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A language GAP in justice

By Geoff Robinson

Each year, thousands of Californians with limited English proficiency are involved in legal proceedings in which they can neither understand nor communicate effectively with the court. They are forced by financial circumstances to attempt to represent themselves without the aid of a qualified interpreter. For this rapidly increasing sector of our society, the protection of our courts is not fully available and the promise of equal justice is out of reach.

How can this be true in California? Although the law requires an interpreter in criminal cases, the same is not true of a civil case. This is the reality even though the rights and principles at issue — custody of a child, domestic violence, civil rights, loss of shelter — can be equally serious. Even if such a right existed, the courts lack the resources necessary to

■ **Geoff Robinson** is a partner at Bingham McCutchen in Walnut Creek specializing in land use. He is the former co-chair of the California Commission on Access and current chair of its Language Access Committee.



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provide interpretation services in civil cases to indigent litigants.

The problem is worsening on both the demand and supply sides: Despite extensive efforts by the courts to recruit and train interpreters, the number of fully qualified court interpreters has actually declined over the past decade, with the largest single decrease in Spanish-language interpreters.

These issues were the subject of a comprehensive report by the California Commission

on Access to Justice, entitled “Language Barriers to Justice in California.” The 2005 report underscored the pressing need for language assistance in our courts. Almost 7 million Californians speak English less than “very well,” the realistic threshold for full participation in a judicial proceeding. Almost 5 percent — or 1.3 million — speak no English at all. California is also the most linguistically diverse state, with more than 220 languages spoken.

The unavailability of trained interpreters in civil proceedings leaves judges and litigants little option but to use unqualified interpreters — family members, friends, bystanders and sometimes children. This is not an acceptable substitute. Study after study has shown that bilingual speakers who have no training in court interpretation cannot function adequately in a court setting.

Court interpretation is a complex task, demanding substantial skill and experience. Specialized legal terminology, variances in dialect and jargon, and cultural influences all render the task far more involved than simply translating words. Reliance on untrained interpreters not only obscures the problem, but can result in true injustice when crucial details are excluded or distorted.

THE CONSEQUENCES

Proficiency in English is a predicate to involvement in the legal system. The obstacles to access created by unavailability of qualified interpreters pose a threat to the integrity of the judicial process. The adversary system rests on the premise that just results flow from the equal presentation of opposing interests to a neutral decision

maker. This goal cannot be attained if one side cannot fully understand or participate in the process.

The challenges of mounting legal claims or defenses are greatly magnified for those not proficient in English. Surveys reveal that a significant proportion of those with limited English proficiency do not even attempt to use the courts because of language difficulties. Judges themselves are deeply concerned about the quality of a judicial proceeding conducted without an interpreter. A recent report to the Legislature found consensus among judges that use of qualified interpreters was a “fundamental factor contributing to the quality of justice in their courts.”

Language barriers to court access have a number of pernicious consequences. People with limited English proficiency are frequently from groups likely to be subjected to discrimination in employment and working conditions, housing, consumer and lending practices and other areas. Linguistically isolated groups are prime targets for various forms of consumer fraud, often perpetrated through telemarketing schemes.

For many in these communities, the judicial system is a one-sided institution, available to enforce claims against them but unavailable to hear their own claims and defenses. Barriers to the courts may also undercut laws guaranteeing language access in areas such as health care, education, fair labor standards, voting rights and consumer protection. Most fundamentally, the de facto exclusion from our courts of a significant segment of our society under-

mines the moral and normative authority of the judicial system.

THE QUEST FOR SOLUTIONS

Why does this state of affairs endure? Not from lack of effort by the courts, who bear the brunt of the problem on a daily basis. The court system has pursued numerous initiatives to increase the number of interpreters, including active recruitment efforts, outreach and training, collaboration with educational institutions, statewide coordination of interpreter groups, and repeated efforts to obtain more funding from the Legislature for interpreter pay.

Nor is the problem a lack of popular support: Polls show that over three-quarters of Californians believe interpreters should be provided free of charge to low-income, non-English speakers.

The Legislature has also done its part, thanks chiefly to the efforts of Dave Jones, the chair of the Assembly Judiciary Committee. In 2006, Jones introduced and secured the passage of AB 2302, which, for the first time, required appointment of a court interpreter in all civil proceedings, regardless of the litigant’s financial means. Jones also managed to get \$10 million included in the 2006-2007 budget specifically for court interpreters.

The biggest obstacle, ironically, is someone who has experienced first-hand the challenges of speaking a different language in a foreign land — Gov. Arnold Schwarzenegger. Despite acknowledging the seriousness of the language access issue, he has stood squarely in the way of resolution efforts. In 2006, he declared:

“I believe it is essential to provide non-English speaking litigants with interpreters in order to provide meaningful access to our justice system” At the same time, however, he vetoed the \$10 million budget appropriation intended to provide more interpreters in civil cases.

When AB 2302 reached his desk, he vetoed it — again citing budget concerns, even though the bill made its provisions contingent upon available funding.

This year, Jones tried a different approach. As passed, AB 3050 would have established a pilot program to provide court interpreters to indigent litigants in selected courts, with the Judicial Council to make recommendations to the Legislature based on the program. All program costs would have been funded by a \$15 charge on telephonic court appearances. Schwarzenegger vetoed the bill (together with scores of others) stating that, with the delayed passage of the budget, he was only signing bills with the highest priority for California and that this bill did not meet that standard.

Gov. Schwarzenegger is wrong. In the sixth-largest economy in the world, the argument that we cannot afford to pay for court interpreters for those with limited English just doesn’t cut it. If, as the governor acknowledges, providing interpreters is essential to providing meaningful access to our justice system, this deserves his highest priority. The courts and the Legislature are doing their part — it’s time for the governor to do his. ■