

Strange Chains

How Language Keeps Non-English Speakers
Out of the Justice System – Or Locks Them In

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A Thesis Submitted to the Department of Romance Studies
Duke University
Durham, North Carolina
2016

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Abstract

Until 2010, North Carolina's courts, which promise "equal justice to *all*," had no resources to accommodate the needs of *all* non-English speakers.¹ They had to sign English-only forms they could not read and were expected find interpreters they could not pay for to explain a crime of which they had never been informed. Over the past five years, this incomprehensible state of language access has improved, thanks to the cooperation of judges, lawyers, advocacy groups, and the courts.

In this project, I explore language access in North Carolina courts. I spent seventy-five hours observing in two North Carolina courthouses, one small and rural and one large and urban. During my time, I met and interviewed 13 non-English speakers whose stories directed my research and whose narratives I weave throughout this project. To understand the context of their experiences, I interviewed over 25 language access stakeholders, including legal scholars, lawyers, an attorney with the Department of Justice, and the interpreters themselves.

I found that the ideal of universal interpreter provision has not yet translated into reality. In fact, 10 of my 13 informants were not provided an interpreter when they needed one. In Chapter I, I identify the two characteristics of the courtroom – scarcity and inefficiency – which bar non-English speakers particularly from access.

In April 2015, the Court published its own solution to courtroom scarcity and inefficiency: the North Carolina Standards for Language Access. These Standards go further than any previous legislation in North Carolina to provide qualified, free interpreters for non-English speakers. Since the Standards are so new, no systematic analysis has been conducted on their application, until now. In Chapter II, I undertake the very first study of the Standards. I develop three shifts in the Standards' application which, if applied, will address all 13 of my informants' inaccess.

As often happens with new research, I began seeking to understand one issue and ended exploring another. As my interaction with my informants spilled out of the courtroom, I began to realize that the most significant inaccess they faced occurred *outside* the courtroom.

Even the best interpreter can only interpret when the non-English speaker is in the courtroom. But less than 5% of cases actually reach the courtroom trial.² My informants ran into walls with pre- and post-court paperwork, at the Clerk's office, and in lawyer-client conference rooms. Most legal work is done in these "in-between" spaces. These de-regulated, liminal settings are where nearly all litigation happens, but where research and service provision are scant.

It is in these "in-between" spaces that I conducted the second part of my fieldwork, and from which Chapter III is inspired. Now that the Standards have made free interpreters a foregone conclusion (at least in theory), it is in these in-between spaces that scholars and policy-makers must re-focus if they are committed to holistic, meaningful access for foreign language speakers.

¹ "Standards" 2.

The North Carolina Administrative Office of the Courts. "Standards for Language Access." Raleigh: North Carolina Administrative Office of the Courts, 29 April 2015. Web. Accessed October 2015.

² Refo, Patricia Lee. "The Vanishing Trial." *Litigation Online*, a Publication of the American Bar Association 30.2 (2004): 2-4. Web. Accessed 11 December 2015.

With this analysis of “access in-between,” I take up the exhortation of Judge Smith, the primary author of the Standards, to “constantly...reexamine the goals” of language access in North Carolina.³ I hope that my analysis will break the tough ground of policy and academic inertia into new soil of legal access research and invite further examination. I hope to begin a conversation on language access that thinks broader than courtroom and deeper than interpreter quality.

³ “Standards” 2.

Acknowledgements

Whenever I was discouraged by a daunting task in Haiti, my friends often reminded me, “*Men anpil, chay pa lou.*” Many hands make the load light. When this project weighed me down, many friends and mentors lightened my load.

When this project was an idea, Jack Holtzman, Bill Rowe, and Amy Woomer-Deters at the NC Justice Center inspired it into reality. Paul Uyehara at the U.S. Department of Justice responded to my initial questions with care and detail, even when the answers were a Google search away. Deborah Weissman and Hannah Gill at UNC contextualized the history, policy, and demographics of language access.

Scott Holmes supervised my legal internship at North Carolina Central University – and became my kindred spirit. Sherry Everett with Legal Aid invited me to interpret for her Spanish-speaking clients. Teresa Rodriguez at the Durham Crisis Response Center explained the maze of domestic violence cases. Yolande Jean invited me into the Haitian immigrant experience of the American justice system.⁴ For any legal knowledge I learned and for introducing me to my informants, I have these four tireless advocates to thank.

Deborah Jenson, my academic advisor, provided theoretical underpinnings for my research.

This project was inspired and directed by my relationship with Spanish and Haitian Kreyòl speakers. I could not have developed these relationships – or done this project – if not for Jacques Pierre and Rebecca Ewing. Thanks to them, I zoomed from zero to fluent in Haitian Kreyòl and Spanish in less than two years.

Laurent Dubois, my indefatigable, brilliant, kind thesis advisor walked with me from outline to final draft. Laurent, you asked my questions better than I did, then answered them clearly and humbly. Your understanding of the writing process and your eye for ideas turned this paper from a collection of nice stories I was exhausted of into a senior thesis I am proud to share with you.

This paper would have been half as long and twice as boring if not for my non-English speaking informants. I am indebted to their candor, honored by their willingness to invite me into their stories, and humbled to call some of them friends. To protect their privacy, I have changed all of their names. Amig@s and zanmi m yo, I hope what I have produced honors you.

Thanks to Armin Ameri for listening, Laurie McIntosh, Charlie Thompson, and Dominika Baran for ideating, the Jacobson family and CityWell Church for praying.

Many hands do indeed make the load light.

Final thanks to Margot, Peyton, Mike, and Beth Holmquist. I love you.

⁴ Yolande and Teresa are pseudonyms.

*This thesis is dedicated to the memory of James Arthur Holmquist.
“Continuous improvement” was his mantra,
continuous love was his means.
I hope this work improves the court system
like you love me, Grampa.*

Introduction

Timeline

To understand where language access in North Carolina stands today, it is helpful to understand its history.

1964 – Congress passes the Civil Rights Act.

Title VI of the Act prohibits discrimination on the basis of race, color, or national origin in federally-funded programs, which includes courts.⁵

1974 – The Burger court decides *Lau v. Nichols*.

In this landmark case, the Supreme Court held that excluding non-English speaking individuals from meaningful access constituted national origin discrimination as defined in Title VI.⁶

2000 – President Bill Clinton signs Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.”

Passed at the peak of the United States’ fourth wave of immigration, the order was supposed to restart momentum toward non-English speakers’ access to government services.⁷ The order required federally-funded agencies and programs to “examine the services it provides and develop and implement a system by which limited English proficient persons can meaningfully access” those services.⁸

⁵ Weissman 35.

⁶ *Lau v. Nichols*; Hidalgo 47-48

⁷ “Modern Immigration” 2015

⁸ United States “Improving Access” 2000.

2002 – The Department of Justice (DOJ) defines “Limited English proficient” (LEP) individual and outlines how programs that receive federal funding must provide services to them.⁹

May 2010 – UNC Law Professor Deborah Weissman and three law students publish report on interpreter services in North Carolina courts.

After systematic observation of several North Carolina courtrooms, they concluded that interpreter services were insufficient and out of compliance with Title VI of the Civil Rights Act.¹⁰

August 2010 – On the heels of Weissman’s report, the Department of Justice sends a letter to all state courts reminding them of their responsibility to LEP individuals.

The letter identifies key barriers to access for LEP individuals and threatens to investigate any court which does not address them.¹¹

May 2011 – Capitalizing on UNC’s momentum and investigation, the NC Justice Center lodges a Complaint with the DOJ against North Carolina courts.

The Complaint reiterated the Court’s inadequacy in language access provision and requested an investigation by the DOJ’s Civil Rights Division.¹²

March 2012 – After an investigation, the DOJ confirms that the AOC is not in compliance with Title VI because of a lack of interpreter services.

The DOJ suggests that the courts act voluntarily to resolve the issue, or else risk lawsuit and loss of federal funding.¹³

⁹ U.S. Department of Justice 2002, 41457

¹⁰ Weissman 2010.

¹¹ “Letter to Courts” 2010

¹² Holtzman 2012.

¹³ U.S. DOJ “Re: Investigation of the North Carolina Administrative Office of the Courts” 2012

August 2012 – In quick response, the AOC guarantees free, qualified interpreters for all criminal cases, regardless of socioeconomic status.

The AOC also pledges to expand interpreter services to all civil cases within two years, which they do.¹⁴ The DOJ is satisfied with the AOC's response and does not press charges.

April 2015 – On his last day in office, AOC Director John Smith signs and publishes the Standards for Language Access.

The Standards are North Carolina's plan for language access in courts. They outline which court officials must act to provide qualified, free interpreters to all limited English proficient individuals.

June 2015 – I witnessed the arrest of Marcelo, a non-English speaker, in the Durham County courthouse.

My encounter with Marcelo began this project.

Marcelo in Chains

The Impetus for the Project

Marcelo had entered the Durham County courthouse that Friday morning a free man, unaware that the language he had spoken all his life would charge, convict, and sentence him to jail.

It was an unusual crime scene.

Marcelo's lawyer was absent without an alibi, but the interpreter had arrived at the scene. The judge called Marcelo up to testify in his defense: why had he not paid his fine? He did not

¹⁴ North Carolina Administrative Office of the Courts "Notice of Expansion and Enhancement" 2012

answer. Instead he asked the court to wait for his lawyer. The interpreter translated. The judge denied his request. Strike One.

The judge pressed on, angrier now, demanding to know why Marcelo had not paid his fine in the six months since his last court date. The judge's question was, of course, rhetorical, an expression of her anger rather than a request for an answer. What she wanted was his money, not a response. But subtext does not translate. Marcelo perceived the judge's angry question as a question, so he complied. He began to mumble his reasons:

“I didn't know I had a fine, the amount, where to pay it, or –“

“I'm not interested in excuses!” the judge cut him off.

She interpreted Marcelo's obedient response as further disrespect. Strike Two.

The judge was fed up with Marcelo's insubordination. She had given him six months to pay his money. He had no right to ask her to wait even one more minute! Unaware of the fine? When she had told him directly and later sent him the bill, first-class, to his address? She had all the evidence she needed to convict Marcelo.

And as I watched, the judge ordered the bailiff to lock Marcelo in handcuffs. He was under arrest, sentenced to an indefinite jail time that would end when he paid his fine.

I had entered an unusual crime scene, indeed. The crime was Marcelo's monolingualism. The verdict? Guilty as charged.

Marcelo was the first non-English speaker I encountered in court. His story's incomprehensibility fascinated me. Despite committing no crime and disobeying no direct order, he had been sentenced to jail, the victim of a miscarriage of justice I understood no more than he understood the language of his prisoners. Meeting Marcelo in June began a project that had little direction but a clear question: why?

Searching for Answers

Over the next year, I spent 75 hours observing non-English speakers in court proceedings to uncover the answer. I soon discovered that Marcelo's story was not unique. Every one of the thirteen non-English speakers I observed and interviewed in North Carolina courts had been denied some fundamental right because they could not speak English.

By the end of my observation, I had compiled compelling stories of non-English speakers. The storytellers were strikingly diverse: from a Haitian in a small-town traffic hearing to an Arabic speaker in Durham's misdemeanor court to a Salvadoran survivor of domestic violence. But their stories were all too similar: each non-English speaker struggled for justice within a court system that stripped them of the same.

What accounted for the uniformity of my informants' struggle?¹⁵ Each person's problems, though unique, resulted from two patterns embedded in court culture: scarcity and inefficiency. In Chapter I, I examine the scarcity and inefficiency that explain Marcelo's chains.

But there were more surprises the day I met Marcelo in court. Five minutes after being handcuffed, Marcelo freed himself.

An *advocate* who *trusted* Marcelo accounted for his freedom. Minutes before Marcelo was booked and sent to jail, Scott Holmes, a criminal defense lawyer, walked into the courtroom. Scott became Marcelo's advocate. Marcelo asked Scott how much money he owed. Scott found out and set Marcelo free. But Scott could not have freed Marcelo had he failed to listen to him. Because he trusted Marcelo to tell him exactly what to do, Marcelo left unchained. Any initiative

¹⁵ From here on, I refer to the non-English speakers whose cases I follow as "informants." I choose "informant," common parlance among anthropologists, over "subject" to reflect the ethnographic/anthropological bent of my methodology ("Ethnography" 2014).

to sustainably address courtroom scarcity and inefficiency must involve (1) space for advocates like Scott and (2) trust in non-English speakers.

In April 2015, the North Carolina Administrative Office of the Courts (AOC)¹⁶ published its own solution to courtroom scarcity and inefficiency: the North Carolina Standards for Language Access.¹⁷ These Standards are impressive and unprecedented. They go further than any previous legislation in North Carolina to provide qualified, free interpreters for non-English speakers. Since the Standards are so new, no systematic analysis has been conducted on their application, until now. In Chapter II, I undertake the very first study of the Standards.

The time, money, and staff the AOC has invested in the Standards must be commended. The Standards have the potential to address courtroom scarcity and inefficiency. But they are far from this potential. Of my thirteen informants, only two received interpreters when they needed them. In Chapter II, I develop three shifts in the Standards' application which address all thirteen of my informants' inaccess.

1) Make “Access” Accessible by providing notice to LEP individuals that interpreters exist and creating intuitive, multilingual forms to request them.

2) Follow the Standards. All judicial officials must be made aware of and held accountable to the Standards.

3) Liberate Interpreters. Interpreters should be free to interpret meaning, rather than constrained to literal translation.

¹⁶ The AOC is the administrative body responsible for language access in the judicial system.

¹⁷ I will refer to this document, which receives considerable treatment, as “the Standards” or “the Standards for Language Access.”

In Chapters I and II, I limit my analysis of language access to the courtroom itself. I examine scarcity and inefficiency as they exist in *courtrooms* in Chapter I and the Standards, which provide *courtroom* interpreters, in Chapter II.

As I continued my research, I met informants who had hit the courtroom jackpot. They received a free, qualified interpreter as promised by the Standards. They faced minimal scarcity and inefficiency in the courtroom. But meaningful access was still denied them. To understand their predicaments, I needed to venture outside the courtroom.

What I found surprised me. In the field of language access, there is a disconnect between research focus and judicial practice. Language access policy addresses lack of access in the courtroom. But here is the catch: *more than 95% of cases never end up in a courtroom trial.*¹⁸ Language services are absent or inadequate in the unregulated “in-between” spaces of judicial procedure: in the court conference rooms, at the clerk’s office, in mailed correspondence, on the streets.

In Chapter III, I begin to examine the barriers to language access “in-between,” situating this research in a small but growing category of liminal-space scholarship. Since the “trial” as we know it is steadily vanishing, this new category of research assumes still more importance.¹⁹

Methodology

Non-English speakers like my informants are increasingly present in North Carolina courtrooms.²⁰ But their stories are absent. How do they experience the courtroom? Is their

¹⁸ Goode 2012

¹⁹ For more on the “vanishing trial,” see Refo’s article, “The Vanishing Trial” in the ABA’s journal.

²⁰ See “The New Frontier” in Chapter II and “Clerical Errors” in Chapter III for a treatment of the growth in Haitian and Latino immigrant populations in North Carolina.

experience different than that of English speakers? I approached these questions through the lens of microanthropology.²¹ Over eight months and 75 hours, I interviewed and observed thirteen non-English speakers as they navigated North Carolina’s legal system.

The most detailed and influential studies of language access thus far have drawn data primarily from the “providers” of language access – judges, lawyers, and court officials. They gather this data by means of quantitative, statistical surveys.²² Large-scale surveys are useful for policy-level analysis but fail to capture lived experience. The field was ripe for a qualitative, small-scale study, for which I am uniquely situated. I am fluent in Haitian Kreyòl and Spanish, thanks to my Romance Studies major at Duke. The Haitians and Latinos trusted me because I spoke their language. Many shared their stories with me. In this paper, I situate their stories within the socio-political context of North Carolina’s legal system.

Limiting the number of non-English speakers I observed enriched my final analysis. Because I had only thirteen informants, some became my friends.²³ They invited me into conversation that strayed from interview questions. I got to know them as *people*, not data

²¹ I am grateful to Laurent Dubois for developing my understanding of “micro-anthropology,” that is, the focused, cross-sectional study of the context and experience of a select few informants.

²² Weissman’s 2010 analysis of interpreter provision in North Carolina is the quantitative analysis most salient to this project (Weissman 2010). Berk-Seligson’s linguistic study, which has become something of the interpreting best-practices textbook, is not quite quantitative. But it relies more on linguistic theory than qualitative analysis (Berk-Seligson 2002). The European Union’s survey analyzes interpreter provision in all 28 member countries. It relies solely on surveys (with a less than 10% response rate) drawn solely from “providers” of language services: courtroom officials and interpreters (Hertog and Van Gucht 2008).

²³ Anthropologists widely concur on issues as profound as Geertz’s and Weber’s definition of “culture” and as mundane as how to cite papers. But on how to “be” with their informants, they diverge. Some, like Carla Freeman, appear surprised by their relationship with subjects and feel obliged to define their “friendship” in a quite unfriendly footnote (Freeman 18, 264). Others, like Karen McCarthy Brown, define their research *in terms of* their friendship. In her introduction to *Mama Lola* she calls “ethnographic research” a “form of human relationship” and proudly acknowledges that the title character introduces her as “daughter” (McCarthy Brown 8, 12).

points.²⁴ This personal aspect of my research lent the final analysis an authenticity absent from statistical research. Further, a quantitative study would have completely missed the “barriers in-between,” which I discovered only because of our friendship. Our conversations often spilled out of the courtroom into the law’s “in-between” spaces, precisely where my informants experienced the most debilitating barriers to access.

The Jargon

My research operates at the intersection of two jargon-filled spaces: law and government bureaucracy. During my research, I learned legalese and the acronyms of court bureaucracy. But I do not assume my readers have also. This paper is meant as much for the lawyers and court officials who might speak the “languages” I have learned as for activists and academics who might continue this work. In an effort to make a project about accessibility accessible, I have attempted to play the role of “jargon interpreter” myself, either explaining the jargon or replacing it with more accessible terms.

Two pieces of jargon appeared with such frequency and are so fundamental to this work that they necessitate detailed definitions.

²⁴ Becoming friends with one’s subjects is risky business in research. My sympathy for their experience is evident in my analysis. I am conscious of my tendency to explain or otherwise excuse my informants’ actions. It is true that where the responsibility for courtroom inaccessibility could fall both to my informants’ lack of awareness and court officials’ negligence, I tend to focus on the latter. This, I believe, is a necessary balancing of scales. All too often, those with privilege, like Marcelo’s judge, commit crimes against non-English speakers with impunity. They are not held accountable for their actions. My non-privileged informants, like Marcelo, are punished for the same – or lesser – crimes. They are held over-accountable. By continuing to shift responsibility for inaccessibility to the Court and away from my informants, I hope to compensate for the imbalance caused by privilege.

“LEP Individual”

Up to this point, I have referred to my informants as “non-English speakers.” But the government and the courts employ a different term: “limited English proficient (LEP) individual.”

In 2002, the Department of Justice released this still-current definition:

“LEP Individual”: A person who speaks a language other than English as his primary language and has a limited ability to read, speak, write or understand English.”²⁵

It is important to note the “or” separating the four skills defined here. If one can speak and understand English well but cannot read or write, he is an LEP individual by definition and requires services. This little conjunction has big implications, especially for the court’s responsibility to provide multilingual documents.

Being LEP is the determinative factor in receiving language services, both at the federal and state levels. Since LEP is the federal government’s term of choice for individuals whose primary language is not English and since the Standards follow suit,²⁶ LEP is the term I will use to reference them throughout this paper.²⁷

²⁵ U.S. Department of Justice 2002, 41457.

²⁶ The 2015 Standards reference “limited English proficient individuals” 103 times in 77 pages.

²⁷ I would be remiss if I did not articulate my reservation about LEP. Terms such as “limited English proficient” and the even more euphemistic “English language learner” root people’s identities in a one-dimensional deficiency. Recently, education scholars have advocated for “additive” terminology such as “emergent bilingual,” to stress non-English speakers’ existing capacity in their native language and their progress, rather than deficiency, toward mastery of English. Still, I understand the Court’s allegiance to LEP. Terms like “emergent bilingual” work well for progressive, long-term environments like school and should be widely adopted, but they may not be practical for the courtroom, where immediately addressing non-English speakers’ basic need to participate meaningfully is more important than teaching English (Abedi 13).

Meaningful Access

“Meaningful access” is the goal of all language access policies. It is the highest and only standard by which researchers and lawyers evaluate these policies. It opens the North Carolina Standards for Language Access and the U.S. Department of Justice’s Language Access Plan.²⁸

Meaningful access for LEP individuals is “the provision of services in a manner which allows a meaningful opportunity to participate in the service or program free from intentional *and unintentional* discriminatory practices...”²⁹ “including, *but not limited to*, in-person interpreting services, telephonic and video remote interpreting services, translation of written materials, and the use of bilingual staff.”³⁰

Other Important Terms

North Carolina Administrative Office of the Courts (AOC) – the administrative body which supervises language access services; published the 2015 Language Access Standards.³¹

Office of Language Access Services (OLAS) – the branch of the AOC which provides language services to LEP individuals, publishes the Registry of Spanish-speaking interpreters, and develops resources for LEP individuals and the courts.³²

The Court – a catch-all proxy for court administration, judicial officials, and the court as an institution.³³ In this work, “the Court” is the operative entity any time I issue a directive (for example, “*the Court* must provide multilingual documents”).

²⁸ “Standards” 7; U.S. Department of Justice 2012, 1

²⁹ American Bar Association 11

³⁰ “Standards” 10; American Bar Association 10, emphasis added

³¹ “Standards” 10.

³² “Standards” 10.

³³ The late literary critic Barbara Johnson would call the Court, as I am defining it, a “metonymy,” that is, a space which subsumes the people and institutions proximate to it (Johnson 44). I am grateful to Deborah Jenson for this insight.

Chapter I: The Judicial Gemini

The Twin Troubles which Plague Court Culture

My small pool of informants yielded unexpected diversity. I met a Haitian in a small-town traffic case, an Arabic speaker in Durham’s misdemeanor court, a Salvadoran survivor of domestic violence, and a Raleigh restaurant worker originally from Mexico. Their backstories could fill a novel, but one sentence sums up their court experience: each struggled for justice within a court system that stripped them of the same.³⁴

What accounted for the uniformity of my informants’ struggle?

Each person’s problems resulted directly from a pair of long-standing misfortunes as ingrained in court culture as swearing-in and “Your Honor”: scarcity and inefficiency.

Since its establishment, the American judicial system has suffered from scarce finances. This “feeblest” of the three branches of government is routinely underfunded locally and nationally. Administrators routinely cut positions and leave vacancies unfilled.³⁵ Underfunding also limits language access services. In his introductory letter to the 2015 Standards, Judge John Smith conceded that “limited funding has forced me to defer the implementation of some specific measures.”³⁶ In this section, I will revisit Marcelo’s story to understand how scarcity and inefficiency particularly affect LEP individuals.

³⁴ In his study of 20th century court cases involving Latinos in the Southwest, Mitchell identifies the court system as the space in which immigrants could most fully claim the “characteristics and compartments associated with American *citizenship* and American belonging” (Mitchell 8, emphasis added).

³⁵ “The Feeblest Branch” 2011

³⁶ “Standards” 2

Marcelo's Case: A Closer Look

In the ideal case, scarcity and inefficiency mean the judicial system slides along at a snail's pace. Over three months interning full-time with a trial lawyer, I saw no case that was resolved after one court date. The fastest finished in three, and many cases I worked on had been going for months or years. Cases are slow-moving as a rule. When a litigant speaks no English, delay is even more likely, and abuse of justice is common.³⁷

Take Marcelo, for example. Scarcity and inefficiency explain the judge's decision to hear his case early. The judge called his case before his lawyer could arrive to defend him. The judge called the case because Sofia, the interpreter on staff at the courthouse, had arrived. Finances are too scarce to hire multiple interpreters, so Sofia is the only interpreter on staff.³⁸ When she arrives, it is common practice to expedite cases that require her, lawyer or no lawyer.³⁹ The judge cannot keep her waiting, especially if her absence is stalling another courtroom into inefficiency. Scarcity and inefficiency also explain the tardiness of Marcelo's lawyer. The lawyer had made his time scarce by taking on too many cases scheduled for the same day. He had not planned for delay. When the judge called Marcelo, his lawyer was tied up with a slow-moving case in another courtroom.

For Marcelo, the scarcity of interpreter services and the inefficiency of courtroom procedure combined into the perfect storm of unjust justice: the judge plowed over Marcelo's rights and nearly hightailed him to jail.

³⁷ Denials of justice are more common in everyday cases like Marcelo's, in which oversight is scarce and consequences are minimal.

³⁸ I am grateful to the Durham County staff interpreter, who shared these thoughts with me in an interview in June 2015.

³⁹ This *de facto* expedition is codified in the Standards for Language Access: "Judicial officials should make every effort to minimize the length of time the interpreter...must spend waiting" ("Standards" 29).

But what happens next in Marcelo's story drove me back to the drawing board. Five minutes after Marcelo was handcuffed and sentenced to jail, he walked out of the courtroom unchained, returned two hours later with the money he owed, turned it in, and walked out again, a free man with a clean record. Like the injustice experienced indiscriminately by my LEP informants, Marcelo's miraculous epilogue is not unique: out of all thirteen of my informants, nine ended up achieving what they had come to court to do.

I began this project – and the introduction to this paper – asking why the court system had failed non-English speakers. As I drew deeper, the project became a quest to understand – and hopefully foster – their success.

Unlikely Epilogues

I entered the courtroom the day Marcelo was arrested not as a researcher but as an intern. Scott Holmes, a Durham trial lawyer and law professor at North Carolina Central University, had generously allowed me to shadow him for the summer. We met Marcelo together. Little did I know that our 15-minute accidental encounter with Marcelo would frame a yearlong research project.

Less than a minute passed between our entrance to the courtroom and Marcelo's arrest. After the bailiff finished locking Marcelo up, Scott caught my eye, and we walked over to him. The judge, meanwhile, had moved on to another case.

Scott whispered to Marcelo as I translated: "My name is Scott, and we are here to assist you."

Marcelo knew exactly how we could help.

"How much money do I owe?" he asked.

Amazingly, in the judge's entire exchange with Marcelo, she had never communicated how much he needed to pay to be released. Scott trusted that what Marcelo asked was he needed to know. He set to work.

Without drawing the attention of the judge, Scott found out Marcelo's debt from the clerk. Upon hearing the sum, Marcelo nearly laughed.

"I have that much sitting in my desk at home!"

At the next interlude, Scott asked the judge to free Marcelo so that he could retrieve the money. To my surprise, the judge agreed immediately. As I reflected, the judge's confounding acquiescence made more sense: Scott was offering an *efficient* solution that taxed none of the court's *scarce* resources. Marcelo would pay what he owed in the clerk's office, not in the judge's slow-moving courtroom. And this transaction would not require wrangling the strained interpreter.

The bailiff freed Marcelo and we walked out of the courtroom together. He thanked us as he rubbed his sore wrists, and we parted ways.

Against impossible odds, Marcelo had succeeded.

My informants face a daunting task in the courtroom: convey their innocence or prove their opponents' guilt. They dutifully follow the steps proscribed to them. They hire lawyers, gather evidence, and prepare for their hearing. Yet the courtroom rules of scarcity and inefficiency seem to doom these LEP individuals to failure. They end up arrested, like Marcelo, interpreter-less like ten of my other informants, or growing impatient with the delay and giving up.

How, then, did nine of my thirteen informants succeed against such steep odds?

They outsmarted the rules.

Scott entered the courtroom with the legal savvy to help Marcelo but without the context of Marcelo's case to know how. Marcelo asked Scott to find out how much money owed. Scott trusted that what Marcelo asked him was what he needed, found out the amount of Marcelo's debt, and asked the judge to free him. Marcelo circumvented courtroom scarcity and inefficiency with an *advocate* – the lawyer – who *trusted* Marcelo to tell him what to do. Any initiative to sustainably address courtroom scarcity and inefficiency must involve (1) trust in non-English speakers and (2) space for advocates.

Trust and Advocates

How LEP Individuals Achieve Meaningful Access

Trust

The American justice system was founded upon an empowering assumption: that all people are innocent until proven guilty.⁴⁰ This assumption is quite radical. People are to be *trusted*, no matter if their charge is murder or stealing Skittles, unless an abundance of facts prove beyond a reasonable doubt that their testimony is false.⁴¹

My informants' failure invites opposite, disempowering assumptions about their character: they must be clueless and resourceless. These assumptions are wrong, as Marcelo's story demonstrates. Marcelo was not clueless. When Scott and I approached him, he knew exactly what question to ask to free himself. Nor was he resourceless. He had hired a private lawyer. Marcelo's judge had internalized these assumptions, however. She refused to listen to his question because, well, he had no clue what to ask anyway. She would not wait for his lawyer because she was in a rush – and did he *really* have a lawyer? Marcelo was guilty with no chance to prove his innocence.

⁴⁰ *Presumption of Innocence* 85

⁴¹ *In re Winship* 1970 in "Proof Beyond a Reasonable Doubt"

Trust must replace the mistrust which pervades the court. A judge who trusted Marcelo might have heeded his plea to wait for his lawyer. Though it would have meant momentary delay, his lawyer would have prevented the inefficiency of processing Marcelo for jail – and saved the court the cost of housing him. Better yet, a judge who trusted Marcelo might have listened to his question, told him how much money he owed, and resolved his case in less time than it took the bailiff to lock him in handcuffs.

The justice system's current strategies to expand language access suffer from the very problems they seek to address. Scarcity is addressed with an infusion of scarce resources and inefficiency with new, complicated procedure. Such solutions are destined to fail. *Trust*, on the other hand, addresses scarcity and inefficiency in a completely new way. By trusting non-English speakers to participate in their own judicial fate, the justice system mines a resource completely untapped: non-English speakers themselves.

Advocates

Meet Teresa. Teresa works as the “immigrant advocate” for the Durham Crisis Response Center (DCRC), Durham's largest domestic abuse support organization. Since 1984, the Durham Crisis Response Center has provided services for victims of domestic abuse. Last year, the DCRC connected over 4,000 victims of domestic abuse to services and has expanded bilingual services to respond to the Triangle's growing Spanish-speaking population. DCRC operates a 24-hour help line in English and Spanish and employs bilingual staff and volunteers.⁴² One of Teresa's primary work responsibilities is accompanying all of the DCRC's Spanish-speaking survivors of domestic abuse to court.

⁴² Durham Crisis Response Center 2012.

Teresa is Durham's unofficial authority on domestic violence. As a woman, she empathizes with the mostly-female victims of domestic violence. As a Latina with a musical Costa Rican accent, she immediately garners the trust of Latina clients. As an advocate with twelve years of experience working with survivors of domestic violence, Teresa leads her clients deftly through the confusing courtroom. Teresa is not a lawyer. She is not a social worker. She is not a law enforcement officer. She is not a court official. Nor is she trained in any of these professions. But she has dedicated her life to supporting her clients. Over years of experience, Teresa has developed a comprehensive understanding of all the systems that interact when someone has been a victim of domestic violence.⁴³ Teresa accompanied each of the five the domestic violence survivors I observed. She called them the morning of their court date, met them early in the conference room, prepared them for their hearing, and gave them parting instructions. Her advocacy was essential to their success. Like an archetype in a novel, a "Teresa" appeared in all nine successful cases of non-English speakers.

Teresa by Many Other Names

For Natalia and Rosa, there was Fabiola, the retired businesswoman-turned-advocate who works at El Centro Hispano, Durham's primary non-profit service provider for the Latino community.⁴⁴ She greeted these victims of wage theft with a grandmotherly smile that belied uncommon grit, which she quickly deployed on their behalf. Fabiola called, emailed, and pestered attorneys into taking their cases. Then, she interpreted for monolingual lawyers and held Natalia tenderly as she wept through her story of being threatened and fired. After their cases

⁴³ Teresa, in her versatility, joins what Wierzbicka calls the "emotional worlds" of disparate contexts – law, domestic abuse work, the Latina community, and the abusive household – which otherwise exist in vacuums (Wierzbicka 2004).

⁴⁴ El Centro Hispano 2011

finished and the employers promised to reform, it was Fabiola, not the lawyer, who kept them to their word.

The lawyer who represented Federico could not have taken his case without Elsa. Elsa works as the bilingual associate at a local bank branch. She had helped Federico open his account years ago, before he began working at *El Pachuco*, the Mexican restaurant where he had been cheated his wages. She explained what it meant when his paycheck bounced twice. She showed him how to deposit the money orders his boss gave him. And her very presence at that bank made it accessible for him. Since he kept depositing his checks with Elsa, he had perfect records of the criminally low wages the *El Pachuco* managers had paid him since he started working. Elsa was able to provide these records to Federico's lawyer, which allowed him to file a Complaint against the restaurant. She even offered to testify in court.

For Pierre, there was Yolande, the Haitian Kreyòl interpreter. Yolande helped move Pierre's case forward when it had reached a standstill. Pierre was intelligent, and fostering his agency in the courtroom is still crucial to his success. But without Yolande, Pierre would have sat submissively in the courtroom and waited hours for the judge to call him – or not.

When Pierre left for Lumberton, his hometown, and after Yolande's interpreter duties were finished, she took him aside and asked him about his schooling. She admonished him to complete his GED and enroll in community college. She gave him a card for her business, proof of her own success, which she attributed to her U.S. education. Then, she introduced herself more fully, explaining her prominent role in the local Haitian church, even naming a few pastors Pierre also knew. She gave him her cell phone number and instructed him to call if he had any questions.

Pierre lived among monolingual factory and farm laborers. In Yolande, he saw a different vision of being Haitian in America: an upwardly-mobile professional with college and graduate degrees and a professional-level command of English. He left for Lumberton with a renewed faith in his academic endeavor, poorer by a \$210 court fine but far richer in social capital. He also gained a faithful friend. Yolande gave Pierre her phone number and encouraged him to call her if he had questions or needed advice. If Pierre had another encounter with the law, he could count on this Haitian businesswoman and church elder to guide him through. Pierre's new connection would mean improved access to the justice system for his whole community – family, friends, and co-workers. Yolande's generosity typifies the resource-sharing often observed in migrant communities.⁴⁵

The work of these men and women integrates the best aspects of many fields: social worker, lawyer, interpreter, therapist – without the limitations of any of them. Teresa is not relegated to the courtroom like a lawyer or to the office like a social worker. She is free to accompany her clients through the whole process, from when they first arrive at her organization, terrified and alone and hurt, through receiving the one-year restraining order. Teresa's clients see her as a mother, a confidante, a guide, a rock, and a saint. Teresa's versatility, Fabiola's business acumen, Elsa's meticulous organization, and Yolande's social capital bridged the gap between my informants and an unintelligible justice system.

These advocates provide culturally-conscious interpretation, but their work succeeds primarily because it is relational. After Teresa's domestic violence cases, she remained with her clients, sharing wise advice and listening to their pain. Thanks to Yolande's willingness to be Pierre's advisor, his entire Haitian community will not face the same confusion he did. Elsa and

⁴⁵ See Blumberg and Smart 2010 for just one example.

Fabiola's doors are open to Federico, Rosa, and their families every week, 40 hours a week. All of these advocates were with my informants before I arrived and will remain after I leave. Their care takes them beyond their job description.

Whenever the problems of the judicial system overwhelm me, I return to these advocates. Their work is counterintuitive – and inspiring. In a court mired in inefficiency, they waste far too much time being with their clients. In a court strained by scarcity, they take on too many cases and stretch themselves too thin. In a court pervaded by mistrust, they believe in their clients. And in all the stories I recount above, the LEP individuals they served received meaningful access to the justice system. They achieved what they had set out to do.

Conclusion

By now, it should be apparent that Marcelo's chains were not a fluke, nor were they his fault. His arrest indicates a pattern of courtroom scarcity and inefficiency he could not control. However, Marcelo's success *was* a fluke. It was sheer coincidence that Scott and I entered the courtroom just in time. It was also his "fault." He knew exactly how we could help him. We leveraged Marcelo's knowledge of what he needed, Scott's familiarity with the courtroom, and my bilingualism to free Marcelo from his strange chains.

When they entered the justice system, my LEP informants confronted a mountain of inefficient bureaucracy and debilitating scarcity. In spite of these Sisyphean odds, and thanks to their inherent potential and the advocates that unleashed it, they succeeded.

Chapter II: Standard Error

“The New Frontier”

North Carolina’s Burgeoning Immigrant Population

Ours is a “nation of immigrants,” as John F. Kennedy’s book of the same name reminds us. People from all countries are welcome, at least in principle. As immigrants have flocked to North Carolina in unprecedented numbers over the past half-century, our state has begun asking how to welcome their languages, too.

Before the turn of the 21st century, North Carolina’s sparse non-English speaking population received little attention and few language access services. In 1990, only 1.4% of North Carolina’s population did not speak English, compared with over 10% in Texas, California, and New York.⁴⁶ The turn of the century ushered in a shift in immigration. More and more immigrants moved to Southeastern states, attracted by the lower cost of living and employment in agriculture and construction.⁴⁷ In the past two decades, no other region has seen immigrant population growth as high as the Southeast. Today, approximately half a million LEP individuals live in North Carolina, four times as many as in 1990.⁴⁸ The Triangle has experienced particularly high rates of growth. It is for good reason that anthropologist Hannah Gill calls North Carolina “the new frontier” for immigration in the U.S.⁴⁹

The growth took our state by surprise. Government institutions were not prepared to meet the needs of the burgeoning non-English speaking population. In the past decade, bureaucracies

⁴⁶ “LEPPopulationData” 2015; Zong and Batalova 2015

⁴⁷ Gill 3

⁴⁸ “LEPPopulationData” 2015

⁴⁹ Gill 3

have begun working with advocacy groups, academics, and immigrant communities to catch up. The courts are no exception.

New Standards

As North Carolina's immigrant population continued to balloon, Dr. Deborah Weissman, professor at the UNC School of Law, and three law students published a landmark report in 2010 on access to the courts for LEP individuals in North Carolina.⁵⁰ They documented where the Court successfully provided services for non-English speakers – and where it failed. This report launched a cooperative effort among academics like Weissman, the Administrative Office of the Courts (AOC), and activist groups like the NC Justice Center to advance language access. Their work culminated five years later in the Standards for Language Access, published by the AOC in April 2015.⁵¹

The Standards are impressive and unprecedented. They go further than any previous legislation in North Carolina to provide interpreters for all non-English speakers. Since the Standards are so new, no study has been conducted on their application. This research is the first. My informants' experiences reveal a gap between the Standards' ideal of universal interpreter provision and the courtroom reality: only two informants received an interpreter when they needed one.

In this first analysis of the Standards, I explore this gap and offer three shifts which might close it.

⁵⁰ Weissman 2010

⁵¹ For a more detailed timeline of events leading up to the Standards, see the Timeline in the Introduction.

The Ideal

The Standards address key problems Weissman identified in her 2010 report. In 2010, free interpreters were sporadically provided to poor non-English speakers in criminal cases. The rest relied on family members, whose conflicting interests and lack of training often disadvantaged LEP individuals. Today, the Standards prohibit untrained interpreters and, in turn, guarantee certified, free interpreters to everyone in criminal and civil cases.⁵² Where in 2010 qualifications for court-approved interpreters were ambiguous, the Standards clearly outline the education, testing, and impartiality necessary to be a court-certified interpreter.⁵³ Where in 2010 procedure for interpreter provision varied from judge to judge, the Standards outline a step-by-step procedure that all judges must follow.⁵⁴

The Reality

The Standards have the potential to uproot the scarcity and inefficiency which exclude LEP individuals from our courts. But they are far from this potential. Of my thirteen informants, only two received an interpreter when they needed one. Of the two, only one received helpful services from the interpreter. Marcelo was the other. For him, the interpreter's untimely entrance facilitated his arrest. Though the Standards guarantee interpreters in all cases and clearly outline how they will be provided, ten of my informants endured their whole court experience without an interpreter and left completely unaware that they were entitled one for free.

In my fieldwork, I uncovered three errors in the Standards which explain the gap between the Standards' ideal and the courtroom reality:

- 1) The inaccessibility of interpreters.

⁵² Weissman et al. 56; "Standards" Appendix A

⁵³ Weissman 62-73; "Standards" 50-55

⁵⁴ Weissman et al. 32, 53-56; "Standards" 27-36

- 2) Judicial officials' lack of awareness of and accountability to the Standards.
- 3) Lack of freedom for interpreters.

Though other issues exist with the Standards, I focus in this chapter on these three because of their universality. Each negative experience with interpreters I observed can be traced back to these issues.

The First Gap: Interpreters in an Ivory Tower

The Inaccessible System which Left Abdul Interpreter-Less

I spent many mornings observing in Durham County's misdemeanor courtroom, the catch-all space for small criminal offenses. It was here that I met many of my LEP informants. One morning in June, I arrived just before roll call began. I settled in to observe.

A few names down the list, the district attorney stumbled over Abdul's multi-syllabled surname. I was immediately alert, intent on identifying the responder. I was equally prepared, however, for silence. District attorneys (DAs) routinely mispronounce multi-syllabic or foreign names of LEP individuals. The mispronunciation begins a dangerous chain reaction. The LEP defendant fails to respond, the DA marks him absent, and a warrant goes out for his arrest. A district attorney's failure to notice an LEP individual can send him on a path to prison before he has said even one word. I willed Abdul to respond.

"First appearance," came the accented reply from the back left of the courtroom.

I turned to the source of the voice, and found Abdul. He was not alone. Sitting next to him was another man, whispering in his ear. Abdul knew he needed an interpreter. But he could not have known the court would provide him one. Though the Standards guarantee interpreters in

all criminal cases, there are no signs in any of the courthouses I visited indicating as such.⁵⁵ So Abdul did what any logical person would: he brought along his own interpreter.

Since many LEP individuals are unaware that they can request an interpreter, the burden falls entirely on the Courts to provide one. The Courts can catch an LEP individual's need for an interpreter at one of two "checkpoints:" roll call and first appearances. These checkpoints are the two verbal interactions in which the Courts assess a person's ability to speak and understand English. If found "limited" at either, they must be provided an interpreter.⁵⁶

The first checkpoint is roll call, which begins district court proceedings. The DA calls the names of everyone on her docket. If the defendant answers roll call in another language or in heavily accented English, the judge and DA can take the necessary steps to schedule an interpreter.⁵⁷ There is no better time to identify need for language services than here. Everyone must speak, and foreign accents register in the ears of the DA immediately.

But roll call is rife with contingencies. People who need interpreters are easy to miss. If the DA (through no fault of his own) mispronounces Abdul's name and Abdul fails to respond (even if he is present), Abdul will receive an arrest warrant rather than an interpreter. Roll call, like any perfunctory activity in an inefficient courtroom, is rushed. After calling one person, the DA routinely calls the next almost before the first has responded. There is little time to notice an accent.

Abdul did respond to the mispronounced version of his name, and the DA must have heard his accented reply. But since Abdul's friend told him exactly what to say, the DA assumed his competence and Abdul slid easily past the first checkpoint.

⁵⁵ "Standards" Appendix A

⁵⁶ I am indebted to attorneys Scott Holmes and Sherry Everett for my understanding of court procedure which informs this section.

⁵⁷ "Standards" 15-17

Fortunately, the second checkpoint, “first appearances,” is not rushed or prone to human error. During first appearances, all defendants in court for the first time stand in line before the judge. The judge instructs them of their right to a free public defender if they cannot afford a lawyer. Then, he asks each defendant whether he wants a public defender or his own lawyer. If the DA had missed an LEP individual’s need during roll call, the judge should catch it at first appearances.

Abdul would have a much harder time flying under the radar this time.

But he was prepared again. He went forward with all the other defendants – and so did his friend.

When the judge came to Abdul, he managed a heavily-accented “hire my own lawyer” and began walking over to sign the paperwork – with his friend in tow. The judge finally called his bluff.

“Who is that with you?” she asked Abdul.

Abdul hesitated. Anyone who looked at his confused expression could have assumed his complete incomprehension. But the judge did not notice. His friend saved him.

“I am his friend,” he offered.

Satisfied with the response but unsatisfied with the friend’s accompaniment, the judge instructed Abdul’s friend to sit down. As his friend retreated, Abdul’s eyes betrayed his worry. He was now alone and interpreter-less. In an instant, the judge had stripped him of the only interpreter he had and failed to provide him another. While his friend explained the proceedings, Abdul’s access to the courtroom had been somewhat meaningful, if slightly improper.⁵⁸ Once the judge separated Abdul and his interpreter, Abdul’s courtroom experience descended into

⁵⁸ The Standards prohibit the use of family members and friends as interpreters (“Standards” 21).

meaninglessness. What stood between this non-English speaker and freedom was a monolingual bailiff and an English-only piece of paper.

Now off the court's radar, Abdul's obvious lack of understanding was simply dealt with rather than addressed. After a five-minute exchange with a frustrated bailiff, Abdul managed to sign his name on the required form. The judge told Abdul that he needed to return to court on November 7th.

"Do you understand?" she asked, noticing his querulous look.

No response, and the same confused expression.

Abdul's need was impossible to ignore. The judge should have called for an interpreter or noted he needed one for his next court date. But he was so close to leaving that the judge deemed this delay unnecessary. She ignored Abdul's need, instructed the bailiff to write his court date on a sticky note (in English, of course), and released him.

Thanks to a friend and a rushed judge, Abdul had been ignored at roll call and first appearance, the checkpoints built into court proceedings to recognize his need for an interpreter. He left having signed a waiver with unknown terms and with a sticky note he could not read. Abdul had been forced through all the steps and left with the resolution he wanted – his own lawyer and no courtroom arrest – but without the free, qualified interpreter he needed.

Abdul should have known about his right to an interpreter before he arrived in the courtroom. The Standards state that the Administrative Office of the Courts (AOC) will provide "public notice" that all LEP individuals are entitled free, qualified interpreters in the form of public "information, forms, or materials."⁵⁹ As of December 2015, no such notice existed in any of the courthouses I visited.

⁵⁹ "Standards" 15

Even if Abdul had known about his free interpreter, he was all but powerless to request one. The request document is inaccessible for LEP individuals. It exists only in English on the third page into the court’s website, which is also only in English.⁶⁰ To fill it out, Abdul needs a computer with Internet and an understanding of legal jargon like “jurisdiction” and “misdemeanor” so that he can fill out the form “completely,” as the form’s instructions mandate.⁶¹ The complicated form is clearly oriented toward “providers” like judges or lawyers, not consumers like Abdul.⁶² Without multilingual signs to inform Abdul of interpreters or accessible forms he can sign to ask for them, Abdul has no hope of requesting his interpreter. His choice to bring along his own interpreter was not only evidence of his resourcefulness. It was rational.

The First Shift: Make “Access” Accessible

Democratizing Interpreter Provision

In this section, we have seen how Abdul’s lack of knowledge combined with the court’s lack of notice led Abdul to bring along his own interpreter. Ironically, Abdul’s interpreter friend confirmed Abdul’s misperception that the Courts would not provide him one. His friend’s intervention prevented the court from noticing Abdul’s need for an interpreter.

⁶⁰ The North Carolina Court System 2016; “Request for Spoken Foreign Language Court Interpreter” n.d.

⁶¹ Curious as to the meaning of “completely,” I attempted to fill out the form. The form would not let me submit it if I left the case number, case name, jurisdiction, type of case, or type of proceeding blank – all information that would be challenging for LEP individuals to extract from their English-only citations. I did successfully submit the form without filling out the name of the prosecuting or defendant’s attorney (which most LEP individuals would not have at the time of filling out the form), but there is no indication on the form itself that these fields are optional (“Request for Spoken Foreign Language Court Interpreter,” n.d.)

⁶² In fact, “Self” or an equivalent is not even listed among the options in the dropdown menu for “Requestor Title” on the Interpreter Request Form. (“Request for Spoken Foreign Language Court Interpreter,” n.d.)

Fortunately, the Standards already contain the solution to Abdul's dilemma.

- 1) Provide the "public notice" of interpreters already outlined in the Standards both in pre-court, mailed correspondence and on signs plastered throughout the courthouse.

This notice should be printed in multiple widely-spoken languages.⁶³

With notice, Abdul would have known he did not need to bring his own interpreter.

- 2) Simplify and distribute the interpreter request form in multiple languages so that LEP individuals themselves, not just court officials, can submit the form.⁶⁴

If this form were given to, not hidden from Abdul, he would have arrived at court with a qualified interpreter at his side for his whole proceeding, instead of a friend for just part of it.

It is in Abdul's best interest to get himself an interpreter. Currently, however, only the Court can provide him one. Public notice and an accessible form allow non-English speakers like Abdul to request their own interpreters. Shifting responsibility to non-English speakers eases the burden of interpreter coordination on the Court.

The Second Gap: Court Officials, Unaware and Unaccountable

Unlike Abdul, Alvaro was no stranger to the courtroom. At roll call, he answered without hesitation and without an interpreter. This time, the judge was more attentive.

She noticed his accent and asked, "What is your name, sir?"

Her question was a brief assessment of Alvaro's ability to speak and understand English.

He responded with the name the DA had called, and the judge, satisfied, instructed the DA to move along with roll call. No need to delay court and call for an interpreter when one was

⁶³ "Standards" 15

⁶⁴ "Standards" 23

not needed. Ironically, the judge's quick decision to salvage efficiency would lead to greater delays just a few minutes later.

The problems began during first appearances. Normally, defendants approach the judge silently. When the judge called Alvaro, however, he began vehemently denying that he *was* Alvaro, loudly and in broken English.

Why had he been summoned to court under a false name? He demanded to know.

He even flashed his ID, proving that his name was not Alvaro.

Court stopped. In the ensuing exchange, Alvaro's inability to clearly communicate in English became apparent. He grew increasingly agitated, and the judge responded in kind. As the situation devolved into a shouting match, I wondered if Alvaro would end up like Marcelo, in handcuffs on his way to jail.

Finally, a lawyer intervened. She posited that the police had arrested Alvaro and served him a warrant with a mistaken name. This had happened to a few of her clients in the past. Gathering herself, the judge ordered Alvaro to speak with the bailiff and get his "stuff sorted out." The tension dissolved and Alvaro's case progressed.

A harmless case of mistaken identity had morphed into a tense argument, frustration for the judge, and confusion for Alvaro, all of which wasted ten minutes of precious court time. What went wrong?

Alvaro had advanced one step past Abdul toward receiving an interpreter. The court noticed Alvaro's need for an interpreter. This is why the judge asked Alvaro to repeat his name after his accented response to roll call. But the judge was either unaware of or indifferent to the proper next step in interpreter provision.

The Standards provide specific instructions for the court once an LEP individual's potential need has been identified:

“The judicial official should conduct a brief examination or *voir dire* of the party in interest.”⁶⁵

The *voir dire* is a short interview of a party in the courtroom.⁶⁶ Judges conduct *voir dire*s to test English capacity. If an individual's English is “limited,” she receives an interpreter. If not, court proceeds.⁶⁷ Since “limited” is not defined in any of the official guides on interpreter provision, the Standards “err on the side of caution.”⁶⁸ If there is any question of a person's English capability, they must receive an interpreter.⁶⁹

In the section on *voir dire*s, the Standards instruct judges to ask open-ended questions that cannot be answered by a simple “yes” or “no.” Examples are provided: “Please tell me about your country of origin” or “how did you learn to speak English?”⁷⁰ In case they forget, the questions are also listed on the “benchcard,” a cheat sheet of sorts which judges keep at their seat.⁷¹ The definition of “limited” might be ambiguous, but how to conduct a *voir dire* is quite clear.

Of the limited-English speaking U.S. population, only 7% reported that they spoke English “not at all.” 19% spoke English “well,” and 15% spoke English “not well.”⁷² For Alvaro and the 34% in the gray area, a proper *voir dire* with open-ended questions is essential to accurately assess need for an interpreter. Unfortunately, I found that improper *voir dire*s were the

⁶⁵ “Standards” 15

⁶⁶ American Bar Association 120-121

⁶⁷ “Standards” 15-16

⁶⁸ “Standards” 15

⁶⁹ “Standards” 15

⁷⁰ “Standards” 15, 16

⁷¹ “Working with Court Interpreters” 1

⁷² Ryan 4

norm, rather than the exception. In fact, in my entire time observing in court, I never saw a properly conducted *voir dire*.⁷³

While I was observing in civil court, Tomas, an LEP individual, came forward. Before he began speaking, the judge asked, “Do you speak English?”

“Yes,” he affirmed.

This insufficient *voir dire* satisfied the judge. He permitted Tomas to speak.

Both Tomas’ and Alvaro’s judges chose to breeze past a proper *voir dire* to avoid halting court. In the civil case, Tomas did indeed speak English well enough to get by, though the judge could not have known that from his one-word answer. Alvaro did not. The judge’s decision to skip the *voir dire* and preserve efficiency actually caused greater delay. Alvaro’s confusion and the ensuing argument stopped court far longer than a proper *voir dire* would have. The events also humiliated Alvaro, angered the judge, and nearly landed Alvaro behind bars. When judicial officials do not follow the Standards, breaches of justice – and missing interpreters – are the inevitable result.

The Second Shift: Follow the Standards

If Alvaro’s judge had followed the proper steps for a *voir dire*, his need for an interpreter would have been clear. Non-English speakers are being denied interpreters because officials like Alvaro’s judge are not following the Standards. For the sake of non-English speakers like Alvaro, the Court has a responsibility to ensure that its officials are both aware of the Standards and accountable to them.

⁷³ The ABA warns that improper *voir dire*s lead to inadequate interpreter provision: judges “often fail to conduct a *voir dire* adequate to identify individuals whose level of English proficiency is insufficient to allow meaningful participation” (American Bar Association 620).

Awareness: North Carolina’s justice system employs over 6,000 individuals.⁷⁴ It is impossible to imagine that all of them received copies of the Standards. Court officials who have not seen the Standards cannot follow them. Of the few who received paper copies of the Standards, only some actually read them. Fewer still committed any part of these 77 pages to memory. The Standards are recent, published in April of 2015. In any institution (and especially a government bureaucracy), it takes time for changes as sweeping as the Standards’ to take root.⁷⁵

To ensure the access for LEP individuals the Standards promise, its authors must make the Standards *themselves* accessible. Each judicial official must know part of the Standards, but none needs to memorize all of them. The Courts might publish several condensed versions of the Standards tailored to different roles – clerks, judges, interpreters, DAs, public defenders, etc.

Accountability: What happens when a court official like Alvaro’s judge, knowledgeable of the Standards’ mandates, willfully ignores them? Currently, by all appearances, nothing. No accountability structure exists in the Standards. In order to integrate the ideals of the Standards in courtroom culture, the Standards need teeth. The Courts must articulate how they will oversee the Standards’ application, and how they will hold officials accountable if they willfully fail to follow instructions.

The Third Gap: Interpreters’ Strange Chains

Let us imagine that the Court made good on this chapter’s first two recommendations. They have *made access accessible* to Abdul by informing him of his right to an interpreter and

⁷⁴ “North Carolina Judicial Branch” 2015

⁷⁵ In fact, I am quite interested in how the Standards – and any information that necessitates change in judicial practice – are disseminated. Because I limited my fieldwork to the consumers of judicial services, I do not know the answer.

giving him a simple, multilingual form to request one. Instead of his friend, Abdul requested and received a free, qualified Arabic interpreter. Alvaro's judge, *aware of and accountable to the Standards*, conducted a proper *voir dire*. Then, she provided him the interpreter he needed to help him navigate his identity crisis.

In this imaginary world, Abdul and Alvaro have received the interpreters the Standards guaranteed them. The gap has closed between the Standards' ideal and the courtroom reality. Would Abdul's interpreter have ensured more "meaningful" access for Abdul than his friend? Would Alvaro's interpreter have prevented the argument with the judge? Under current interpretive constraints, no.

In North Carolina, LEP individuals are not the only ones in chains. Current interpreter "best practices" render interpreters little more useful than Google Translate. In what critics call the "conduit" model of interpreting, interpreters must translate "completely and accurately" but are prohibited from explaining culturally incomprehensible ideas to either their LEP client or the court.⁷⁶ They also cannot answer any of their clients' questions.⁷⁷

There is a vigorous debate as to whether interpreters should have interpretive freedom or be limited to literal translation. The jury is still out.⁷⁸ North Carolina's Standards emerge on the strict end of the spectrum: Interpreters must translate their clients' words "completely and accurately" but are prohibited from interpreting meaning.⁷⁹

⁷⁶ "Standards" 48; Fowler et al. 404

⁷⁷ "Standards" 48

⁷⁸ I am indebted to Fowler, Ng, and Coulthard's article "Legal Interpreting" for my understanding of this debate. For a detailed summary, see Fowler et al. "Legal Interpreting," pp. 404-405.

⁷⁹ Standards 43, 48-49. Fowler et al. 406

The Standards explain that literal interpretation is necessary to maintain “interpreter impartiality,” so that LEP individuals are on “equal footing” with English speakers.⁸⁰ In fact, this “impartiality” disadvantages LEP individuals.⁸¹ An English speaker in Alvaro’s situation could ask a bailiff why he had been booked under a mistaken name. Alvaro can ask no one. He cannot ask the bailiff, who speaks only English. His interpreter, bound by “impartiality,” cannot answer his question or direct him someone who might.

With an “impartial,” court-appointed interpreter, Abdul would not have lasted past roll call. There are five possible responses to roll call: guilty, not guilty, compliance, first appearance, and attorney. In the courtroom, none of these responses is easy to understand. Responding “guilty” does not mean pleading guilty. Responding “not guilty” does not mean a trial. Sometimes, one must respond “first appearance” even if it is his second time in court. Even if the interpreter translates the terms accurately and impartially, their implications in an American courtroom might be completely different than in a courtroom in the Middle East.⁸² Without an explanation of what they mean *here*, Abdul is lost. His interpreter could provide a precise definition of each term. But she is bound from saying anything.⁸³

⁸⁰ “Standards” 48

⁸¹ Berk-Seligson concluded that interpreters will advocate, consciously or unconsciously, for their clients regardless of the constraints placed on them. In observation of domestic violence interpreters, she notes that they “become active agents in helping the applicants” (227). The constraint to literalism seems like the Court’s overcompensation for an unavoidable reality. They cannot prevent advocacy in reality, so they categorically exclude it in theory.

⁸² Mikkelsen notes that the same legal term (such as “manslaughter”) may be understood completely differently by people from different cultures (Mikkelsen 1995 in Fowler et al. 408). This may also be the case for any of the five responses to roll call.

⁸³ To further complicate matters, interpreters never interpret roll call instructions anyway! Often, they are not yet in the courtroom. Even when they are, they wait for the LEP individual’s hearing to begin interpreting. If LEP individuals are expected to rely on interpreters for meaningful access, interpreters must begin their jobs as soon as court starts.

In Chapter I, I noted that court officials assume LEP individuals' cluelessness to justify stripping them of their agency. Though their assumption is wrong, LEP individuals denied interpreters indeed appear bewildered. When a judge hears Alvaro arguing in Spanglish or Abdul muttering in Arabic, he does not see a person limited by the constraints of his interpreter. He sees cluelessness.

Future courts may make access accessible and court officials may be aware of and accountable to the Standards. Future Alvaros and Abduls may even receive the interpreters they deserve. Herein lies the contradiction of interpreters bound by literalism: they *enable* the meaninglessness they exist to correct. Their presence allows cases of LEP individuals to progress. However, since interpreters cannot explain what they are interpreting, LEP individuals inevitably end up confused. Abdul was lucky to have his friend with him that day, because a court-appointed interpreter, constrained by literalism, would have guaranteed Abdul meaningful *inaccess* from the first words he heard.

The Third Shift: Liberate Interpreters

Freeing interpreters corrects the Standards' foundational error. Section 1.1 of the Standards states its guiding principle: to provide "meaningful access" to non-English speakers.⁸⁴ With the Standards' present constraint to literal interpretation, access to interpreters is, at best, a helpful formality, at worst, meaningless. With interpretive freedom, interpreters can convey *meaning*. The gap between the Standards' ideal of "meaningful access" and the meaning-less reality begins to close.

⁸⁴ "Standards" 7

Conclusion

Though other issues exist with the Standards, I focus on accessibility to interpreters, accountability to and awareness of the Standards, and interpretive freedom because of their universality. Each negative experience with interpreters I observed can be traced back to these issues. In a court system plagued by financial scarcity and bureaucratic inefficiency, the three shifts I proposed in this chapter are notable for their efficiency. They do not involve hiring costly staff or sinking money into new infrastructure. In fact, the first two “changes” – providing notice of interpreters and following the Standards – are nothing more than requests that the Standards be applied as they are written. The third – freeing interpreters to convey meaning – aligns with the Standards’ fundamental commitment to “meaningful access.”

Chapter III: The Barriers In-Between

Introduction: The Epicenter isn't the Center

Until this point, I have limited my analysis of language access to the courtroom. In Chapter I, I examined scarcity and inefficiency as they exist in *courtrooms*. In Chapter II, I undertook the first analysis of the Standards for Language Access, which provide interpreters in *courtrooms*.

The courtroom is the epicenter of the justice system. **Just as** an earthquake registers most powerfully at its epicenter, the iconic legal dramas – OJ Simpson's murder trial, Bill Clinton's impeachment hearing, the indictment of Trayvon Martin's shooter – are most powerfully realized in the courtroom. The cases examined in this paper thus far also began and ended in the courtroom. Abdul, the Arabic speaker, entered the courtroom with his interpreter friend and left interpreter-less and confused. Alvaro entered the courtroom charged with another person's crime. Instead of providing an interpreter, the judge argued with Abdul in a language in which she had received multiple degrees and Alvaro could not form a proper sentence. And Marcelo entered the courtroom a free man. Ten minutes of miscommunication and an angry judge later, he almost left the courtroom in handcuffs. Three compelling stories of inaccess experienced in three courtrooms.

These courtroom stories are the most powerful because they are the most visible. The courtroom is a public forum.⁸⁵ Anyone can enter a courtroom and observe. Flagrant injustices in the courtroom are easy pickings for academics to scrutinize and reporters to publicize. The

⁸⁵ The Sixth Amendment to the U.S. Constitution guarantees the accused a "public trial."

courts, in turn, address language access in the courtroom. The Standards for Language Access provide interpreters in the *courtroom*. They address the scarcity of interpreters in the *courtroom* and the inefficiency of *courtroom* procedure.

The Standards are a highly visible solution to address language access in the courtroom, the highly visible epicenter of the law. Still, something is wrong. Marcelo sat in chains, Alvaro argued with a judge, and Abdul understood none of it. All were still denied meaningful access. The epicenter has been addressed. But destructive inaccess persists. Why?

The answer lies in the tremors.

Earthquakes do not inflict their greatest damage at the epicenter, but in the most densely-populated areas. For the justice system, the epicenter is the courtroom. But here is the catch: *less than 5%* of cases end up in there.⁸⁶ The courtroom might be the epicenter, but the justice system's population density is highest outside the courtroom, where the other 95% of cases start and end, and where oversight, research, and resources are scarcest.⁸⁷

In this chapter, I begin to examine the state of language access outside the courtroom, situating this research in a small but growing category of liminal space scholarship. As some worry that the courtroom trial is vanishing, a study of the barriers that non-English speakers face in-between assumes still more importance.⁸⁸

⁸⁶ The other 95% of cases end in plea bargains (court-negotiated deals between lawyers) or are simply dismissed (Goode 2012).

⁸⁷ According to a 2012 New York Times report, 97% of federal criminal cases and 94% of state criminal cases end in plea bargains, outside-court negotiations between lawyers (Goode 2012). Trial is even less likely in civil cases: in 2002, the American Bar estimated that only .6% of civil cases went to trial (Refo 2004).

⁸⁸ Refo 2004

The Twins In-Between

The two barriers that affect all LEP individuals

In a paper of this scope, it is impossible to compose an exhaustive list of the barriers “in-between,” though future researchers might find in this a worthy challenge. Instead, I address the two confronted by all my informants: English-only paperwork and English-only officials.

Before they sit down in the court’s pews, every LEP individual has been barred from meaningful access in at least one (and probably both) of the following ways.

1) **Paper.** In criminal cases, a citation is delivered detailing the charges and the hearing date. This citation is only and always distributed in English. In civil cases, LEP individuals either receive or fill out a form before arriving at court. This form is only and always valid in English.

2) **People.** Almost everyone who enters the courthouse doors must interact with at least one official before entering the courtroom.⁸⁹ Except for the rare bilingual official, they speak to these LEP individuals in English.⁹⁰

The Paperwork Maze

English-only paperwork in domestic violence cases

When someone has been the victim of domestic abuse, their primary opportunity for redress is the “Domestic Violence Protect Order” (DVPO), commonly known as a “restraining order.” Obtaining an order appears simple. Fill out a form, get it signed by the judge, and leave with the order. But the reality is anything but. Inefficiency twists these apparently simple steps into an incomprehensible maze. There are far more dead ends than exits.

⁸⁹ In rare cases, including evictions proceedings, the first interaction LEP individuals have is with the magistrate in the courtroom.

⁹⁰ The Standards note that telephone interpreting services are available in the in-between spaces inside the courthouse: clerks’ offices, magistrates’ offices, and first appearances in district court (“Standards” 20-21). Officials are either unaware of or inconvenienced by such telephone services, however. I never saw them used.

Teresa Rodriguez outlines at least eleven steps to a restraining order. She would know. As the “immigrant advocate” at Durham’s foremost non-profit serving survivors of domestic violence, she has filed for hundreds of restraining orders over her twelve-year career. These eleven steps must be followed exactly, and in order. Missing one – filling out a form improperly, failing to show up for a court date, forgetting a signature – results in immediate failure.

When an English speaker gets lost in the eleven-step maze, she can turn to one of the clerks, a judge, or a bailiff. The lost LEP individual has nowhere to turn. The Standards provide no interpreter services outside of proscribed courtroom interactions.⁹¹ And how could they? Money is far too scarce to hire interpreters to hover around the courthouse halls like store clerks, ready to freely provide their services.

If, by some miracle, an LEP individual guesses the correct order of these eleven steps and begins to progress through the maze, the paperwork will throw her off course again. She must understand or complete at least three specific forms, all of which are only valid in English.⁹²

The Administrative Office of the Courts boasts that “over 50 bilingual court forms are in print at this time” (“Language Access Services” 2016). A smattering of civil case forms are indeed available in Spanish/English and Vietnamese/English versions. But the clerk will not accept these bilingual forms.

Figure 1 shows the bilingual domestic violence complaint form. The form contains a watermark which instructs, in Spanish, “Please fill out the English version of this form.” In case the watermark is insufficient, the document begins with a bilingual restatement of its limitation: it is “for informational purposes only.” The document repeats that it cannot be used three times

⁹¹ Except in conference room settings, and only for cases with court-appointed attorneys (“Standards” 17-18).

⁹² See note above.

in two languages. Every one of the fifty bilingual forms has the same information. The irony is almost comical. The information most accessible to non-English speakers tells them that they cannot access the Court using the form.

Figure 1: Bilingual Domestic Violence Complaint Form

<p>NOTE: THIS FORM IS FOR INFORMATIONAL PURPOSES ONLY. DO NOT COMPLETE THIS FORM FOR FILING. USE THE ENGLISH VERSION OF THE AOC-CV-303 INSTEAD. SÍRVASE NOTAR: ESTE FORMULARIO SOLO SE DISPONE PARA FINES INFORMATIVOS. NO LO DEBE PRESENTAR EN EL TRIBUNAL, SINO QUE DEBE LLENAR Y PRESENTAR LA VERSIÓN EN INGLÉS DEL FORMULARIO AOC-CV-303.</p>	
<p>STATE OF NORTH CAROLINA EL ESTADO DE CAROLINA DEL NORTE</p> <p>_____ County Condado de _____</p>	<p>File No. Nro. de expediente</p> <p>In The General Court Of Justice District Court Division En los Tribunales de Justicia del Fuero Común Sección del Tribunal de Distrito</p>
<p>Name Of Plaintiff (Person Filing Complaint) Nombre del demandante (persona que interpone la demanda)</p>	<p>COMPLAINT AND MOTION FOR DOMESTIC VIOLENCE PROTECTIVE ORDER DEMANDA Y PETICIÓN DE UNA ORDEN DE PROTECCIÓN A CAUSA DE VIOLENCIA INTRAFAMILIAR</p> <p>G.S. 50B-1, -2, -3, -4 Art. 50B-1, -2, -3, -4 de la ley</p>
<p>VERSUS CONTRA</p> <p>Name And Address Of Defendant (Person Accused Of Abuse) Nombre y dirección del demandado (persona acusada de maltrato)</p>	
<p>(Check only boxes that apply and fill in blanks. Additional sheets may be attached.) (Solamente marque los cuadros que apliquen y llene los espacios en blanco. Se pueden agregar hojas extra.)</p>	
<p>1. I live in _____ County, North Carolina. 1. Vivo en el condado de _____, Carolina del Norte.</p>	
<p>2. The defendant and I <input type="checkbox"/> are spouses. <input type="checkbox"/> are former spouses. 2. El demandado y yo <input type="checkbox"/> somos cónyuges. <input type="checkbox"/> éramos cónyuges.</p> <p><input type="checkbox"/> are persons of the opposite sex who are not married but live together or have lived together. <input type="checkbox"/> somos personas del sexo opuesto que no estamos casados pero vivimos juntos o hemos vivido juntos.</p> <p><input type="checkbox"/> have a child in common. <input type="checkbox"/> tenemos un hijo en común.</p> <p><input type="checkbox"/> are parent and child or grandparent and grandchild. <input type="checkbox"/> somos padre e hijo o abuelo y nieto.</p> <p><input type="checkbox"/> are current or former household members. <input type="checkbox"/> somos o éramos miembros de un hogar.</p> <p><input type="checkbox"/> are persons of the opposite sex who are in or have been in a dating relationship. <input type="checkbox"/> somos personas del sexo opuesto que estamos o hemos estado en una relación romántica.</p>	
<p>3. There <input type="checkbox"/> is <input type="checkbox"/> is not another court proceeding between the defendant and me pending in this or any other state. (List county, state, date, and what kind of proceeding, if applicable.) 3. <input type="checkbox"/> Hay <input type="checkbox"/> No hay otro procedimiento judicial entre el demandado y yo pendiente en este o en algún (ningún) otro estado. (Enumere el condado, el estado, la fecha y qué tipo de procedimiento, en su caso.)</p>	
<p><input type="checkbox"/> 4. The defendant has attempted to cause or has intentionally caused me bodily injury; or has placed me or a member of my family or household in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress; or has committed a sexual offense against me in that: (Give specific dates and describe in detail what happened.) 4. El demandado ha intentado provocarme lesiones corporales, o lo ha hecho intencionalmente; o ha causado que yo o un familiar mío o una persona que vive en mi hogar temiera lesiones corporales graves e inminentes u hostigamiento continuo que fuera suficiente para causar daño emocional considerable; o ha perpetrado un delito sexual en contra mía, ya que: (Indique fechas específicas y describa con detalle lo que sucedió).</p>	

The bilingual domestic violence Complaint form. The watermark states, in Spanish, "Please fill out the English version of this form." Note also the opening instructions that this form is "for informational purposes only."⁹³

⁹³ Obtained from the North Carolina court's website:
 <<http://nccourts.org/Forms/Documents/1362.pdf>>. Highlighting added.

Accompanied by Teresa, the immigrant advocate at the Durham Crisis Response Center, LEP individuals stand a better chance. But Teresa's support far from guarantees their success. Out of the fifteen cases when the LEP individual did have an advocate (or even two: Teresa and a lawyer), only three ended with a restraining order. The others remained in the domestic violence maze, waiting for a miracle. Some gave up.

Paperwork may be the single most prohibitive barrier to access for non-English speakers, in-between or otherwise. Understanding paperwork is a requirement in *every* case, and *no* paperwork can be submitted or is distributed in any language other than English. Paperwork may also be the most invisible barrier. The problem of paperwork is the catch-22 of language access. All LEP individuals unable to submit their paperwork never make it to the courtroom. The Court sees few LEP individuals in the courtroom, so language services are deemed unnecessary. But the very reason LEP individuals cannot enter the courtroom is the dearth of services the Court did not deem necessary to provide.

Fortunately, dismantling this barrier might also be the easiest – and widest-reaching – step towards language access since (and perhaps even including) the Standards. Little financial investment is necessary to provide documents in languages other than English. Contracting a professional to translate the documents is far less expensive than hiring a permanent interpreter. And once more bilingual documents are in place, it takes precisely \$0 to allow LEP individuals to submit them.⁹⁴

⁹⁴ It is true that integrating bilingual documents is not a one-and-done investment. Once the documents exist, the Courts must hire professionals to translate submitted bilingual forms. This is a tall order for a system already strained financially. Though not ideal, the Courts could save money by outsourcing translation to a third party instead of hiring expensive staff. The infrastructure for such outsourcing is already in place. The Courts uses third parties to provide

Un-Served

The Second Barrier in Domestic Violence Cases

In the previous section, we established that preliminary English-only paperwork categorically excludes LEP individuals without advocates. For LEP individuals with an advocate like Teresa this paperwork is a minor inconvenience. All of my informants who worked with Teresa filled out and submitted the paperwork successfully, received a free lawyer and a court date. They were on track for success. But out of more than fifteen domestic violence survivors who did submit their paperwork, only three ended with a restraining order.

Their failure can be traced to a single barrier in-between: the service of summons. The court cannot grant a survivor her restraining order unless her alleged batterer is present at the hearing. He can only show up if the court has “served” him instructions on the date, time, and location of the proceeding. This service happens in-between, that is, outside of the courtroom. If the court cannot find him and give him these instructions, the case is delayed. In the three cases that ended successfully, the alleged batterers had been successfully served.

After four or five court dates with no service and no progress, LEP survivors are understandably frustrated. The time and cost of coming to the intimidating courthouse start to seem more stressful than the risk of future abuse. Often, they dismiss their cases. Inaccessible paperwork prevents the majority of LEP individuals from beginning domestic violence proceedings. Lack of service stops them from finishing.

Scarcity and Inefficiency: The Debilitating Disconnect

Failure of service is common because the court allocates minimal resources to the job. In Raleigh, at least three officers in the sheriff’s office serve warrants, paperwork, and subpoenas.

interpreters for LEP individuals who speak languages like Quiche or Aymará, languages so rare that there is no interpreter (“Standards” 21).

In Durham, just one sheriff must serve summons for all civil cases, including evictions, money owed, and domestic violence cases.⁹⁵

In service of summons, inefficiency makes an appearance once again. But there is a debilitating disconnect. Efficiency in-between *causes* inefficiency in the courtroom. The sheriff completes service if he *attempts* to serve defendants (by knocking on their doors, for example), not if he successfully serves them (by finding them). Since the number of assignments is overwhelming, the lone sheriff in Durham must move quickly through his daily quota of service assignments. This time-saving measure in-between causes inefficiency in the courtroom. Without successful service, a case cannot progress.

The language barrier further complicates service. In an English-speaking neighborhood, a monolingual officer might ask around to increase his chances of finding the defendant. This demands little extra effort. In a Spanish community, that same officer has no way of sleuthing the defendant's whereabouts. LEP individuals in particular are moving targets, often changing addresses and jobs off the record.⁹⁶ Resource scarcity means the sheriff has no access to interpreters, and an even lower chance of serving a non-English speaker successfully.⁹⁷

⁹⁵ I am grateful to Legal Aid attorneys Sherry Everett and Sarah Davidson-Palmer for these observations.

⁹⁶ Sometimes LEP individuals avoid service by leaving the country, an escape option few English speakers have. Many non-English speaking immigrants maintain a strong network of support in their home countries, families or friends they can return to when they need to escape from the pressures of the States. For defendants in domestic violence cases being sought by the authorities, escape to impunity at home is often a viable option (Sherry Everett, personal interview, October 2015; Teresa Rodriguez, personal interview, October 2015).

⁹⁷ Even if he does serve the defendant successfully, the defendant cannot understand it. All paperwork, including service documents, is only in English.

Agents, but No Agency

The service process is structured to exclude the LEP individuals whose cases depends on it. Once the domestic violence survivor has provided her alleged batterer's information, the justice system assumes all responsibility for serving him. This leaves the survivor, who has the most time and interest in getting him served, with no way to participate. The investigator researches her batterer and the sheriff attempts to serve him, while the survivor shows up at each of her progressively discouraging court dates to the same news: no service. The Court leaves no space for her to speak with the investigator or the sheriff, so she cannot hold them accountable. In turn, these officials struggle to see the value in their work. They never meet the victims whose safety depends on their successful service. They complete their service quota as long as they attempt service and regardless of their success. In the disconnect of the in-between, LEP individuals whose cases depend on service cannot provide it, and the sheriffs who provide service lack incentive to serve successfully.

Agents and Agency: Increasing Service

Increasing rates of service is as simple as returning control to the LEP survivors themselves. Those who have reached the courtroom have already self-selected for their inherent capability. They, more than the disconnected, overworked sheriff, have the greatest stake in seeing their defendant served. And they have the time and the community connections to locate him. They should have access to the court officials responsible for service. Working in tandem, the victim can provide them with crucial information about the defendant's location.

When I asked one domestic violence lawyer for an example of successful service, she told me about Francia, an empowered survivor who located Andrés, her evasive abuser. The sheriff had tried several times to serve Andrés without success. Francia's lawyer refused to give

up. She maintained contact with Francia. Francia eventually found out that Andrés worked at a local grocery store, unbeknownst to both the sheriff and the investigator. Once Francia informed the lawyer, she shot off an email to the sheriff. He served the defendant that afternoon.

Francia, an empowered survivor, leveraged her knowledge of her community and her lawyer to serve her batterer. The efficiency of the process is indicative of the power of strategic cooperation. All parties' strengths were utilized to make a complicated task – finding one man who knows the authorities are looking for him – simple.

Of course, giving LEP individuals access to the sheriff involves an infusion of scarce resources: hiring a sheriff to manage communication and an interpreter to translate. But the additional cost would quickly pay for itself in pre-emptive crime prevention. Elisa's case is a perfect example. After months of unsuccessful service, she finally gave up and dismissed her case. Three months later, Jaime, her batterer, returned and abused Elisa more severely than before. She ended up in the hospital. This time, Jaime was caught, jailed, tried in criminal court, and sentenced to jail.

Keeping just one person out of jail for one year covers almost the entire salary of a sheriff. Each year Jaime spends in jail costs North Carolina an average of \$27,747.⁹⁸ A deputy sheriff's salary in Durham is \$32,210.⁹⁹ If Elisa had access to the sheriff the first time she had been abused, they could have worked together to serve Jaime. Elisa would have received her restraining order and avoided the trauma of the second abuse. Jaime would have been served his summons, attended court, and given the restraining order. He would have been on the court's radar, off the court's payroll, and less likely to abuse Elisa again.

⁹⁸ "Cost of Supervision" 2012

⁹⁹ "Frequently Asked Questions" 2016

Survivors of domestic abuse wear the wounds of physical hurt. With time and good fortune, these wounds heal. But their emotional pain stays with them. The process of receiving a restraining order restores their dignity and is important for emotional healing. When the women I observed received their orders, they walked out of the courthouse standing taller. They held the evidence of their empowerment in their hands. In a procedure meant to restore dignity, their inability to participate wrests it from their hands. By sharing the power of service with survivors, the court returns dignity to them. The survivors heal and save the court money in the process.

Blurred Lines

Connecting the In-Between and the Epicenter

Until now, I have treated the barriers in the courtroom and in-between separately. Interpreters, the subject of Chapter II, work almost exclusively inside the courtroom. Paperwork, discussed earlier in this chapter, is almost exclusively filled out in-between.

However, LEP individuals experience the justice system as an integrated whole, not as two distinct parts. My informants weave deftly between the courtroom and the in-between, from the courtroom to lawyers' offices to bank branches to non-profits to clerks' desks and back to the courtroom. As I followed, I began to see how the two spaces overlap.

I found that in-court inaccess is a symptom of barriers in-between. A recap of the stories we have seen is demonstrative. The judge arrested Marcelo *in the courtroom* because he had not paid his fine. No bilingual paperwork or clerk *in-between* had notified him in Spanish how much he owed. Abdul was never provided an interpreter *in the courtroom*. No one *in-between* notified him that he was entitled to one. Alvaro and the judge argued about Alvaro's name *in the courtroom*. The police *in-between* had mistaken his name on the arrest warrant.

Each of these LEP men were victims of inaccess in the courtroom because of barriers in-between.

In what follows, I bridge the gap between the tremors in-between and courtroom epicenter. I discuss three barriers my informants experienced in-between which explain their lack of access in the courtroom:

- 1) **Clerical Errors**
- 2) **Inadequate or False Lawyers**
- 3) **Cultural Misunderstandings**

Policy makers can continue to sink money into in-court solutions to language access like interpreters. But if the inaccess originates in-between, their efforts are in vain. Addressing in-court inaccess must begin by confronting the barriers in-between that cause it.

Clerical Errors

Pierre: Guilty as Charged?

Paperwork overwhelms LEP individuals. But they are not the only ones inundated. Court employees struggle to handle paperwork, too. District attorneys and public defenders rush around with bulging briefcases. Heaps of paper lie scattered on the desks of clerks. Filing, data entry, and paper-shuffling occur constantly but never finish. Mistakes in-between can cause grave errors in the courtroom, as Pierre, a Haitian Kreyòl speaker, well knows.

Pierre arrived early the day I met him, unsure of what to expect.

“Do you have an interpreter?” I asked him, in Kreyòl.

“M pa konnen,” he responded. *I don't know.*

I knew he had one, of course. That is why I had driven over 100 miles to this tiny town.

Pierre had already been the victim of courtroom scarcity. The lack of Haitian Kreyòl interpreters had delayed his case for over three months. The demand for Haitian interpreting services in North Carolina has increased faster than Yolande, the only certified Haitian Kreyòl interpreter in North Carolina, can handle. Pierre is one of thousands of Haitians who have migrated from Florida and Haiti to Wayne County, the tiny corner of rural North Carolina where we met. Haitians in Florida, left unemployed in the wake of the 2008 recession and Florida's sluggishly-recovering economy, began searching for work elsewhere. They found it in Wayne County. Pierre works in the local Butterball factory, one of several turkey processing plants which join the Mount Olive pickle company in employing Haitians.¹⁰⁰ It was on his way to work one summer morning that the police arrested him.

Yolande walked into the courtroom at 9:35am, five minutes after roll call had started. She was just in time. If she had arrived just two minutes later, she would have missed Pierre's name. As I watched, I was hopeful. With Yolande's interpreting, Pierre would finally understand his case. In the scene that follows, however, understanding is exactly what was missing.

After Pierre's name was called, the district attorney proceeded immediately with questioning.

"Can you ask him how he pleads, guilty or not guilty?" she asked.

"Eske ou vle plede kulpab o no kulpab?" *Do you plead guilty or not guilty?* Yolande dutifully translated.

Pierre faltered, completely unprepared to answer this question.

The question was the first time – after his arrest, over three months of waiting, 500 miles of driving, and three unproductive court dates – Pierre had "meaningfully interacted" with

¹⁰⁰ Fletcher 2012; Charbonneau "Haitian Community" 2012; Charbonneau "Little Haiti" 2012

America's justice system. Yolande interpreted the question perfectly. But she is legally bound from telling him what pleading guilty or not guilty means.¹⁰¹ She is also bound from telling him the crime he was charged with. Only his lawyer can do that.¹⁰² *But Pierre never knew he had the right to a lawyer.*

Yolande repeated the question, insistently now.

“Eske ou vle plede kulpab o no kulpab?” *Do you plead guilty or not guilty?*

More hesitation. Pierre looked up and around, as if searching for someone to help him. But Yolande was facing the front of the courtroom, not Pierre. The DA was studying her papers. Pierre was alone. He turned his gaze back down. Then, he responded.

“Kulpab.” *Guilty.*

“Guilty,” Yolande relayed to the DA.

Guilty, he pled, to a crime he was never informed of, without the lawyer he was never provided.

Pierre left that day with a conviction on his record and a hefty fine. A proper defense by a qualified lawyer might have meant a different outcome. Pierre could have walked free, free of charges, free of fines, and free of infractions on his record. But at no point was his right to a lawyer communicated to him. This oversight in the courtroom began with a clerical error in-between.

The record lists that Pierre had already appeared for two court dates. This is true. The record also states that Pierre had waived his right to a public defender. This is false. To arrive at this conclusion, the clerk made two false assumptions.

¹⁰¹ “Standards” 48; See also Chapter I, “The Third Shift: Liberate Interpreters” for a detailed explanation of the limitations which constrain interpreters.

¹⁰² “Standards” 48-49

- 1) Pierre had his first appearance already.
- 2) At first appearance, Pierre waived his right to a lawyer.

Both assumptions would have been true for any English speaker. For Pierre, they are mistakes. He could not have made his first appearance because he had no interpreter.¹⁰³ He could not have waived his right to a lawyer because he made no first appearance.

In Pierre's case, the overlap between barriers in the courtroom and in-between is evident. Pierre's "refusal" of his public defender in the courtroom resulted from a clerk's error in-between. The error allowed the district attorney to steam ahead with his case and draw out a quick guilty plea. This guilty plea would mark Pierre with a record for the rest of his life.

Expensive Lawyers, Public Defenders, and the Notorious "Notario"

LEP individuals have four choices for legal representation: a public defender, a private lawyer, a false lawyer, or none of the above.¹⁰⁴ No option is ideal, and the last two are dangerous.

Every one of the informants we met in Chapters I and II had a chance to hire a public defender.¹⁰⁵ But I never once saw a public defender representing a non-English speaking client. Their decision is understandable. By avoiding public defenders, they avoid an inadequate defense by an overworked civil servant. Public defenders fall victim to the same scarcity that

¹⁰³ "District Court Calendar" 2015. Though Yolande could not be present at Pierre's first two court appearances, the judge could have used telephone services as provided by the Standards (20-21). That Pierre had no interpreter is more evidence (albeit anecdotal) that court officials do not make use of the telephone services.

¹⁰⁴ I am grateful to Scott Holmes and Sherry Everett for this understanding of legal representation for LEP individuals.

¹⁰⁵ The Supreme Court decided in *Gideon v. Wainwright* that free representation by a public defender in criminal court is an unalienable right, regardless of citizenship status (*Gideon* 1963)

cripples their clients. They are underpaid, with a starting salary of \$37,182. They are also overworked, routinely managing over 100 cases.¹⁰⁶

Once they waive their right to a public defender, LEP individuals face a complicated task: choosing their own lawyer. Released to their own resources, they must contend with unverifiable claims in a saturated market. On the streets of the poorer areas of Durham and in the bilingual newspapers, lawyers hawk their services, guaranteeing “free and honest consultations,” sometimes even “in-home,” and always in “your language.”¹⁰⁷ It seems that lawyers have a monopoly on advertisements in many Spanish-language newspapers. In a recent edition of *Què Pasa*, a Raleigh-area Spanish newspaper, 10 of the 13 advertisements on the first five pages were for lawyers. One redundant lawyer had three separate ads.¹⁰⁸

Lurking among the legitimate lawyers are the fakes. Known in the Latino community as *notarios* or *notarios públicos*, these predators prey on uninformed LEP individuals. They take advantage of a difference in definition among linguistic cognates. “Notario” in Spanish and “notè yo” in Haitian Kreyòl are the cognates of “notary” in English. Though the three words sound similar, they have different meanings in different countries. In Latin America and Haiti, all *notarios* and *notè yo* are lawyers. In the United States, most notaries are not lawyers. Many Latino and Haitian immigrants do not know the difference.¹⁰⁹

Notarios and *notè yo* do not falsely represent their identity: they are often, in fact, notaries. But they falsely represent their services. They charge non-English speakers for legal advice that they are not qualified to give. Figure 2 depicts a notary’s ad in Little Haiti, Florida. He misrepresents his ability to provide immigration counsel. *Notarios* like this one have

¹⁰⁶ Scott Holmes, Personal Interview, July 2015; “About NC Leaf” 2015

¹⁰⁷ *Què Pasa* 2015

¹⁰⁸ *Què Pasa* 2015

¹⁰⁹ Nark 2013

expanded beyond the Latino and Haitian communities, according to a 2013 study.¹¹⁰ They leverage their badly-needed services and knack for publicity to con desperate immigrants from other parts of the world, including Asia and Eastern Europe.¹¹¹

¹¹⁰ Nark 2013

¹¹¹ “About Notario Fraud” 2016; Nark 2013; Sanchez 2015; Zoltan 2015; Zoltan, Paul, Personal Interview, April 2015; Sanchez, Edward, Personal Interview, April 2015

Figure 2: “Notorious Notarios”



“Notarios” like this one advertised in Florida’s Little Haiti misrepresent their ability to perform legal services like immigration counsel.¹¹²

¹¹² Photo by JoNel Newman. Accessed in “About Notario Fraud” 2016. <http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud/about_notario_fraud.html>.

LEP individuals need lawyers to win their cases. But every option for legal counsel leads to loss. Public defenders are inadequate or too busy. Private lawyers induce debt (or do not show, like Marcelo's). *Notarios* are cheap and attractive, but they provide false, illegal information. All of the options for LEP individuals are risky, and if they choose none of the above and represent themselves, they will fail by default.

Some lawyers break the paradigm. They provide capable representation to LEP individuals at low costs. Lawyers like Sherry Everett, who works with Legal Aid of Durham, and Scott Holmes, who runs a law clinic at North Carolina Central University, represent non-English speakers for free. Scott and Sherry's work proves that there are alternatives to public defenders, *notarios*, and private lawyers. But lawyers like Scott and Sherry are rare and perpetually overworked. They can do their work only because non-profits fund them. They are the exception to the norm. An increase in lawyers like them means a substantial paradigm shift toward non-profit legal work. Because public defense is an entrenched (and necessary) part of our system and private lawyers make good money, such a shift is unlikely.

Culture Crossing

Underlying the barriers in-between are socio-cultural misunderstandings of American courts. Home country realities of the justice system powerfully shape LEP individuals' perceptions of their new country's equivalent.

The way that American institutions engaged with LEP individuals in their home countries – whether charitably, militarily, or politically – forms the way LEP individuals engage with the court in the United States. One Haitian mother approached the court for help with her incorrigible – but typical – teenager. Rather than resolve the conflict, the court took the teen from

his mother and placed him in foster care. Another quarreling LEP couple came to the court for help resolving their dispute. Instead, the district attorney legally separated the couple and charged the wife with domestic abuse.¹¹³

Because many LEP individuals live under the specter of deportation, they sooner accept coercive plea bargains and reject public defenders than risk a trial, a court-appointed lawyer, and being thrown out of the country.¹¹⁴ When Haitians avert their eyes before judges and district attorneys, they are attempting to communicate deference and respect. What district attorneys and judges see instead is dishonesty.¹¹⁵ Immigrants from cultures where lateness is polite lose in the American courtroom, where tardiness is an arrestable offense.¹¹⁶

I do not mean to suggest that all cultural differences must be accommodated by the court system. This is infeasible. It is also impractical. Solutions like cultural training for court employees, while admirable, would be expensive and could not cover all the cultures represented in any given courtroom. Instead, I raise these misunderstandings to prove the interdependence of barriers to access LEP individuals experience. Cultural misunderstandings begin in-between and extend into the courtroom.

Before they arrive in the courtroom, LEP individuals have been formed by cultural norms, histories, and fears particular to their home countries and communities. The courtroom, in turn, is founded upon cultural norms, histories, and fears particular to the American context. When the two conflict, the American court wins.

¹¹³ I am grateful to Yolande Jean, the Haitian Kreyòl interpreter, for recounting these two stories.

¹¹⁴ Gottschalk 272-276; Ontiveros 2015

¹¹⁵ "Cultural Differences" 2015; Yolande Jean, personal interview, Sept. 2015

¹¹⁶ Avnet and Millier 2010; Norgate et al. 2014

Conclusion: Shifting Focus

In the field of language access, there is a crucial disconnect between research focus and judicial practice.¹¹⁷ Researchers investigate transcripts from the courtroom and policies address inaccess in the courtroom. But over 95% of the legal process occurs *outside the courtroom*.

Academics and policy-makers focus on the courtroom, and specifically on interpreters, for three reasons:

1) **Accessibility.** Interpreters work in courtrooms, public spaces easily accessible for scholars. Even if scholars are bound by their academic commitments from visiting courtrooms, they can access the full text of any trial they wish, thanks to trial transcripts available in online databases.

2) **Impact.** Courtroom interpreters are the baseline of language access. Without them, the trials and hearings of non-English speakers cannot proceed. The impact of interpreters is easily quantifiable. Interpreters in North Carolina record each time they provide their services.

3) **Scholarly interest.** Interpreters are the Golden Corral of language access studies. Scholars of all backgrounds can find something that satiates their academic taste buds. Interpreting best practice has theoretical foundations in linguistics, sociology, and case law, attracting linguists, sociologists, and legal scholars. Interpreter provision necessitates policies, drawing political scientists, and demographic assessment of language needs, drawing statisticians.

These three reasons compel academics and policy makers toward the courtroom. But such a narrow focus has resulted in substantial blind spots in language access policy. The overwhelming majority of cases are conducted and resolved outside of the court.

¹¹⁷ Hiroshi Motomura, personal communication, 10 October 2015; Deborah Weissman, personal interview, 4 September 2015; Berk-Seligson 225-227

Non-English speakers are barred from the American justice system in-between, outside the prototypical courtroom trial. English-only paperwork prevents them from beginning their cases, and English-only officials confuse them if they do. Even if a friend translates their paperwork and an interpreter interacts with the officials, essential procedures are completely out of their control. Overburdened sheriffs shoulder the entire responsibility for warrant service. Inundated clerks cause bureaucratic mistakes which deprive non-English speakers like Pierre of their lawyers. And every interaction is fraught with cultural incomprehensibilities.

With updates to the Standards for Language Access, interpreters in the courtroom should be a foregone conclusion. Until now, however, the in-between spaces have been ignored. This must change. The in-between is ripe for research by pioneering academics and innovative solutions from creative court administrators. It is in these in-between spaces that scholars and policy-makers must re-focus if they are committed to holistic, meaningful access for foreign language speakers.

Conclusion

In each chapter of this work I develop a distinct barrier to meaningful access for LEP individuals and propose preliminary solutions. In Chapter I, I identify the scarcity and inefficiency which characterize courtroom culture. The Court cannot hire the interpreters it needs because finances are scarce. Court proceedings are inefficient as a rule. The few interpreters on staff are stuck waiting for a slow case to begin, which stalls cases in other courtrooms. But non-English speakers are not bound by scarcity and inefficiency. Scott, Marcelo's lawyer, trusted Marcelo to brief him on his case and leveraged his legal savvy to free his client. Any initiative to sustainably address courtroom scarcity and inefficiency must involve (1) trust in non-English speakers and (2) space for advocates.

In Chapter II, I undertake the very first study of the Standards for Language Access, the groundbreaking document released in April 2015 which provides interpreters for all non-English speakers in all cases. In my observation, the ideal of universal interpretation is far from the courtroom reality. Errors with the Standards for Language Access meant that ten of my thirteen informants did not receive interpreters.

Some did not receive interpreters because no one informed them that they were entitled to one. Those that knew their right could not have requested one anyway. The form to do so exists only in English on the third page into the court's website, which is also only in English. Public notice and an accessible form would allow non-English speakers to request their own interpreters, thereby easing the burden of interpreter coordination on the Court.

Other non-English speakers are being denied interpreters because officials are not following the Standards. For the sake of non-English speakers, the Court has a responsibility to ensure that its officials are both aware of the Standards and accountable to them.

Even when interpreters are provided, the constraints by which they are bound render them all but useless. The Standards state that they must translate their clients' words "completely and accurately." But they are prohibited from interpreting meaning.¹¹⁸ To correct this foundational error, interpreters must be freed to interpret meaning.

As often happens with new research, I began seeking to understand one issue and ended exploring another. As my interaction with my informants spilled out of the courtroom, I began to realize that the most significant inaccess they faced occurred *outside* the courtroom. Less than 5% of cases actually reach the courtroom trial.¹¹⁹ In Chapter III, I narrate the stories of my informants who experienced inaccess filling out pre- and post-court paperwork, at the Clerk's office, and in lawyer-client conference rooms. Most legal work is done in these "in-between" spaces. These de-regulated, liminal settings are where nearly all litigation happens, but where research and service provision are scant. It is in these in-between spaces that scholars and policy-makers must re-focus if they are committed to holistic, meaningful access for foreign language speakers.

I have stated courtroom scarcity and inefficiency, the Standards' deficiencies, and the barriers in-between must be addressed to guarantee meaningful access for non-English speakers in courts. I have omitted, however, *who* should do the addressing. This omission is intentional. I spent most of my time observing and interviewing the "consumers" of court resources – non-English speakers themselves. Since I spent little time with the "providers" of legal services – judges, lawyers, court administrators – I do not presume to assign them tasks. As such, wherever I issued a directive, I used "the Court" as a proxy (for example, "the Court must provide multilingual documents"). This is not to say that the judicial branch is solely responsible for

¹¹⁸ "Standards" 48; Fowler et al. 404

¹¹⁹ Refo, Patricia Lee. "The Vanishing Trial." *Litigation Online*, a Publication of the American Bar Association 30.2 (2004): 2-4. Web. Accessed 11 December 2015.

language access. Quite the contrary. All progress toward language access up to this point, including the 2015 Standards, has been a result of cooperation.¹²⁰

I hope that this work can continue the collaborative effort toward meaningful language access that the Standards began. In fact, collaboration is the only means by which this work can be involved in positive change. My informants told me their stories of lack of access. This report crystallizes their experiences into concrete, enumerated barriers. Court administrators can tailor solutions to these barriers. Court staff and legal advocates can carry out these solutions. All the while, non-English speakers like my informants must have a place at the table. They evaluate the efficacy of language access solutions firsthand. Surveys analyzed by researchers and judicial employees provide important, but secondhand, information. Listening across lines of race, class, privilege and language, the court system can become an institution where language access is meaningful.

Many hands do indeed make the load light.

¹²⁰ In the introduction to the Standards, primary author Judge John Smith lists the professors, judges, clerks, court administrators, non-profit workers, private lawyers, federal government employees, and “community” members who worked together to publish the Standards. (“Standards” 2).

Epilogue: Marcelo's Strange Chains

Problems and proposed solutions, compelling stories and unfortunate (or triumphant) resolutions, began and form this paper. I end, however, with questions.

How can non-English speakers communicate with a system built by and for English speakers? How can they access justice when “justice,” after all, must operate inaccessibly to ensure its perpetuity. (If laypeople could defend themselves, lawyers would be out of a job). How can they claim their rights from the very entity that wields the power to strip them of the same – and throw them out of the country?

And in a court system weakened by scarcity and impeded by inefficiency, are the sweeping solutions I proposed even feasible?

To say that meaningful access is feasible *now* would be to undermine the complexity of the problem. To give up would be to undercut momentum towards its solution. Meaningful access necessitates solutions that will take time and money the Court does not have.

A point I made in Chapter III bears repeating: though I separated barriers to access into three categories, I increasingly found that they do not exist in vacuums. The barriers intertwine. They are, so to speak, chained together.

And precisely because they exist together is there hope.

At every turn – in the courtroom, with interpreters, and in-between – Marcelo had been denied meaningful access to the justice system. But Marcelo's shackles are interdependent. Breaking *any one* of them liberates him from his strange chains.

If his judge had eschewed “efficiency” and waited for Marcelo's lawyer, Marcelo would never have been shackled.

If the Standards had freed Marcelo's interpreter to ask how much money he owed, Marcelo would never have ended up before an angry judge.

If Marcelo had received court mail in-between in Spanish, he would never have entered the courtroom at all.

Threatening Marcelo were the strange chains of meaningless access.

Breaking the chains was an "infeasible" escape – disrupting intertwined inaccess.

Following the escapes was freedom: life and meaning, restored.

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Recommended Reading

Berk-Seligson, Susan. *The Bilingual Courtroom*. Chicago: The University of Chicago Press, 2002. Print.

Berk-Seligson is a linguist and legal scholar particularly interested in language access for Spanish speakers. This work, first published in 1990 then republished in 2002, has become something of a textbook within legal language access scholarship. Referenced often, her study of trial interpretation, identification of the problems inherent in interpretation, and methodology has undergirded modern interpreter best practices.

Fowler, Yvonne et al. "Legal Interpreting." Chapter 29 in *The Routledge Handbook of Translation Studies*. Eds. Carmen Millán and Francesca Bartrina. London: Routledge, 2012. <<https://www.routledgehandbooks.com/doi/10.4324/9780203102893.ch29>>.

In this short chapter, Fowler, an interpreter trainer with over 20 years' experience, and her colleagues provide a complete, succinct summary of developments in courtroom interpretation over the past three decades. While Berk-Seligson's work focuses primarily on the U.S. context, Fowler and her colleagues examine interpretation in courts around the world, from Hong Kong to India to Australia. I benefited particularly from their analysis of the debate between the interpreter as "conduit" and "active participant."

"Standards for Language Access." Raleigh: North Carolina Administrative Office of the Courts, 29 April 2015.
<http://www.nccourts.org/LanguageAccess/Documents/NC_Standards_for_Language_Access.pdf>.

The Standards a landmark document in North Carolina courtroom language access. They go further than any previous legislation to provide qualified, free interpreters for non-English speakers. For a 77-page document published by a bureaucracy, the Standards are remarkably accessible, clear, and specific. Much of the text is borrowed (almost verbatim) from American Bar Association's 2012 Standards for Language Access and contextualized to the North Carolina context by the posse of influential and diverse stakeholders who compiled it. I cite the Standards more often than any other source.

Weissman, Deborah Emily Kirby, Sarah Long and Sonal Raja. "An Analysis of the Systemic Problems Regarding Foreign Language Interpretation in the North Carolina Court System and Potential Solutions." 5 May 2010.
<<http://www.law.unc.edu/documents/clinicalprograms/foreignlanguageinterpretationproblemsnc.pdf>>.

This report was the first systematic investigation of court language access services in North Carolina and began a chain of events that eventually led to the Standards. Many of the Standards' sections are direct responses to this report. Such a study merits replication, especially given the Standards' first birthday in April 2016.

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