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Breaking The Language Barrier: New Rights For California's Linguistic Minorities

"El demandado admite la sentencia a del demandante por la cantidad de mil dolares y autorizo que se asiente la sentencia por esa cantidad." *An English-speaking person, if signing a contract which contained the above phrase, probably would not realize that he had just authorized a confession of judgment. Linguistic minorities in the United States face similar problems daily with the use of the English language in dealings which frequently affect basic rights and necessities. Recent developments in both California and federal law signify a beginning towards penetration of the isolated position of such minorities created by the language barrier. This comment analyzes those developments in an effort to assess the effectiveness of such attempts to break the barrier and to propose potential alternative solutions to protect the rights of linguistic minorities in California.*

Justice Holmes declared a half-century ago that "it is desirable that all citizens of the United States should speak a common tongue."¹ In the United States, English is the only officially recognized language and the furnishing of official state services and documents in more than one language is an exception to the rule that such services and documents be furnished only in English. At one time the California Constitution declared that all official writings shall be in the English language.² Although this was deleted as surplusage by a 1966 constitutional revision, California Welfare and Institutions Code Section 8 still provides, as do many of the codes,³ that "[w]henver any notice, report, statement or record is required or authorized by this code, it shall be made in writing in the English language."⁴

1. *Meyer v. Nebraska*, 262 U.S. 390, 412 (1923) (dissenting opinion).

2. CAL. CONST. art. IV, §24 (1849).

3. See, for example, CAL. CODE CIV. PROC. §185.

4. Such requirements did not always exist in California. In its early history California provided one of the most far-reaching methods of political information for linguistic minorities by means of non-English session laws. See Fedynskyj, *State Session Laws In Non-English Languages*, 46 IND. L.J. 463 (1971).

Recently, however, various cultural subgroups in our society have demanded that they be accorded a legal status not inferior to that which has long been enjoyed by the dominant element.⁵ The California State Legislature has responded to this demand with the enactment of bilingual legislation. Realizing that one of the sensitive points of the relationship between the minority group and the remainder of society is that of language, the legislature has set out to break this barrier and, at the same time, make life less difficult for such persons while the goal is being pursued.

This comment will initially trace the development of case law relating to the rights of linguistic minorities. As will be seen, linguistic minorities have had limited success in arguing their cases on the theories of due process and equal protection. However, a recent United States Supreme Court decision has introduced the Civil Rights Act of 1964 as a possible alternative theory for the successful argument of legal challenges forwarded by linguistic minorities. The reshaping of public policy in California in the nature of bilingual legislation shall also be examined. Recently enacted bilingual laws have been selected for review, and the positive and negative implications of proposed bilingual legislation will be analyzed, with special focus on the properly designed bilingual bill.

A CONSTITUTIONAL IMPERATIVE?

Recent court decisions present a new legal aspect to the right of linguistic minorities not to be discriminated against for an insufficient knowledge of English. Whether these decisions mandate state communications or services in more than one language is the subject of the following discussion.

A. *Castro v. State of California*

Until recently, Article II, Section 1 of the California Constitution denied the right to vote to any person who was not able to read the constitution in the English language and write his or her name.⁶ In 1970 the first significant step in the recognition of the rights of linguistic minorities was taken by the California Supreme Court in the case of *Castro v. State of California*.⁷ In *Castro*, non-English-speaking petitioners proved that they were adequately informed on political issues

5. The social pressure for equal treatment has been reflected by a new and more meaningful legal status for these persons. *Guerrero v. Carlson*, 9 Cal. 3d 808, 817, 512 P.2d 833, 839, 109 Cal. Rptr. 201, 207 (1973) (dissenting opinion). See L. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 576-80 (1973).

6. CAL. CONST. art. II, §1 (1879) (repealed Nov. 7, 1972).

7. 2 Cal. 3d 223, 466 P.2d 244, 85 Cal. Rptr. 20 (1970).

and could therefore cast intelligent votes despite their inability to communicate in the English language. Petitioners were able to demonstrate access to considerable information on matters of national, state, and local concern by virtue of the availability of numerous newspapers and magazines published in Spanish, as well as Spanish programs on radio and television. As a result of this showing, the court held that California's constitutional provision conditioning the right to vote upon an ability to read the English language was, as applied to persons literate in Spanish but not in English, unconstitutional as violative of the equal protection clause. The court reasoned that the state's classification denying the "fundamental right" to vote to linguistic minorities as a class was not supported by a "compelling state interest." Although the state's interest in having intelligent voters was a promotable one, the constitutional provision was not properly tailored to effectuate that interest. The disfavored class which was denied the vote included persons not only literate in a language (Spanish), but also sufficiently educated and informed on the political issues. Conversely, those included within the favored class were not necessarily intelligent voters by virtue of the mere fact they spoke English. Additionally, the court extended its holding to any case in which otherwise qualified voters, literate in any language other than English, are able to make a comparable demonstration of access to sources of political information. However, the court was careful to limit the scope of its holding, stating:

Whether such a radical reconstruction of our voting procedures is constitutionally compelled, however, is a separate question. It is clear that the goal of efficient and inexpensive administration, while praiseworthy, cannot justify depriving citizens of fundamental rights. But this does not imply that the state must not only provide all qualified citizens with an equivalent opportunity to exercise their right to vote, but must also provide perfect conditions under which such right is exercised California is not required to adopt a bilingual electoral apparatus as a result of our decision today The state interest in maintaining a single language system is substantial and the provision of ballots, notices, ballot pamphlets, etc., in Spanish is not necessary either to the formation of intelligent opinions on election issues or to the implementation of those opinions through the mechanics of balloting. It reasonably may be assumed that newly enfranchised voters who are literate in Spanish can prepare themselves to vote through advance study of the sample ballots with the assistance of others capable of reading and translating them.⁸

8. *Id.* at 242, 446 P.2d at 257-58, 85 Cal. Rptr. at 33-34.

Two noteworthy points emerge from the *Castro* opinion. First, although California can no longer deny qualified linguistic minorities access to the ballot, the state is not obligated under the equal protection clause to provide all qualified citizens with *perfect conditions* in which to exercise their right to vote. Thus the court used the equal protection clause merely as a device to prevent total deprivation of a fundamental right and not as an equalization device to assure the same ease in the exercise of such right. Secondly, it was assumed by the court that a member of a linguistic minority group who wishes to vote can prepare himself by way of advance study and with the *assistance of others* who are capable of reading and translating for him. This notion of translation via others is to play a predominant and recurring role against the demands by linguistic minorities for bilingual governmental services and documents. Although *Castro* seemingly called an end to discrimination based on the inability to communicate in English, a subsequent federal court decision showed just how slightly the door to linguistic minority rights had opened.

B. *Carmona v. Sheffield*

In the case of *Carmona v. Sheffield*⁹ a group of Spanish-speaking citizens alleged that they were denied due process and equal protection by reason of California's refusal to grant them unemployment insurance benefits. Plaintiffs claimed that the denial of unemployment insurance benefits and the subsequent dismissals of their administrative appeals were a direct result of the failure of the Department of Human Resources Development to make Spanish-speaking employees available to help determine the validity of their claims, and of the further failure of the defendants to provide written notices in Spanish to applicants who had evidenced an ability to understand only the Spanish language. The federal district court granted the State's motion to dismiss for failure to state a claim upon which relief could be granted and in so doing pointed out the unreasonableness in the plaintiffs' contention. The court believed that a decision in favor of plaintiffs would ultimately require the State of California, all other states, and the federal government to provide forms and to conduct their affairs and proceedings in whatever language is spoken and understood by *any* person or group affected thereby. The federal district court stated,

The breadth and scope of such a contention is so staggering as virtually to constitute its own refutation. If adopted in as cos-

9. 475 F.2d 738 (9th Cir. 1973), *aff'g* 325 F. Supp. 1341 (N.D. Cal. 1971).

mopolitan a society as ours, enriched as it has been by the immigration of persons from many lands with their distinctive linguistic and cultural heritages, it would virtually cause the processes of government to grind to a halt The extent to which special consideration should be given to persons who have difficulty with the English language is a matter of public policy for consideration by the appropriate legislative bodies and not by the Courts.¹⁰

On appeal, the United States Court of Appeals, Ninth Circuit, affirmed the district court's dismissal. In a brief opinion, it held that as a matter of procedural due process California's approach was a reasonable one since there appeared to be no relatively easy means of providing a more adequate form of notice.¹¹ In turning to the equal protection issue, the court stated that "[e]ven if we assume that this case involves some classification by the state, the choice of California to deal only in English has a reasonable basis."¹²

C. *Guerrero v. Carlson*

Three years after its decision in *Castro*, the California Supreme Court, in *Guerrero v. Carlson*,¹³ once again faced the question of possible violation of linguistic minority rights. On this occasion, the court addressed itself specifically to the question of whether linguistic minorities have a right to non-English governmental notice. In *Guerrero*, despite a welfare agency's knowledge that certain Spanish-speaking recipients of welfare were not literate in English, the agency sent them notices in English of proposed reductions and terminations of benefits. Allegedly as a result of their unfamiliarity with the English language, some of the beneficiaries who had received such notices failed to make timely requests for a hearing and suffered an immediate reduction or termination of benefits. Plaintiffs sought an injunction prohibiting the welfare agency from reducing or terminating welfare payments to recipients known to the agency to be literate in Spanish, but not in English, except pursuant to a notice in Spanish. The lower court denied the injunction, and the California Supreme Court affirmed in a six to one decision.¹⁴ In language similar to that used by the *Carmona* court, the California Supreme Court declared that although in appropriate cases the use of Spanish in notices of proposed termination or reduction of welfare benefits would be desirable as a matter of public policy, such use did not rise to the level of a constitutional

10. 325 F. Supp. at 1342.

11. 475 F.2d at 739.

12. *Id.*

13. 9 Cal. 3d 808, 512 P.2d 833, 109 Cal. Rptr. 201 (1973).

14. Justice Tobriner dissented in a separate opinion.

imperative. Underlying the court's decision was the recurring fear of a *concursum horribilium*,¹⁵ which is to say that a decision in favor of the plaintiffs would have called for application of a similar rule in the case of *all* non-English-speaking recipients and would necessitate notices in scores of different languages in connection with *all* official notices. Borrowing the reasoning of the *Carmona* court, the majority concluded that such a result could make the conduct of official business all but impossible.

1. *Procedural Due Process*

The major thrust of the plaintiffs' contention for non-English governmental notice was based on the due process clause. Although the plaintiffs conceded that there was no direct authority for this proposition, they relied heavily on *Goldberg v. Kelly*.¹⁶ In the course of its opinion in *Goldberg*, the United States Supreme Court observed that a welfare recipient must be given a "timely and adequate" hearing notice in the case of termination of benefits,¹⁷ but did not delineate guidelines for the contents or form of such notice. Although the notice was considered adequate in *Goldberg*, the question of its being in any language other than English was not raised. Accordingly, in *Guerrero* the California Supreme Court held that *Goldberg* did not mandate that a termination notice given to Spanish-speaking recipients was constitutionally adequate only if prepared in Spanish.¹⁸

Additionally, the plaintiffs in *Guerrero* supported their contention by turning to both general and specific authority on the law of notice. The general authority relied on by plaintiffs was *Mullane v. Central Hanover Trust Co.*,¹⁹ from which the following passage on the adequacy of notice necessary to satisfy due process is derived:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance [W]hen notice is a person's due, process

15. 9 Cal. 3d at 815, 816, 822, 512 P.2d at 838, 842, 109 Cal. Rptr. at 206, 210.

16. The primary holding in *Goldberg* was that recipients of public assistance payments are entitled under procedural due process to an evidentiary hearing before the state may terminate those payments. 397 U.S. 254 (1970).

17. *Id.* at 267-68.

18. 9 Cal. 3d at 811, 512 P.2d at 834, 109 Cal. Rptr. at 202.

19. 339 U.S. 306 (1950).

which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.²⁰

The specific authority relied on by the plaintiffs was *Covey v. Town of Somers*,²¹ in which a notice of judicial foreclosure for delinquency in paying real property taxes was sent to a property owner whom the authorities knew was mentally incompetent and unable to understand the meaning of any such communication. Reversing the foreclosure judgment, the United States Supreme Court quoted the foregoing language of *Mullane* and ruled that notice to a person known to be an incompetent who is without the protection of a guardian does not measure up to this requirement of due process.²²

The California Supreme Court in *Guerrero* agreed with both the *Mullane* principles on notice and the application of such principles in *Covey*, but distinguished the concept of plaintiffs' lack of ability to speak English from an unsoundness of mind which justifies appointment of a legal guardian. The court declared that an incompetent may be unable to understand an official notice no matter how it is explained to him. In contrast, the plaintiffs in *Guerrero* were in full possession of their mental faculties and were admittedly literate in Spanish. Accordingly, the Court held that "[t]hey are able without question to understand a *translation* of the notice into [Spanish]."²³ The court viewed the due process issue as depending on "[w]hether governmental agencies can reasonably believe that upon receiving the notice plaintiffs will seek and obtain such a translation."²⁴ In resolving this issue, the court went on to make certain assumptions regarding the non-English-speaking recipient of governmental notices in the English language. Initially, it felt that it was "reasonable to assume that in contemporary urban society the non-English-speaking individual has access to a variety of sources of language assistance."²⁵ The court then set forth two basic means of language assistance available to such persons.

[First,] he may turn to members of his family, friends, or neighbors who were either born in this country or received some schooling here. [S]econdly, he may contact representatives of governmental agencies or private organizations devoted to (1) counseling immigrants, (2) assisting particular nationalities, linguistic

20. *Id.* at 314-15.

21. 351 U.S. 141 (1955).

22. *Id.* at 146.

23. 9 Cal. 3d at 812, 512 P.2d at 835, 109 Cal. Rptr. at 203.

24. *Id.*

25. *Id.* at 813, 512 P.2d at 836, 109 Cal. Rptr. at 204.

groups, trades, or professions, (3) protecting individual rights to welfare or other governmental benefits, or (4) furnishing legal aid to the poor.²⁶

Additionally, the court carefully

examined the various forms of notice employed in this case: each notice [was] printed on letterhead of the Department of Social Services of Los Angeles County; each [was] personally addressed to the individual plaintiff by name, address, and case number; [and each manifested itself as] an official communication . . . and was signed by a social worker or departmental representative.²⁷

Also emphasized was the fact that inasmuch as welfare payments played such a crucial role in the daily lives of the plaintiffs, it could

be assumed that a welfare recipient would not be so disinterested in his family's livelihood as to simply ignore an official document delivered in the mail which has every appearance of relating to his right to receive public assistance payments.²⁸

The court concluded by holding that

[i]n view of the practicalities and peculiarities of the case . . . , it is not unreasonable for the state to expect that persons such as those in the plaintiffs' position will promptly arrange to have someone translate the contents of the notice Accordingly, prior governmental preparation of notice in Spanish is not a constitutional imperative under due process.²⁹

It would appear that a threefold test has emerged from *Guerrero* for determining compliance with due process requirements for governmental notice to non-English-speaking persons. First, the notice in its "substantive context" must be such as to reasonably convey all required information regarding the particular action and to afford the recipient reasonable time to make an appearance.³⁰ This requirement appears to be applicable to all governmental notices regardless of whether the recipient is non-English-speaking. Secondly, for the non-English-speaking recipient, the form of the notice must be so calculated as to alert him to the importance of having the writing translated. Thirdly, the non-English-speaking recipient of such notice must have access to some source of language assistance in order to have the notice translated for him. In light of the various means

26. *Id.*

27. *Id.*

28. *Id.* at 814, 512 P.2d at 836, 109 Cal. Rptr. at 204.

29. *Id.* at 814, 512 P.2d at 837, 109 Cal. Rptr. at 205.

30. This requirement necessitates compliance with the basic principles on the law of notice as enunciated in *Mullane*. See text accompanying notes 19-20 *supra*.

of translation available, obtaining such assistance would not appear to present a significant problem in most situations.³¹

2. Equal Protection

Plaintiffs in *Guerrero* also contended that the failure to furnish them with notices in Spanish violated the principles of equal protection. It was argued that to send notices of reduction or termination of welfare benefits in English to recipients known to be illiterate in that language was to arbitrarily discriminate against them by creating a class of recipients who are denied aid without being duly and properly informed of the reasons for such denial. Plaintiffs contended that this classification substantially affected their right to public assistance and that there was no merit in such a classification by the state. The court rejected this contention by reasoning that since it had already found the notice in English to be adequate under due process standards, plaintiffs' purported classification did not in fact exist. Even assuming that the court had recognized its existence, since the classification would not substantially affect a fundamental right, the court would not have been required to apply the "compelling state interest" test.³² Therefore, in applying the traditional test of equal protection,³³ the court could have reasoned that there existed a reasonable basis for such classification by reason of the state's interest in an efficient and inexpensive administration and in maintaining a single language system for all of its citizens.

In light of the foregoing cases, a number of conclusions may be drawn regarding the legal rights of linguistic minorities in California. Initially, pursuant to equal protection thinking, a linguistic minority cannot be deprived of his fundamental rights on the basis of his inability to communicate in the English language. However, *Carmona* and *Guerrero* taken together illustrate the limited use which the equal protection clause has in the area of *extending* linguistic minority rights. Furthermore, due process does not appear to be a major constitutional

31. Although a situation could be hypothesized in which a non-English-speaking person is sufficiently cut off from contact with others able to translate for him, such a person or class of persons would appear to be small. See Brief for Respondents at 14-15, *Guerrero v. Carlson*, 2 Civ. No. 39549 (Cal. App., 2d dist., 1973).

32. A person does not have a "fundamental right" to welfare. See *Dandridge v. Williams*, 397 U.S. 471, 485 (1970).

33. Under the so-called "traditional test" a classification is said to be permissible under the Equal Protection Clause unless it is "without any reasonable basis." On the other hand, if the classification affects a "fundamental right," then the state interest in perpetuating the classification must be "compelling" in order to be sustained. *Dandridge v. Williams*, *id.* at 519-20 (dissenting opinion).

vehicle for any widespread mandate requiring bilingual state services, notices, or other official writings. Its role appears to be limited to those situations in which a plaintiff could prove that not even the circumstances which surrounded the plaintiffs in *Guerrero* exist—that, in light of all the facts, the notice which affects his rights is insufficient to call his attention to the importance of having the writing translated and that he had no access to means of translation at the time.³⁴ Lastly, although bilingual requirements are highly desirable, they do not appear to be a question for the courts but rather a matter of public policy for the legislature to act upon.

CIVIL RIGHTS ACT OF 1964

In the recent case of *Lau v. Nichols*,³⁵ the United States Supreme Court unanimously ruled that the failure of the San Francisco school system to provide special English language instruction to approximately 1,800 non-English-speaking students of Chinese ancestry denied them a meaningful opportunity to participate in the public education program. The Court declared that such denial violated Section 601 of the Civil Rights Act of 1964³⁶ which bans discrimination in any program or activity receiving federal financial assistance. The school district in this case received large amounts of federal financial assistance. In order to obtain such federal assistance, it contractually agreed to comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by the Department of Health, Education, and Welfare (HEW) which are issued pursuant to Title VI. In 1968, pursuant to Section 601 of the Act, HEW issued a guideline which stated that "school systems are responsible for assuring that students of a particular race, color, or national origin are not denied the opportunity to obtain the education generally obtained by other students in the system."³⁷ In 1970 HEW made the guidelines more specific with the issuance of the following regulation:

Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.³⁸

34. Brief for Respondents at 14, *Guerrero v. Carlson*, 2 Civ. No. 39549 (Cal. App., 2d dist., 1973).

35. 94 S. Ct. 786 (1974).

36. 42 U.S.C. §2000(d) (1970).

37. 33 C.F.R. §4955 (1968).

38. 35 Fed. Reg. 11595 (1970).

Under Section 602 of the Civil Rights Act of 1964,³⁹ HEW is also authorized to issue rules, regulations, and orders to insure that recipients of federal aid under its jurisdiction conduct any federally financed projects consistently with Section 601 of the Act. Accordingly, HEW's regulations specify that the recipients may not "[p]rovide any service, financial aid, or other benefit to an individual which is different or is provided in a different manner from that provided to others under the program." Nor, may a recipient "[r]estrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program."⁴⁰

The Court found that the school district was not in compliance with the Act or the guidelines made pursuant thereto, by the district merely providing these students with the same facilities, textbooks, teachers, and curriculum as English-speaking students. Never reaching the equal protection argument advanced by the plaintiffs, but relying solely on the aforementioned Civil Rights Act provisions and interpretive guidelines, the Court remanded the case for appropriate relief based on the expertise of the school officials.

Two points should be kept in mind when interpreting the scope of the Court's decision in *Lau*. First, Justice Stewart, joined by Chief Justice Burger and Justice Blackman in a concurring opinion, pointed out that

it is not entirely clear that Section 601, . . . standing alone, would render illegal the expenditure of federal funds on these schools On the other hand, the *interpretive guidelines* published by the Office for Civil Rights of the Department of Health, Education, and Welfare in 1970, 35 Fed. Reg. 11595, clearly indicate that affirmative efforts to give special training for non-English speaking pupils are required by Tit. VI as a condition to receipt of federal aid to public schools⁴¹

This language may reasonably be interpreted as indicating that the existence of interpretive guidelines might be essential in determining whether the conduct of other federally financed projects is deemed violative of Section 601 of the 1964 Civil Rights Act.

Secondly, in a separate concurring opinion, Justice Blackmun warned against the possibility that the Court's judgment in *Lau* may be interpreted broadly. He stressed the fact that the children con-

39. 42 U.S.C. §2000(d)-1 (1970).

40. 45 C.F.R. §80.3(b)(1) (1973).

41. 94 S. Ct. at 789-90 (emphasis added).

cerned with in *Lau* consisted of a very substantial group (approximately 1,800). However, Justice Blackmun stated,

[W]hen, in another case . . . we are concerned with a very few youngsters, or with just a single child who speaks only German or Polish or Spanish or any language other than English, I would not regard today's decision, or the separate concurrence, as conclusive upon the issue For me, *numbers* are at the heart of this case and my concurrence is to be understood accordingly.⁴²

ASSISTING THE LINGUISTIC MINORITY BECOMES PUBLIC POLICY IN CALIFORNIA

Since 1971 approximately ninety bills have been introduced in the California State Legislature which in some way affect linguistic minorities. Although this type of legislation has had a poor passage record,⁴³ many of the bills which have been enacted are of great assistance to the linguistic minority in his contact with the state and his fellow citizens. The purpose of the following discussion is to examine a sampling of existing and proposed bilingual legislation in California today.

A. Education

The Court in *Lau v. Nichols* did not direct a specific remedy for curing the educational problems encountered by linguistic minority children. Although it mentioned possible approaches the school district may wish to take in alleviating these problems, *Lau* left the final determination for rectifying the problem to the expertise of the school district itself.⁴⁴ One approach, already available to local school districts in California, is a legislative scheme adopted in 1972.

The Bilingual Education Act of 1972 was added to the Education Code in order to promote bilingual education programs in public schools.⁴⁵ "Bilingual education" is the use of two languages, one of which is English, as a means of instruction in which concepts and information are introduced in the dominant language of the student and reinforced in the second language.⁴⁶ The Act recognizes that the teaching of language skills is most meaningful and effective when presented in the context of an appreciation of cultural differences and

42. 94 S. Ct. at 791 (Blackmun, J., & Burger, C.J., concurring) (emphasis added).

43. For example, during the 1971 and 1972 legislative sessions some 65 bills were introduced in the California Legislature and only 10 became law.

44. 94 S. Ct. at 787.

45. CAL. EDUC. CODE ch. 5.7 (commencing with §5761), as enacted, CAL. STATS. 1972, c. 1258, at 2505.

46. CAL. EDUC. CODE §5761.2(a).

similarities. The Act was in response to a legislative finding that there are large numbers of children in California who come from families where the primary language is other than English.⁴⁷ For such children the inability to speak, read, and comprehend English presents a formidable obstacle to classroom learning and participation which can be removed only by instruction and training in the pupils' dominant language. The primary goal of bilingual programs is to develop in each child fluency in English as effectively and efficiently as possible so that he may then be enrolled in the regular program in which English is the language of instruction.⁴⁸

The Act requires school districts to undertake and report to the Department of Education an annual census⁴⁹ of all non-English-speaking children (children who communicate in their home language only),⁵⁰ and also children of limited English-speaking ability. The first annual census revealed that 188,160 school children fall within such categories.⁵¹ The Act also authorizes a prescribed program for bilingual education programs, including provisions regarding parent and community participation. Participation in the program is voluntary for both school districts and pupils, and those school districts wishing to participate are required to submit to the Department of Education their proposed bilingual program for approval.⁵² However, in light of *Lau v. Nichols* it seems that an added incentive for school district participation has been created—namely, those school districts containing a substantial number of children of the same linguistic minority group must now provide some form of special educational assistance or face curtailment of federal funds.

One of the major difficulties participating school districts encounter is the shortage of qualified bilingual teachers. In recognition of this shortage, the Act provides that a district may, after diligent search and recruitment in California with the assistance of the Department of Education, request from the Superintendent of Public Instruction either a waiver of certification requirements of such teachers or an authorization to utilize for two years only a monolingual teacher and a bilingual

47. CAL. EDUC. CODE §5761.

48. *Id.*

49. CAL. EDUC. CODE §5761.3.

50. CAL. EDUC. CODE §5761.2(c).

51. Statistics used in the census were derived from the fall 1972 school term, grades kindergarten through twelve. A further breakdown of the census indicates: (1) non-English-speaking children total 47,509 (Spanish—43,456, Cantonese—1,017, Tagalog—606, Portuguese—556, Japanese—448); and (2) children with limited English-speaking ability total 140,651 (Spanish—119,434, Cantonese—5,206, Tagalog—4,528, Portuguese—2,226, Japanese—2,027).

52. See generally CAL. EDUC. CODE §§5761-5763.

aide for such classes.⁵³ In response to the Act, in May of 1973 the Commission for Teacher Preparation and Licensing adopted a Specialist Instruction Credential for Bilingual Cross-Cultural Education. During its 1973 session, the California Legislature enacted Senate Bill 1335⁵⁴ which recognizes the need for increased numbers of bilingual-bicultural teachers to staff present projects. Senate Bill 1335, which added Chapter 5.77 (commencing with Section 5768) to the Education Code, requires the Commission for Teacher Preparation and Licensing to design career ladder programs, to provide for grants to allow bilingual aides to become fully certificated bilingual teachers, and in conjunction with public institutions of higher education, to design a comprehensive language and cultural curriculum for teachers who are already certificated in order that they may qualify for the credential.

Thus the educational process is the primary manner in which California is attempting to break the language barrier. Formal education is, after all, a major agency for transforming a heterogeneous and potentially divided community into a community bound together by a common language and a sense of common identity. But education is not the answer in itself. It can assist in bringing about a society in which all persons have a basic understanding of the English language and an appreciation of cultural differences and similarities, but it has one basic limitation in achieving such a goal. Education does not reach all persons who need it—namely, those linguistic minorities who are not participating in the educational process in some form.⁵⁵ Therefore, until the goal is ultimately reached, additional legislation is required to enable the linguistic minority to live well in a society in which he does not speak the dominant language.

B. Governmental Services

During the 1973 legislative session, the California Legislature specifically addressed itself to the problem of providing the linguistic minority with the right to bilingual governmental services. The legislature discovered that numbers of persons were being denied rights and benefits to which they would otherwise be entitled because of a lack of trained, bilingual public employees.⁵⁶ As a result of this discovery,

53. CAL. EDUC. CODE §5764.

54. CAL. STATS. 1973, c. 1096.

55. For example, seventy-five percent of all Mexican-American children of school age are enrolled in school, but the number in high school is only one-third what it should be on the basis of population. Their drop-out rate is over twice the national average. R. ANDERSON, *BILINGUAL SCHOOLING IN THE UNITED STATES* 108 (1970). See also Kobrick, *A Model Act Providing for Transitional Bilingual Education Programs in Public Schools*, 9 HARV. J. LEGIS. 260, 262 (1972).

56. CAL. GOV'T CODE §7291. The magnitude of the problem, however, was not

the Bilingual Services Act of 1973 was enacted, which added Chapter 17 (commencing with Section 7290) to the Government Code.⁵⁷ The Act was added to provide for effective communication between all levels of government and the people who are precluded from utilizing public services because of language barriers.⁵⁸ The Act requires state and local agencies which furnish information or render services by contact with a *substantial number* of non-English-speaking people to employ a *sufficient number* of qualified bilingual persons in public contact positions or as interpreters to assist those in such positions, in order to insure provision of information and services in the non-English language.⁵⁹ Exempt from the provisions of the Act are school districts, county boards of education, and offices of county superintendents of schools.⁶⁰ The determination of which positions are "public contact" positions, what constitutes a "substantial number" of non-English-speaking people, and what constitutes a "sufficient number" of qualified bilingual persons is to be made by the state or local agency.⁶¹

Although some agencies were attempting to fill public contact positions with bilingual personnel prior to the enactment of the Act,⁶² they were not under any legal duty to do so. It is of interest to note that the Act as originally introduced required every state and local public agency to employ bilingual personnel in public contact positions if at least 15 percent of the population which the office served were non-English speaking.⁶³ Although this mandatory formula would have left no discretion in the agency for determining when it would be required by law to initiate a bilingual personnel program, it might have had the effect of deterring agencies which deal with a substantial number of non-English-speaking people, yet not amounting to 15 percent, from offering bilingual services. The multiple effect of all those agencies falling within such a category might have resulted

clear. The "Bilingual Compensation Survey," conducted by the State Personnel Board in November 1972, in response to Assembly Rule 102, A.C.R. 102, CAL. STATS. 1972, c. 127, at 167, indicated that nine out of 70 state departments surveyed required bilingual positions. Another 2,000 positions were identified for their desirability for using a second language. At the local level, there was even less information available. Eighteen out of sixty cities surveyed had bilingual requirements, but the number of bilingual positions was not available. See generally *Hearings on A.B. 86 Before the California Assembly Committee on Employment and Public Employees*, Apr. 10, 1973, at 1.

57. A.B. 86, CAL. STATS. 1973, c. 1182.

58. CAL. GOV'T CODE §7291.

59. CAL. GOV'T CODE §7293.

60. CAL. GOV'T CODE §7298.

61. CAL. GOV'T CODE §§7292, 7293, 7297.

62. See, for example, STATE DEPARTMENT OF SOCIAL WELFARE, *MANUAL OF POLICIES AND PROCEDURES* §22-203.3 (1969) (bilingual and cultural approaches).

63. A.B. 86, 1973-74 Regular Session, *as introduced*, Jan. 16, 1973.

in vast numbers of non-English-speaking persons being denied the benefits of the Act. Apparently, in light of this limiting effect, the arbitrary percentile determination was dropped in favor of the "substantial number" formula. The agency is thus under an obligation to make a good faith determination of whether they serve a substantial number of non-English-speaking people. This legal obligation could no doubt be challenged in the courts should an agency fail to make a good faith determination, or no determination at all.

The legislature made no fiscal appropriation for the Act because it may be implemented only by filling positions made vacant by retirement or by normal attrition.⁶⁴ However, in light of the immediate importance of this type of legislation, it seems desirable for state and local agencies to implement the program immediately by means other than retirement or attrition. For example, Spanish language instruction could be given to the present staff in an agency in order for it to develop a working knowledge of the minority language.⁶⁵ Work time could be allocated for such a program of instruction, and perhaps instructors could be acquired by way of volunteers from local schools or from bilingual personnel already employed by the agency. In any event, long-range planning will be necessary for agencies to adequately increase the proportion of bilingual employees on their staffs, in both public contact positions and as interpreters assisting those in public contact positions.

The legislators responsible for the Act have recommended a five-point plan for its immediate implementation for both city and county governments.⁶⁶ The recommendation proposes that city councils and county boards of supervisors adopt a resolution acknowledging that there exists in the city and county a substantial number of non-English-speaking people, that the city and county adopt a timetable for implementing the Bilingual Services Act, that city and county Civil Service Commissions be directed to study the effect of the Act on future hiring plans, that the commissions make an immediate survey of the number of bilingual personnel presently employed, and that the city and county hold public hearings to allow the linguistic minorities to express their feelings on any proposed action. It would appear that should such a plan be adopted by a city or county government, it would then have the burden of proving that it does or does not serve a substantial number of non-English-speaking people. This burden of proof would not appear to be easily satisfied, considering that there is

64. CAL. GOV'T CODE §7294.

65. STATE DEPARTMENT OF SOCIAL WELFARE, *supra* note 62.

66. Sacramento Bee, Nov. 27, 1973, at B 2, col. 4.

no simple means of identifying a non-English-speaking person. Although a person's surname may be helpful in making the identification, it is not definitive on the issue of illiteracy in the English language. Furthermore, learning a new language is a process, not an event. When a non-English-speaking person is exposed to the English language, whether by formal study or simply by living in an English speaking environment, he will ordinarily pass through a long gradation of proficiency until he becomes fully bilingual. At what point on that scale does literacy in English begin for such a person and the right to bilingual governmental services in his own language end?⁶⁷

The Act additionally requires any materials explaining available services to be translated into any non-English language spoken by a substantial number of the public served by the agency. Whenever oral or written notice of the availability of materials explaining services is given, it shall be given in English and in the non-English language into which any materials have been translated. Here again, the determination of when these materials are necessary is left to the discretion of the agency. The Act is to be implemented to the extent that local, state, or federal funds are available, and to the extent permissible under federal law and the provisions of civil service law governing the state and local agencies.

C. Administration of Justice

1. Police-Community Relations

On April 25, 1973, Assembly Bill 1670 was introduced in the California Legislature and was passed to the Senate on September 10.⁶⁸ The bill was in response to a legislative finding of need for improvement in citizen knowledge of police procedures and police knowledge of community attitudes and conventions. The legislature felt that any misunderstandings resulting from such mutual lack of knowledge between the citizens and the police could be alleviated by means of the publication of a guidebook for police and other citizens which, while not attempting to formally interpret law or police regulations, would attempt to establish proprieties of speech and conduct suitable for the situations in which misunderstandings most frequently arise. Assembly Bill 1670 requires the Commission on Peace Officer Standards and Training to prepare a draft of a guidebook for police and citizens, the purposes being to express in clear and nontechnical lan-

67. Brief for Respondents at 10, *Guerrero v. Carlson*, 2 Civ. No. 39549 (Cal. App., 2d dist., 1973).

68. A.B. 1670, 1973-74 Regular Session (proposed CAL. PEN. CODE §13515).

guage the respective obligations of police and citizens in those situations in which they most frequently encounter each other, and to ameliorate relations between police and citizens by establishing a mutual understanding of the needs for commonly used police procedures and the appropriate citizen responses, and by better informing the police of the conventions of the various social groups in California. A preliminary draft of the guidebook in both English and Spanish is to be submitted to the legislature, the Governor, and the Department of Justice six months after the effective date of the bill.

2. *Small Claims Courts*

Small claims courts are a major defense for the victimized consumer and may be the only contact such a citizen has with the judicial system. Consequently, an opportunity for a fair and adequate hearing should be guaranteed. Assembly Bill 1233 was introduced during the 1973 session and passed to the Senate on September 14.⁶⁹ Assembly Bill 1233 provides that in certain counties, municipal courts that have more than a specified number of judges shall have a department that must remain open at least either one night a week or one night every other week and Saturday for the purposes of conducting a small claims court. The bill additionally requires all courts to give each party in a small claims action a written statement of the alternatives available for enforcement of the judgment. Such statement is required to be distributed in English and a foreign language when the court determines that there is a *sufficient population* that speaks a foreign language as its primary language.

3. *Legal Forms*

The 1972 Conference of Delegates recommended to the Board of Governors of the State Bar of California that a committee be created to inquire into the propriety of having certain court forms printed in Spanish as well as English. Proponents of the resolution contend that for California's non-English-speaking citizens of Spanish heritage, who have or will become involved with the judicial system, legal forms in English do not adequately convey their legal rights.⁷⁰ Apparently, some Mexican-American citizens involved with the judicial process have lost their rights to proceed to trial in consumer and landlord-tenant cases because they were unable to read a summons informing

69. A.B. 1233, 1973-74 Regular Session (proposed CAL. CIV. CODE §118; CAL. GOV'T CODE §72300.5).

70. STATE BAR OF CALIFORNIA, 1972 CONFERENCE RESOLUTION 1-7.

them of the necessity to file a written response in court.⁷¹

The magnitude of the default problem in California, however, is not clear. The Legal Aid Foundation of Los Angeles contends that local judges appear loath to set aside default judgments in which the ground of excusable neglect is based upon a defendant's inability to read the summons served upon him.⁷² On the other hand, the State Bar Legal Forms Committee contends that the substance of the summons as it has existed for the past several years is designed to accomplish its fundamental objective—to inform the defendant that he is being sued and that he should respond prior to the expiration of the time specified in the summons or important consequences such as default may flow from his failure.⁷³ The Legal Forms Committee considered the fundamental problem as to why defendants allow defaults to be taken against them, and whether practically anything can be done in the form of statutory change to avoid such defaults. The committee declared that upon discussing the matter with a number of judges who have familiarity with motions to set aside defaults, it was informed that it is indeed seldom that a defendant seeks to set aside a default on the ground that he did not know he was being sued or that he just could not understand the summons.⁷⁴ The committee also stated that it was informed that "a large proportion of defendants who default do so because either they feel that the obligation is a just one or that they just do not wish to contest the proceedings at the time of service."⁷⁵

In recommending to the State Bar that it not sponsor legislation or other action to print summonses or other legal forms in Spanish and that it oppose any such legislation to this effect, the Committee on Legal Forms noted a number of potential problems if such legislation were enacted.⁷⁶ If the requirement be mandatory, the committee questioned whether all plaintiffs would be required to furnish Spanish translation of summons to defendants in all counties. In response to this problem, it can be urged that only those plaintiffs who know, or have reason to know, that the defendant is non-English speaking should be required to furnish a translation. Also, it does not ap-

71. Letter from George M. Duff, Directing Attorney, Legal Aid Foundation of Los Angeles, to Assemblyman William T. Bagley, May 1, 1973, on file *Pacific Law Journal*.

72. *Id.*

73. Letter from Richard A. Lavine, State Bar Committee on Legal Forms, to William B. Eades, Committee Coordinator, State Bar of California, Jan. 8, 1973, on file *Pacific Law Journal*.

74. *Id.*

75. *Id.*

76. *Id.*

pear necessary that all counties have a mandatory requirement to furnish the bilingual summons, particularly those without a substantial number of linguistic minorities. Another problem noted is, if a plaintiff failed to supply a Spanish translation, would that failure be a jurisdictional defect? Arguably, such a failure to comply with the statutory manner in which notice shall be given would be a jurisdictional defect. Even though a proper basis of personal jurisdiction is present and notice is given in such a manner as to satisfy the requirements of constitutional due process (a reasonable method of notice and a reasonable opportunity for a hearing), jurisdiction may still not be obtained. The state, by statute, may prescribe the manner (form) in which notice shall be given and compliance with the statutory procedure of notice (process) may be considered jurisdictional.⁷⁷ If it is, no jurisdiction over the person is acquired by the court in the particular action without such compliance.

Furthermore, "[i]f the printing of the summons is optional and confined to certain counties where Spanish-speaking persons are numerous, what sanction could be used to compel dissemination of Spanish forms of summonses?" One obvious sanction would be that the failure to supply a Spanish translation would be a jurisdictional defect; thus plaintiff would not acquire jurisdiction over the defendant. This would have the effect of supplying a defendant with a legal basis (*i.e.*, lack of in personam jurisdiction) for having a default judgment set aside.⁷⁸ The committee also pointed out, "If the summons were required to be printed in Spanish, what about the complaint itself? We attorneys realize that it is the complaint which is the more important document, and we seldom bother to even read a summons." A response to this point would seem simple—the requirement for a bilingual summons is not motivated by reason of what the attorney might read and consider pertinent, but rather to call the recipient's attention to the fact that he is being judicially summoned. If this is accomplished, it is reasonable to assume that the recipient of the summons would seek legal advice from an attorney who could read the complaint. In addition, "[i]f we require that summonses be printed in Spanish in counties where Spanish-speaking persons form an appreciable portion of the population, why not require that summonses be printed in Chinese in San Francisco County or in Armenian in Fresno County?" There is no logical reason why the bilingual summons

77. 1 B. WITKIN, *CALIFORNIA PROCEDURE, Jurisdiction* §83 (2d ed. 1970).

78. See CAL. CODE CIV. PROC. §473.5 (motion to set aside default). Cf. Siegal, *Supplementary Practice Commentary*, N. Y. JUDICIARY LAW §401 (McKinney Supp. 1973) (jurisdictional ramifications of failure to provide bilingual summons).

should not be furnished to these ethnic groups, as well as to any other in which a substantial number of such group is represented by non-English-speaking persons. It is important to note, however, that not all ethnic groups consist of such a substantial number of non-English-speaking persons as does the Spanish ethnic group. Statistics compiled by the United States Bureau of the Census indicate that as of 1969 only 80 percent of the United States population with Spanish backgrounds were literate in English, as compared to an average of 97 percent of those persons representing other ethnic groups. To illustrate the significance of this comparison, the next closest ethnic group demonstrated a literacy rate of 92.3 percent, as contrasted to the 80 percent figure which represented the Spanish group.⁷⁹ Accordingly, the *con-cursus horribilium*⁸⁰ alluded to by the committee appears illusory. Lastly, the committee questions, "What assurances would we have that defendants who read English imperfectly would necessarily understand Spanish translations of legal terms which have acquired peculiar legal meanings to lawyers over the centuries?" This question seems to misconstrue the aim of such legislation inasmuch as the purpose of the translation is to call attention to the basic nature of the summons, not to convey a *Black's Law Dictionary* translation of legal jargon.

On March 22, 1973, Assembly Bill 912 was introduced in the California Legislature and eventually died in the Assembly Judiciary Committee.⁸¹ Assembly Bill 912 would have required all subpoenas and summonses to be printed in English and Spanish. Undoubtedly, this bill's defeat is related to the conflict of opinion within the legal community regarding the translation of legal forms into languages other than English.⁸² It is also reasonable to assume that the bill was unnecessarily overbroad in its mandatory requirement that *all* summonses and subpoenas be printed in both English and Spanish.⁸³ A

79. These statistics reflect the percentages of persons of those groups who were 10 years old and over and able to read and write English. UNITED STATES BUREAU OF THE CENSUS, CURRENT POPULATION REPORT, SERIES P-20, No. 221, *Characteristics of the Population by Ethnic Origin: Nov. 1969* at 18 (1971).

80. See text accompanying note 15 *supra*.

81. A.B. 912, 1973-74 Regular Session (referred to Assembly Judiciary Committee, Mar. 26, 1973).

82. See STATE BAR OF CALIFORNIA, 1972 CONFERENCE RESOLUTION 1-7 (counter-arguments).

83. Cf. S.B. 1091, 1973-74 Regular Session. This bill amends CAL. CODE CIV. PROC. §412.20(a)(4) to require the summons to contain the following statement in boldface type in English and Spanish:

Take notice! You are being sued. Unless you or your attorney file a formal legal answer to the statements made in the attached complaint the court will assume that they are true and award judgment against you at the request of the plaintiff(s). This is the only notice you will receive before the judgment can be entered against you.

S.B. 1091 also amends §412.20(a)(5) to require that the notice in a summons advising

more reasonable approach would be to design such legislation narrowly for only those persons clearly needing it and thereby to conserve on the costs of translation and printing.

Initially, perhaps in the case of summonses, a plaintiff should only be required to furnish a translated version if he knows or has reason to know that the defendant is non-English speaking. This would appear to be a reasonable formula in light of the fact that litigants often have had some contact with one another and would therefore be in the best position for ascertaining whether the opposing party is literate in English. Furthermore, such a requirement could be further narrowed by restricting the nature of the particular transaction or dealing which gives rise to the requirements of a non-English summons. In this respect, it might be well to look at two recent changes in New York court practice.

On May 1, 1970, New York Laws of 1970, Chapter 302 added Subdivision (d) to Section 401 of the New York City Civil Court Act to require that summonses served in an action arising from a consumer credit transaction be printed legibly in both Spanish and English. Additionally, New York Civil Court Rules were amended to require that summonses be printed in Spanish as well as English when served in an action arising from a consumer credit transaction *conducted in Spanish*.⁸⁴ New York's recent legislation in the area of bilingual legal forms is most enlightening and provides a good example to follow and perhaps to expand upon. Specifically, the weak legal position of those who have little money and no property is manifest most often in the consumer area and the landlord-tenant relationship.⁸⁵ These areas, already suspect due to the existence of unequal bargaining positions between the parties, become even more suspect when the unfavored party is not literate in the language of the favored. Thus these situations particularly contribute to make everyday life for a member of a linguistic minority more difficult than for his English-speaking counterpart.

The following proposal is offered as an example of the apparent limits to which the California Legislature might resort in enacting responsive bilingual legislation in respect to the summons. Section 412.20 of the Code of Civil Procedure should be amended to require

the defendant of his right to obtain the advice of counsel be in both English and Spanish.

84. N.Y. CIV. PRAC. §2900.2 (McKinney 1973) (effective Sept. 1970).

85. Carlin, Howard, & Messinger, *Civil Justice for the Poor: Issues for Sociological Research*, 1 L. & Soc'y REV. 13-15 (1966).

any summons served in an action arising from a consumer credit transaction or a landlord-tenant relationship to be legibly printed or typed in both the English and Spanish languages whenever such transaction or relationship is principally conducted in Spanish.

Additionally, Section 185 of the Code of Civil Procedure should be repealed.⁸⁶

D. Consumer Protection

1. Home Solicitation Contracts

Sections 1689.5 to 1689.13 of the Civil Code provide a right to cancel a home solicitation contract or offer within a specified time period.⁸⁷ During the 1973 session, the California Legislature enacted Assembly Bill 175⁸⁸ which amended Section 1689.7 of the Civil Code to require that in a home solicitation contract or offer, the buyer's agreement or offer to purchase must be written in the same language as is principally used in the oral sales presentation. Section 1689.7 was also amended to require the "Notice of Cancellation," which must be attached to the agreement or offer to purchase, to be written in the same language as used in the contract.

2. Spanish Language Contracts

The legislature also passed Assembly Bill 212 during the 1973 session.⁸⁹ This bill was designed to place Spanish-speaking consumers on the same footing as English-speaking consumers by insuring that they have an equal opportunity to read and understand contractual agreements. Had Assembly Bill 212 become law, it would have required contracts entered into for the retail purchase of goods or services, or for secured loans, to be available in Spanish as well as English whenever the following conditions existed: (1) the purchaser requests such contract in Spanish; (2) the seller is a person engaged in any business or enterprise which provides goods or services at retail to the

86. CAL. CODE CIV. PROC. §185 states: "Every written proceeding in a court of justice in this state shall be in the English language, and judicial proceedings shall be conducted, preserved and published in no other."

87. For a complete discussion of these sections, see Comment, *A New Remedy for California Consumers: The Right to Cancel a Home Solicitation Contract*, 3 PAC. L.J. 633 (1972).

88. CAL. STATS. 1973, c. 554. For an analysis of the effect of A.B. 175 on CAL. CIV. CODE §§1689.5-1689.13, see 5 PAC. L.J., REVIEW OF SELECTED 1973 CALIFORNIA LEGISLATION 303 (1974).

89. A.B. 212, 1973-74 Regular Session (proposed CAL. CIV. CODE §1632). See also, A.B. 45, 1972 Regular Session, as introduced, Jan. 6, 1972, as amended, Mar. 6, 1972.

public for a profit; (3) such person advertises through any medium in Spanish either specific goods or services for retail, *or* advertises in either Spanish or English that business is conducted in Spanish, *or* advertises through any medium in Spanish that money will be loaned if such loan will be secured by real property, personal property, or by wages; and (4) such contract is otherwise required by law to be in writing, *or* extends or may extend credit to the purchaser. Notice in Spanish of the availability of contracts in Spanish was to be conspicuously displayed on the premises where such contracts were to be consummated, and the notice was to state that contracts in Spanish are available upon request. Failure to comply with these requirements was to be unlawful, and in such case, the contract would have been voidable at the option of the purchaser. Where a form contract was to be printed in Spanish, Assembly Bill 212 did *not* require that words inserted in blank provisions also be in Spanish. Nor did it apply to any contract for service or matters incidental thereto entered into by a public utility subject to the jurisdiction of the Public Utilities Commission.

Assembly Bill 212 was reluctantly vetoed by the Governor because of concern expressed to him by Spanish language broadcasters who feared the loss of Spanish advertising. The broadcasters contended that the requirements of such legislation would force many businesses to cancel Spanish-language advertising due to financial considerations.⁹⁰ At the very least, this purported problem could be alleviated by changing the focus of such legislation from "advertising" to the "language used in conducting the particular transaction." That is to say, contracts entered into for the retail purchase of goods or services, or for secured loans, should be available in Spanish as well as in English whenever the transaction in question is *principally conducted* in the Spanish language. Accordingly, advertising in Spanish would not give rise to Spanish language contracts so long as the transaction itself is not conducted in the Spanish language.

Legislation such as Assembly Bill 212 is highly desirable in operating to remove an element of unconscionability which is ripe in such commercial settings. Although California has no statute specifically making unconscionability of a contract a defense to its enforcement,⁹¹ California equity courts often relieve a party from the effect of a transaction which has been procured by taking "unfair advantage"

90. Governor Ronald Reagan, A.B. 212 Veto Message, Oct. 1, 1973.

91. California has not adopted UNIFORM COMMERCIAL CODE §2-302 which makes "unconscionability" a defense to enforcement of a contract by the party wronged.

of his condition or necessities.⁹² For example, California Civil Code Sections 1575(2) and (3) states that "undue influence consists [i]n taking an unfair advantage of another's weakness of mind; or [i]n taking a grossly oppressive and unfair advantage of another's necessities or distress." Undue influence along with constructive fraud⁹³ are grounds for rescission of the contract by the wronged party.⁹⁴ Whether one party to an agreement has taken unfair advantage of the other is to be determined in light of the circumstances existing when the contract was made.⁹⁵ It would appear that using a contract form entirely in English without explanation in a transaction negotiated by a Spanish-speaking salesman with a Spanish-speaking buyer suggests that the seller has "knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of ignorance, illiteracy or inability to understand the language of the agreement."⁹⁶

E. Elections

As previously mentioned, the decision in *Castro v. State of California*⁹⁷ made it clear that although Spanish literates could no longer be excluded from the polls, there was no requirement that a bilingual electoral apparatus be adopted.⁹⁸ Nevertheless, during its 1973 session the California Legislature recognized that more than the right to vote is necessary for linguistic minorities to realistically exercise that right. Consequently, Assembly Bill 790 was enacted to provide linguistic minorities with bilingual election officials to assist them in voter registration and voting procedure.⁹⁹ The bill amended Sections 201 and 1611 of the Elections Code to provide that when the county clerk finds that three percent or more of the voting age residents of a precinct are insufficiently skilled in English to register or vote without assistance, or if interested citizens or organizations provide information which the county clerk believes indicates a need for registration or voting assistance for qualified, non-English-speaking citizens, the county clerk shall make reasonable efforts to recruit deputy registrars or

92. *Odell v. Cox*, 151 Cal. 70, 90 P. 194 (1907). See Roos, *The Doctrine of Unconscionability: Alive and Well in California*, 9 CAL. W.L. REV. 100 (1972).

93. CAL. CIV. CODE §1573.

94. CAL. CIV. CODE §1689(b)(1).

95. *Odell v. Cox*, 151 Cal. 70, 90 P. 194 (1907).

96. UNIFORM CONSUMER CREDIT CODE (UCCC), §6.111(e) (Rev. Final Draft 1969); Hogan, *Integrating the UCCC and the UCC: Limitations on Creditors' Agreements and Practices*, 33 LAW & CONTEMP. PROB. 686, 703 (1968); Wright, *Toward A Consumer Code For California*, this volume at 529.

97. 2 Cal. 3d 223, 466 P.2d 244, 85 Cal. Rptr. 20 (1970).

98. See text accompanying note 8 *supra*.

99. CAL. STATS. 1973, c. 885. For a complete discussion of A.B. 790, see 5 PAC. L.J., REVIEW OF SELECTED 1973 CALIFORNIA LEGISLATION 380 (1974).

election officials who are fluent in English and in a language used by the non-English-speaking citizens. Section 14217 of the Elections Code formerly prohibited an election official on duty from speaking any language other than English. This section has been amended to provide that when an election official uses a language other than English at the polls, he shall communicate with voters in such language only as he would be lawfully permitted to communicate in English and shall be subject to the same penalty for any illegal communication as if it had occurred in English.

Also during the 1973 legislative session, a bill was introduced which provides that for a nominal cost any candidate for election to any federal or state office may file with the Secretary of State or with the county clerk a 250-word statement of qualifications that will be sent with the sample ballot to the voters.¹⁰⁰ Furthermore, the candidate may request that a Spanish translation of the statement be sent, with the cost being adjusted accordingly. This legislation is currently pending in the state legislature.

Bilingual legislation affecting the election process has the effect of not only assisting the linguistic minority, but also of promoting the state's goal in having intelligent voters. For an individual to be an intelligent voter, he should understand the significance of the issues upon which he is voting, whether or not some third person is available to explain it to him or to counsel him on how to vote.¹⁰¹ Consequently, the reasons for legislation favoring non-English translations of ballots, ballot arguments, and candidate qualification statements should be distinguished from the reasons advanced for other non-English documents or services, in which "translation via others"¹⁰² may be sufficient.

CONCLUSION

It is a truism that life is more difficult in an English-speaking country for the person who does not speak English.¹⁰³ Difficulties are encountered each time a member of a linguistic minority finds it necessary to deal with fellow citizens—for example, when he seeks to rent an apartment or house, to make a retail purchase, to obtain a loan, or to purchase an automobile. Difficulties may also be experienced whenever the person has a need to deal with the government or its

100. S.B. 145, 1973-74 Regular Session, *as amended*, Aug. 31, 1973.

101. Lavine, *supra* 73.

102. See text accompanying note 8 *supra*.

103. *Guerrero v. Carlson*, 9 Cal. 3d 808, 812, 512 P.2d 833, 836, 109 Cal. Rptr. 201, 204 (1973).

agencies—such as, when he seeks to apply for a driver's permit or to qualify for unemployment insurance benefits or welfare payments. Lastly, difficulties may be experienced when the government finds it necessary to deal with a linguistic minority—for example, police communications, judicial summonses, or subpoenas, and other official state notices. Although the California Legislature has recently taken a notable step forward in alleviating some of the difficulties encountered by linguistic minorities in California, additional bilingual legislation should be encouraged. Bilingual legislation is particularly needed in those areas which significantly affect linguistic minorities in their everyday contact with the state and general public, such as in the areas of public health and safety, employment practices, public services, official state communications, judicial processes, and consumer protection.

In examining the sampling of bilingual legislation presented in this comment, it appears that such legislation can be properly designed to extend this needed assistance without experiencing the *concursum horribilium* so often alluded to. Government is not, after all, an end in itself; it is a means to an end, and that end is a good society for all people. As Aristotle said, "The function of government is not just to enable men to live but to enable them to live well."

Carl P. Blaine