

**Court Interpreters: Meeting Essential Needs For Equal Access  
After the Governor's Vetoes**

**Assembly Judiciary Committee  
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**I. Despite The Demographic Need And Various Legislative Efforts, Access To  
A Court Interpreter In California Is Largely Limited to Criminal Matters**

The U.S. Constitution entitles criminal defendants with limited English proficiency to an interpreter supplied by the court. The California Constitution likewise explicitly provides that a “person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.” (Cal. Const. art. I, § 14.) While there is no corresponding constitutional right in ordinary civil proceedings, observers have noted that there may be state and federal statutory obligations to provide a court-appointed interpreter where the failure to do so would deny full and equal access to the courts on the basis of language, which has long been recognized as a characteristic of prohibited discrimination on the basis of national origin.

In California, it appears that court-appointed interpreters are almost exclusively limited to criminal proceedings – and even in those cases it is said that there are significant difficulties ensuring the availability of interpreters in the needed language in a timely manner. (California Commission on Access to Justice, *Language Barriers to Justice in California*) (September 2005).)

Although the Judicial Council apparently does not collect hard data on language need or interpreter use in civil matters,<sup>1</sup> it appears that the courts have begun to provide interpreters in some civil matters by making use of the pool of court employees and independent contractors normally assigned to criminal matters. As discussed in more detail below, this development has likely been compelled by the practical reality of a large and growing number of Limited English Speaking (LEP) residents in the state over the last 20 years.

**II. Initial Legislative Measures To Increase Access to Court Interpreters In  
Civil Matters**

The extension of interpreters to civil cases has likewise been assisted by various Legislative initiatives, beginning with SB 982 (Solis) of 1996 which established Evidence Code section 755. As introduced, that bill would have provided that in any action or proceeding under specified provisions of the Family Code relating to domestic violence,

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<sup>1</sup> See attached Judicial Council Response to Committee Questions Regarding Court Interpreter Need and Usage, and Judicial Council User Cost Survey for Court Interpreter Services

an interpreter shall be present as needed to interpret the proceedings in a language that the party understands, and to assist communication between the party and his or her attorney. As enacted, compliance with this measure was made conditional on the availability of federal funds, which have not been provided.

Two years later, in 1998, AB 1884 (Cedillo) was introduced, seeking to require appointment of a court interpreter in any court proceeding in which the best interest of a minor child is at issue where at least one of the parties is unable to participate fully in the proceeding due to a lack of proficiency in the English language and the court determines that the parties are financially unable to pay the cost of an interpreter. The bill was scaled-back during the legislative process and as ultimately enacted codified Family Code section 3032, which directed the Judicial Council to establish a one-year pilot project to provide court-appointed interpreters in specified child custody and domestic violence proceedings.

Pursuant to AB 1884, the Judicial Council in January 2000 implemented a Family Law Interpreter Pilot Program (FLIPP) in seven counties with \$1 million appropriated from the state Budget Act. The program provided interpreters in specified child custody, domestic violence, marital dissolution and other proceedings where a party requiring English assistance could not afford to pay an interpreter. This program found an acute need for interpretation in these proceedings, and broad agreement among judicial officers that interpreter services were a fundamental factor contributing to the quality of justice in their courts. Among other improvements, the program reduced the amount of courtroom time for hearings, ensured non-English-speaking litigants appeared more consistently at subsequent hearings, substantially reduced the number of delays, improved the ability of litigants to understand orders, impacted compliance with orders, and reduced the backlog of cases. As one judicial officer put it, "Having interpreters equates to having a bailiff or a record of the proceedings, it is just that basic. The service needs to be provided." (The Judicial Council's report to the Legislature is available at [www.courtinfo.ca.gov/programs/cfcc/pdffiles/FLIPP.PDF](http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/FLIPP.PDF).)

In 2002, the Trial Court Interpreter Employment and Labor Relations Act (SB 371 Escutia) was enacted. The stated purpose of the bill was to provide for the fair treatment of court interpreters, to enhance access to the court system for persons who depend upon the services of interpreters, and to promote sound court management. Prior to this bill, all court interpreters were independent contractors. SB 371 established an employment model for court interpreters, resulting in approximately half the certified or registered interpreters used in the courts becoming staff interpreters, according to the Judicial Council.<sup>2</sup>

There were no further legislative efforts to expand the availability of civil interpreters until the California Commission on Access to Justice recently brought renewed attention to the issue, as discussed below. Nevertheless, although the domestic violence requirement of Evidence Code section 755 is conditioned on absent federal funding, and

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<sup>2</sup> Employment relations between court interpreters and the courts have not always been happy, however, as evidenced by a six-week strike in Los Angeles in 2007.

the one-year FLIPP pilot has terminated pursuant to the statute, the Judicial Council has endeavored to provide interpreters in some of these cases out of existing court resources because of the benefits of doing so. According to a Judicial Council "Fact Sheet" dated May 2007, the Judicial Council maintains a Domestic Violence –Family Law Interpreter Program to provide assistance to trial courts in funding interpreter services for litigants with limited English proficiency in cases where domestic violence or elder abuse protective orders have been issued or are being sought, and in some general family law cases. In the support of this initiative, the Judicial Council has authorized an allocation of \$1.75 million per year for the program with funds made available through the Trial Court Improvement Fund. This program began in 2001 when the Judicial Council authorized \$1.6 million annually for courts to provide interpreters for litigants with limited English proficiency in family law cases where domestic violence protective orders have been issued or are being sought. In fiscal year 2005–2006, the program was expanded to encompass general family law cases and elder abuse protective order cases. Courts may utilize program funds to provide interpreters in court hearings, family law facilitator sessions, court-connected self-help sessions, and family court services mediation sessions, and to pay for interpreter coordinator services. All trial courts are eligible to apply for funding, with allocations based on annual expenditures for interpreter services in criminal and juvenile cases, expenditures in prior grant years, and courts' stated expectations of need. In fiscal year 2006–2007, funds were allotted to 36 courts.

### **III. The California Commission on Access to Justice Has Repeatedly Called for Greater Efforts to Address Language Access Needs In the Courts**

The California Commission on Access to Justice, established by the State Bar in 1997, is comprised of a cross section of twenty-three lawyers and academic, business and community leaders appointed by the State Bar, Governor, Judicial Council, Legislature and others. In its groundbreaking initial report in 2002, entitled *The Path to Equal Justice*, the CCATJ found that people with limited English proficiency are among those most likely to need assistance in accessing the courts, and least likely to receive it. The report concluded that language services are essential to equal access to justice. "Litigants with limited English proficiency must receive assistance in order to fully understand and participate in the judicial process. In many areas of the state, a third or more of all litigants may lack fluency in English. Particularly when they are self-represented, they cannot hope for justice without the assistance of trained interpreters and other services that can help them understand and present their cases, and courts must have the ability to provide adequate certified interpreters."

These findings were renewed and amplified in a 2005 report by the Commission, *Language Barriers to Justice in California*. The Access Commission observed that English proficiency is a prerequisite to engagement in the legal system. Without English proficiency, the prospect of navigating through the legal system is daunting, particularly since a high percentage of litigants represent themselves in court. The Commission pointed out: "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.” According to the Commission's 2005 report, Californians face a dire unmet need for language assistance in the courts; over one-quarter of Californians (roughly 8.8 million people) are foreign born, and 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.

Although the courts apparently do not collect reliable data, the Access Commission reported that millions of Californians are involved with legal proceedings every year. The report notes that in recent years demand for interpreter services has grown steadily, while the number of qualified interpreters has continued to shrink. According to the Access Commission, 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. Therefore, courts rarely appoint interpreters in civil cases unless parties pay for them. (According to the Judicial Council, the Los Angeles Superior Court has a policy of making court interpreters available to parties for an hourly fee, which is potentially subject to discretionary waiver for indigent parties. (*See* attached Judicial Council User Cost Survey for Court Interpreter Services.) This practice is controversial among legal services and civil rights advocates because it is seen as conditioning equal access to court services on the payment of an additional fee based on a protected national origin characteristic. As discussed in section V below, the United States Department of Justice has also expressed concerns about the practice of charging parties a fee for court interpreters.

The Access Commission also reported that, as a result of an increased need for interpreter services, courts often use uncertified or unregistered interpreters — even in regions with large populations of people who speak those languages. In many instances, in civil and family law matters, the court settles for using a relative or friend of the party with limited English proficiency if a certified or registered interpreter cannot be found. According to the report, in an informal survey of legal service providers several reported use of children for interpretation. 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. With an unqualified interpreter involved, the Access Commission found, 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 cannot fully comprehend the questions asked of them. The Access Commission's 2005 report states, “This linguistic distortion compromises the fact-finding process. 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. 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 Access Commission concluded "the English speaking members of the court and the non-English speaking litigants or witnesses virtually do not attend the same trial."

The Commission also noted that 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." This finding is confirmed by complaints reported to this Committee indicating that civil matters needing an interpreter in downtown Los Angeles family court departments can sometimes have access to a Spanish interpreter if the parties and counsel wait until one becomes available, often requiring lengthy delays and continuances. But it is not only cases needing an interpreter that are delayed. If an interpreter becomes available, all other businesses in the court is reportedly put on hold while the cases needing an interpreter are handled, causing costly interruptions and delays and frustration in the cases that are put aside.

The starkest consequence of linguistic barriers to the courts is that justice is denied, the Access Commission reports. In addition, these barriers also impact the efficiency of the courts. 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 also impairs trust and confidence in the judicial system.

In light of these findings, the Commission recommended the following actions be taken to ensure access to the judicial system for all Californians:

- **Adopt a Comprehensive Language Access Policy for Courts Accompanied by Specific Plans Designed to Achieve Such Access.** The plan should include adequate funding to provide for qualified interpretation and translation services; access to standard court documents in multiple languages; and training and resources to assist court personnel and judges in identifying and addressing language issues.
- **Develop Specific Recommendations for Court Officials and Staff to Implement the Language Access Policy.** The Judicial Council should ensure that adequate training packages and model protocols exist for court staff and judicial officers to address language access issues.
- **Reevaluate the System for Training and Certifying Interpreters.** Existing test approaches, qualification requirements, and models of training should be analyzed. Adequate funding should be sought so that compensation can be set at levels that encourage people to pursue careers in court interpretation.

- **Lawyers and Bar Associations, Legal Services Programs, Law Schools and Law Libraries Should All Strive to Provide Better Service to Persons With Limited English Proficiency.**
- **Compile Existing Data and Conduct Additional Research to Assess the Need for Language Assistance in the Courts.**

The Committee is unclear about the extent to which any of these recommendations may have been implemented by the courts, except that the Administrative Office of the Courts has recently issued a Limited English Proficiency Plan with respect to the administrative office, as discussed below.

The Access Commission issued a further report in 2007, entitled *Action Plan for Justice*, reiterating that civil litigants who are unable because of language proficiency to fully understand and participate in the proceedings should have the right to a qualified interpreter at all stages of the proceedings irrespective of financial means. The Access Commission recommended the Judicial Council should work with the Governor and the Legislature to ensure that adequate funding is provided to make this a reality, noting that this recommendation would likely be incremental as funding for all civil interpreter needs will become available only over time. "However, it is critical that access to court certified interpreters be recognized as a universal right in our judicial system." As an immediate step toward this goal at a time when resources are limited, the Commission recommended establishment of pilot projects for court interpreters in civil cases involving significant legal rights to allow a selected sample of courts to assess the need for interpreters in civil cases, examine ways of maximizing the use of existing interpreters through calendar management, and determine what it would take in terms of both funding and interpreters to provide adequate interpretation services. This approach will help ensure that funds are expended and available interpreters used in the most efficient and effective manner to achieve the goal of providing qualified interpreters to meet the need.

The Access Commission concluded:

Barriers to access to justice associated with language difficulties pose a significant threat to the judicial system. The Judicial Council's 2005 Trust and Confidence Survey indicates that a substantial majority of Californians (regardless of English proficiency) believe that non-English speakers who are able to access the courts fare less well than English speakers. Over 65 percent of respondents believe that non-English speaking litigants receive worse results in court proceedings than other litigants. A significant erosion of public trust and confidence in the fairness of the courts, either by litigants with limited-English proficiency or by the public as a whole, threatens the future legitimacy of the legal system. Anecdotal information and surveys, including the recent Judicial Council Trust and Confidence Survey, show that many limited-English speakers simply forego their rights rather than attempt to overcome this challenge. As a result, in civil judicial proceedings that most affect peoples' basic needs, they are

unable to effectively present their cases or protect their legal rights. Given that courts are often the only source of protection against such abuses as consumer fraud, employment and housing discrimination and others, state and federal laws intended for the protection of vulnerable groups against these abuses can be rendered meaningless for limited-English speakers.

Specifically, the Access Commission in 2007 made the following recommendations:

- **Guarantee qualified interpreter services in civil proceedings.** Civil litigants who are unable because of language proficiency to fully understand and participate in the proceedings should have the right to a qualified interpreter at all stages of the proceedings irrespective of financial means. The Judicial Council should work with the Governor and the Legislature to ensure that adequate funding is provided to make this a reality.
- **Develop policies and procedures to improve language access.** This recommendation includes a range of issues for consideration by the Judicial Council 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:
  - Provide training and resources to court staff and judicial officers in order to give them the tools to recognize situations in which a litigant does not have the sufficient English proficiency to understand any aspect of the court process.
  - Expand pilot self-help Spanish and multi-lingual centers, based on recommendations from the Report to the Legislature on these pilot programs.
  - Compile existing data and conduct additional research to accurately gauge the extent of the unmet need and develop appropriate solutions.
  - Continue to expand and translate information on the California Court's Online Self-help Center into other languages while ensuring the website is culturally competent.
  - Coordinate and initiate a public information campaign encouraging immigrants to seek relief from the court system without fear of deportation, including multi-lingual informational notices posted in courthouses, websites, self-help centers, domestic violence shelters and other locations frequented by immigrant communities.
  - Develop standards or protocols and disseminate best practices for use of interpreters outside the courtroom setting, such as in clerks' offices and self-help centers.

- Develop strategies for the use of technology, such as interpreter services via video conferencing and translation software, which will be of particular benefit to rural communities.
  - Consider a multi-lingual referral phone line.
- **Reevaluate the system for recruitment, training, compensation and certification of court interpreters.** While rigorous standards for certification are essential, statistics indicate that the current system is coming nowhere close to providing sufficient qualified interpreters in civil and family law proceedings. Existing approaches to testing 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 modes of training and qualifying interpreters, including the possibility of apprentice interpreter status should be explored. Existing efforts to attract and retain interpreters should be increased significantly. Adequate funding should be sought so that compensations can be set at levels that encourage people to pursue careers as state court interpreters, and make state court interpreting a financially viable choice when compared to compensation rates in the private sector or even the federal courts. Programs should be developed to work with high schools, community colleges, and other institutions of higher education to provide instruction, including the creation and expansion of degree programs, in court interpretation, and research should be conducted into both pedagogical and technological methods of training and instruction.
- **Evaluate the role of lawyers, bar associations, legal services programs, law schools and law libraries.** Lawyers must be better equipped to assist parties and witnesses with limited-English proficiency.

With the exception of the AOC's Limited English Proficiency Plan, the Committee is unclear about the extent to which these recommendations have been implemented by the courts.

#### **IV. Governmental Response to Access Commission Recommendations**

In January 2006, shortly after the Access Commission's September 2005 language access report, Governor Schwarzenegger issued his proposed state budget for FY 06-07 with the following comment on court interpreters:

For non-English speaking defendants and witnesses in criminal cases, existing law provides for interpreters. No such requirement exists for non-English speaking civil litigants. These litigants are generally unable to use professional interpreters unless they can pay for the costs of the interpreter services. The issues at stake in child custody, child support, and other civil cases can be equally critical, and involve the well-being and safety of parents and children. Therefore, it is essential to provide interpreters for civil cases, including family law and domestic violence cases. This will enable litigants to have meaningful access to



the courts. Using existing resources, the Judicial Council will identify efficiencies and best practices, and will, to the extent possible, expand the use of interpreters in civil cases. (Governor's Budget Summary, Judicial Branch, available at <http://www.dof.ca.gov/budget/historical/2006-07/documents/FullBudgetSummary.pdf>.)

It is not known what steps have been taken by the Judicial Council to implement the Governor's admonition. However, despite the Governor's suggestion that civil interpreter needs be addressed using existing resources, the Judicial Council has made clear to the Legislature that it believes additional resources are needed to expand the availability of interpreters in civil cases.

The Legislature has made serious efforts to respond to the Judicial Council's request for new resources. Building on the statement in the Governor's proposed 2006-2007 budget acknowledging the importance of providing professional interpreters in civil cases, the Assembly, at the urging of Judiciary Committee Chair Dave Jones, proposed and, with the concurrence of the Senate, the Legislature provided \$10 million in the budget to fund civil interpreters. However, the Governor deleted this funding from the Budget Act with the following line-item veto message:

Item 0250-101-0932— For local assistance, Judicial Branch. I reduce this item from \$2,802,900,000 to \$2,792,000 by reducing:

(4) 45.45 Court Interpreters from \$96,126,000 to \$86,126,000.

I am deleting the \$10,000,000 legislative augmentation to provide interpreters in civil cases. I believe it is essential to provide non-English speaking litigants with interpreters in order to provide meaningful access to our justice system, and as such, I expect that the Judicial Council will identify efficiencies and best practices, and will, to the extent possible, expand the use of interpreters in civil cases using existing resources. This is consistent with the agreement I have made with the Chief Justice regarding funding for the Courts, which provides a stable funding level for the Judicial Branch and allows the Judicial Council to prioritize programs within that annual augmentation, as is appropriate for an independent branch of government. (See <http://www.dof.ca.gov/budget/historical/2006-07/documents/EnactedBudgetSummary2006-07.pdf>.)

Following the Governor's action, the Legislature attempted to establish a prospective mechanism for the provision of court-paid certified interpreters in civil proceedings, conditioned on the availability of future funds, by adopting AB 2302 (Judiciary). Although this bill enjoyed bipartisan support, it was also vetoed by the Governor. In relevant part, the Governor's veto message stated:

The state has made significant progress towards eliminating the structural deficit. However, the state must continue to exercise fiscal discipline and limit the growth of state government in order to eliminate the projected deficit in 2007-08 and the

future. While it is essential to provide non-English speaking litigants with interpreters in order to provide meaningful access to our justice system, this bill would impair our ability to eliminate the structural deficit. There are many worthwhile programs that compete for General Fund dollars. However, now is not the time to expand programs that significantly increase the expenditure of General Fund dollars at a time the State is moving to eliminate its structural deficit.

Assembly Member Jones attempted once again to make progress on this issue by authoring AB 3050 in 2008 – a measure sponsored by the Judicial Council, proposing a small pilot program in a handful of courts to be determined by the Judicial Council for the deployment of court interpreters in critical civil cases where the party is unable to afford a private interpreter. As suggested by the Access Commission, the bill called for the pilot program to be developed by a court working group in order to design best practices and the most efficient methods for deploying extremely limited resources. In addition, the bill sought to improve statewide data collection on interpreters in both criminal and civil cases, providing a more accurate basis for planning, evaluating and deploying existing court resources. In response to the Governor's prior veto message, the bill was to be self-supported by a small fee in order to avoid any impact on the state budget.

The measure was the subject of a letter of support to the Governor from California Supreme Court Chief Justice Ronald M. George, stating: "As publicly elected constitutional officers, it is our duty to continuously evaluate and appropriately adjust state institutions to meet the changing needs of California's dynamic population. Each day, thousands of California residents rely on our courts to handle their most sensitive and valuable personal and professional disputes and they expect them to be resolved in a fair and equitable manner. It is fundamental to California's judicial system that litigants are able to meaningfully participate in the legal resolution of civil grievances regardless of their primary language."

Nevertheless, the Governor vetoed AB 3050 without stating a substantive or fiscal objection.

**V. Federal And State Statutes May Require Interpreters Or Other Steps To Provide Language Services In Order To Ensure Equal Access To Court Operations By Language Minorities**

Legal services and civil rights advocates maintain that court programs and operations are subject to state and federal statutes mandating equal access and the provision of bilingual services for persons who need assistance with English.

The Access Commission's 2005 report notes:

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. These and other federal statutes protect access by those with limited English proficiency to education, health care, social services and voting. Similar protection for access to public services in California is provided by the Dymally-Alatorre Bilingual Services Act, which contains a bold articulation of state policy in favor of equal access.

The Access Commission also observed, "The state's Standards of Judicial Administration offer instruction to judges for determining whether an interpreter is needed. Under Section 18 [now Standard 2.10], 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.' 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.'" This standard also provides, "After the examination, the court should state its conclusion on the record. The file in the case should be clearly marked and data entered electronically when appropriate by court personnel to ensure that an interpreter will be present when needed in any subsequent proceeding." However, in light of the Judicial Council's statement to the Committee that it has no data regarding interpreter need, it is not clear whether such electronic records are kept or collected.

The Access Commission noted that the standards of judicial administration do not specifically provide for payment of interpreters or the source of such payment, but commented: "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."

Federal and state civil rights laws may also apply to the provision of court interpreters. The Access Commission noted that Title VI of the federal Civil Rights Act of 1964 provides 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." (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.

In August 2000, pursuant to Executive Order 13166, the United States Department of Justice (DOJ) issued a general guidance document setting forth principles for agencies to apply in developing guidance documents for funding recipients pursuant to the Executive Order. 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.

The Access Commission opined, "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." The Access Commission noted that "The issue is of considerable 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."

More recently, the Administrative Office of the Courts issued a "Limited English Proficiency Plan," (September 2008) which appears to acknowledge application of federal obligations under Title VI and Exec. Order 13166 in reciting that the plan was developed in compliance with these federal requirements. Unfortunately this document pertains only to the central administrative offices of the Judicial Council, not the trial courts, and therefore does not address the provision of court interpreters.

The Committee has learned that a February 21, 2008 letter from the Civil Rights Division of the U.S. Department of Justice to the National Center for State Courts finds that Title VI and E.O. 13166 apply to state courts receiving direct or indirect federal financial assistance. This letter cites DOJ guidance stating, "At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. (67 FR 41455, 41471.)" This letter also addresses the question of charging a fee for court interpreters, stating that "a disturbing number of courts and court systems [have been] engaging in a practice of charging LEP parties for interpretation costs – a practice which implicates national origin concerns."

It may also be relevant that the U.S. Department of Justice recently announced settlement of a civil rights complaint against the judicial branch of the State of Maine, requiring that court interpreters be provided. According to a news release issued by the U.S. DOJ, "The agreement resolves a Justice Department investigation of a complaint alleging that the Maine judicial branch, which receives federal funding, was not in compliance with Title VI of the Civil Rights Act of 1964, and the nondiscrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968. These two acts together prohibit discrimination on the basis of race, color, national origin, sex or religion by recipients of

federal assistance. A key aspect of Maine's model language assistance plan is the administrative order issued in October 2006, stating that all LEP individuals shall have access to language assistance during all civil as well as criminal proceedings." (Available at <http://www.usdoj.gov/opa/pr/2008/September/08-crt-867.html>.) The administrative order issued by the Maine Supreme Judicial Court states: "Maine's state courts will provide all LEP individuals who are parties or witnesses in any type of court case, or parents of minors involved in juvenile actions, with an interpreter in all court proceedings related to that case, at the State's expense. 'All court proceedings' includes case management conferences, CADRES and judicially-assisted mediations, motion hearings, arraignments, commitment hearings, competency hearings, jury selection, trials, sentencing, appellate arguments, and any other court events or proceedings authorized by the presiding judge or justice." (Available at [www.courts.state.me.us/court\\_info/opinions/adminorders/%20JB\\_06\\_3%20LEP.htm](http://www.courts.state.me.us/court_info/opinions/adminorders/%20JB_06_3%20LEP.htm))

A state statute similar to Title VI may likewise be applicable. Government Code section 11135 provides: "No person in the State of California shall, on the basis of race, national origin, ethnic group identification ... be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state." This obligation is enforceable by a private right of action for equitable relief pursuant to Government Code section 11139.

## **VI. Conclusion**

Despite important work by the Access Commission, significant efforts by the Legislature and Judicial Council, and some substantial progress over the past 10 years, court interpreters are still largely unavailable in civil proceedings. The Access Commission and the Judicial Council have indicated that additional resources are necessary to meet this need, and the Legislature has endeavored to provide those resources. The Governor has stated his agreement that civil interpreters are essential for meaningful access to justice, but has consistently indicated that the need should be met without providing the courts additional resources, even where those resources do not come from the state budget. Legal services and civil rights advocates contend that the courts, like other state programs and operations, may have a legal obligation to provide interpreters in civil cases, regardless of whether additional funds are provided. In a time of severe budget crisis in California, it is not clear whether or how progress can be made on this critical issue in the near future.