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The Burden of Babel in Government

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Abstract

An earlier paper (Blair, 2001) describes the reactions of American federal courts to attempts by legislative bodies in the United States (including territories) to mandate the use of English and restrict the use of other languages. This paper focuses on court decisions concerning private citizens who have petitioned federal courts in order to require greater accommodation to residents with limited English proficiency who seek meaningful access to government services and employment opportunities.

The United States has often been described as a land of immigrants. Each successive wave of immigration has contributed to the nation's linguistic and cultural diversity. Government policy has been tolerant of this diversity with few exceptions. Anti-German sentiment during the First World War culminated with some states designating English as their official language and some partially suppressing the teaching of German and other foreign languages (see Meyer v. Nebraska, 1922). Two decades later anti-Japanese sentiment led to a massive internment (see Blair, 1999) that included suppression of the Japanese language within the camps. Whenever such language restrictions have come before the federal courts, however, they have been rejected (Blair, 2001). Yet governments at the federal, state, and local levels continue in large measure to operate monolingually in English.

The role of government in America expanded greatly at the time of Roosevelt's New Deal. Then World War II and the Cold War further increased its size. It became a domestic superpower in terms of services and employment as well as an international superpower. Thus access has become increasingly important to every resident, including a growing Hispanic population. Increasingly aware of and sensitive to their rights, Spanish speakers and other language communities have now come to demand not only toleration of, but accommodation to minority languages.

AN UNBEARABLE BURDEN?

The first thing to note in a legal approach to language use is that although the First Amendment protects freedom of speech, there is no right to be understood, and even protected speech that is understood can normally be ignored with impunity. The case of *Carmona v. Sheffield* (1971/1973) indicates how reluctant the federal courts have been to acknowledge even the existence of a judicial issue when an individual seeks to control the choice of language in an interaction with a government agency.

Serafia Carmona and Manuel Venegas, who were denied unemployment benefits by the San Jose office of the California Department of Human Resources Development, filed suit on behalf of all monolingual speakers of Spanish living in Santa Clara County. It was their contention that the

administration of this state program in English denied them equal protection of the law.

District Court Judge Schnacks and, on appeal, a three-judge panel—Chambers, Choy, and Jameson—at the Ninth Circuit Court of Appeals declared that the United States is an English-speaking country, pointing out that an understanding of the language is a condition of naturalization (8 U.S.C. 1412 (1)). But the third main argument against requiring use of "whatever language" a person or group speaks was the burden it would impose on government. "The breadth and scope ... [would be] so staggering as virtually to constitute its own refutation." The extent to which government should accommodate speakers of languages other than English was deemed a matter for *legislative* bodies to consider, rather than something to which a person might be entitled. Both courts ruled that the plaintiffs had failed even to state a claim.

Since the court in this case did not even recognize the validity of the claim before it, it may be more instructive to note what issues the judges failed to consider. There is no question of the legitimacy of the government's authority to administer unemployment benefits. On the other hand, it cannot do so arbitrarily. The constitutional protections of due process and equal protection grant citizens the power to make some demands on government, even if those demands are not explicitly delineated. Although government agencies and those who seek their services participate equally in the communicative acts necessary to those services, the agencies hold all the power in the decision making process. Government often has a monopoly on the services it provides, and furthermore, compels all tax payers to pay for them. From the government's perspective any individual decision to award benefits is of little consequence, but for individual applicants the consequences can be quite dire and would therefore seem to compel serious judicial consideration.

Once the legitimacy of the plaintiff's interest can be established, the next logical step would be to examine the nature of the relief sought, its consequences, and the burdens it would place on each party. Plaintiffs wanted to mandate the use of Spanish interpreters and forms written in

Spanish. The district court noted that no authority had been cited; apparently the abstract concept of due process without an applicable legal precedent was considered too vague. No criteria was proposed that would *limit* the government's burden either in terms of (a) the range of languages in which the government would be required to provide services or (b) the range of government agencies or services that would need to be offered on a multi-lingual basis. Perhaps the district and appeals courts were reluctant to write such limits into a decision granting the plaintiffs relief, choosing instead to point out the overwhelming burden an *unlimited* decision would have and ridiculing the claim on the basis of that burden.

CHOOSING THE RIGHT LAWS AND EVIDENCE

In this next case, we see how difficult it can be, even after a claim has been recognized, to get an issue before a court. The district and appeals courts that heard *Soberal-Perez v. Schweiker* (1982/1983) recognized the potential for language-based discrimination, but the most severe scrutiny was directed at the plaintiff's evidence and the statutory basis of the suit. The burden of proof, after all, is always placed on the petitioner. In addition, there is also the tendency to give the government a generous amount of leeway in which to exercise its authority. Yet, despite the technicalities that must be observed to get an issue before a court, we can see the judges' concern that the plaintiffs get a fair hearing, at least at the administrative level.

Anibal Soberal-Perez was born, raised, and educated through the tenth grade in Puerto Rico. At the age of 18, he moved to the United States and worked several years at menial employment. Suffering from respiratory and psychological impairments, he decided to apply for disability insurance (DI) and social security insurance (SSI) benefits. His application was turned down.

He received a notice in English of his right to reconsideration, but was unable to understand it and all subsequent documents provided by the Social Security Administration (SSA). The initial determination was, subsequently, reconsidered and affirmed. Notice of his right to a hearing before an

administrative law judge with legal representation was issued. On April 19, 1977, with a friend to act as his translator, Soberal-Perez went to the Brooklyn SSA office with a letter from his doctor and the notice of reconsideration, both of which he handed to a clerk. After asking questions which neither he nor his friend understood, the clerk filled out a form that requested a hearing, but waived Soberal-Perez's rights to appear and submit further evidence. Soberal-Perez complied with the clerk's indication that he should sign the form, even though he did not understand the consequences. More rejections and more notices, all in English, followed.

Benito Cortez, age 58, also received a minimal education in Puerto Rico, came to the United States, and worked at menial jobs. Though suffering from circulatory and osteoarthritic impairments, he was denied disability benefits and, because of insufficient communicative ability in English, unknowingly waived procedural rights.

Alcedo De La Cruz was born in the Dominican Republic in 1903. Like the others he was a Spanish speaker. In August 1975, he applied for SSA retirement benefits. Instead he received SSI benefits and was advised to return to work until he could qualify for retirement benefits. He did so, but subsequent earnings were not figured into the calculation of his SSI benefits. Four and a half years later, when the SSA discovered this mistake, they informed him that they would recover their overpayments from his future SSI benefits. When De La Cruz applied for a waiver of the recovery, based on his lack of understanding of the reporting requirements, the SSA ruled that *he* had been at fault in causing the overpayments.

Miguel Carballo moved to the United States from his native Puerto Rico with an eighth grade education. After 25 years as a cook, he began suffering severe diabetes, including a coma in 1968. The Social Security Administration granted SSI, but denied DI benefits. Carballo failed to file a civil action for review within the legally prescribed 60-day period.

All four went to court claiming that the government's failure to provide documents, instruments, and advice in Spanish denied them due process and equal protection under the Fifth Amendment and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Title VI prohibits discrimination on the basis

of national origin "under any program or activity receiving Federal financial assistance". The district court, however, decided that SSI and DI benefits, like other payments receiving *direct* budgetary funding, do not fall within the scope of Title VI. DI funding comes directly from the social security payroll tax, while SSI benefits come from general revenues. Neither gets funding through loans, grants, or contracts. The appeals court noted that various departments, in issuing the implementing regulations had excluded federal agencies from the provisions and affirmed the district court's point that *legislative* debate at the time of enactment makes it clear that enforcement of Title VI is *by federal agencies against non-federal entities* with whom there is a contractual relationship, promising not to discriminate in return for the federal money they receive. The Social Security Act itself and the Fifth Amendment were deemed the proper avenues for protection against discrimination by the Social Security Administration.

As for equal protection analysis, there are two tiers of scrutiny. Which one applies depends on the challenged classification and on whether (a) it operates to the disadvantage of some suspect class or (b) impinges upon a fundamental right (*San Antonio Independent School District v. Rodriguez*, 1973, 17). If it does either, strict scrutiny requires the government to come forward with compelling justification and omits the application of the usual presumption of validity. Otherwise the classification need only be rationally calculated to further some legitimate, articulated governmental purpose.

The right to noncontractual claims, such as benefits, is not a *fundamental* right. Therefore strict scrutiny would come into play if and only if the plaintiff could demonstrate membership in a suspect class. While ethnic groups and groups based on national origin qualify, groups bases on language use *per se* do not. There is no law that bars language-based discrimination itself. Legal protection of language use only comes into play when it can be shown that language and national origin are so intimately related that language-based discrimination has had a disproportionate impact on groups defined by *national origin*. The plaintiff also has to produce evidence of intention to discriminate. The impact on a group of national or ethnic origin has to be not just foreseeable, but a *motivation* for the discriminatory action, and foreseeability, however great, does not constitute

evidence of such improper motivation "when a believable and historical non-discriminatory explanation exists" (*Soberal-Perez v. Schweiker*, 1982/1983). That historical explanation, apparently recognized by the court on the basis of judicial notice, was simply that the "national language of the United States is English." Applying the lower standard of equal protection analysis, the court found that "[t]he cost in time, money and administrative disruption are sufficient justifications".

After commencement of the lawsuit, all claims were remanded to Secretary Heckler of Health and Human Services for full evidentiary hearings. Cortez and Carballo were subsequently awarded benefits. Soberal-Perez lost on the merits.

The courts in this case relied most heavily on (a) the lack of applicability of Title VI protection to agencies of the federal government and (b) the presumption of legal validity for government actions. The level of scrutiny that government actions receive depends on who and what they affect. Language minorities do not qualify for the same high standards as do groups based on ethnic or national origin. Furthermore, there is a greater presumption of good intentions in a communicative act when no fundamental right is at stake. Social security benefits, it turns out, are not a fundamental right. Now let's take a look at the consequences of judicial language policy on employment and in education.

LINGUISTIC GATEKEEPING

In 1973 the Ninth Circuit Court of Appeals could not even find a claim to be considered when faced with a plaintiff's argument that government agencies should provide information in Spanish (*Carmona v. Sheffield*, 1971/1973). Yet only two years later, the Sixth Circuit found discriminatory effect in a case involving access to government employment (*Frontera v. Sindell*, 1975). Again the language was Spanish. Though the existence of a legal issue was recognized at this time, the court affirmed monolingualism as a viable national policy and refused to scrutinize the validity of civil service testing. English was the language of government. No privileges

could be granted to other languages *unless granted to all*, and that would create an *impossible financial burden* for the government.

Damian Frontera, who had received only a fourth grade education in Puerto Rico, moved to Cleveland in 1953 at the age of 28 and became a union carpenter on the basis of an oral test and inspection of his work. After obtaining temporary employment as a carpenter at Cleveland's Hopkins Airport, he applied for and, in May 1970 along with 126 other hopefuls, took the exam for a permanent appointment, one of the highest paid positions in the city's workforce. Only one such appointment was to be made.

The pre-examination announcements, examination instructions, and written section of the exam were all in English, a language which Frontera spoke poorly and which he could read at a basic level only with great difficulty. This lack of proficiency in English had not interfered with his work performance at the airport nor with his ability to communicate with his supervisor. Nevertheless Frontera requested to have the test administered to him in Spanish. His request was granted, and two days before the test the Civil Service Commission formally voted to have the test translated if possible. Because the employee who was assigned to do the translation was unable to accomplish the task in time, however, the test was administered in English.

A minimum of 70 out of 100 points were required to pass. The plaintiff scored 36 out of 50 on the performance test, but testified in court that he had not understood that he could use some clamps which were on the work table. On the written section he achieved a score of 31.349 out of 50. It seems he had trouble understanding some words and phrases, such as "beading work", "factory or shop lumber", and "decay" resisting (in reference to cedar). Consequently Frontera failed the exam, ranking 103 out of 127 applicants. He continued in his job on temporary status until November 1970 when Cleveland's poor financial condition resulted in a massive layoff of workers and his job was eliminated.

He filed suit under the Fourteenth Amendment and 42 U.S.C. 1981, 1983, and 1985 on his own behalf and on behalf of other Spanish speakers who might have taken the test if announcements and administration had been

offered in Spanish. The district court recognized the discriminatory effect on the Spanish-speaking community, but felt that the city had shown a compelling state interest to administer the exam in English.

The Sixth Circuit agreed. Two of the three judges went on to say that the city need only have shown a rational basis, rather than compelling state interest. According to the court there had been no discrimination on account of nationality, and English was reaffirmed as the common, national language of the United States. After all, English is the language in which legislatures conduct their business, and in which the laws are printed. Some states, furthermore, had legally designated English as their official language, and English literacy is a condition for naturalization (8 U.S.C. 1423). Exceptions to this national policy, the court declared, do not create any right to government services in a particular language.

A metropolitan city like Cleveland has numerous language groups represented in its population. If the city conducted examinations in Spanish, denial of the same privilege to *any* other language group would constitute "invidious discrimination." Nor could Cleveland which had severe financial problems at the time, "saddle its harried taxpayers" with the expenses necessary for "a department of languages with a staff of linguists to translate the tests and supervise them."

The majority of the court was very reluctant to entertain any challenge to the validity of the testing process, because they were afraid that to do so would discourage objective civil service testing in favor of a more selective hiring process contaminated by political considerations. Written tests, though they may lack some validity, were considered the least susceptible to subjective judgment. Even a cut off which cannot be shown to predict job performance, the judges pointed out, may serve defensible goals. Applicants lacking in motivation or mental ability might thus be weeded out. As for Frontera, the examination did not test "general proficiency in the English language[, but rather technical terms which] ordinarily would be recognized and understood by a person knowledgeable in the carpentry trade."

Both the city government and the applicant were direct participants in the test and had substantial interest in the consequences of its outcome. Frontera

sought employment; the government sought the most qualified candidate for the job. On the one hand, the court recognized the discriminatory effect that an English test has on non-English speakers. Yet it still seemed to interpret English proficiency as a valid indication of an applicant's motivation, mental ability, and technical knowledge. This is a fancy way of saying that people who do not learn English must be lazy, dumb, or untrained. No evidence for such a conclusion appears in the record. In shooting from the hip, as they did, the judges exposed their own linguistic chauvinism.

Though the court felt that only a rational basis was necessary to sustain the government's defense, it found that the city had, in fact, a compelling interest to administer the test in a single language. No importance seems to have been attached to the fact that the city had agreed to translate the test into Spanish. As in *Carmona v. Sheffield* (1971/1973), the linguistic and financial *burden* necessary to cover *all* languages was judged excessive. Perhaps they felt that only *legislative* policy could determine at what point a language might qualify for special consideration.

ENGLISH-ONLY EDUCATION

Again and again we see that the courts are reluctant to grant relief to any *single* language group because such preferential treatment might itself be challenged as being discriminatory against other minority language groups. Yet, in *Lau v. Nichols* (1973), the Supreme Court did feel compelled to reverse lower court rulings and grant relief to Chinese-speaking students in the San Francisco Unified School District. To at least one of the justices the number of students involved was a critical factor.

At the time approximately 16.6 percent of the students in the San Francisco schools were Chinese speakers. Although the Board of Education realized that 2,856 of these 16,574 students needed special instruction in English, only 1,066 were getting such help. Thus, there were four groups of Chinese-speaking students in school: (a) 14,784 bilingual students that were fluent enough in English that they did not need any special instruction, (b) 433 students that needed help and received six hours of bilingual or ESL

(English as a Second Language) instruction a day, (c) 633 that received one hour of such instruction a day, and (d) 1,790 that needed special instruction but received none at all. Some of the students who received instruction received bilingual instruction, some received ESL instruction. Even so only slightly more than one third of their instructors were fluent in Chinese.

Kinney Kinmon Lau's mother filed a class action suit in federal court to compel the school district to provide special instruction to all students who needed it. The suit was based on constitutional rights to due process and equal protection and on Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Though sympathetic to the plight of students of limited English proficiency, both the district court and the Ninth Circuit Court of Appeals ruled that the students' rights to an education and to equal educational opportunities had already been satisfied, because they had access to the same system as English-speaking students. They found no *affirmative* duty to provide the special assistance needed to rectify the "lingual deficiencies" of Chinese-speaking students. Had their limited English proficiency been the result of or perpetuated by illegal *segregation*, as had been the case with Spanish-speakers in San Felipe-Del Rio, Texas (*United States v. Texas*, 1971), then mandatory bilingual education might properly be used as a remedy, in order to *unify* a dual school system, but the San Francisco school district *was* a unified system.

The Ninth Circuit observed that the United States is an English-speaking nation and emphasized that state and local governments have the right to make reasonable regulations, including one establishing the language of instruction. The use of English as the language of instruction was described as proper given the "socializing purposes" for which public schools were created. Although the judges recognized that special instruction might be both "commendable and socially desirable", they could find no constitutional or statutory justification for a court to issue such a mandate. Whether to provide bilingual or ESL instruction, how much to provide, and whom to provide it to amounted to a "complex decision, calling for significant amounts of executive and legislative expertise and non-judicial value judgments" (*Lau v. Nichols*, 9th Cir., 1973, 799). The fact that students had received varying amounts of different types of remedial instruction was

not discrimination, but simply reflected that the school district recognized a problem and had initiated exploratory, pilot programs to deal with it.

Judge Hill, a district court judge who sat on the Ninth Circuit panel in the Lau case, wrote a blistering dissent. He reminded his colleagues that *communication*, not mere physical presence, is the "essence of education". Furthermore, the plaintiffs were not seeking a bilingual education, but simply to learn English from bilingual teachers in order to enter the mainstream educational process (i.e. subtractive bilingualism). Nor, he argued, is intent to discriminate required to invoke equal protection. Characterizing equal educational opportunity as one of the most "vital and fundamental" of all rights, he pointed out that students were legally compelled to attend school, but, through no fault of their own, could not understand what transpired. He insisted that they had, indeed, established a *prima facie* case of discrimination. It should have been up to the school district to explain why it was unable to provide the instruction necessary to develop even a minimal fluency in English.

Later when the Ninth Circuit considered a request for a rehearing before the full court, Judges Hufstedler and Ely, neither of whom had sat in on the case, added their own dissents and protested the court's refusal to rehear the case *en banc* (*Lau v. Nichols*, 9th Cir., 1973, 807). The case was subsequently appealed to and accepted by the U.S. Supreme Court.

The Supreme Court sided with the dissenting judges, but based its decision on extremely narrow grounds. They expressly refused to consider whether any *constitutional* rights had been violated. They relied, exclusively, on the federal regulations issued by the Department of Health, Education, and Welfare (HEW) in 1970 under Title VI. The HEW guidelines specifically required all schools getting federal funds to "to take affirmative steps to rectify the language deficiency" of national origin-minority students in order that all students could benefit equally from their education (45 C.F.R. 80.3 & 80.5). Thus, the HEW's regulations, rather than any federal statutes or the Constitution conferred upon the Chinese-speaking students a right to some appropriate form of special instruction. Neither the regulations nor the justices specified what form the instruction should take. After all, the plaintiffs *had not sought*, and the court *would undoubtedly have avoided*

specifying any particular remedy. The choice of bilingual instruction, ESL, or some other method was left completely up to the school district. Justice Blackmun and Chief Justice Burger, wrote a concurring opinion in which they emphasized the importance of the *number* of students in need of special assistance.

This case displays a number of characteristic features of the judicial process. First, there is a tension between (a) the obvious injustice of compelling attendance at school and then, due to a lack of communication, utterly failing to provide any education and (b) the wish to avoid establishing any new broadly defined right to education in any specific minority language. The court wanted to grant relief, but on the *narrowest grounds* possible. They found those grounds in the regulations of the HEW and in the school's use of federal funds—no *constitutional* right, simply a violation of a contract between the federal government and an organization using federal money.

The second feature could be termed under-specification of the remedy. The court simply pointed out the problem with placing non-English speaking students in English classrooms and not helping them cope with the language barrier. Two possible remedies, bilingual education and ESL instruction, were mentioned as examples of the kinds of programs already offered to some Chinese-speaking students. Yet the decision as to how to remedy the problem was left entirely up to the school district. This is not surprising. From the court's point of view, to do anything else would be over-specification. By design, courts scrupulously avoid making policy decisions that rightfully belong to the *executive* or *legislative* branches (Farnsworth, 1983, 51). Their role is to exercise a judicial veto, as it were, over the other two branches of government when necessary, rather than actively initiate new directions.

Finally, we see the practical side of the judiciary, in its concern for the economic *feasibility* of the *burdens* that its decisions confer upon the parties in any legal action. Here that concern is reflected in the importance of the *number* of Chinese-speaking students. The school's responsibility increases in proportion to the number of students left wandering in a linguistic and

educational desert. The per capita expenditures needed to remedy the situation, after all, could be expected to decrease for larger groups of speakers of any specific language due to economies of scale. Once a critical mass is reached, the pressure to act becomes overwhelming.

SUMMARY OF MAJOR LEGAL POINTS

The courts have made it quite difficult for legislative bodies to restrict people's choice of language (Blair, 2001). They have at the same time, however, allowed administrative agencies to effectively restrict people's access to government services on the basis of language. The reason for this double standard is the difference between *affirmative* rights and *negative* rights. While people have the negative right to be free from restraint on their own personal choice of language, unless some fundamental right is at stake, non-English speakers have no affirmative right to compel government agencies to interact with them in their preferred language. Thus while a criminal defendant has a right to an interpreter, someone seeking non-contractual claims—such as benefits—does not. The decision in *Lau v. Nichols*, (1973/1974) leaves the status of a student's right to an education in any non-English language very much in doubt. The Ninth Circuit denied such a right. The U.S. Supreme Court reversed that decision, but only on the basis of federal regulations that apply to schools receiving federal funds, and without specifying any specific remedy. The problem was recognized and the school system directed to take care of it without any specific guidance.

Affirmative rights would demand (a) affirmative policies and (b) the allocation of resources. In mandating any course of action, the courts must take into consideration the ability of the mandated party to follow that course of action. Negative rights pose no problem. The burden of taking a law off the books is negligible and is more likely to free up resources than consume them. There is a burden involved, however, in implementing multilingual services. In order to grant an affirmative right to these services, the courts have to be assured that it is a burden that government agencies will be able to bear. In *Carmona v. Sheffield* (1971), *Frontera v. Sindell* (1975), and again

in *Soberal-Perez v. Schweiker* (1982/1983) it is assumed—at least there is no evidence presented in the published records—that the burden of mandating services in a multitude of languages, with which the vast majority of government employees may not be familiar, would be too great.

CONCLUSIONS

What does all of this mean, then, for those of us interested in preserving linguistic diversity and in working for social and political equality for those who speak languages other than English? Is there hope that the federal judiciary will recognize language rights? The record shows that the courts have strongly supported the choice of language as a *negative* right all along (Blair, 2001). The question that remains is how to get judges to recognize that choice as an *affirmative* right as well.

Without a general statement of language rights in our laws, we cannot expect the courts to recognize some special status for particular languages independent of social and demographic context. Yet the courts have expressed some concern for people that are at a linguistic disadvantage, particularly if the *number* of people is great. This has been tempered, however, with an acute sensitivity to and exaggerated concern for the *burden* that might fall on government to remove that disadvantage. An effective legal argument in favor of multilingual government services, therefore, must place stress (a) on minority languages that are demographically prominent in some local communities and (b) on the relatively high *social costs of language barriers and miscommunication* as compared to the costs of providing such services. Such a line of argument would seek to establish language rights for linguistic minorities in communities where the government's *burden is minimal* and the communicative *benefits and linguistic resources are maximal.* Under such conditions courts might be willing to recognize some kind of *threshold* where the rights of non-English speakers outweigh the burden to government of providing services in a minority language.

For obvious reasons, pointed out by several courts, however, not all languages will be able to attain such a threshold in all communities. In order

to ensure communication between a wider range of non-English speakers and government, we should broaden our focus and insist on *communication* in whatever manner is most effective, rather than in any *particular* language.

We must recognize rights and obligations for all parties to *communicate* in good faith. Making government share in the responsibility to penetrate language barriers, while allowing a flexible response, will ensure the widest application possible, to as many languages and situations as possible. Research in bilingual education (Lucas & Katz, 1994) suggests that such a flexible response guarantees that a non-English speaker's native language will be assigned some role in the process.

Such a communicative approach takes factors into account that an all-or-nothing approach might not. According to the 1990 census, for example, more than 81 percent of the Americans over age five who speak a non-English language at home are fairly fluent in English as well (Chen, 1995); they are non-English speakers, rather than non English-speakers. Most government workers can attain a low level of fluency in a second language without a great deal of training. Available linguistic resources are often underutilized. Various strategies—such as language simplification, elaboration, negotiation of meaning, and anticipation of and planning for language difficulties—can be used. In addition, modern information and communication technologies can help get these language solutions to people when and where they need to have them.

Finally, it is important to realize that the judiciary is only one of three branches of government. Of those three branches it is the *least* able to redirect policy. Its role is restricted to that of finding internal contradictions within the law itself. It cannot write new laws, it can only validate or discard existing ones. Certain laws may be unnecessary, based on false premises, illogical, wasteful, short-sighted, and even counterproductive. Yet, that does not make them unconstitutional. The courts simply cannot override them on the basis of such criteria. The fight for justice must be waged on numerous fronts. Even organizations with a strong judicial focus, such as the American Civil Liberties Union, understand the importance of presenting both legal and extra-legal arguments to *all three* branches of government and to the public at large (see Chen, 1995 and A.C.L.U., 1996). They are among a wide

coalition of groups waging a defensive battle against English Only legislation. The establishment of affirmative rights for non-English speakers will probably depend as much on an offensive battle of similar proportions in legislatures, administrative government agencies, and in public political debate as it does on the deliberations of judicial bodies.

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