpreters in civil cases unless parties pay for them. Funds are not available to compensate the interpreter for this service, and there are no statewide guidelines for the judicial branch regarding payment of interpreters in civil proceedings.⁶¹

C. Other States

California is not alone in facing these challenges, although no other state faces the sheer volume of cases in which language assistance is needed. While California has long been a model to which other states have looked for guidance, California may look to counterparts around the country for models of comprehensive court interpreter statutes that protect the rights of non-English speaking litigants in all civil as well as criminal actions. These models include:

1. Policy Declarations

Statutes in several states have a preamble, introduction or policy declaration that clearly articulates the law's purpose: to protect the rights of non-English speaking litigants in all judicial proceedings — civil and criminal. For example, Oregon declares that it is “the



Several states accord non-English speakers a right to an interpreter at state expense in all civil court proceedings.

⁶⁰ For example, the Health and Human Services' Office for Civil Rights states:

“What constitutes a program or activity covered by Title VI was clarified by Congress in 1988, when the Civil Rights Restoration Act of 1987 (CRRA) was enacted. The CRRA provides that, in most cases, when a recipient/covered entity receives federal financial assistance for a particular program or activity, all operations of the recipient/covered entity are covered by Title VI, not just the part of the program that uses the federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the federal assistance is used only by one part.”

U.S. Department of Health and Human Services, Office for Civil Rights, *Policy Guidance: Title VI Prohibition Against National Origin Discrimination as it Affects Persons with Limited English Proficiency, Part C.1.* (Sept. 1, 2000).

⁶¹ A survey of legal services providers and community based organizations conducted by the Access Commission on Access in 2003 revealed very few instances in which courts appointed certified or registered interpreters in cases in which such interpreters were not required by statute or proffered by a party.

policy of this state to secure the constitutional rights and other rights of persons who are unable to readily understand or communicate in the English language.”⁶²

2. Right to Interpreter in Civil Proceedings

Several statutes explicitly provide litigants with a right to a court-appointed interpreter in all civil matters in states including Idaho, Iowa, and Minnesota, as well as Washington, D.C.⁶³ Several states also require waiver of the right to an interpreter to be in writing and approved by the court, after a full explanation of the nature and effect of the waiver is stated on the record and after the litigant has consulted with his or her attorney. In the State of Washington, the right to a qualified interpreter may not be waived unless a “non-English speaking person requests a waiver” and the “appointing authority determines on the record that the waiver has been made knowingly, voluntarily and intelligently.”⁶⁴ In Massachusetts, waiver of the right to an interpreter “shall be effective only when approved by a judge after [the] non-English speaker has consulted with counsel and had explained to him, through an interpreter, in open court by the judge the nature and effect of such waiver.”⁶⁵

3. Interpreter Fees and Other Costs

Nearly all of the statutes that provide the right to an interpreter in civil proceedings also provide for the interpreter’s fees and other costs to be paid by the court or another public body. In Washington, D.C., all costs associated with providing interpreter services are paid by the Office of Interpreter Services.⁶⁶ In Kansas, fees may be paid out of funds appropriated for the operation of the courts and agencies, but “at no time shall such fees be assessed against the non-English speaker.”⁶⁷ In Kentucky, appointed interpreters are paid out of the State Treasury.⁶⁸

While these jurisdictions have far fewer litigants with limited English proficiency than we have in California, we can learn a significant amount about practice, procedure, and costs from their experiences.

⁶² OR. REV. STAT. § 45.273.

⁶³ See, e.g., MINN. STAT. §§ 546.42, 546.43

⁶⁴ WASH. REV. CODE § 2.43.060

⁶⁵ MASS. ANN. LAWS ch. 221C § 3.

⁶⁶ D.C. CODE ANN. § 2-1902

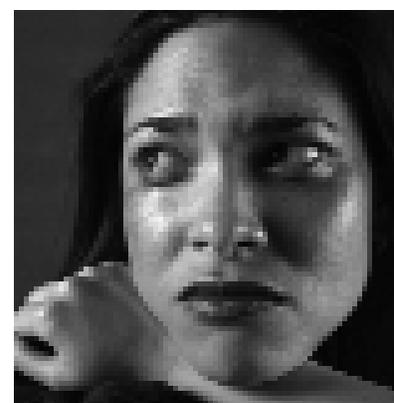
⁶⁷ KAN. STAT. ANN. § 75-4352

⁶⁸ KY. REV. STAT. ANN. §§ 30A, 410, 30A-415

IV. The Problem

Statewide court surveys indicate that more than 85 percent of Californians believe that an adequate number of interpreters must be made available to assist non-English speakers in all court proceedings.⁶⁹ They also reveal that “Californians overwhelmingly favor (76 percent) providing interpreters free of charge to non-English speaking people.⁷⁰ Yet, as the previous section of this report explains, California law requires courts to provide interpreters for parties only in criminal and a small number of civil cases. The courts do not have the resources to meet even those needs effectively, despite the best efforts of the Judicial Council and Administrative Office of the Courts.⁷¹

In recent years, demand for interpreter services has grown steadily while the number of qualified interpreters continues to shrink. Court interpretation is a difficult and demanding occupation, requiring considerable training and skill. Complete proficiency in both English and the foreign language is just the starting point. The interpreter must be capable of accurately and idiomatically rendering the spoken word from one language to the other without in any way altering the intended meaning. Variations of dialect and jargon, nuances of meaning, cultural factors, gesture and body language, and the use of specialized legal terminology in court all render the task infinitely more complex than mere literal translation of words. The interpreter must be able to process all this almost instantaneously to meet the demands of simultaneous interpretation.⁷² Efforts to attract and retain interpreters who have these skills have not succeeded in adequately expanding the pool of properly qualified interpreters who can assist in the courts. As a result, the courts often are forced to rely on untrained interpreters — in some civil and family law



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*⁷³

⁶⁹ *Fairness in the California Courts* at 4-79.

⁷⁰ *Id.* at 4-80 (figs. 4-82, 4-83), emphasis in original.

⁷¹ The Judicial Council is the policy-making body of the California courts, the nation’s largest court system. Under the leadership of the Chief Justice, and in accordance with the California Constitution, the Council is responsible for ensuring the consistent, independent, impartial and accessible administration of justice. The Administrative Office of the Courts (AOC) is the staff agency of the Judicial Council.

⁷² See Gonzalez, Roseann Duenas, Vasquez, Victoria, and Mikkelson, Holly, *Fundamentals of Court Interpretation* (Durham, NC: Carolina Academic Press, 1991).

⁷³ Hewitt, William E., *Court Interpretation: Model Guides for Policy and Practice in the State Courts* (Williamsburg, VA: National Center for State Courts, 1995) at 15 (*hereinafter Court Interpretation: Model Guides*).

The courts often are forced to 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.

cases, even family members or children — which can lead to faulty translations and threaten the court’s ability to ensure justice.⁷⁴

There are other challenges as well: most of the standard forms and documents used in court proceedings are provided only in English. The Judicial Council’s self-help web site is available in Spanish, as are the domestic violence forms available on the site. But most other court forms are printed in English only, even though several such forms are mandatory in certain proceedings. Even where forms are available in other languages, all documents completed and submitted in any judicial proceeding must be, by law, in English.⁷⁵ The inability to understand or complete basic court forms compounds the difficulty for those with limited English proficiency.

The Judicial Council has made access to the judicial system and fairness in the state courts — including language access — one of its highest priorities. The Council’s Access and Fairness Advisory Committee addresses fairness issues in the courts and provides policy direction in areas related to race, ethnicity, gender, and other issues. The committee has issued several reports on access and fairness issues, many of which highlight the issues of language access.⁷⁶ Likewise, the Judicial Council’s Court Interpreters Advisory Panel provides leadership and oversight of the judiciary’s court interpreter system, including the certification examination. The Task Force on Self-Represented Litigants considered language barriers when it prepared a statewide action plan for pro per litigants, adopted by the Judicial Council in March 2004.

While the issue of language barriers is gaining attention, inadequate resources for litigants with limited English proficiency is a continuing — and growing — problem.

⁷⁴ *Id.*

⁷⁵ 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.

⁷⁶ These include, in addition to *Fairness in the California Courts*:

Final Report of the California Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts (January 1997); and

Access to the California State Courts: A Survey of Court Users, Attorneys, and Court Personnel, Final Report of the Judicial Council of California Advisory Committee on Access and Fairness in the Courts, Access for Persons with Disabilities Subcommittee (January 1993).

A. The Shrinking Interpreter Pool

“It is a common misconception that anyone proficient in two languages can interpret. In fact, interpreting requires a complex set of skills, all of which must be exercised simultaneously. The interpreter must listen, understand, store words and word order, search for the right concepts and words in the second language, reconstruct the message in the second language, and speak and monitor his or her own output, all while listening for the next chunk of dialogue to process.”⁷⁷

1. Interpreter Qualifications (Spoken Languages)

Under California law, interpreters must meet rigorous standards in order to participate in court proceedings. (For purposes of this report, only spoken languages are at issue; hence, standards governing American Sign Language interpretation are omitted.) For some languages, interpreters must be certified; for others they must be registered.

- A *certified interpreter* has passed a state certification exam testing interpreter skills in one of 13 designated languages and meets ongoing professional and educational requirements.⁷⁸
- A *registered interpreter* has passed a state exam for English fluency, meets ongoing professional and educational requirements, and may interpret in languages not yet certified by the state.
- *Provisionally qualified interpreters* have met some, but not yet all, state requirements to be either a registered or certified interpreter.⁷⁹

Government Code section 68561 and Rule 984.2 of the California Rules of Court require an interpreter in a judicial proceeding to be certified or registered (where such registration or certification is available). Courts may use non-certified interpreters only after conducting a diligent search for available certified interpreters among state and federally certified court interpreters, administrative hearing-certified interpreters, and interpreter agencies. If the search is unsuccessful, the trial court must specifically qualify



⁷⁷ *Improving Interpretation in Wisconsin's Courts*, Madison, WI: Committee to Improve Interpreting and Translation in the Wisconsin Courts, 2000. (KFW 2926 T72 C66 2000) available at <http://www.courts.state.wi.us/circuit/pdf/Interpreter_Report.pdf>.

⁷⁸ Currently, court interpreters can be certified in 13 languages: American Sign Language, Arabic, Armenian (Eastern), Armenian (Western), Cantonese, Japanese, Korean, Mandarin, Portuguese, Russian, Spanish, Tagalog, and Vietnamese. Judicial Council Fact Sheet, *Court Interpreters* (August 2004) at 2. The Judicial Council has designated Khmer and Punjabi to become certified languages once tests and other certification requirements are finalized.

⁷⁹ *Interpreter Use Study* at 1.3.

the non-certified interpreter and find good cause on the record to use him or her.⁸⁰

To become either certified or registered spoken-language interpreters, applicants must successfully complete an examination with an oral and written component that tests the candidate in the following areas:

- written vocabulary, grammar, and reading comprehension in English, for non-designated languages, and in both English and the second language for the designated languages; and
- sight translation, simultaneous and consecutive interpreting.

In order to pass the test, candidates must have mastery of both languages at the level of an educated native speaker, have the ability to interpret in simultaneous, consecutive and sight-translation modes, and be able to convey communications accurately, completely and promptly.⁸¹ Fewer than 15 percent (and, in past years, as few as 3.9 percent) of all court interpreter candidates in California pass the certification exams.⁸² These statistics are comparable to those of other states (such as New Jersey and Washington), as well as the federal system, in which passage rates vary from 3.6 to 12.5 percent.⁸³ The statistics are similar regardless of the specific language involved. These data, together with analysis of the individuals who have performed satisfactorily on the tests, suggest that the problem is not with the tests themselves but rather with the inherent difficulty of performing the

⁸⁰ The Judicial Council has responsibility for certifying and registering court interpreters. (Senate Bill 1304; Stats. 1992, ch. 770.) Senate Bill 1304 requires the Council to:

- Designate the languages for which certification programs will be established;
- Approve one or more entities to certify interpreters of as many languages as the Council designates;
- Adopt and publish guidelines, standards, and procedures to determine which certification entities will be approved;
- Adopt standards and requirements for interpreter proficiency, continuing education, certification renewal, discipline, and professional conduct;
- Adopt programs for recruitment, training, continuing education, and evaluation to ensure that adequate numbers of interpreters are available and that they interpret competently; and
- Set fees or establish fee guidelines for applications to take the interpreter examination, for certification or renewal of certification, and for certain other functions.

⁸¹ *Briefing Summary, State Court Interpreter Certification Consortium* (Revised – January 20, 1977) State Court Journal, Vol. 20, No. 1 (1996).

⁸² See Lesley Duncan, *Court Interpreting: Development Of A Pilot Project In California*, Institute For Court Management, Court Executive Development Program, AOC (May 2001) at 25; Hewitt, William E. and Lee, Robert Joe, *Behind the Language Barrier, or 'You Say You Were Eating an Orange?'* 20 State Court Journal 23, 28 (1996) (Figures for California from January 1991 to April 1993) available at <http://www.ncsonline.org/wc/publications> [hereinafter, Hewitt, *Behind the Language Barrier*].

⁸³ Hewitt, *Behind the Language Barrier* at 28.

tasks the tests measure. Simply put, few people have the combination of skills, training and experience to meet the unique demands of effective court interpreting.⁸⁴

2. Decline in Qualified Interpreters

The availability of qualified interpreters has declined precipitously in the past several years. In 1995, 1,675 interpreters were certified in California (at the time, interpreters could not yet be registered for an undesignated language). In 2000, 1,108 people were certified interpreters, and about 260 people were registered interpreters.⁸⁵ As of December 2002, there were 1,060 certified court interpreters and 400 registered interpreters in California.⁸⁶ In addition, the number of certified interpreters in key languages is dropping. In 1995, 1,536 interpreters were certified in Spanish. Five years later, the number dropped to 988 — a 36 percent decline.⁸⁷ Interpreters certified in Cantonese numbered 31 in 1995; in 2000, the number dropped to 22. The number of interpreters certified in Vietnamese dropped from 47 to 36 during the same time frame. The trend is mirrored in other languages (see chart below).⁸⁸ Although the initial number of certified interpreters may have been inflated (by inclusion of some who no longer actively worked as court interpreters) the decrease in numbers of certified interpreters is still an alarming trend.

Number of Certified Court Interpreters by Language, 1995, 2000⁸⁹ and 2005⁹⁰

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
Total	1,665	1,108	1,238⁹¹

⁸⁴ *Id.*

⁸⁵ *Interpreter Use Study* at 1.3. This figure represents some overlap: a few interpreters are certified to interpret a designated language and also registered to interpret one or more undesignated languages.

⁸⁶ Judicial Council Fact Sheet — Court Interpreters (August 2004) at 1.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*, Table 3.6.

⁹⁰ Master List of Certified Court Interpreters, available at <www.courtinfo.ca.gov/courtinterpreters/ctintdb.cfm>.

⁹¹ 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.

Demand for interpreters is diverse. For nine courts in a sample analysis conducted in 2001, per diem interpreters were used for over 64 languages (Albanian to Zapoteco). Although the greatest demand in all courts is for Spanish interpreters, no two courts in this sample had the same language as their second- or third-highest interpreter use expenditure. Below are the languages with the second and third highest usage, by county:

Los Angeles

Korean and Armenian

San Diego

Laotian and Cambodian

Sacramento

Russian and Hmong

Merced

Hmong and Thai

Yolo

Russian and Punjabi

Several of these languages are not designated languages for certified interpreters.



“To ensure equal justice in California courts for this growing demographic group, we need to recruit thousands of interpreters.”⁹²

In addition, the availability of certified and registered interpreters varies widely across the state. During the 2000-01 fiscal year, 97 percent of interpreter services in the Los Angeles County Superior Court were provided by certified interpreters. The figure in Merced County Superior Court was 37 percent.⁹³

3. Increasing Demand for Interpreters

While the availability of qualified interpreter services has fallen, the need for such services continues to rise dramatically. A study published in 2000 by the Judicial Council revealed that “interpreter day usage” — a calculation of the number of days interpreters of each language were used in courts (chiefly in criminal cases) in a particular area — rose sharply for many languages between the 1994-95 fiscal year and the 1998-99 fiscal year.⁹⁴ Statewide, day usage of several “designated” languages rose significantly. Usage of Spanish interpreters, by far the most commonly used in California courts, increased 19 percent. Vietnamese interpreter usage rose 41 percent, Korean usage increased 36 percent, and Cantonese usage jumped 57 percent.⁹⁵ The increased day usage for some undesignated languages was even more dramatic. Mandarin interpreter usage went up 91 percent; use of Punjabi interpreters skyrocketed by more than 137 percent. Use of South Asian and Southeast Asian languages has increased significantly in several counties as well.⁹⁶ These numbers do not include the vast majority of civil cases, in which no right to an interpreter exists. While no firm data exist regarding trends in such cases, it is fair to assume similar increases in demand given the demographic trends described above.

4. Growing use of Unqualified Interpreters

As a result of an increased need for interpreter services, courts often must use uncertified or unregistered interpreters — even in regions with large populations of people who speak those languages:

- In fiscal year 1998-99, for instance, Bay Area counties provided certified Arabic interpreters in fewer than one-third of cases in which the service was needed.

⁹² Justice Eileen C. Moore, Chair of the Judicial Council Advisory Committee on Court Interpreters, quoted in McCarthy, E. and Blane, Collen, *Interpreters Wanted — Courts Reach Out to Ethnic Communities*, Judicial Council Court News (July-Aug. 2002).

⁹³ *Id.* at 3.1-3.5.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ In Merced County, Hmong, Laotian, Mien, Thai, and Punjabi interpreters comprised more than 34 percent of total expenditures for contract per-diem interpreting in fiscal year 2000-01. In Fresno County, services provided in Hmong and Laotian alone represented more than 9 percent of total expenditures for contract per-diem interpreters. In San Diego County, the second- and third-highest expenditures were for Laotian and Cambodian interpreters, respectively. *Id.*

- Those same counties provided certified Cantonese interpreters in an average of just 38 percent of cases in which they were used — even though a very high percentage of California’s Cantonese speakers live in the Bay Area.
- Some areas have trouble providing properly qualified Spanish interpreters. On average, Northern California counties used certified Spanish interpreters in just 60 percent of cases in which they were needed; Central California counties used them in 61 percent of cases.
- The majority of all Tagalog service days occurred in Southern California, but counties in that area provided certified interpreters only 28 percent of the time.⁹⁷
- In Southern California, counties provided registered interpreters of Mandarin in just 15 percent of cases.⁹⁸

California Court Interpreter Service Days for Designated Languages⁹⁹

Language	FY 1994-95	FY 1998-99	% Change
Spanish	122,484	145,661	18.9%
Vietnamese	6,528	9,197	40.9%
Korean	2,943	3,716	26.3%
Cantonese	2,066	3,252	57.4%
Tagalog	1,495	1,986	32.8%
Arabic	851	1,365	60.3%
Japanese	623	1,080	73.3%
Portuguese	306	311	1.6%
Total	137,295	166,567	21.3%

The lack of available qualified interpreters often causes substantial delay and disruption in court proceedings, which adds to the expense and burden of litigation. The manager of interpreter services for the Superior Court of Los Angeles County estimated that more than 40 proceedings are continued every day in that county because a certified or registered interpreter is not available, resulting in some 10,000 delayed proceedings per year.¹⁰⁰

In many instances, in civil and family law matters, the court must settle for using a relative or friend of the party with limited English proficiency if a certified or registered interpreter cannot be found. In an informal survey of legal service providers, several

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*, Table 3.1. This table predates the designation of Armenian, Russian and Mandarin as certified languages.

¹⁰⁰ *Report to the Legislature* at 13.

reported use of children for interpretation.¹⁰¹ Others reported problems with untrained interpreters adding their own ideas or insights to what is said by the court or the parties involved, or prompting parties to say something that the interpreter thinks the court wants to hear.¹⁰²

5. The Inadequate Alternative

Courtroom interpreting poses unique challenges and requires specialized skills and training. The interpreter must simultaneously listen to and convey what the speaker is saying in another language, often including complex procedural or legal terms or concepts that may have no counterpart in the language or culture of the non-English speaker. The interpreter must be able to convey the precise text of the message — with no additions, deletions or paraphrasing — while also conveying the tone and style of the speech.

It is important to remember that from the beginnings of judicial proceedings triers of fact (the judge or jury) have to determine the veracity of a witness' message on the basis of an impression conveyed through the speaker's demeanor. The true message is often in how something is said rather than what is said; therefore, the style of a message is as important as its content.

The interpreter is required to render in a verbatim manner the form and content of the linguistic and paralinguistic elements of a discourse, including all of the pauses, hedges, self-corrections, hesitations, and emotion as they are conveyed through tone of voice, word choice, and intonation¹⁰³

Well-meaning family members, friends, or bystanders simply cannot fulfill the role of a qualified interpreter in any but the most basic proceedings. Critical judicial concepts (“judgment,” “custody,” etc.) cannot be adequately communicated under such circumstances. With an unqualified interpreter involved,

it is more likely than not that significant portions of [the] testimony will be distorted by the interpreter omitting information present in the original testimony, adding information not present, or by stylistically altering the tone and intent of the speaker. Judges and juries are not given the opportunity to “hear” the testimony as it was originally spoken, and defendants and witnesses

¹⁰¹ A 2003 bill that died in committee (AB 292) would have prohibited any state or local governmental agency, or a public or private agency, organization, entity, or program that received state funding, from using any child under 15, or permitting any such child to be used, as an interpreter, as defined, in any matter involving the business or function of that agency, organization, entity, or program, except as specified. The bill would also have required each agency, organization, entity, or program that received state funding to have in place, and available for inspection, an established procedure for providing competent interpreting services that did not involve the use of children.

¹⁰² Interpreters in court proceedings are required by law to render an accurate interpretation of court proceedings, “without embellishing, omitting, or editing” what is stated or written. CAL. R. CT. 984.4.

¹⁰³ Gonzalez, Vasquez, and Mikkelson, *Fundamentals of Court Interpretation*. (Carolina Academic Press, Durham, NC: 1991) at 16.

cannot fully comprehend the questions asked of them. This linguistic distortion compromises the fact-finding process¹⁰⁴

Use of unqualified persons as interpreters not only masks the problem but also may result in genuine injustice where — through no fault of the court, the litigants or the translator — critical information is distorted or not imparted at all.¹⁰⁵ Fraud is also a very real possibility. Unless a judge happens to be fluent in the non-English language, he or she has no real way of knowing whether the proceedings are being accurately and comprehensively interpreted. 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.”¹⁰⁶

Untrained interpreters are manifestly not an adequate substitute for trained professionals.

B. Court Efforts to Expand Interpreter Pool

The courts have made significant efforts to attract and retain qualified interpreters, but have been hampered by lack of adequate funding. In an effort to address the chronic shortage of qualified interpreters, the Administrative Office of the Courts (AOC) has focused on outreach, recruitment, training, and retention. These efforts have included the following actions:

- A pilot program using the services of certified and registered interpreters via specialized telephone equipment;
- Workshops to prepare Spanish and Korean applicants for the oral certification exam;
- Active recruitment of individuals fluent in the languages most commonly spoken, through public service announcements and job fairs at high schools and universities;
- Collaboration with the University of California at Berkeley to develop a training program for Spanish interpreters and with UCLA to develop a program to train interpreters to pass the oral portion of the certification exams;
- Redesign of the court interpreter program web site to include a distinct section on how to become a court interpreter;



"Asking a child to translate information about medical or legal problems can hurt the parent-child relationship, traumatize the child, and result in inaccuracies."

– Assemblyman Leland Yee
(D-San Francisco) ¹⁰⁷

¹⁰⁴ *Id.* at 5.

¹⁰⁵ Studies and media reports have documented the gross misinterpretation and resulting miscarriages of justice that can occur when courts use improperly trained or otherwise unqualified interpreters. *Court Interpretation: Model Guides*, at 15. Hewitt, *Behind the Language Barrier*.

¹⁰⁶ *Court Interpretation: Model Guides* at 16.

¹⁰⁷ Comments made in support of AB 292 (2003), which would have banned the use of children as interpreters except in emergency situations. The bill died in committee. (Reported by Jeniffer Coleman, Associated Press, April 2, 2003.)

In 1997, the American Bar Association adopted a resolution recommending that “all courts be provided with qualified language interpreters in order that parties and witnesses ... may fully and fairly participate in court proceedings.”

— ABA Resolution, Rep. No. 109
(adopted August 1997)

- Coordination of statewide and regional meetings where interpreter coordinators can share information and resolve common issues;
- Preparation and assessment workshops to help interpreters pass the state certified interpreter exam; and
- Collaborative efforts with local trial courts to ensure that courts explore all available means to secure certified interpreters, providing lists of certified and registered interpreters available throughout California, providing other assistance to courts in locating certified and registered interpreters, and ensuring that funding allocated for certified interpreters is used only for that purpose.

As the entity responsible for administering statewide standards for interpreter certification, professional development and recruitment, the Judicial Council also has taken steps to improve interpreter compensation in an attempt to attract more people to the field.¹⁰⁸ Since January 1999, the Judicial Council has raised pay rates for certified contract interpreters three times.¹⁰⁹ The current rate schedule compensates certified and registered independent-contractor court interpreters at \$265 per day and \$147 per half day.¹¹⁰

Nevertheless, certified interpreters in the federal system earn up to \$329 per day, albeit without benefits, and interpreters working in the private sector earn two or three times the maximum compensation for state certified interpreters. As a result, the courts

¹⁰⁸ Legislation effective on January 1, 1998, made the Judicial Council responsible for setting uniform pay rates for interpreter services (a function previously delegated to trial courts, which had resulted in rates ranging from \$114 to \$210 for a full day). The Council set the daily compensation for certified and registered independent-contractor court interpreters at \$265 per day statewide, effective July 1, 2000 (the third increase since January 1999). Judicial Council Fact Sheet — Court Interpreters (August 2004) at 2.

¹⁰⁹ Much of the important work to this end is being carried out by the Court Interpreters Advisory Panel (CIAP). The CIAP is an advisory committee of the Judicial Council created to (1) improve the quality of interpreter services provided to courts, (2) increase the number of available, qualified court interpreters, and (3) provide non-English-speaking persons with increased access to the court system. The CIAP makes recommendations to the Judicial Council on interpreter recruiting, training, testing, certification, and continuing education and evaluation (see CAL. GOV'T CODE § 68560). The panel includes trial court judicial officers, judicial administrators, and court interpreters.

¹¹⁰ The Judicial Council also has worked with the state legislature to transition court interpreters from independent-contractor status to employee status with benefits. In 2002, the Governor signed Senate Bill 371, which provided a platform for the transition and awarded collective bargaining rights to the interpreters. Although the legislation was passed, the Governor and Legislature appropriated no funds to cover the costs implied by the legislation. Given the budget crisis, the recognized employee organization representing the court interpreter employees agreed to refrain from bargaining for benefits until 2005.

In anticipation of bargaining, the Judicial Council sought funding and was able to secure \$15 million through the budget allocation process to fund benefit costs for the court interpreter employees beginning in FY 2005-06. The \$15 million represents an increase of more than 22 percent to the Council's interpreter budget for 2005-06, bringing the total interpreter budget for the year to \$87 million.

continue to struggle to attract properly qualified interpreters.¹¹¹ The courts should not be forced to tackle these problems alone.

C. Forms and Pleadings

Providing adequate interpreting resources in court proceedings is a major challenge facing the state court system. But there are other ways in which language barriers prevent people with limited English proficiency from fully accessing the court system. Another significant problem is the unavailability of court documents in other languages. Forms and pleadings provided by California courts, while critical to many basic court proceedings, continue to be provided only in English. For people with limited English proficiency, the very basic process of filling out paperwork becomes a daunting task.

The Judicial Council publishes over 600 forms for use in California courts. Many of these forms are required for a variety of proceedings. Since 2002, the number of forms available in other languages has increased significantly. The Judicial Council's self-help web site is now available in Spanish, including all of the domestic violence forms available through the web site.¹¹² However, fewer than 10 percent of the forms are published in languages other than English or Spanish, and only a tiny fraction are published in Chinese, Korean and Vietnamese. These forms relate to issues ranging from child



Many forms and pleadings provided by California courts, while critical to many basic court proceedings, continue to be provided only in English.

¹¹¹ To address the chronic shortage of qualified interpreters, the Judicial Council and the AOC have explored alternative methods for delivering interpreter services at the trial court, including developing a state-funded telephonic interpreting program. In 2000, the AOC implemented a pilot telephone interpreting program designed to:

- 1) reduce the number of proceedings delayed or continued due to the unavailability of a qualified interpreter;
- 2) decrease the use of unqualified interpreters;
- 3) use the time of interpreters more efficiently; and
- 4) reduce the costs associated with the use of interpreters in courts without ready in-person interpreter access.

The pilot program is also intended to provide courts with access to qualified interpreters in rarely spoken languages, overcome geographic challenges within a jurisdiction, and implement better control over the quality of interpreter services. The experience of court interpreter program coordinators from other jurisdictions, evaluations of other telephonic court interpreter projects, and the resources available from experts in the field informed and structured the development of California's pilot project. See Lesley Duncan, *Court Interpreting: Development Of A Pilot Project In California* (Institute For Court Management, Court Executive Development Program, AOC, May 2001) (*hereinafter* Duncan, *Court Interpreting*).

¹¹² The California Courts' web site (<<http://www.courtinfo.ca.gov/>>) includes multiple resources for users, including online forms, calendars, opinions, orders, rules, links to superior courts, links to e-filing locations and a self-help tool in English and Spanish. In 2003, the California Courts launched the Centro de Ayuda de las Cortes de California, the Spanish-language edition of the California Courts Online Self-Help Center. Some web pages with domestic violence forms and instructions also were translated into Chinese, Korean, Vietnamese, and Spanish. *Judicial Council of California 2004 Annual Report at 11*, available at <http://www.courtinfo.ca.gov/reference/documents/AR_2004.pdf>.

“Even before an individual reaches the courtroom, a myriad of forms and instructional manuals offered only in English may intimidate non-English speakers seeking relief in the courts.”

custody matters, restraining or protective orders, proof of service and responsive declarations to court orders.

Despite all the recent progress, many vital forms are published only in English, including subpoenas, applications for waiver of court fees, unlawful detainer forms, petition for probate, and many others. The cost of translating these forms is significant and adequate funds are not available for this purpose.

Furthermore, use of many of the Judicial Council’s forms is mandatory in certain legal proceedings, yet often neither the forms nor informational handouts are available in languages other than English. Among these required forms: the Civil Case Cover Sheet (Form 982.2(b)(1)); several forms used in small claims courts; forms related to traffic infractions; forms dealing with transitional housing infractions; and a variety of forms used in probate matters.

D. Court Staff and Judges

“The administration of court interpreting services has become a challenge for court administrators and judges alike, especially given the skill needed to accurately interpret court proceedings, the myriad of languages for which interpreters are needed, and the logistical difficulties of providing interpreting services to trial courts in both urban and rural areas of each state.”¹¹³

In its comprehensive study of problems in court interpretation, the National Center for State Courts found that “for most courts the problems related to interpreter services are beyond affordable solution at the individual trial court level due to inadequate expertise and financial capacity.”¹¹⁴ This remains the case in California. As the data described above indicate, the state faces a severe scarcity of qualified court interpreters, even if adequate funding were available to provide qualified interpreters in all instances. The problem is compounded by lack of training of judges and court staff and the absence of alternative resources.

A large majority of Californians believe that judges and court personnel need to be trained to understand the special needs of linguistic minorities.¹¹⁵ California needs a comprehensive system of training for judges and court staff to enable them to determine what level of language assistance is needed or to deal with situations where no certified interpreter is available. Judges and court staff lack not only the skills necessary to determine what language assistance is needed, but also the criteria for determining whether a non-certified or non-registered interpreter is capable of providing adequate service under

Final Report of the
California Judicial Council
Advisory Committee on Racial
and Ethnic Bias in the Courts,
Judicial Council of California,
Advisory Committee on
Racial and Ethnic Bias
in the Courts (1997)

¹¹³ Duncan, *Court Interpreting*, at 19.

¹¹⁴ *Court Interpretation: Model Guides* at 3.

¹¹⁵ *Fairness in the California Courts* at 4-76.

the circumstances. Even where a judge or court administrator is able to determine that a litigant needs significant language assistance and that the proffered interpreter is not sufficiently qualified, there is no back-up system of resources available to meet the need.

As a result, in civil and family law proceedings in California courts, friends, relatives, bystanders or even children are all too often called upon to assist litigants with language needs. The inadequacy of the resulting service can undermine the quality of the outcome in such a proceeding. Additionally, because no other resources are generally available to address language issues, there is little incentive to attempt to determine a litigant's language needs since, as a practical matter, they cannot be accommodated anyway.

Cultural differences compound the problem of inadequate training. Litigants from other countries often bring to the court entirely different political and cultural norms and perceptions that significantly affect communication. Words or phrases may take on entirely different meanings as a result of such cultural differences, and an interpreter fluent in the language may nonetheless be incapable of adequately expressing concepts because of cultural differences. For example, many cultures have no concepts equivalent to a jury or to a deposition. Many judges and court administrators are unaware of the full extent of the potential problems posed by cultural differences and hence are likely (by action or inaction) to make decisions prejudicial to the interest of the litigant.

V. The Effect on the Courts

The ultimate consequence of linguistic barriers to the courts is that justice is unavailable. The very people who are arguably most in need of the protection of the courts cannot obtain that protection. In eviction proceedings, repossessions, creditor/debtor cases, wage garnishments, family law matters, and other routine civil judicial proceedings, they are unable to present their cases effectively or protect their legal rights. The court system itself potentially becomes a one-sided instrument when, because of inability to comprehend the process, limited-English proficient litigants simply default, and thereby lose legal rights, property, livelihood or shelter.

Affirmative legal rights — constitutional, statutory, contractual, common law — also go unenforced when language barriers exist. The difficulties and complexities involved in affirmatively asserting claims and rights are magnified exponentially for those not proficient in English. Many will simply forego their rights rather than attempt to overcome this hurdle. The results: discrimination and violations of law in areas such as housing, employment and working conditions, education and consumer and lending practices go unredressed.

A. Damaging the Institutional Integrity of the Court

The moral and normative authority of the courts depends on public perceptions of fairness and accessibility. Any significant erosion of public trust and confidence in the fairness of judicial outcomes threatens the future legitimacy of the legal system. By excluding a large segment of the population from participation in an institution that shapes and reflects our values, we threaten the integrity of the judicial process. In the eyes of linguistically isolated groups, courts become a one-sided institution — available to legitimize and enforce the taking of their property, eviction from their homes, and garnishment of their wages, but unavailable for redress of their own legal claims.¹¹⁶ The resentment fostered by the inability to access the benefits of the court system can ultimately impair enforcement of judicial decrees and attenuate the rule of law.



"To a minority for whom English is not the primary language, language barriers only heighten the desperation that justice is simply beyond reach, no matter what the truth or consequences."

— Florida Supreme Court Task Force on Racial and Ethnic Bias

¹¹⁶ Survey data indicate that a large majority of California's Asian (76%) and Hispanic (74%) populations believe that English speakers are treated better by the courts than people who speak little or no English. *Fairness in the California State Courts* at 4-35.



People with limited English proficiency are often also members of groups whose cultural traits or economic circumstances make them more likely to be subjected to discrimination in employment, housing, lending practices and other areas.

B. Threatening the Quality of Justice

Our judicial system relies on the adversarial process in which neutral arbiters decide disputes based upon competing presentations of facts and law.¹¹⁷ The system is founded on the notion that “truth is best discovered by powerful statements on both sides of the question.”¹¹⁸ However, “our adversary system presupposes [that] accurate and just results are most likely to be obtained through the equal contest of opposed interests”¹¹⁹ This goal is unachievable if one party lacks the ability to understand or communicate at any stage of the proceedings. Allowing proceedings to continue when one party is incapable of participating fully significantly impairs the quality of the process and its results. Consider how the integrity of the judicial process is compromised when:

- Defaults result from a party’s inability to understand a judicial summons, to translate forms or pleadings, or to communicate with judicial staff.
- The lack of interpreters available for a court proceeding results in significant delays in the resolution of cases.
- Untrained and inexperienced interpreters provide faulty interpretation and misinformation to the court and litigants.
- Litigants are unable to communicate with or understand the court, witnesses or adverse parties or counsel. Proceedings are effectively a “babble of voices” to them.

Judges recognize and acknowledge these problems. A recent report to the California Legislature regarding a pilot program to provide interpreters in certain family law proceedings found consensus among judges that interpreting of family and domestic violence proceedings was a “fundamental factor contributing to the quality of justice in their courts.” As one judge put it, “[h]aving interpreters equates to having a bailiff or a record of the proceedings, it is just that basic. The service needs to be provided.”¹²⁰

Civil cases often involve fundamental rights and interests such as employment, shelter, family issues, housing or health code enforcement, freedom from abuse, and eligibility for unemployment, health and welfare benefits. Damages, repossession or foreclosure claims can involve assets accumulated over years or lifetimes. Particularly in cases in which significant rights are at stake, elementary notions of fairness dictate that both sides should, at a minimum, be able to understand and participate in the proceedings without regard to English proficiency.

¹¹⁷ See Fuller, L., *The Forms And Limits of Adjudication*, 92 Harv. L. Rev. 353 (1978).

¹¹⁸ Lord Eldon, quoted in *Jones v National Coal Board* [1957] 2 QB 55, 63.

¹¹⁹ *Lassiter v. Dept. of Social Services*, 452 U.S. 18, 29 (1981).

¹²⁰ Judicial Council of California, Administrative Office of the Courts, *A Report to the California Legislature — Family Law Information Center: An Evaluation of Three Pilot Programs* (March 2003) at 2.

C. Straining Court Resources

The growing needs of persons of limited English proficiency (many of whom are self-represented), the increasing use of untrained interpreters, and the shortage of trained interpreters have all placed severe burdens on a court system that is already strapped for resources. Judicial proceedings conducted without qualified interpreters are slow and inefficient. Judges and court personnel must struggle to understand what litigants are trying to communicate and are inevitably impaired in their ability to perform basic functions. Forced continuances and/or special settings needed as a result of the scarcity of interpreters delay adjudication both for litigants with limited English proficiency and others.

D. Compounding the Problems of a Vulnerable Population

People with limited English proficiency are often also members of groups whose cultural traits or economic circumstances make them more likely to be subjected to discrimination in employment, housing, lending practices and other areas. Persons with limited English proficiency are often employed in entry-level, temporary, seasonal and low-wage jobs (particularly agriculture), where they are more likely to be denied minimum wages, workers' compensation, family leave, overtime pay and other employment benefits guaranteed by law. They also are more likely to encounter hazardous and illegal working conditions, including excessive hours, exposure to dangerous chemicals and pesticides and unsafe equipment. Workers who complain about safety violations or other conditions of employment are more likely to be terminated.

Although very specific laws exist for protection against such abuses (such as the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §1801, *et seq.*), they are of little value to people who cannot access the courts to enforce them. Language barriers also may undermine the intent of state and federal laws guaranteeing access to health care, fair housing, fair labor standards, voting rights, consumer protection, and public education for people with limited English proficiency.

Communities with a high proportion of families with limited English proficiency also are often targets of various forms of consumer fraud, often perpetrated through telemarketing schemes, and are frequent victims of unlawful lending, credit schemes and unfair and illegal debt collection practices. Immigrant populations are often preyed upon specifically because perpetrators recognize their victims' limited ability to access judicial protection. The numerous federal and state legal protections against discrimination in housing, education, employment, and lending are of little benefit if victims lack meaningful access to the courts to enforce them.

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.

VI. Recommendations

A. Adopt a Comprehensive Language Access Policy for Courts

Federal and state laws guarantee equal access by people of limited English proficiency to a wide range of public and private health and social service programs and activities. Eighty-five percent of Californians agree that the courts must ensure that an adequate number of interpreters are available to assist non-English speakers.¹²¹ In keeping with these fundamental policies, California should explicitly recognize a right to equal access to the courts without regard to language proficiency. Such a statement of a policy goal should be accompanied by specific steps designed to secure adequate funding and achieve the goal of guaranteeing such access, including the following:

Guarantee of Qualified Interpreter Services

A party involved in a civil proceeding who is unable because of language proficiency to fully understand and participate in the proceedings should be guaranteed the right to a qualified interpreter at all stages of the proceedings without regard to financial ability.¹²² The Judicial Council should expand its efforts to provide guidance to judges and other personnel as to how to proceed if a qualified interpreter is not available for a particular proceeding.

Court Documents

All significant Judicial Council forms — including summonses, pleadings, and notices, as well as informational material — should be made available in languages other than English including, at a minimum, the languages spoken by a significant number or percentage of the population using the court's services. Additionally, any summons or other notice of commencement of legal proceedings should be accompanied by a form

¹²¹ *Fairness in the California State Courts* at 4-79.

¹²² A “qualified interpreter” for this purpose would be (1) an interpreter who is certified or registered to provide interpreter services in the party's language; or (2) if the court finds that no certified or registered interpreter is reasonably available, an interpreter who is determined by the court to be capable of interpreting effectively, accurately, and impartially. Effective and accurate interpretation would mean the ability to translate, without omissions or additions, in a manner that conserves the meaning, tone, and style of the original statement, including dialect, slang, and specialized vocabulary. All interpreters would be required to meet prevailing ethical standards in order to be qualified.



“Equality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favor or of grace or of discretion.”

— U.S. Supreme Court Justice
Wiley Rutledge

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.

that alerts recipients, in each of the languages spoken by a significant number or percentage of the local population, that it is an official court document and that they may lose property or other valuable rights if they fail to file a timely response. Systems should also be developed to help litigants complete court forms in English, for formal filing with the court. This may include modification or expansion of existing web sites, such as www.lawhelpcalifornia.org and the Judicial Council's web site, www.courtinfo.ca.gov. Consideration should be given to establishing a central multi-lingual informational source, such as an 800 number, for litigants to use for information and referral.

Court Staff and Judges

Court staff, administrators and judges should work with the Administrative Office of the Courts to continue to develop training and resources that allow them to identify and address language issues when they arise. Clear protocols should be developed and disseminated, and court staff should be trained to recognize situations in which a litigant does not have sufficient language proficiency to understand forms, pleadings, notices or other communications involved in the judicial process. Judges should have the training needed to determine whether a person is sufficiently proficient in English to be able to fully understand and participate in court proceedings without the aid of an interpreter. They should also receive the training needed to determine whether a non-certified or non-registered interpreter is qualified to provide interpreter services. Finally, court staff and judges need to be cognizant that fundamental concepts of our judicial system are foreign to many litigants, and that cultural issues exacerbate existing language barriers.

B. Develop Specific Recommendations to Implement Language Access Policy

The following recommendations include a range of issues the Judicial Council should consider as part of its ongoing effort to achieve full language access. The Judicial Council should determine how best to delegate development of proposed policies and materials so as to achieve the following recommended goals:

General Recommendations

1. *Standards and Protocols.* Develop clear standards and protocols for court staff and judicial officers in the handling of requests, screening, documenting, handling waivers, and providing services to litigants and other court users with language needs;
2. *Prioritization.* Prioritize areas to move toward the goal of full language access, assuming that the many challenges and the lack of resources will make this a multi-year process;

3. *Evaluation.* Evaluate language access policies statewide — including getting suggestions from staff and collecting complaints/issues from court users — and revise statewide policies and procedures based upon such evaluation;
4. *Community Involvement.* Request that local courts work with community-based organizations as part of community-focused court planning to address local language access issues and needs.

Recommendations Involving Administration

1. Develop checklists for court staff, including information on language appropriate resources, options for addressing those with limited English proficiency, and steps to be followed to ensure access for litigants with limited English proficiency;
2. Develop greater uniformity in translated terms, particularly common legal terms (“defendant,” “restraining order”) and names of proceedings (“small claims”) to enable courts in different counties to share resource material and avoid confusion resulting from different translations of the same term;
3. Develop systems to encourage interpreter volunteers in self-help centers and in court clerks’ offices to help prepare them for the certification examination;
4. Consider developing standards or protocols, and disseminate best practices, for use of interpreters outside the courtroom setting, such as clerks’ offices and self-help centers;
5. Develop commonly asked questions of clerks in different languages that could be posted on the statewide court web site. (For example, explanation of continuance and that the matter is being continued while the court is trying to find an interpreter);
6. Consider expansion of pilot self-help Spanish and multi-lingual centers, based on recommendations from the Report to the Legislature¹²³ on these pilot programs;
7. Continue to translate information on self-help web site into other languages and ensure that there is meaningful translation by including descriptive materials to supplement the forms;
8. Consider a multi-lingual referral phone line;
9. Expand existing web site and links to language assistance programs;
10. Provide cultural competency training.

¹²³ Judicial Council of California, Administrative Office of the Courts: *Equal Access Fund – A Report to the Legislature* (March 2005), available at <http://www.courtinfo.ca.gov/courtadmin/jc/documents/reports/0205item8.pdf>



C. Compile Existing Data and Conduct Additional Research

While census data, interpreter use statistics, and anecdotal information indicate the scope of the language access problem, and additional research is in progress or is planned, far more information is needed to accurately assess the extent of the unmet need and develop appropriate solutions.¹²⁴ Although data collection is expensive, research goals should be made a priority. Research is needed to identify key points of contact with the court system at which limited-English proficient persons are in greatest need of assistance. In order to prioritize funding and potential solutions, areas in which unmet needs are most critical — whether in particular subject areas (e.g., family law) or particular language populations — should be identified.

1. Census data should be supplemented with additional survey data showing actual use or attempted use of the courts by persons within language subgroups. A comprehensive survey of court personnel — including judges, clerks and administrative staff — should be conducted to identify such matters as the numbers of civil litigants needing language assistance with court procedures, forms, deadlines, directions and other matters.
2. Data is needed on the percentage of cases in which non-certified and non-registered interpreters are used in civil proceedings.
3. Further surveys of legal service agencies and community-based organizations should be conducted to supplement the data regarding the extent of demand, the distribution among language subgroups, the incidents of defaults resulting from language issues, and other barriers encountered by persons of limited-English proficiency in gaining access to the court system.
4. Data to be compiled as a part of implementation of the Trial Court Interpreter and Labor Relations Act, SB371, should be analyzed in such a way as to help clarify where there is most need for additional languages and additional certified or registered interpreters. Now that many interpreters are court employees, is this increasing (or otherwise affecting) availability of interpreters in civil proceedings?

D. Reevaluate System for Recruitment, Training, Compensation and Certification of Court Interpreters

The existing system of recruitment, training, and certification of court interpreters should be reexamined. While the rigorous standards for certification are essential, statistics indi-

¹²⁴ Attempts in the past to collect this data have foundered for lack of funding.

cate that the current system is coming nowhere close to providing sufficient qualified interpreters in civil and family law proceedings.¹²⁵ There are too few interpreters with the unique skills and motivation necessary to become certified. Those who do are likely to be in highest demand in the private sector, where compensation is much higher. Additionally, the federal court system is a more attractive alternative for such interpreters given the higher rates available. While no one wants to establish a system that sanctions low-quality interpretation, it is worth exploring whether sufficient training and practical experience might result in an increased passage rate on the certification exam. It may also be that the compensation structure and the demands of the job are such that otherwise qualified candidates are simply not attracted to court interpreting as a profession.

1. Formal professional training and mentoring of test-takers is critical to improving passage rates on the tests, and current training and mentoring projects should be expanded to meet the need.¹²⁶ Experience indicates that low passage rates on certification exams are explained by the intrinsic difficulty of the work and lack of essential training rather than by deficiencies in the test. However, existing test approaches should be analyzed to determine whether fine-tuning could further improve them, and whether qualifications at levels less than full certification can be identified for specific types of interpreting assignments. The goal would be to confirm that the tests measure, as accurately as possible, the skills needed to provide effective interpretation in a variety of contexts. Training programs set up through community colleges, non-profits and other entities should be encouraged and funded, as should test preparation programs (such as those used to prepare for the Bar or medical boards).
2. Different models of training and qualifying interpreters should continue to be examined for the ways in which they strike a balance between the desire to obtain the best interpreters and the need to have sufficient qualified interpreters for a

¹²⁵ The enactment of the Trial Court Interpreter Employment and Labor Relations Act in 2002 (SB 371) may improve the situation but it remains too early to tell. One of the statute's stated goals is to enhance access to justice for those who depend on interpreter services. It creates a pool of eligible legally certified and registered interpreter employees (who previously worked for the courts as independent contractors) and includes provisions governing the terms of employment and compensation of interpreters. As trial court employees, interpreters receive worker's compensation insurance, disability insurance, Medicare, and other benefits not available to independent contractors (see Appendix 2).

¹²⁶ One very promising model is the Spanish Self-Help Model Program: Centro de Recursos Legales and Interpreter Development in Fresno, which was a recipient of the 2004 Ralph N. Kleps Award for Improvement in Administration of the Courts, an annual award recognizing innovation in the state's courts. Under this program, volunteer interpreters are recruited from court interpreter schools and asked to commit to a minimum of four hours per week of volunteer interpreting services. Most of the volunteers are working to become certified court interpreters and their ability to assist as volunteers enables them to strengthen their skills in preparation for the state certification exam. The Center provides extensive training, covering ethics, security, terminology, logistics, and other subjects. The training includes an assessment of the individual's Spanish-language skills followed by additional instruction and mentoring by a fully qualified interpreter (including observing in court and viewing family court orientation and mediation sessions). This gives the volunteers exposure to the real world of court interpreting and has been extremely effective: six of the nine participants in the courts' first Interpreter Mentor Program passed the written State Certification Examination for Court Interpreters.

variety of interpreting contexts. Consideration should be given to establishing an apprentice status for candidates for “certified interpreter” or “registered interpreter” who have not yet passed both the written and oral exams but have attained a specific level of experience and achieved a designated level of proficiency and training. Such a system could involve some form of “registered apprentice” designation and enable a qualified recipient to provide interpretation in certain limited circumstances, such as in non-court settings or in a limited range of non-criminal proceedings. Such a system, in addition to providing badly needed interpreters in particular proceedings, would provide valuable hands-on training to apprentice interpreters.

California’s circumstances and extensive experience with language interpretation distinguishes it substantially from most other states. Moreover, because of its lengthy history and variety of experience, California has long been a leader to which state courts nationwide have looked for experience and innovation. Nevertheless, it is worth seeking information about developments in other states, including data already compiled by the National Center for State Courts, to determine whether innovative practices in place or emerging in other states could be incorporated among California’s best practices.

3. Existing efforts to attract and retain interpreters should be increased significantly.
4. A central repository should be widely publicized as being responsible for disseminating best practices with regard to training and mentoring interpreters, and should coordinate with legal services programs and other community-based organizations who either have resources to share or could take advantage of existing resources.
5. Additional funding should be sought so that compensation can be set at levels that encourage people to pursue careers as court interpreters.¹²⁷

E. Evaluate Role of Lawyers and Bar Associations, Legal Services Programs, Law Schools, and Law Libraries

1. The State Bar should work closely with the Judicial Council to address language barriers and implement the solutions recommended in this paper. The State Bar also should consider ways it could help train lawyers to function in situations involving parties or witnesses with limited English proficiency, including developing and encouraging MCLE offerings.
2. Legal services programs should continue their efforts to improve services to their constituents, since they provide services to the communities most challenged by a lack of English language proficiency. This includes training their advocates and pro bono volunteers how to serve a client community with limited English proficiency; sharing best practices for meeting the challenge; sharing resources

¹²⁷ Ongoing implementation of SB 371 — discussed above — should help in this regard.

with court self-help centers; and encouraging outreach to law schools to recruit bilingual students and students of color and to educate and mentor them regarding language access issues.

3. Law school curricula should be examined to determine how best to prepare law students to function in situations involving parties or witnesses with limited English proficiency.
4. Law libraries are key players and should continue to be included in the effort to ensure adequate access to their valuable resources for those with limited English proficiency. Additional legal resource and self-help guides, and court, interpreter and legal service provider informational handouts need to be developed in multiple languages for patrons. Publishers should be encouraged to develop or translate manuals and self-help texts into multiple languages. Law library staff — often the first point of contact for litigants — need training in the best techniques for assisting limited-English proficiency patrons. Service providers, pro bono attorneys, legal services and other organizations that serve persons with limited-English proficiency should collaborate with law librarians to develop in-library programs, presentations and counsel. A clearinghouse web site of non-English resources and links could be established and made available in multiple languages. Translation of in-house library guides should be shared.

VII. Conclusion

Overcoming language barriers in the judicial system presents an immense challenge. Though laws and public policies regarding language access exist, the state has not thus far followed a clear path toward implementing those measures. And the funding required to adequately address the need for language assistance in the courts is sorely lacking.

Fortunately, many stakeholders are aware of the need for language resources in the courts, and those dedicated people are determined to address the issues and solve the problem. This report is one step toward building awareness, creating a dialogue, and inspiring the many people who care about our state to work together to protect the integrity of our courts. California's diversity is a treasure, an asset, a trait that defines and distinguishes this great state. It is time that we honor that diversity and all those who contribute to this state's success by ensuring that we live up to the promise of equal access to justice for all.



Appendix 1.

Details on the Legislative Framework

Proceedings Involving Small Claims¹²⁸: If the court determines that a small claims litigant does not speak or understand English sufficiently to comprehend the proceedings or give testimony, and needs assistance doing so, the court may permit another individual (other than an attorney) to assist that party. If a competent interpreter is not available at the first hearing of the case, the small claims court shall postpone the hearing one time only to allow the party the opportunity to obtain another individual to assist that party. Any additional continuances shall be at the court's discretion.

Domestic Violence, Parental Rights, Dissolution of Marriage or Legal Separation Involving a Protective Order¹²⁹: In proceedings involving these issues, a party who does not proficiently speak or understand English "shall" have a certified interpreter present to assist communication between the party and his or her attorney. The interpreter's fees shall be paid by the litigants "in such proportions as the court may direct," except that the fees shall be waived for a party who appears *in forma pauperis*. However, the statute provides that compliance with its requirements is mandatory only if funds are available pursuant to the Federal Violence Against Women Act (P.L. 103-322) or from sources "other than the state"

Medical Examinations¹³⁰: During "any medical examination, requested by an insurer or by the defendant, of a person who is a party to a civil action and who does not proficiently speak or understand the English language, conducted for the purpose of determining damages," a certified interpreter "shall be present" to interpret the examination in a language the person understands. The interpreter's fees shall be paid by the insurer or defendant requesting the examination.

¹²⁸ CAL. CIV. PROC. CODE § 116.550 and CAL. R. CT 985

¹²⁹ CAL. EVID. CODE § 755, CAL. GOV'T CODE § 68092(b).

¹³⁰ CAL. EVID. CODE § 755.5.

Appendix 2.

Details on Pay for Court Interpreters

Non-certified and non-registered independent-contractor interpreters are compensated at not more than \$175 per day or \$92 per half day, as determined by the local court.

Pursuant to the Judicial Council payment policies for contract court interpreters, certified and registered independent-contractor interpreters are currently paid \$265 per day or \$147 per half day, except where trial courts pay premiums to contractors under unusual circumstances. Despite some previous rate increases, compensation for interpreters in the state courts still lags behind that for federally certified interpreters who are paid \$329 for a full day.

Under Senate Bill 371, court interpreter employees represented by a recognized employee organization bargain over terms and conditions of employment, including wages and benefits (vacation, sick leave, retirement, health insurance, etc.). The Judicial Council budgeted \$15 million to fund benefit costs for FY 2005-06.¹³¹

¹³¹ See footnotes 108 through 110, *supra*, p. 26.

Appendix 3.

Classification of Interpreters in California Courts

Interpreters used in the California court system can be divided into five groups — certified, registered, non-certified, non-registered and provisionally qualified. These categories correspond to the languages that interpreters speak and the levels of testing they have successfully completed. Definitions of the categories follow:¹³²

Certified interpreter: An interpreter who has passed the certification exam in one of 13 designated languages, has attended the Judicial Council Code of Ethics workshop, and meets biannual continuing education and professional requirements.

Registered interpreter: An interpreter who has passed an English fluency exam, has attended the Judicial Council Code of Ethics workshop and the orientation workshop, and meets biannual continuing education and professional requirements. A registered interpreter may interpret in any of the nondesignated languages, as well as in any of the recently designated languages for which certification exams have not yet been developed.

Non-certified interpreter: An interpreter who interprets in the courts in one of the designated languages but has not successfully met certification requirements.

Non-registered interpreter: An interpreter who interprets in the courts in one of the nondesignated or newly designated languages but has not successfully met registration requirements.

Provisionally qualified interpreter: An interpreter who interprets in the courts, in any language, who has passed the written exam and taken the Judicial Council Code of Ethics workshop.¹³³

¹³² Judicial Council of California, Administrative Office of the Courts, *Report to the Legislature on the Use of Interpreters in the California Courts* (December 2002) at 5-6.

¹³³ Any non-certified or non-registered interpreter interpreting on the record in a criminal or juvenile proceeding must be provisionally qualified under California Rule of Court, Rule 984.2.

Appendix 4.

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Appendix 5. 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)

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Tony L. Richardson – 2005 Chair
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Toby Rothschild – 2005 Vice Chair
General Counsel
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Council of California County Law Librarians

Marcia Bell, Director
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California Council of Churches

Robin Clinton Crawford
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Sylvia Martin-James, Retired Educator
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California Chamber of Commerce

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