Legislative Inconsistency: California’s Good Cause Statutory Exceptions as a Step Back in the Effort to Improve Court Access for Non-English Speaking Civil Litigants

By Nicholas P. Tsukamaki*

EDUARDO, a native Spanish speaker from Honduras who speaks very little English, has been summoned into family court in Solano County, California on account of a domestic violence proceeding brought by his estranged wife. While his wife is represented by counsel, Eduardo does not have the money to hire an attorney, and thus appears pro se.1 When the judge calls the matter, she realizes that Eduardo cannot understand her. Already behind in her morning calendar, the judge quickly asks her clerk and bailiff if there are any court interpreters in the building. After a quick phone call, her clerk informs her that all of the court’s certified interpreters are occupied in the criminal court. Perturbed, the judge asks those seated in the audience if any of them speaks Spanish. A woman raises her hand and indicates to the judge that while not a native speaker, she speaks some Spanish and is willing to interpret. After a quick swearing-in, the judge, without taking further measures to determine the stranger’s linguistic qualifications, allows the woman to take a seat next to Eduardo and interpret the proceeding.

Throughout the twenty-minute hearing, the woman, who has no previous experience interpreting in a legal proceeding, translates only the conversation between Eduardo and the judge, failing to do the same for the dialogue between the wife’s attorney and the judge. Moreover, given her limited knowledge of Spanish, the woman is sim-

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* Class of 2007; B.A., University of California at Santa Barbara, 2001. I would like to thank my editor, Nicole Magaline, for her flexibility, hard work, and thoroughness in bringing this article to publication. I would also like to thank my friend, Todd Barnes, for his comments and suggestions.

1. Litigant proceeding pro se appears without an attorney. See Black’s Law Dictionary 1258 (8th ed. 2004) (defining pro se as “on one’s own behalf; without a lawyer”).
ply unable to translate most of the legal terms that are used, and Eduardo asks repeatedly for her to explain what the judge is saying.

At the end of the hearing, the judge enters an order granting Eduardo's wife a three-year restraining order with a provision prohibiting Eduardo from coming within one hundred yards of his wife or his three children. Although he understands the gist of what has just happened, Eduardo is confused about the details of the restraining order and is unable to ask the judge to explain it a second time or how he can appeal the order. He leaves the courtroom frustrated, both by his failure to understand the proceedings and by his inability to effectively contest his wife's allegations.

This story, while hypothetical, is one of many that could be told to illustrate the acute problem facing California's non-English speaking citizens and residents in their attempt to meaningfully access the judicial system. While criminal defendants have a constitutional right to a court-appointed interpreter, no similar statutory or constitutional right exists for civil litigants. As a result, the courts, faced with an inadequate number of qualified court interpreters and an increasing need for their services, are using inexperienced and uncertified interpreters in order to meet the demand in civil cases.

This interpreter problem and its effects on non-English speaking civil litigants in California is well documented. What has not been examined as critically, however, is the inconsistent legal framework that has allowed for and perpetuated the problem. As will be explained below, this framework has its roots in Jara v. Municipal Court.

2. This hypothetical is not meant to be representative of all cases in which non-English speakers proceed without qualified interpreters. Nor is it meant to represent the procedures followed in any particular county. The author offers this hypothetical merely as an example of how the current law in California can affect the state's non-English speaking population in its effort to access the judicial system.

3. See, e.g., Ann M. Simmons, Non-English Speakers Want Their Say In Court, L.A. TIMES, Apr. 3, 2006, at B2 (citing several examples in which non-English speaking litigants have lost their cases in court due to a lack of qualified interpreters).

4. See CAL. CONST. art. I, § 14 ("A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.").


6. See id.

in which the California Supreme Court held that neither the statutory law nor the state’s constitution requires judges to appoint interpreters at public expense to assist non-English speaking litigants in civil proceedings.8

While not actually overturning the decision in *Jara*, the California Legislature has taken two important steps over the past thirty years to move away from *Jara’s* holding in an effort to ensure equal access to the courts for these litigants. First, under the auspices of the Judicial Council of California (“Council” or “Judicial Council”),9 the Legislature has increased both the quantity and quality of interpreting services available for non-English speaking civil litigants.10 Second, through the enactment of various statutory provisions, the Legislature has ostensibly provided for the appointment of certified interpreters at public expense in certain civil cases.11

Despite this legislative divergence from *Jara*, the letter and spirit of its holding continue to pervade California statutory law in the form of “good cause” exceptions. These statutory provisions, which permit courts to appoint uncertified interpreters on a finding of good cause or at the judge’s discretion,12 are internally at odds with the Legislature’s own recognition that only certified professionals are capable of accurately interpreting legal proceedings.13 More importantly, by granting judges the discretion to appoint almost any professed bilingual person as an interpreter in a civil proceeding, these statutes continue the judicial disservice perpetrated against these litigants since before legislation was enacted for their benefit.14

8.  *Id.* at 95, 97. By contrast, the California Constitution requires the state’s courts to appoint an interpreter for all non-English speaking defendants in criminal proceedings. *See supra* note 4.

9. The Judicial Council is the administrative body of the California courts. As set forth in California Constitution article VI, section 6(d), the Council, “[t]o improve the administration of justice . . . shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute.” According to its own interpretation of its constitutional mandate, the Council “sets the direction and provides the leadership for improving the quality and advancing the consistent, independent, impartial, and accessible administration of justice.” Judicial Council of California, Judicial Council: History and Role, http://www.courtinfo.ca.gov/jc/about.htm (last visited June 10, 2006).

10.  *See infra* Part II.B.


12.  *See infra* Part III.A.

13.  *See discussion* *infra* Part III.B.

14.  *See infra* Part II.B (outlining the legislative steps that were taken in the 1970s to provide greater access to the courts for non-English speakers in California).
ture's subtle use of language and statutory construction, the ultimate effect of these exceptions is clear: a trial court is not required to appoint a certified interpreter for a non-English speaking party in any civil proceeding.\(^{15}\)

This Comment will argue that these good cause exceptions are inconsistent with the Legislature's commitment to improving court access for non-English speaking civil litigants, in that they permit judges to appoint interpreters who do not meet the standards that the Legislature itself has established. Part I will outline the state common law rule regarding the use of interpreters in civil cases, as well as the recognized need for professionally-trained court interpreters. Part II will provide a brief demographic background on the issue, as well as outline the legislative response to the flood of non-English speakers to California. Part III will examine the statutory good cause provisions and demonstrate how they undermine the Legislature's own goals in this area. Lastly, Part IV of this Comment will argue that the only way to ensure equal access to the courts for these non-English speaking litigants is to amend the statutes and the California Constitution so as to guarantee the right to a certified court interpreter in all civil proceedings.

I. The California Supreme Court Has Failed to Recognize the Need for Certified Interpreters in Civil Proceedings

A. \textit{Jara v. Municipal Court} and the Denial of Equal Court Access for Non-English Speakers in Civil Proceedings

In \textit{Jara}, the indigent, non-English speaking appellant was sued in a property damage action arising out of an automobile accident.\(^{16}\) Alleging indigency and the inability to speak or understand English, he

\(^{15}\) However, the right to a court-appointed interpreter may exist for non-English speakers appearing in administrative proceedings. According to the California Commission on Access to Justice, "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." \textit{Commission Report, supra note 5}, at 12. However, the statutes cited by the Commission do not indicate whether this interpreter must be certified or not. For example, California Government Code section 11435.15(a) (West 2005) states that listed agencies "shall provide language assistance in adjudicative proceedings . . . ." While this statute mandates "language assistance" in these proceedings, it does not specify the qualifications those providing such assistance must possess. \textit{Id.}

“moved the court to appoint an interpreter skilled in English and Spanish, without expense to himself.”17 The Superior Court of Los Angeles County denied the motion, and Jara appealed.18 The California Supreme Court affirmed the trial court’s judgment, stating, inter alia, that “[n]o statutory basis exists for appointment of an interpreter at public expense to assist non-English speaking [civil] litigants.”19 To substantiate this ruling, Justice Clark opined as to the following:

In contemporary urban society, the non-English speaking individual has access to a variety of sources for language assistance. Members of his family, friends or neighbors—born or schooled here—may provide aid. . . . Appellant questions the competence of family members and friends to interpret complex legal proceedings. However, court certified interpreters are certainly not lawyers and even if appointed, the complexities will remain.20

The court also distinguished the case from an earlier decision in Gardiana v. Small Claims Court,21 in which the California Court of Appeal held that “in small claims court volunteer interpreters should be appointed when one of the parties [is indigent and] does not speak English, and if volunteers are unavailable, an interpreter should be appointed and compensated at public expense.”22 The Jara court

17. Id. at 95.
18. Id. The California Supreme Court’s opinion in Jara does not provide the full procedural posture of the case. After the trial court denied Jara’s motion, he appealed his case to the California Court of Appeal. Jara v. Mun. Court, 137 Cal. Rptr. 533 (Cal. Ct. App. 1977). The Court of Appeal reversed the trial court’s decision, holding that in a civil action, if the defendant is indigent and does not speak or understand English, and irrespective of whether he is, or is not, represented by counsel, and, if represented by counsel, irrespective of whether counsel speaks and understands English only, the due process and equal protection provisions of the federal and state Constitutions require, in order for such defendant to have a meaningful opportunity to be heard and defend, that an interpreter be appointed for him at public expense.

20. Id. at 95–96.
22. Jara, 578 P.2d at 96. In light of current statutory law, it is unclear whether Gardiana is still good law. Gardiana seemed to imply that the court has a duty to appoint an interpreter at public expense for an indigent party when the court is unable to secure the services of volunteer interpreters. Gardiana, 130 Cal. Rptr. at 681–82. This holding would seem to supplement California Code of Civil Procedure section 116.550(a) (West 2006), which states that in small claims court “[i]f the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony, and needs assistance in so doing, the court may permit another individual (other than an attorney) to assist that party.” However, subdivision (d) of the same statute states that “[i]f a court interpreter or other competent interpreter is not available to aid a party in a small claims action, at the first hearing of the case the court shall postpone the hearing
found that unlike the small claims setting in which parties are prohibited from appearing with attorneys and where the court functions "informally and expeditiously" without pleadings or specific rules of evidence, in appellant's case, he "possesses an attorney capable of fully representing him in the municipal court proceeding."\(^2\)

While \textit{Jara} ostensibly precluded the right to an interpreter only in non-small claims civil proceedings in which the non-English speaking litigant is represented by counsel, the scope of its holding has been extended to all civil proceedings regardless of whether the litigant appears with an attorney.\(^2\)

Justice Tobriner's prescient dissent in \textit{Jara} foreshadows the Legislature's eventual recognition of the need for certified interpreters in civil proceedings. The dissent begins by properly framing the issue as whether our judicial system will allow an indigent defendant in a civil case who does not speak nor understand the English language to be deprived of his interest in his property . . . which he may desperately need in order to survive, in a proceeding that he does not, and, because of his indigency, cannot hope to understand.\(^2\)

Responding to the majority's claim that alternative sources of interpreting assistance, such as family members or friends, are at the disposal of the indigent, non-English speaking litigant, Justice Tobriner stated that contrary to the majority's rather cavalier assumption, significant numbers of minority groups whose principal language is not English were neither born nor schooled here, and the defendant may

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\(^2\) Justice Tobriner, \textit{Jara}, 578 P.2d at 96.

\(^2\) See \textit{COMMISSION REPORT}, supra note 5, at 10 (stating that in \textit{Jara}, the Supreme Court of California "held that non-English speaking indigent civil litigants do not have a right to have a court interpreter appointed at public expense."); David Ackerly, \textit{Limited English Should Not Be a Legal Liability}, L.A. DAILY JOURNAL 6 (July 7, 2006) ("In 1978 . . . the court refused to extend [the right to a court-funded interpreter] to civil cases generally in \textit{Jara v. Municipal Court}."). Interestingly, while the \textit{Jara} court upheld the appointment of a court interpreter in the small claims context, it did not do the same for self-represented, indigent civil litigants. These two contexts are analogous in that in both, the litigant, as a result of either a procedural requirement or his or her indigency, is unable to appear with an attorney. The only conceivable rationale for this inconsistency is that civil litigants, unlike small claims litigants, have the \textit{ability} to hire an attorney to represent them in the matter. However, given the indigency of many non-English speaking litigants, access to legal representation may be illusory.

\(^2\) \textit{Jara}, 578 P.2d at 97 (Tobriner, J. dissenting).
not be able, therefore, to obtain assistance from his community. In addition, in California, as in our nation as a whole, those people whose principal or sole language is not English are, unfortunately, most often part of educationally and economically deprived subgroups, and may be the persons least likely to be able to provide for the defendant a competent and coherent translation of sophisticated court proceedings.26

Despite the fact that it does not possess the power of law, Justice Tobriner's dissent rationalizing the need for qualified court interpreters in civil proceedings has become accepted outside of the courtroom setting, most notably in the academic literature.27

B. Certified Court Interpreters Must Be Appointed in Both Civil and Criminal Proceedings

The Jara majority’s uninformed assertion that family members, friends, and neighbors are able to provide adequate language assistance for the non-English speaking civil litigant28 has been well refuted.29 Many sources have maintained that these uncertified individuals simply do not possess the requisite level of skill necessary to adequately and competently interpret legal proceedings.30 According to one source,

a court interpreter must have a superior, unquestionable command of two languages and must be able to manipulate registers from the most formal varieties to the most casual forms, including slang. The interpreter’s vocabulary must be of considerable depth and breadth to support the wide variety of subjects that typically arise in the judicial process.31

26. Id. at 98.
27. See infra Part I.B.
29. See, e.g., Charles M. Grabau & Llewellyn Joseph Gibbons, Protecting the Rights of Linguistic Minorities: Challenges to Court Interpretation, 30 NEW ENG. L. REV. 227, 258–60 (1996) ("[B]ilingualism, or fluency in two languages, is only the starting point’ for interpreters . . . . '[C]ourt interpretation] requires skills that few bilingual individuals possess, including language instructors. The knowledge and skills of a court interpreter differ substantially from or exceed those required in other interpretation settings, including social service, medical, diplomatic, and conference interpreting."); Michael B. Shulman, Note, No Hablo Ingles: Court Interpretation as a Major Obstacle to Fairness for Non-English Speaking Defendants, 46 VAND. L. REV. 175, 188 (1993) ("[B]eing bilingual is not enough; it does not qualify someone to be a court interpreter any more than knowing how to take shorthand qualifies someone to be a court reporter."). See also Ackerly, supra note 24, at 6 ("The Jara decision, now almost 30 years old, is sorely outdated and fails to recognize the tremendous risks involved in relying on friends, neighbors and family members to interpret.").
30. See discussion supra note 29.
The Judicial Council itself has echoed this belief. On its website, the Council states that court interpreting is a very demanding job that requires complete fluency in both English and the foreign language. The level of expertise required for this profession is far greater than that required for everyday bilingual conversation. Most people do not have full command of all registers of both English and the foreign language and, therefore, require special training to acquire it.\(^3\)

As these sources demonstrate, the ability to fully comprehend legal lexicon in one language while simultaneously or consecutively translating it into another, all the while keeping up with the fast pace of judicial proceedings, is not easily acquired.\(^3\) Thus, contrary to Justice Clark's majority opinion in *Jara*, the fact that one is bilingual is not a condition that automatically renders that person capable of being a competent court interpreter. As for Justice Clark's inference that even certified interpreters are unable to adequately interpret legal proceedings, and that "complexities will remain,"\(^3\) this may in fact be true in some instances. However, certified court interpreters, by virtue of their training and expertise, are much more likely to render an accurate interpretation of legal proceedings than those who are not so trained. The efforts on the part of the Legislature to increase the

\(^{32}\) Judicial Council of California, Programs: Court Interpreters: Becoming an Interpreter, http://www.courtinfo.ca.gov/programs/courtinterpreters/becoming.htm (follow hyperlink under "Common questions and answers") (last visited June 20, 2006). The California Legislature has also recently expressed this belief. See Assemb. B. 2302, 2006 Leg., Reg. Sess. § 1(f) (Cal. 2006) ("Court interpretation is extremely difficult and takes a rare combination of skills, experience, and training.").

\(^{33}\) Simultaneous, consecutive, and sight interpreting are the three principal methods of interpreting in a legal setting. González, Vásquez & Mikkelson, *supra* note 31, at 32. Simultaneous interpreting refers to "the technique whereby the interpreter speaks at the same time as the [second language] speaker ...." *Id.* at 359. In consecutive interpreting, "the interpreter waits until the speaker has finished the [second language] message before rendering it into [English]." *Id.* at 379. Sight translation consists of "the oral translation of a written document, a hybrid of translation and interpretation." *Id.* at 401. See also Heather Pantoga, *Injustice In Any Language: The Need for Improved Standards Governing Courtroom Interpretation in Wisconsin*, 82 *Marq. L. Rev.* 601, 642–48 (1999) (summarizing the different forms of interpretation in legal proceedings).

\(^{34}\) See Susan Berk-Seligson, *The Bilingual Courtroom: Court Interpreters in the Judicial Process* 15–17 (University of Chicago Press 1990) (describing the complex lexical and syntactic features of legal language). See also Commission Report, *supra* note 5, at 17 ("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 the court all render the task infinitely more complex than mere literal translation of words.").

number of professional court interpreters in the state reflect this belief.\textsuperscript{36}

While not stated in \textit{jara}, implicit in the absence of statutory or constitutional authority mandating the appointment of certified interpreters in civil cases is the belief that the interests at stake in criminal proceedings are more important than those implicated in civil matters. While this may be true in some criminal cases, such as capital punishment proceedings for example, this belief fails to consider the full scope of personal interests at stake in ordinary civil matters. While civil defendants do not face imprisonment or death sentences at the hands of the state, they nonetheless face the threat of significant or even debilitating financial loss, eviction from their homes,\textsuperscript{37} and, in family law cases, the threat that the court will restrict or suspend access to their children. As stated by the California Commission on Access to Justice:

\begin{quote}
In routine civil proceedings, such as evictions, repossessions, creditor/debtor cases, wage garnishments, and family law matters, [non-English speakers] cannot effectively defend themselves or assert their legal rights. And the court system itself can appear unfair and unbalanced when, because of inability to comprehend the process, defendants with limited English proficiency cannot meaningfully participate in court proceedings, and thereby lose legal rights, property, livelihood, or shelter.\textsuperscript{38}
\end{quote}

Perhaps more important than mere deprivation of physical possessions, however, is the right of all individuals who appear in court to due process and the opportunity to meaningfully and fairly participate in court proceedings.\textsuperscript{39} This idea is reflected in Justice Tobriner's dis-

\begin{footnotesize}
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\item See infra Part II.B.
\item See Simmons, supra note 3, at B2 ("For immigrants trying to navigate the state’s civil courts, a lack of proficiency in English can jeopardize their jobs, homes and civil rights.").
\item COMMISSION REPORT, supra note 5, at 2–3. See also Daniel J. Rearick, Note, \textit{Reaching Out to the Most Insular Minorities: A Proposal for Improving Latino Access to the American Legal System}, 39 \textit{Harv. C.R.-C.L. L. Rev.} 543, 554 (2004) ("[U]nder the Federal Court Interpreters Act[,] neither plaintiffs nor defendants have any right to an interpreter in suits between private parties, though these trials may involve issues as fundamental as the custody of one’s children, eviction from one’s home, or vindication of one’s First Amendment rights.").
\item See Deborah M. Weissman, \textit{Between Principles and Practice: The Need for Certified Court Interpreters in North Carolina}, 78 \textit{N.C. L. Rev.} 1899, 1928 (2000) ("[F]undamental notions of fairness, due process, and access to the courts seem to require the appointment of an interpreter in civil proceedings. In civil cases, litigants seek to enforce or protect constitutional rights and pursue or defend other significant interests. Civil domestic violence proceedings, custody matters, eviction proceedings, and creditor-debtor proceedings implicate an individual’s life, liberty, and property. Procedural protections, including the right to an interpreter, may be warranted in these situations.").
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sent in *Jara*, where he poignantly disagreed with the majority’s “assessment of the confusion, the despair, and the cynicism suffered by those who in intellectual isolation must stand by as their possessions and dignity are stripped from them by a Kafka-esque ritual deemed by the majority to constitute, nonetheless, a fair trial.”

It is clear then, that only those professionally trained in court interpretation possess the skills necessary to competently interpret legal proceedings, and that this standard applies as much in the civil context as it does in the criminal context. Belief in this idea is implicitly reflected in the evolution of the statutory law over the past three decades, as the Legislature has taken affirmative steps to provide an increasing number of non-English speaking Californians with more competent court interpreters.

II. The Influx of Non-English Speakers to California and the Legislative Response

A. California’s Demographic Transformation Has Created a Severe Language Problem for the Courts

In the shadow of *Jara*, California has undergone a demographic transformation that in many ways has redefined the linguistic and ethnic makeup of the state. According to the California Department of Finance, 27.9% of the country’s foreign-born population, or 9.5 million persons, resided in California in 2004. Data from the most recent United States Census also shows that “20 percent of the state’s population (6,277,779) reported not being able to speak English well and 3.5 percent, or 1.11 million, of California’s 31.4 million residents over age 5 were linguistically isolated or spoke no English at all.”

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40. *Jara*, 578 P.2d at 98 (Tobriner, J. dissenting).
43. *See* Judicial Council of California Administrative Office of the Courts: A Report to the California Legislature on the Use of Interpreters in the California Courts 18 (2004), http://www.courtinfo.ca.gov/reference/documents/useinterprept.pdf [hereinafter 2004 Interpreter Report]. According to the United States Census Bureau: A linguistically isolated household is one in which all adults (high school age and older) have some limitation in communicating in English. A household is classi-
These statistics alone paint a profoundly troubling picture of the linguistic competence of California citizens: one in five does not adequately speak the official language of the state’s courts. Even more discouraging, a recent report issued by the Judicial Council indicates that “California’s statistics on legal immigration show an increasing rate of growth in ethnic groups unlikely to speak English as a first language.”

This growth in the number of non-English speakers that will immigrate to California over the next few decades, as well as the problems that it will create for the courts, is better understood by briefly examining the demographics of Hispanics, California’s most populous ethnic group. This group currently makes up over half of the state’s foreign-born population. Demographers have predicted that within a generation, Hispanics will make up a majority of the state’s population. According to the Public Policy Institute of California...
fornia, half of the state's foreign-born Hispanics reported not being able to speak English well or at all. This language deficiency inhibits the ability of the state's most populous ethnic group to protect their legal rights in court. As noted by one commentator:

Latinos are likely to suffer deprivation of legal rights and protections as a consequence of their status as newcomers and immigrants. They are often subjected to discrimination in housing, employment, the criminal justice system, lending practices, and other ways that affect their health and safety. Because Latinos may need the courts for resolution of their rights, the hardships that follow from the denial of legal rights are compounded by the language barrier.

This language barrier will inevitably become more problematic as the influx of Latino immigrants increases over the coming decades.

These statistics point to one unavoidable conclusion: the proportion of the state's population that speaks inadequate English, and thus the number of non-English speaking individuals accessing California's courts, is increasing. Given the obvious linguistic disadvantages that non-English speakers face in an English-speaking court system, as well as the potentially discriminatory effects that language deficiency may have on a particular litigant, the next question that arises is what steps, if any, the California Legislature has taken to confront and ameliorate this demographic reality.

B. The Legislative Response to California's Demographic Transformation Evidences a Need to Provide Non-English Speaking Civil Litigants with Certified Interpreters

In order to fully understand how the good cause exceptions run counter to the legislative efforts to increase court access for non-English speaking civil litigants, it is first necessary to examine the scope of these efforts. The mere fact that the Legislature has made any effort at all—i.e., that it has provided a statutory basis for appointment

50. Weissman, supra note 39, at 1905-06 (footnotes omitted).
52. The fact that a litigant is deficient in English may automatically put that individual at a disadvantage in the eyes of the court. For example, there is some statistical evidence indicating that those who understand English are treated better by the courts than those who do not. See Judicial Council of California, Final Report of the California Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts 95 (1997), http://www.courttinfo.ca.gov/reference/documents/rebias.pdf [hereinafter Racial Bias Report] (stating that in one survey "86 percent of the attorneys polled believed that a good understanding of English afforded better treatment by the courts.")
of certified interpreters in certain civil cases—reflects a legislative recognition that inherent problems exist in a court system where the use of these professionals is the exception rather than the norm. Looked at another way, the statutory provisions granting non-English speakers the right to a court appointed interpreter are indicative of a break with the holding and rationale of \textit{Jara}.\textsuperscript{53} Applying the majority's reasoning in \textit{Jara}, a superior court judge could simply allow any self-professed bilingual person, such as a litigant's relative or random member of the courtroom audience, to interpret in a civil proceeding without the need to make a finding as to that person's competence. However, in select civil proceedings, the courts do not initially retain complete discretion to appoint uncertified interpreters.\textsuperscript{54} The Legislature, most likely due to its recognition of the complexity of court interpretation and the problems that arise when uncertified individuals are permitted to interpret legal proceedings,\textsuperscript{55} has explicitly provided civil litigants with the right to an interpreter where \textit{Jara} expressly denied it. It is clear then, that the Legislature has recognized the gravity of the language problem in the courts for some time.\textsuperscript{56}

\textsuperscript{53} See discussion supra Part I. The rationale behind the holding in \textit{Jara} was twofold. First, the majority found that court-appointed interpreters are unnecessary, since a non-English speaker's attorney is capable of adequately representing the litigant's interests. \textit{Jara} v. Mun. Court, 578 P.2d 94, 96–97 (Cal. 1978). Second, the court found that uncertified interpreters, such as friends and family, are able to provide sufficient interpreting services for non-English speakers. \textit{Id.} at 95. However, current statutory provisions ostensibly require the court to appoint a certified interpreter in certain civil cases, thus implicitly rejecting the basis of \textit{Jara}'s holding: \textit{See, e.g.}, \textit{CAL. EVID. CODE} § 755(a) (West Supp. 2006) ("In any action [involving] . . . [domestic violence, parental rights, dissolution of marriage or separation] . . . in which a party does not proficiently speak or understand the English language, and that party is present, an interpreter . . . \textit{shall} be present to interpret the proceedings . . .") (emphasis added).

\textsuperscript{54} \textit{See, e.g.}, \textit{CAL. EVID. CODE} § 755(a) ("The interpreter selected \textit{shall} be certified . . . unless the court in its discretion appoints an interpreter who is not certified.") (emphasis added). Under this statute, judges ultimately retain the discretion to appoint uncertified interpreters in domestic violence, parental rights, and divorce proceedings. However, appointment of certified interpreters is initially phrased in mandatory terms.

\textsuperscript{55} According to Assembly Bill 2302, which is currently pending in the California State Senate, the Legislature acknowledges that "[r]eliance on untrained interpreters, such as family members or children, can lead to faulty translations and threatens the court's ability to ensure justice. Court interpretation is extremely difficult and takes a rare combination of skills, experience, and training." Assemb. B. 2302, 2006 Leg., Reg. Sess. (Cal. 2006).

\textsuperscript{56} \textit{See \textit{CAL. GOV'T CODE} § 68560(e)} (West 1997) ("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.").
The first affirmative legislative response to this problem came on November 5, 1974, when the Legislature amended the state constitution so as to guarantee the right to an interpreter for all non-English speaking criminal defendants.\textsuperscript{57} Nearly four years later, on May 24, 1978, the Legislature passed Assembly Bill 2400,\textsuperscript{58} which "mandate[d] programs to ensure adequate interpretation services and [compilation of] statistics on the use of interpreters statewide."\textsuperscript{59} This bill also delegated to the Council the responsibility of setting standards for interpreter certification,\textsuperscript{60} surveying the scope "of the language needs of California citizens and residents in relation to the judicial process,"\textsuperscript{61} and submitting its findings and recommendations to the Legislature every five years.\textsuperscript{62}

In 1990, pursuant to California Government Code section 68560, the Chief Justice of California appointed the Judicial Council Advisory Committee on Court Interpreters to propose actions to the Council 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."\textsuperscript{63} In order to meet these goals, both the Council and the California Legislature recognized that programs would need to be established in order to certify and train interpreters.\textsuperscript{64} Effective Janu-

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\item \textsuperscript{57} González, Vásquez & Mikkelsen, supra note 31, at 73.
\item \textsuperscript{58} This bill was adopted as a result of detailed reports that the Judicial Council submitted to the Legislature in 1976 and 1977 "identifying specific language needs of California citizens and residents, describing language services that had been provided by California's justice system, indicating special problem areas in need of solution, and setting forth specific objectives to be achieved by providing adequate interpreter services to non-English-speaking citizens and residents in California." CAL. GOV'T CODE § 68560(c) (West 1997).
\item \textsuperscript{59} González, Vásquez & Mikkelsen, supra note 31, at 73.
\item \textsuperscript{60} Id. See also Judicial Council of California, Programs: Court Interpreters: Becoming an Interpreter, http://www.courtinfo.ca.gov/programs/courtinterpreters/becoming.htm (follow hyperlink under "Common questions and answers") (last visited June 20, 2006). This webpage provides a list of questions and answers for those interested in becoming a court interpreter. Id. Answers five and six set forth the requirements that must be met in order for one to become a certified or registered court interpreter. Id. In order to become a certified interpreter, for example, one must pass an approved certification examination, file for certification with the Judicial Council, pay an annual fee, attend a Judicial Council code of ethics workshop, and submit proof of having completed thirty hours of continuing education and forty assignments of recent professional interpreting experience every two years. Id.
\item \textsuperscript{61} CAL. GOV'T CODE § 68560(a) (West 1997).
\item \textsuperscript{62} See CAL. GOV'T CODE § 68563 (West 1997).
\item \textsuperscript{63} CAL. GOV'T CODE § 68560(d) (West 1997).
\item \textsuperscript{64} See id. § 68560(d) (noting that the Council "proposed to the Legislature changes . . . to create a program to certify court interpreters, and to coordinate programs
ary 1, 1993, the Council “assumed responsibility for certifying and registering court interpreters and for developing a comprehensive program to ensure an available, competent pool of qualified interpreters.”

One can draw several conclusions and inferences from the numerous provisions of California Government Code section 68560. First, its enactment evidences a legislative awareness of the decades-old problem regarding the increasing number of non-English speaking persons accessing the court system. Second, implicit in its finding that programs should be established to train, certify, and evaluate interpreters is the recognition that only professionally-trained and certified interpreters can provide these non-English speaking citizens “equal justice under the law” and “increased access to the court system.” Moreover, the plain language of the statute makes clear that these legislative steps were not taken solely for the benefit of non-English speaking criminal defendants. The statute more broadly encompasses “all California citizens and residents,” not just those who appear in criminal proceedings. In this way, a reading of section 68560 leads to the conclusion that the Legislature has requested, if not required, that all court interpreters be certified so as to ensure equal court access for all Californians.

for interpreter recruiting, training, testing, certification, and continuing education and evaluation.”). See also id. § 68560(f) (“Competent interpreter services in the courts and judicial and administrative agencies should be provided through programs to recruit, train, test, certify, and evaluate interpreters. Continuing education and evaluation would also help ensure adequate interpreter services to the courts.”).

65. Judicial Council of California, Fact Sheet: Court Interpreters (2006), http://www.courtinfo.ca.gov/reference/documents/factsheets/cntinterp.pdf. See also Cal. Gov’t Code § 68562 (a), (b) (West 1997 & Supp. 2006) (authorizing the Council to designate the languages for which certification programs shall be established and to adopt standards and requirements for interpreter proficiency as well as programs for interpreter recruiting and training); Cal. Gov’t Code § 68563 (ordering the Council to conduct studies on the use of and need for court interpreters “not later than July 1, 1995, and every five years thereafter.”); Cal. Gov’t Code § 68564(a) (West 1997) (ordering the Council to adopt rules and standards for “determining the need for a court interpreter in particular cases.”).

66. Cal. Gov’t Code § 68560(d), (e) (West 1997).

67. Id. § 68560(c) (emphasis added).

68. Codifying this requirement seems to be one of the main goals of Assembly Bill 2302, which would amend California Evidence Code section 755 (West Supp. 2006) so as to provide certified interpreters in all civil actions or proceedings. See Assemb. B. 2302, 2006 Leg., Reg. Sess. § 2(a) (Cal. 2006). However, this legislative intent is undermined by the presence of the good cause exception under California Government Code section 68561(c) (West 1997 & Supp. 2006), which would effectively grant courts the ability to appoint uncertified interpreters. See id.
Pursuant to this legislative mandate, the Council has made considerable progress toward meeting these goals. As of December 2004, California had 1361 certified interpreters in eight designated languages, as well as 425 registered interpreters in one or more non-designated or newly designated languages, for a total of 1786 certified or registered interpreters. Also, statistics show that for fiscal year 2003-04, California superior courts spent over sixty-five million dollars, or almost three percent of total court expenditures, on interpreters. According to the Court Interpreter Data Collection System ("CIDCS"), certified interpreters were used in nearly eighty-five percent of all statewide interpretations contracted each day in 2004. Also, despite the fact that they are paid considerably less than federal court interpreters, certified and registered interpreters in California are currently paid "32.5 percent more for a full day of interpreting than they were when the Judicial Council first established statewide standards for interpreter pay in January 1999." 

Despite these commendable gains, the Council is not adequately addressing the problem. The Council itself has recognized that "[a]lthough there are more than 1700 certified and registered spoken


70. According to the Judicial Council, five additional spoken languages—Armenian, Khmer, Mandarin, Punjabi, and Russian—were designated for certification in 2000. See 2004 Interpreter Report, supra note 43, at 5. However, examinations have not yet been developed for all five. See id.

71. According to the Council, a certified interpreter is "[a] spoken language interpreter who has passed the certification examination in one of the thirteen designated languages for which there is currently an examination, has attended the Judicial Council Code of Ethics workshop, and meets biennial continuing education and professional requirements." 2004 Interpreter Report, supra note 43, at 6. By contrast, a registered interpreter does not have to demonstrate any language ability in the designated language. He or she need only pass an "English fluency exam . . . attend[ ] the Judicial Council Code of Ethics and orientation workshops, and meet [ ] biennial continuing education and professional requirements." Id.


language interpreters in California, the state’s trial courts are facing a critical shortage of qualified interpreters.”\textsuperscript{77} Not surprisingly, the Council has also noted that “some courts report anecdotally that proceedings are sometimes delayed in order to ensure the availability of a certified or registered interpreter. In some incidents, noncertified/nonregistered court staff [are] being called for interpreting tasks if the courts could not locate more-qualified interpreters.”\textsuperscript{78}

At the end of its most recent report to the Legislature, the Council noted that while interpreters in criminal matters are legally mandated, “[i]t is unclear how interpreting needs are being met in other important areas of court operations, such as civil and family law . . . .”\textsuperscript{79} The answer to this question, as will be explained more fully below, is clear: the need is being met, if at all, through the use of good cause statutory provisions which, with the exception of witnesses,\textsuperscript{80} al-

\textsuperscript{77.} 2004 Interpreter Report, supra note 43, at 18. See also Racial Bias Report, supra note 52, at 108 (concluding that “[a]n inadequate number of qualified interpreters are available to assist non-English speakers.”). According to the California Commission on Access to Justice, “[i]n 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.” Commission Report, supra note 5, at 2.

\textsuperscript{78.} 2004 Interpreter Report, supra note 43, at 2. See also Simmons, supra note 3, at B2 (“Lynn Holton, a spokeswoman for the Judicial Council, which oversees the courts, acknowledged, ‘Courts are sometimes forced to use noncertified interpreters who lack the experience and skills of certified interpreters.’”). The author of this Comment can vouch for this anecdotal evidence. As a judicial intern in Contra Costa County Superior Court during the summer of 2005, the author, while not a certified or registered interpreter, performed interpreting services in approximately twenty-five family law matters in which at least one of the litigants appeared pro se. In the majority of cases in which an interpreter was clearly needed, a certified interpreter was unavailable, thus necessitating either a continuance of the matter or the assistance of an uncertified court employee or member of the public. The cause of this problem is twofold. First, as noted by the Council, there are simply not enough interpreters to assist all non-English speakers who access the courts. Second, because the California Constitution only grants criminal defendants the unconditional right to an interpreter, see Cal. Const. art. 1, § 14, those interpreters that work at a particular courthouse may not be available to assist litigants in civil cases. See also Cal. Gov’t Code § 26806(a)-(c) (West Supp. 2006) (stating that in counties with a population of 900,000 or more, the “clerk of the superior court, shall, when interpreters are needed, assign the interpreters so employed to interpret in criminal and juvenile cases in the superior court.” Id. § 26806(b). “The clerk of the court may also assign the interpreters so employed to interpret in civil cases in superior and municipal courts when their services are not required in criminal or juvenile cases . . . .” Id. § 26806(c)).


\textsuperscript{80.} See Cal. Evid. Code § 752(a) (West 1995) (“When 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, an interpreter whom he or she can understand and who can understand him or her shall be sworn to interpret for him or her.”) (emphasis added). Unlike other statutes that provide for appointment of court interpreters, section 752(a) does not provide a loophole for judges to
low judges to appoint uncertified interpreters in all civil proceedings where the litigants are non-English speakers.\(^8\)

III. The Statutory Good Cause Exceptions Undermine the Legislature's Efforts to Improve Access to the Courts for Non-English Speaking Civil Litigants

A. Several Statutes Grant Judges the Discretion to Appoint Unqualified Interpreters, and in Some Cases, Carry on Proceedings Without the Presence of an Interpreter

The good cause exception permeates California statutory law.\(^8\) In its most basic form, the exception grants trial judges the discretion to appoint uncertified interpreters to assist non-English speaking litigants.\(^8\) Its clearest emanation appears in California Government Code section 68561(c). Subdivision (a) of the same statute states that

appoint uncertified interpreters. Also, while a non-English speaking civil litigant does not have an unconditional right to a certified interpreter when appearing as a party, if called as a witness in the same case, section 752(a) would require that such an interpreter be provided by the court.

81. The use of unqualified interpreters in court proceedings is not unique to California. One commentator has indicated that in many state courts, judges "frequently use persons randomly obtained from the courtroom as interpreters, with little or no investigation into their competence. The use of not only bailiffs, secretaries, building janitors, courthouse personnel, jurors, arresting officers, probation officers, prison guards . . . district attorneys and other counsel . . . has been documented." Alice J. Baker, A Model Statute to Provide Foreign-Language Interpreters in the Ohio Courts, 30 U. TOL. L. REV. 593, 603–604 (1999) (footnotes omitted). Baker also cited a 1991 study of interpreters in New Jersey courts indicating that "almost half of New Jersey judges use persons obtained randomly from the courtroom as interpreters . . . [and] that 88% of interpreters observed had never received any formal training . . . ." Id. at 603 n.62. See also Carlton M. Clark, Hon. Lynn W. Davis & Steven M. Sandberg, The Changing Face Of Justice In Utah, 14 UTAH BAR J. 14, 16 (2001) (noting the practical and ethical dilemmas that arise when attorneys interpret for their clients).

82. See, e.g., CAL. GOV'T CODE § 68561(c) (West 1997 & Supp. 2006); CAL. R. CT. 984.2(b)(2) (West 2005); CAL. EVID. CODE § 755(a) (West Supp. 2006); CAL. CIV. PROC. CODE § 116.550(a) (West 2006).

83. California Government Code section 68561(c) broadly allows the court to appoint an uncertified court interpreter “for a language designated by the Judicial Council who does not hold a court interpreter certificate.” Subdivision (a) of the same statute, in conjunction with subdivision (c), would permit an uncertified interpreter to interpret “in a court proceeding.” The plain meaning of this language would seem to imply that the good cause exception is applicable in both criminal and civil cases. As for criminal matters, Rule 984.2(b)(3) of the California Rules of Court more specifically provides that in a criminal or juvenile delinquency proceeding, a judge may appoint an interpreter who is not certified if certain conditions are met, such as to “prevent burdensome delay or in other unusual circumstances.” While the practice of utilizing uncertified interpreters in criminal cases raises many legitimate concerns, that issue is beyond the scope of this article.
except for good cause as provided in subdivision (c), any person who interprets in a court proceeding using a language designated by the Judicial Council . . . shall be a certified court interpreter as defined in Section 68566 for the language used." Subdivision (c) provides that "[a] court may for good cause appoint an interpreter for a language designated by the Judicial Council who does not hold a court interpreter certificate. The court shall follow the good cause and qualification procedures and guidelines adopted by the Judicial Council." The last sentence of section 68561(c), when read in conjunction with section 68564(d), restricts the court's ability to appoint uncertified interpreters by requiring the judge to conform to certain procedures and guidelines before doing so. One of the problems with these two provisions, however, is that they do not go far enough in guiding this judicial determination. A judge who consults section 68561(c) in deciding whether or not to appoint an uncertified interpreter may not be familiar with the Council's "good cause and qualification procedures and guidelines." Also, because the statute does not indicate where these procedures and guidelines are located, a judge may be at a loss in trying to find them.

Despite this vague statutory language, the Council has in fact set forth procedures and guidelines for the court to follow in appointing uncertified interpreters. It is dubious, however, whether these guidelines even apply to civil cases. For example, Judicial Council form IN-100, which references section 68561(c), sets forth certain steps that the court must take in order to appoint an uncertified interpreter. However, the title of this form, Procedures and Guidelines to Appoint a Noncertified Interpreter in Criminal and Juvenile Delinquency Proceedings, would seem to indicate that the form is not applicable in civil cases.

84. CAL. GOV'T CODE § 68561(a). Section 68566 defines a certified court interpreter as "[a] natural person who . . . holds a valid certificate as a certified court interpreter issued by a certification entity approved by the Judicial Council . . . ." CAL. GOV'T CODE § 68566 (West 1997).

85. CAL. GOV'T CODE § 68561(c).

86. California Government Code section 68564(d) (West 1997) states that the Council shall establish "[p]rocedures and guidelines for determining good cause to appoint an interpreter for a language designated by the Judicial Council who is not certified, and for qualifying such an interpreter, pursuant to subdivision (c) of Section 68561." 87. CAL. GOV'T CODE § 68561(c).

88. JUDICIAL COUNCIL OF CALIFORNIA, PROCEDURES AND GUIDELINES TO APPOINT A NONCERTIFIED INTERPRETER IN CRIMINAL AND JUVENILE DELINQUENCY PROCEEDINGS, FORM NO. IN-100 (1996), available at http://www.courtinfo.ca.gov/forms/documents/in100.pdf [hereinafter FORM IN-100].
Judicial Council form IN-110,\textsuperscript{89} entitled \textit{Qualifications of a Noncertified Interpreter}, presents a similar problem. This form consists of twelve questions that the prospective interpreter must answer concerning his or her qualifications and experience as an interpreter.\textsuperscript{90} The answers to these questions are then reviewed by the judge in making her determination as to whether the person should be appointed as an interpreter.\textsuperscript{91} However, if form IN-110, which references Rule 984.2(c) of the California Rules of Court,\textsuperscript{92} is read in conjunction with IN-100, it would apply only to criminal and juvenile delinquency proceedings.

If these forms do not apply to civil cases, then there would be an inconsistency in section 68561. While the statute broadly applies to all court proceedings,\textsuperscript{93} the qualification procedures and guidelines that the judge must follow pursuant to subdivision (c) are applicable only in non-civil cases. If this is so, then there are in fact no procedures or guidelines that the court must follow in civil cases, thus making the last sentence of subdivision (c) an empty requirement.

Even assuming judges follow these forms in civil cases,\textsuperscript{94} they nonetheless grant the court too much discretion in appointing interpreters. For example, despite the thoroughness with which the questions in form IN-110 probe the prospective interpreter's background and experience,\textsuperscript{95} the form provides no indication as to when the judge must find that the person is unqualified. In other words, should the judge's determination be based mainly on the person's level of education?\textsuperscript{96} His or her language training?\textsuperscript{97} His or her interpreting experience?\textsuperscript{98} Should the prospective interpreter be appointed if they have several years of interpreting experience but no language training or college degree? Even more troubling, the discretionary problem

\textsuperscript{89} Judicial Council of California, Qualifications of a Noncertified Interpreter, Form No. IN-110 (1996), available at \url{http://www.courtinfo.ca.gov/forms/documents/in110.pdf} [hereinafter Form IN-110].
\textsuperscript{90} Id. at 1–3.
\textsuperscript{91} See Form IN-100, supra note 88, at 1.
\textsuperscript{92} This rule is entitled: "Appointment of noncertified interpreters in criminal and juvenile delinquency proceedings." Cal. R. Ct. 984.2 (West 2005). For further discussion of this rule of court, see Cardenas, infra note 110.
\textsuperscript{94} Unfortunately, there is neither statistical nor anecdotal evidence indicating whether, or to what extent, judges utilize these forms in civil cases.
\textsuperscript{95} See Form IN-110 supra note 89, at 1–3.
\textsuperscript{96} See Form IN-110 supra note 89, at 2, question 3.
\textsuperscript{97} See Form IN-110 supra note 89, at 2, question 4.
\textsuperscript{98} See Form IN-110 supra note 89, at 2, question 7.
created by these guidelines may be exacerbated by a lack of judicial expertise in the area of foreign languages and language acquisition. 99

Thus, a review of the principal good cause exception, as well as the relevant Judicial Council forms and guidelines, illustrates the problems that arise as a result of confusing statutory provisions that grant judges overly broad discretion in who they appoint as interpreters. 100

Given its broad language, section 68561(c) applies to seemingly all court proceedings, both civil and criminal. 101 Several other statutory provisions apply the exception in more specific settings. For example, under California Government Code section 71802, a provision of the Trial Court Interpreter Employment and Labor Relations Act, 102 a superior court is required to hire only registered and certified interpreters to “perform spoken language interpretation,” but may hire “[i]nterpreters who are not certified or registered . . . as

99. See infra note 125.

100. Section eighteen of the Appendix to the California Rules of Court, which contains procedures that the court must follow when determining the need for an interpreter, suffers from many of the same discretionary problems as California Government Code section 68561(c) and the related Judicial Council forms. Cal. R. Ct. App. § 18 (West 2005). This rule of court states that “[a]n interpreter is needed if, after an examination of a party or witness, the court concludes that: (1) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel . . . .” Id. § 18(a)(1). Subdivision (b) allows the court to examine the party to determine whether an interpreter is needed, while subdivision (c) provides the court with questions to ask the party in making that determination. Id. § 18(b), (c). These questions range from relatively simple ones dealing with identification (e.g., name, address, age) to questions about the court proceedings. Id. § 18(c). However, like the Judicial Council forms, section eighteen grants judges overly broad discretion in determining when an interpreter should be appointed, in that it does not contain a bright line rule as to when a party is deemed able or unable to understand the proceeding. This discretionary problem may be exacerbated if, due to their lack of language expertise, judges are unable to determine whether the individual appointed as a court interpreter is competent. See infra note 125. Lastly, the broad use of the term “interpreter” under subdivision (a), without specifying whether that “interpreter” need be certified or not, would seem to permit the court to appoint a person who is uncertified. Cal. R. Ct. App. § 18(a)(1). In this way, section eighteen is analogous to California Government Code section 68561. For further discussion of this rule of court, see Commission Report, supra note 5, at 13.

101. See discussion supra note 83.

independent contractors only when certified and registered interpreters are unavailable and the good cause and qualification procedures under section 68561 (c) have been followed.\textsuperscript{103}

In some areas of the Code, the exception is less explicitly stated. For example, California Evidence Code section 755.5(a) provides that

\begin{quote}
[d]uring 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 . . . an interpreter shall be present to interpret the examination in a language that the person understands. . . . The interpreter shall be certified.
\end{quote}

Despite this apparently clear mandate that only a certified interpreter be appointed, subdivision (e) provides that “[i]n the event that [certified interpreters] . . . cannot be present at the medical examination . . . the requester specified in subdivision (a) shall have the discretionary authority to provisionally qualify and utilize other interpreters.”\textsuperscript{104} While the statute does not specify who these “other interpreters” may be, it is likely, as demonstrated by the above discussion, that they consist of family members, friends, or others untrained in court interpreting.

Other statutes not only allow the court to invoke the exception, but also permit judges to enter binding orders in the absence of an interpreter. For example, in small claims hearings, “[i]f the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony, and needs assistance in so doing, the court may permit another individual (other than an attorney) to assist that party.”\textsuperscript{105} Pursuant to subdivision (c) of the same statute, “failure to include an interpreter for a particular language . . . shall not invalidate any proceedings before the court.”\textsuperscript{106} Thus, not only may a small claims commissioner appoint an unqualified person to serve as an interpreter, she also has the discretion to

\textsuperscript{103} CAL. GOV'T CODE § 71802(d) (West Supp. 2006). According to the Judicial Council, an independent contract interpreter “may be certified or noncertified, registered or nonregistered.” 2004 INTERPRETER REPORT, supra note 43, at 7.

\textsuperscript{104} CAL. EVID. CODE § 755.5(e) (West 1995).

\textsuperscript{105} CAL. CIV. PROC. CODE § 116.550(a) (West 2006). This provision fails to use the term “certified.” It simply allows “another individual” to assist the non-English speaker. Id. The vagueness of this terminology, especially in the context of court interpretation where several interpreter classifications have been established, see discussion supra note 71, implies that almost anyone, despite his or her lack of qualifications, may be permitted to interpret in a given small claims proceeding.

\textsuperscript{106} CAL. CIV. PROC. CODE § 116.550(c).
effectively enter a binding order against a party who may not have understood the proceeding.\textsuperscript{107}

California Evidence Code section 755 is a similar statute. It initially provides that in domestic violence, parental rights, dissolution of marriage, or separation proceedings "in which a party does not proficiently speak or understand the English language, and that party is present, [a certified] interpreter [as provided pursuant to California Government Code section 68566], shall be present to interpret the proceedings in a language that the party understands . . . ."\textsuperscript{108} However, this same provision allows the court "in its discretion [to] appoint[ ] an interpreter who is not certified."\textsuperscript{109} Unlike Rule 984.2 of the California Rules of Court,\textsuperscript{110} which requires the judge in a criminal proceeding to follow Judicial Council procedures when appointing an uncertified interpreter, the family court judge acting pursuant to California Evidence Code section 755(a) is not so re-

\textsuperscript{107} The rationale behind broadly allowing "another individual" to interpret in small claims proceedings may be that the interests at stake are not, at least monetarily, as significant as they are in limited or unlimited civil cases. See discussion supra Part I.B. Another reason may be that such informal proceedings do not require interpreters to have formal qualifications. However, for an indigent, self-represented, non-English speaking small claims defendant, the $5,000 maximum amount that can be sued for may be substantial. See California Department of Consumer Affairs: Consumer Resource and Referral Guide: Legal Agencies - Small Claims Court Function, http://www.dca.ca.gov/smallclaims/sclfunct.htm (last visited Aug. 7, 2006). Also, by not specifying that the "individual" be certified or even qualified, this statute may run counter to the Jara court's reasoning, interpreting Gardiana, that because "[t]here exist no attorneys, no pleadings, and no specific rules of evidence [in small claims court] . . . unless the non-English speaking party has an interpreter he is effectively barred from access to the small claims proceeding." Jara v. Mun. Court, 578 P.2d 94, 96 (Cal. 1978).

\textsuperscript{108} CAL. EVID. CODE § 755(a) (West Supp. 2006). For further commentary on the proposed amendment to this statute, see discussion infra Part IV.A.1.

\textsuperscript{109} CAL. EVID. CODE § 755(a).

\textsuperscript{110} For further critique of this rule of court, see Roxana Cardenas, "You Don't Have to Hear, Just Interpret!": How Ethnocentrism in the California Courts Impedes Equal Access to the Courts for Spanish Speakers, 38 CT. REV. 24 (2001). Cardenas notes that Rule 984.2 of the California Rules of Court "is the source of much dissension among judges and interpreters because it lends itself to abuse by the courts, thereby bypassing the assignment of certified court interpreters. The court favors it because it is a tool of expediency, specifically preventing 'burdensome delays.'" Id. at 29. She also states that "[f]or the Spanish speaker, the 'good cause' clause [under 984.2(b)(2)] signifies a step back in the struggle for equal access, hearkening back to the days of self-proclaimed interpreters such as relatives, court staff, and the like. This rule violates the purpose of the [Federal] Court Interpreters Act and is a blow to the profession of certified court interpretation." Id. While Rule 984.2 applies only to criminal and juvenile dependency proceedings, its use of the good cause exception is analogous to the use of the exception in civil cases under California Government Code section 68561(c) (West 1997 & Supp. 2006).
stricted. Appointment of an uncertified interpreter is merely at her “discretion.” 111

Moreover, like in small claims matters, 112 the absence of an interpreter in a section 755 proceeding does not prohibit the judge from:

1. Issuing an order when the necessity for the order outweighs the necessity for an interpreter. (2) Extending the duration of a previously issued temporary order if an interpreter is not available. [Or] (3) Issuing a permanent order where a party who requires an interpreter fails to make appropriate arrangements for an interpreter after receiving proper notice of the hearing with information about obtaining an interpreter. 113

Thus, the effect of California Government Code section 68561(c) and its other statutory manifestations throughout the Code is clear: a judge in a civil proceeding involving one or more non-English speaking litigants, upon a finding of good cause 114 or simply pursuant to the judge’s discretion, 115 may, in lieu of appointing a certified interpreter, appoint an interpreter who is unqualified and incompetent. In certain situations, the judge may also enter binding court orders against a party where the need for an interpreter has been established but none are available. 116

111. CAL. EVID. CODE § 755(a).
113. CAL. EVID. CODE § 755(c)(1)-(3). The discretionary breadth of these provisions is striking. For example, under section 755(c)(1), the judge, if she finds that its issuance is particularly urgent, could theoretically enter a three-year civil harassment restraining order against a party who did not even understand the nature or extent of the proceeding. Similarly, under section 755(c)(3), a family law judge, on a finding that a particular non-English speaking litigant failed to locate an interpreter after receiving notice that one was needed, could theoretically enter a permanent child custody order precluding that litigant from seeing his or her children.

114. Whether or not the judge in a particular civil case follows the Judicial Council forms and guidelines in order to find good cause is dubious. See Cardenas, supra note 110, at 30 n.83 (“The author’s experience is that it is entirely in the judge’s discretion to decide what constitutes a ‘burdensome delay.’ A judge may invoke the ‘good cause’ clause if he needs an interpreter, but no interpreter is available. . . . If the judge does not wish to wait a full day or longer for a certified interpreter, he may invoke the ‘good cause’ clause.”). If this is the case—i.e., if judges are appointing uncertified interpreters simply because certified interpreters are unavailable—it may be that the good cause provisions are being invoked even though judges have no knowledge of an interpreter’s language skills other than his or her claim to be bilingual.

115. See CAL. EVID. CODE § 755(a).
116. According to the California Commission on Access to Justice, “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 . . . and court-related medical examinations.” See COMMISSION REPORT, supra note 5, at 12. Also, citing California Evidence Code section 755(e), the Commission is correct in recognizing that the “right” to a court-appointed interpreter in section 755 proceedings is merely “illusory,” given the contingency of such an appointment on the availability of fed-
B. The Good Cause Provisions Undermine the Legislature’s Recognition that Only Certified Interpreters Are Able to Adequately Ensure Equal Access to the Courts for Non-English Speaking Civil Litigants

The reasons underlying the enactment of these good cause provisions may not be evident at first glance. While one could argue that the dearth of professionally-trained interpreters necessitates judicial use of the provisions, the statutes do not indicate as much. The Legislature is silent as to why these exceptions, which are couched in statutory subdivisions in which the main or preceding provisions require the court to appoint a certified interpreter, were enacted. As for the Council, none of its reports have recognized, let alone justified, the use of the exceptions.

Despite its silence on the matter, the legislative justification for enacting these provisions may follow the reasoning of Jara. For example, one may argue that neither the California Constitution nor any state common law rule requires judges to appoint a certified interpreter for a civil litigant at public expense, especially if that litigant is represented by an attorney.\(^{117}\) Thus, that a judge would even consider appointing an interpreter for civil plaintiffs, who access the courts of their own volition,\(^{118}\) is more than the law requires that judge to do. As for civil defendants, who are compelled to appear in court, the legislative justification may be that most of them are already adequately represented by counsel.\(^{119}\)

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118. This, obviously, is in contrast to criminal defendants who have no choice as to their appearance in court.
119. This contention, in effect, is part of the holding of Jara. Jara, 578 P.2d at 96. However, it is questionable whether immigrant, non-English speaking litigants are able to even hire attorneys, let alone “adequate” ones who are fluent in their native languages. For example, the Public Policy Institute of California has indicated that poverty rates are substantially higher for immigrants than for United States natives. Public Policy Institute of California, Immigrants in California: Just the Facts 2 (2002), http://www.ppic.org/content/pubs/jtf/JTF_ImmigrantsJTF.pdf (“In 2000, the poverty rate of foreign-born people residing in California was 18 percent, compared to 12 percent of U.S. natives.”). Given their low socio-economic status, non-English speaking immigrants may be those individuals least able to hire an attorney.
Another reason for the use of these provisions may be that because the interpreter problem in civil cases tends to arise predominantly in limited civil actions or family law proceedings, the use of certified interpreters in those cases is not as critical as it is in criminal proceedings where there is presumptively more at stake. This contention, however, would seem to imply that the importance of all criminal proceedings outweighs that of all civil matters.120

Part and parcel of this latter belief is the contention that because these civil matters are less important, unqualified bilingual persons are an adequate substitute for professionally-trained court interpreters. However, even what may appear to be a simple civil proceeding, such as an amendment to a child custody order or a request for a civil harassment restraining order, is likely to involve complex legal language that an ordinary bilingual person, untrained in court interpreting, does not understand or is unable to interpret. Thus, such a belief would undoubtedly be "a step back in the struggle for equal access, hearkening back to the days of self-proclaimed interpreters such as relatives, court staff, and the like," effectively bringing "the bilingual up to the level of a certified court interpreter."121

As noted above, the more obvious reason for the existence of these provisions is the unavoidable fact that there are simply not enough certified court interpreters to assist all non-English speakers accessing California's courts, let alone a sufficient number to assist all civil litigants.122 Thus, these provisions act as "tools of expediency,"123 or judicial crutches, that permit the bench to make ends meet when professional interpreters are unavailable.124

While it may be argued that the appointment of uncertified interpreters is necessary to deal with the increasing number of non-English

120. See discussion supra Part II.B.
124. The inadequate number of trained interpreters in California is, and will likely continue to be, a particularly acute problem for the courts. While the Judicial Council has phrased the problem in terms of inadequacy, see RACIAL BIAS REPORT, supra note 52, at 108, at least one source claims that the number is actually decreasing. According to the California Commission on Access to Justice, "[t]he availability of qualified interpreters has declined precipitously in the past several years," especially in key languages such as Spanish and Cantonese. See COMMISSION REPORT, supra note 5, at 21. For example, the Commission notes that "[i]n 1995, 1,536 interpreters were certified in Spanish. Five years later, the number dropped to 988—a 36 percent decline. Interpreters certified in Cantonese numbered 31 in 1995; in 2000, the number dropped to 22." Id. (citations omitted). While these numbers had risen to 1088 and 23 respectively by 2005, they are still well below their level of ten years ago. Id.
speakers accessing the courts, another argument can be made that this practice is a wholly inadequate alternative that may even be detrimental to those litigants the court is trying to assist. Because the statutes grant courts broad discretion in who they may appoint when certified interpreters are unavailable, a judge may inadvertently appoint a person who is either not fluent in the relevant foreign language, or, though bilingual, is completely unfamiliar with the complicated legal lexicon used in court proceedings. This shortcoming presents the possibility that given his or her lack of linguistic expertise, and despite otherwise good intentions, an uncertified interpreter may unintentionally act to the detriment of a non-English speaking litigant by incorrectly or incompletely interpreting court proceedings. In this way, the use of unqualified interpreters does not serve as a crutch or “tool of expediency” for the courts, but rather constitutes a harmful substitute that denies rather than facilitates access to the courts for this segment of the population.

The larger problem, however, at least in terms of demographics and judicial administration, is that the use of these “substitute” interpreters undermines the Legislature’s efforts over the past three decades to increase access to the courts for non-English speakers. As stated above, the California Legislature, under the auspices of the Judicial Council, has incurred substantial expense and expended considerable effort in pursuit of its goal to create a highly qualified and competent cadre of professionally-certified court interpreters. More recent signs of these efforts include steps taken to increase the cadre’s full time membership through financial and employment.

125. Some commentators argue that the root of the interpreter problem is the wide discretion that monolingual and linguistically-inexperienced judges are given in determining whether an individual is competent to be a court interpreter. See, e.g., Grabau & Gibbons, supra note 29, at 258 (“Granting judges such broad discretion is problematic because it presumes that a judge is able to determine who is a qualified interpreter. Even if a judge is bilingual, it is unlikely that the judge has an independent basis to determine the proposed interpreter’s linguistic competency.”) (footnotes omitted); Shulman, supra note 29, at 185, 187 (“A judge who is not fluent in the language to be interpreted cannot independently evaluate the interpreter’s fluency, and he must rely on the individual’s representations of her ability and experience . . . . Judges . . . . therefore, cannot meaningfully protect the defendant’s right to a competent court interpreter . . . . [T]hey are not themselves court interpreters nor do they usually have any expertise in the area.”).

126. See Berk-Seligson, supra note 34, at 15–17.

127. See discussion supra Part II.B.

128. Between January 1, 1999 and July 1, 2000, the Legislature authorized two wage increases for court interpreters constituting a 32.5% increase in pay over this period. See 2004 Interpreter Report, supra note 43, at 14.
related incentives. Over the years, this larger legislative plan, put into practice by the Judicial Council, has been improved and supported by the Legislature out of recognition that uncertified interpreters do not adequately ensure access to the courts for non-English speakers.

Yet, despite this recognition, the Legislature has, in the form of good cause exceptions, undermined its own best efforts. These statutory provisions undermine the Legislature’s intentions by allowing the courts to utilize something that the Legislature itself has tried to abolish: uncertified interpreters. The severity of the problem would not be as great if the provisions were invoked only sparingly, such that uncertified interpreters were only used on rare occasions. However, given the scarcity of certified interpreters and the abundance of non-English speaking litigants accessing the courts, these exceptions, at least in the civil context, are likely invoked more often than not.

In order to provide these litigants with any judicial access at all, the bench may believe that it has no other option. The California Legislature, through the fact-finding and administrative role of the Judicial Council, cannot be but fully cognizant of the problem. Thus, by allowing these statutes to remain on the books in their present form, the Legislature is effectively condoning a practice that it purports to prohibit.

The Legislature and the Council may view these provisions as a short-term solution to the problem. The belief may be that once there are an adequate number of certified interpreters in the state, or once the proportion of Californians who speak inadequate English decreases, the good cause exceptions will no longer be necessary. However, in the thirty years since the Legislature first officially recognized the problem, and in the fourteen years that the good cause exception has existed, there has been no indication that either of these contingencies is likely to be met in the near future. In fact, statistical data suggests that levels of immigration, as well as the proportion of non-English speakers in the state, will actually increase in the coming decades. Thus, given the stagnant, and potentially decreasing num-

132. See Cal. Gov't Code § 68561 (West 1997 & Supp. 2006). This statute, which includes the good cause exception under subdivision (c), was enacted in 1992. Id.
ber of certified interpreters, these statutory exceptions may, by default, become the rule. Despite the lack of hard data indicating the frequency with which the courts utilize uncertified interpreters, it may be that this has already happened.

In the meantime, an increasing number of non-English speakers are attempting to participate in civil proceedings around the state. Due to the lack of certified interpreters or the priority given to criminal defendants, inexperienced family members and friends, court employees, and members of the public are filling in. While justice is likely served in many of these cases, there are undoubtedly some in which it is not. Thus, the specter of Jara continues to loom over the courts in the form of sustained judicial use of uncertified interpreters. Despite valiant efforts on the part of the Legislature to move away from its antiquated holding, Jara is implicitly, if not directly, being invoked as much now as it was almost thirty years ago.

IV. Solving the Interpreter Problem

A. The Legislature and the Judicial Council Must First Recognize that Current Proposals Will Not Solve the Problem

In a 1997 report on the problem of racial and ethnic bias in the courts, the Judicial Council Advisory Committee on Racial and Ethnic Bias concluded that “[a]n inadequate number of qualified interpreters are available to assist non-English speakers.” One of the Committee’s proposed solutions to the problem was to “urge consideration of the recommendation that local courts should ensure that an adequate number of trained interpreters are available to assist non-English speakers in both criminal and civil cases.”

136. See discussion supra Part III.A. See also Simmons, supra note 3, at B2 (noting an incident cited in a study by the California Commission on Access to Justice in which “a woman who spoke only Spanish had to rely on her child and the husband accused of abusing her to tell her side to a court clerk.”).
137. The author does not discount the likelihood that in some civil cases, given their brevity or simplicity, non-English speakers may, through the assistance of an uncertified interpreter, understand enough of the proceeding such that no real injustice is done. However, the fact that this level of understanding cannot be guaranteed in all civil proceedings is sufficient to raise concern as to the effectiveness and legitimacy of this practice.
138. See Racial Bias Report, supra note 52.
139. Id. at 108.
140. Id. at 108-109.
Seven years later, in its statutorily-prescribed five-year report to the Legislature,\textsuperscript{141} the Council again concluded that “the state’s trial courts are facing a critical shortage of qualified interpreters.”\textsuperscript{142} As part of its \textit{Recommendations to Increase the Number of Certified and Registered Court Interpreters}, the Council made several proposals, including increased rates for certified interpreters, development and implementation of a refresher course for inactive interpreters, expansion and implementation of a mentoring program in which experienced court interpreters serve as counselors for new interpreters, and development of a resource manual for court interpreters.\textsuperscript{143}

While undoubtedly drafted with the best intentions in mind, these proposals, with the possible exception of increased pay rates,\textsuperscript{144} are unlikely to significantly increase the number of interpreters in the courts. The Council’s own recent reports and statistics substantiate this assertion. For example, according to the \textit{Judicial Council 1996 Annual Report to the Governor and the Legislature}, California had 1675 certified interpreters in 1996.\textsuperscript{145} Eight years later, despite several wage increases\textsuperscript{146} and legislation passed to grant more stable employment to professional interpreters,\textsuperscript{147} that number had fallen to 1361.\textsuperscript{148} Thus, these proposals are either slow to take effect or, more plausibly, they have simply failed to achieve their desired result.

As the interpreter dilemma worsens over the coming years, the Council will likely advance similar proposals, finding comfort in the fact that the bench is dealing with the problem as best it can by utilizing the services of non-professionals. However, by virtue of its own findings and conclusions,\textsuperscript{149} the Council cannot be but fully aware that these services are inadequate, and that given the decreasing pool

\begin{itemize}
\item \textsuperscript{141} See CAL. GOV’T CODE § 68563 (West 1997).
\item \textsuperscript{142} 2004 INTERPRETER REPORT, supra note 43, at 18.
\item \textsuperscript{143} Id. at 19.
\item \textsuperscript{144} State court interpreters are currently paid substantially less than federal court interpreters. See supra note 75. Until state wages are on par with federal wages, professionally-trained interpreters will have a financial disincentive to become state court interpreters. See Simmons, supra note 3, at B2 (“[S]tate courts have lost professional interpreters to private agencies and the federal court system because of the pay.”). This may also mean that federal courts are able to hire and retain the best, most qualified interpreters, thus leaving the less competent ones to work in state courts.
\item \textsuperscript{145} See RACIAL BIAS REPORT, supra note 52, at 100 n.150.
\item \textsuperscript{146} See 2004 INTERPRETER REPORT, supra note 43, at 14.
\item \textsuperscript{147} See Trial Court Interpreter Employment and Labor Relations Act, CAL. GOV’T CODE §§ 71800–71829 (West Supp. 2006).
\item \textsuperscript{148} See 2004 INTERPRETER REPORT, supra note 43, at 6.
\item \textsuperscript{149} See, e.g., 2004 INTERPRETER REPORT, supra note 43, at 20.
\end{itemize}
of certified interpreters, the ability of non-English speakers to access the courts shows no signs of improvement.

1. Assembly Bill 2302: An Incomplete Solution to the Interpreter Problem

Currently pending in the California State Senate is a bill that would amend California Evidence Code section 755.150 This statute currently provides for the appointment of certified interpreters in domestic violence, parental rights, dissolution of marriage, and separation proceedings “in which a party does not proficiently speak or understand the English language.”151 The proposed amendment would change this language to provide certified interpreters “in any civil action or proceeding.”152 The amendment would also require the court to waive interpreter fees for a party appearing either pro se or in forma pauperis,153 or if the court determines that the party is financially unable to pay them.154 Unlike the current version of section 755,155 the funds to pay for interpreter fees under Assembly Bill 2302 are not contingent on the availability of federal funds authorized pursuant to the federal Violence Against Women Act.156

The benefits to be derived from the passage of this bill cannot be overstated. The mere fact that the Legislature is proposing to provide certified and, in some cases, court-funded, interpreters for all non-English speaking civil litigants evidences a new legislative acknowledgment of the current interpreter problem and constitutes a critical step forward in the effort to provide these litigants with equal court access. For example, the most recent version of the proposed amendment indicates that “[i]nadequate resources to assist litigants with limited English proficiency affect the court’s ability to function properly, causing delays in proceedings for all court users, inappropriate defaults, and faulty interpretation that can ultimately subvert justice,”157 and that “[r]eliance on untrained interpreters, such as family members or

151. CAL. EVID. CODE § 755(a) (West Supp. 2006).
153. This term is defined as “[i]n the manner of an indigent who is permitted to disregard filing fees and court costs.” BLACK’S LAW DICTIONARY 794 (8th ed. 2004).
155. See CAL. EVID. CODE § 755(e).
156. See Assemb. B. 2302, 2006 Leg., Reg. Sess. § 2(e) (Cal. 2006).
157. Id. § 1(d).
children, can lead to faulty translations and threaten the court's ability to ensure justice."^{158}

Apart from the Legislature's desire to provide certified, court-funded interpreters for all indigent and self-represented litigants that need them, this proposed amendment is essentially identical to the statute as currently drafted. This is due to the fact that the Legislature, in its quest to introduce sweeping legislation in the area of court interpreters, has failed to omit the good cause exception. The most current version of the proposed amendment provides that "[t]he interpreter shall be certified pursuant to Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code, except as provided in subdivision (c) of Section 68561 of the Government Code."^{159} Moreover, Assembly Bill 2302 will retain most of current section 755(c),^{160} which permits the court to issue an order "when the necessity for the order outweighs the necessity for an interpreter,"^{161} and to extend "the duration of a previously issued temporary order if an interpreter is not readily available."^{162}

The presence of the good cause provision in the proposed amendment is like a dark cloud in otherwise clear skies. As this Comment has demonstrated, the exception provides a loophole for judges to appoint uncertified interpreters in civil cases, especially in situations where certified interpreters are unavailable.^{163} In light of the Legislature's efforts to improve the quality of interpreting services in the courts, Assembly Bill 2302, if signed into law as currently drafted, would constitute yet another glaring example of legislative inconsistency in the area of court interpretation.^{164}

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158.  *Id.* § 1(f).
159.  *Id.* § 2(a) (emphasis added). California Government Code section 68561(c) is the primary statutory good cause exception. *See* discussion *supra* Part III.
160.  *See id.* § 2(c).
162.  *Id.* § 755(c)(2).
163.  *See* discussion *supra* Part III.B.
164.  *See* discussion *supra* Part III.B.
B. The Only Way to Effectively Solve the Interpreter Problem Is to Eliminate the Good Cause Provisions and Amend the State Constitution\textsuperscript{165}

As evidenced by the reports and other data cited in this Comment, California’s courts face a serious dilemma with regard to the lack of professionally-trained interpreters in civil proceedings. Even if the Legislature were to eliminate the statutory good cause provisions and amend the state constitution so as to guarantee the right to a certified interpreter in all civil cases, given the lack of competent interpreters, such changes would have no immediate impact on the current situation. Requiring a judge to appoint a certified interpreter where one is simply unavailable would lead to a situation where the law is one of form without substance. However, these amendments are the only way to effectively guarantee equal court access for California’s non-English speaking population and to avoid the pitfalls associated with relying on the services of non-professionals.

While the author of this Comment does not discount the various solutions and recommendations advanced by both the Council\textsuperscript{166} and the California Commission on Access to Justice\textsuperscript{167} to ameliorate the interpreter problem, it is unclear how they would effectuate amendments to the statutes and the California Constitution. Given the need for these amendments and the desire to avoid enacting ineffective legislation, this Comment proposes specific procedural and administrative changes that could be implemented so as to make the unconditional right to a certified interpreter more feasible.

The first proposed change is to have the courts make an earlier determination as to the need for and appointment of certified interpreters. Under the current statutes, it is the judge who makes the determination as to whether an interpreter is needed in a given case.\textsuperscript{168} The problem with waiting for the judge to make this determination is

\textsuperscript{165} For example, California Constitution article I, section 14 could be amended to read: "[Any] person unable to understand English who [appears in any civil or criminal proceeding] has a right to a [ ] [certified] interpreter throughout the proceedings.");

\textsuperscript{166} See supra Part IV.A.

\textsuperscript{167} See COMMISSION REPORT, supra note 5, at 35–41. In its report, the Commission has outlined a comprehensive list of recommendations and proposals to improve language access in the courts. These include the right to a qualified interpreter for non-English speaking parties without regard to financial ability, development of training and resources that will allow judges and court staff to identify and address language issues, evaluation of language access policies statewide, and a reevaluation of the state’s system for recruitment, training, compensation and certification of court interpreters, among others. Id.

\textsuperscript{168} See discussion supra Part III.A.
that if one is needed and none are available, the matter is either heard without a certified interpreter or it is continued. If steps were taken to make this determination earlier on, these problems could be avoided.

For example, the Council could institute a procedure whereby upon filing suit, the plaintiff is notified by the court that all non-English speaking parties must secure the aid of a certified interpreter in order for their matter to be heard. If the plaintiff is a non-English speaker and indigent or self-represented, the appointment of a court-funded interpreter would be made at the same time suit is filed. If the litigant is uncertain as to her English proficiency, she would be evaluated by a court employee trained in her native language before or at the time suit is filed. This evaluation would allow the court employee to determine whether or not a certified interpreter should be appointed for that litigant.

For civil defendants, the summons or complaint served on them would contain a notification similar to that given to non-English speaking civil plaintiffs. Thus, if necessary, professional evaluation of the defendant’s English proficiency would be required before the matter could be heard. One difference, however, would be that interpreter fees for these defendants would be waived by the court in all cases.

169. It should be noted that Assembly Bill 2302 proposes to waive interpreter fees for indigent and self-represented litigants. See Assemb. B. 2302, 2006 Leg., Reg. Sess. § 2(b) (1) (Cal. 2006) (“The fees of an interpreter shall be waived for a party who needs an interpreter and appears either in propria persona or in forma pauperis pursuant to Section 68511.3 of the Government Code or if the court otherwise determines that the party is financially unable to pay the cost of an interpreter.”). If the litigant is not indigent or is unable to demonstrate the financial need for a court-funded interpreter, then he or she would be responsible for paying these fees.

170. In order for this process to be feasible, each court would have to schedule hearing dates based on interpreter availability. Thus, a non-English speaking civil plaintiff would not be given a court date unless the clerk could guarantee the availability of a certified interpreter on the day of the hearing.

171. These employees would be certified interpreters trained in a particular county’s most commonly-spoken foreign languages, such as Spanish and Cantonese. As court employees under the Trial Court Interpreter Employment and Labor Relations Act, CAL. GOV’T CODE §§ 71800–71829 (West Supp. 2006), they would, in addition to their role as courtroom interpreters, provide language evaluations for litigants at scheduled times during the day. If there are no available court employees fluent in the litigant’s native language, other steps, such as referral to an independent contractor interpreter trained in that language, would be necessary. As with interpreter fees, the cost of these referral services would be waived for indigent and self-represented litigants.

172. Alternatively, if both parties are able to pay interpreter fees, these costs could be statutorily awarded to the defendant in the event the plaintiff’s suit is unsuccessful.
These procedural changes would also alleviate the problems associated with the unavailability of certified interpreters in civil cases. If the need for an interpreter is determined before a party files his or her paperwork, calendaring of cases could be improved by matching cases where an interpreter is needed with interpreter availability. Under this procedure, interpreters would be scheduled and assigned to a particular party weeks or months in advance of that party’s hearing. This scheduling procedure would allow the courts to more efficiently utilize the limited number of interpreters they have at their disposal and would avoid court days in which interpreter demand exceeds supply. In this way, the inevitable delays and continuances that result when certified interpreters are unavailable could be eliminated.\textsuperscript{173}

Another benefit to be derived from these proposed changes would be the removal of discretion from the trial judge in appointing interpreters. As noted above, many judges, due to their lack of foreign language expertise, are unable to adequately determine when an individual qualifies as a competent interpreter.\textsuperscript{174} This lack of expertise, when combined with the broad discretion granted to them under the current statutes, may lead judges to either misjudge a litigant’s English language ability and fail to appoint an interpreter when one is needed, or lead them to select an incompetent interpreter who is unable to adequately interpret the proceeding. By mandating that a certified interpreter evaluate a particular litigant’s English language proficiency, and by requiring that either the court clerk or the parties themselves secure the services of these professionals before they appear in court, the trial judge’s problematic discretionary role will effectively be removed.

Finally, the constitutional and statutory amendments advanced by this Comment may actually increase the number of certified interpreters in the courts. As explained by one commentator, individuals considering a career in court interpreting would feel more confident in their marketability as professional interpreters if their future job was not subject to being delegated to non-professionals.\textsuperscript{175} Thus, without

\textsuperscript{173} Another way to combat the problem associated with limited interpreter availability would be to enact a statutory provision requiring each county courthouse to have at least one to three full-time interpreters certified in the county’s most commonly-spoken foreign languages available to appear exclusively in civil proceedings. Such a provision would guarantee greater interpreter availability for non-English speaking civil litigants.

\textsuperscript{174} See Grabau & Gibbons, supra note 29, at 258.

\textsuperscript{175} See Cardenas, supra note 110, at 30 n.84 ("If the good cause clause exists to allow nonqualified people to interpret, what is the point of seeking training to become quali-
the good cause provisions, prospective interpreters would have more incentive to become court employees under the Trial Court Interpreter Employment and Labor Relations Act, \(^{176}\) or work in the courts as independent contractors. \(^{177}\) In either case, the Legislature, by eliminating the exceptions, would be able to draw more professional interpreters to the courts.

**Conclusion**

It may be difficult for the monolingual American who has never been forced to learn a foreign language to comprehend the confusion and frustration that confronts the non-English speaking person attempting to navigate the formal processes of an English-speaking society.

While the interpreter dilemma outlined in this Comment may be a minor one in other parts of the country, the demographic makeup of California makes the state, perhaps more than any other, particularly prone to the problem. In response, the California Legislature, which has been a trailblazer among state legislatures in granting rights for non-English speakers, \(^{178}\) has ultimately failed to guarantee equal access to the judicial system for the most disadvantaged segment of the state's population.

It is evident that the insufficient number of professionally-trained interpreters in California presents a particularly acute obstacle in the path toward solving the problem. However, this insufficiency is only part of the dilemma. Underlying it is a more enduring conflict that the Legislature is waging with itself. While the Legislature has recognized the need to provide the courts with certified interpreters, the statutory structure it has established is undermining its efforts to combat the interpreter problem. This legislative inconsistency has taken place in a context in which the California Supreme Court has been...
unwilling to overrule an outdated common law decision whose reasoning, by all accounts, is no longer generally accepted.\textsuperscript{179}

The ultimate effect of this judicial obstinacy and legislative inconsistency has been an unequal distribution of justice in California's courts. While criminal defendants are guaranteed the right to an interpreter when one is needed,\textsuperscript{180} civil litigants are not. While some civil litigants are provided a professionally trained court interpreter for their cases, others similarly situated, by virtue of the availability of certified interpreters in the court on the day of their appearance, are not. Only by establishing more uniform rules can the state hope to rectify this inequality. California's non-English speaking population deserves no less.

\textsuperscript{179} See discussion \textit{supra} Parts I.B, II.B.
\textsuperscript{180} See \textit{Cal. Const.} art. I, § 14 ("A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.").