UNIVERSITY OF CALIFORNIA
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Privatizing Language Work:

Interpreters and Access in Los Angeles Immigration Court

A dissertation submitted in partial satisfaction of the requirements

For the degree Doctor of Philosophy

in Anthropology

by

Sonya Rao

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ABSTRACT OF THE DISSERTATION

Privatizing Language Work: Interpreters and Access in Los Angeles Immigration Court

by

Sonya Rao

Doctor of Philosophy in Anthropology

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Professor Paul V. Kroskrity, Chair

The dissertation addresses the privatization of communication-based labor in public services. The linguistic anthropological study uses well-established tools of ethnography of communication to examine daily hearings in Los Angeles Immigration Court (2014-2017). I first turn attention to the extraction of invisibilized communication-based work in daily immigration court practice. Analytical focus is paid to the communication-based work of interpreters, judges, and attorneys; however, the demonstrated method of identifying the effort that constitutes communication labor can be applied across all industries and work that involve communication. A discussion of the unequal recompense of this labor, and the resulting impacts on court users, follows. Next, I argue that professional and institutional beliefs about comprehension, interpreting, and language barriers constitute working conditions for legal professionals and interpreters. I demonstrate ways in which these ideological working conditions hindered the court from providing meaningful linguistic access to court users. In a case study, I combine the analytical tools for examining communication-based labor and ideological working conditions to account for how courtroom professionals works through ideological notions of comprehension

and intelligibility to carry out their tasks. Finally, the dissertation draws on a National Labor Relations Board case, interviews, and ethnographic fieldwork in Los Angeles Immigration Court during a switch from a long-serving language services provider to a controversially unprepared new contractor to discuss the state of communication labor under neoliberalism. I show how the treatment of interpreters during this time is microcosmic of the United States' larger projects of undermining asylum, mobility, and migration – and therefore is a useful point of intervention. After elaborating the macroanalytic connection between language access and immigration law broadly, I conclude with practical recommendations for legal practice.

The dissertation of Sonya Rao is approved.

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LIST OF FIGURES

LIST OF TRANSCRIPTION SYMBOLS

(( ))	non-speech communication
…	pause
italic text	interpreted speech
bold text	emphasized speech

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I would first like to thank all of the interpreters and legal professionals who inspired and provided insight for this project. I hope it can be in service of creating better working environment for all who serve immigrants. By extension, if this dissertation can go even a small distance to giving support to immigrants like those whose trials I observed, I will have a lot more to be thankful for. It is, and has been, my greatest hope for this project. I think that the many professionals from Los Angeles Immigration Court who contributed to this project would not object if I dedicate the dissertation to those they serve, the individuals going through deportation proceedings in U.S. Immigration Courts.

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VITA

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"A History of Misunderstanding: Structural Forces on Communication on Video-Conferencing Detained Hearings."
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"Privatized Language Services in Immigration Courts: The Disproportionate Harms on Indigenous Migrants."
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"Handling Requests for Emergency Language Services Ethically: Professional Tools for Scholars in the Legal Arena."
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Panelist Spring 2019
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American Anthropological Association Meeting, San Jose, CA.

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Chapter One: Introduction

1.1. Background

An interpreter first drew my attention to the ways that private language service agencies degrade litigants' language access rights in mid-2014. In an interview about his life, training, and decades of experience as a professional legal and community interpreter, he continually brought back focus on the lax, profit-motivated practices of interpreter agencies and the consequences for immigrants. He told me how interpreter agencies put little effort into ensuring interpreters are qualified, often aggressively prioritized hiring unqualified individuals who accepted low wages over hiring qualified professionals, who had more experience but asked to be compensated in accordance. He described how courts were beginning to follow in this trend by cutting interpreting budgets and switching to less expensive, lower quality telephonic interpreting. He noted that the pressure to maintain quality interpreting was on the professional community to keep up a high standard, and on small communities to train new interpreters.

We continued to discuss several topics related to acting as a steward for a language-minority community over several hours. At the end, to my ritual question of what a professional like him would want a researcher like me to pursue to support his work and community, he insisted that I observe immigration courts. Here, he emphasized, I would find the perfect examples of how lack of oversight over private interpreter agencies was degrading and often completely violating litigants' language access and due process rights. I promised I would, and shortly thereafter began formal observations of immigration court hearings. Interpreters, like all professional communities, are hardly a monolith. Nevertheless, the rest of this dissertation confirms and

expands on his, and many other interpreters', findings about the externalities of privatized language services in immigration courts.

This dissertation deals with the linguistic realities of a court system saddled by motivations of profit and politics more than function, procedure, or justice. Immigration courts have been known to be politically fraught, as have their sister systems, the deportation machine and migrant detention centers. The dissertation examines one small piece of the massive immigration bureaucracy that represents the rot and de-humanization at the heart of all of these components of the United States immigration system: the purposeful disinvestment from communication infrastructure and language services in immigration courts. In the chapters that follow, I show the crucial role of communication that has been overlooked in the examination of the political economy of the system of detaining and deporting migrants in the United States. I show the many ways that ignoring the importance of quality communication in court is all too convenient to an arch-political program of the 21st century – to control migration by constant, high-volume deportations and forcing migrants to live in constant fear of deportation. This system was put in place under the Bush administration, accelerated dramatically under the Obama administration and during this study, and even moreso under the Trump administration just as observations on this were ending.

First, I will provide context on that very political economy. After asylum law lost political utility in geopolitics (Hamlin 2012), the United States, among other extractive powers, began increasingly criminalizing and limiting migration and mobility (de Genova 2002, Chacon 2007). After the cold war, the U.S. continued to destabilize regions and push trade liberalization for imperial gain, generating an inevitable flow of outmigration from politically and economically destabilized regions (Falk 1999). During the same years, they built up ever-increasingly

punishing borders to stem the flow of migration into their domestic territories (Fassin 2011; de Leon 2015). The U.S. has not abandoned asylum and refugee law, but severely reduced its role and power (Fassin 2011). They still accept migrant labor, but keep these populations precarious by treating violations immigration law with criminal stakes of deportation – a form of banishment from which one cannot return (Eagly 2010). Through the power of this contradiction, U.S. industry can continue to exploit migrant labor internal to their borders as well as extract resources abroad.

All the while, neoliberal ideologies and policy back astronomical increases in securitization of the border, leading to a border-industrial complex that accumulates capital from the administrative process of migration management itself – from detention, to border patrol, to deportation proceedings in court and the final removal of deportees (Menjivar 2014; Goodman 2020, 2020b). Scholarship, news media, and policy reformers have paid particular attention to the private prisons that manage the detention of migrants, and for good reason – investigations have found serious abuses at these facilities, while private profit soars (Dow 2009).

The dissertation examines an area of profit from the deportation regime that has gone under the radar – private contracts for language services in immigration courts. Communication across languages is a primary challenge in U.S. immigration courts. Users of immigration courts are in deportation proceedings, often under the threat of being separated from their families and sent to a place where they are in danger of persecution, bodily harm, or death. In addition to this stress, they must navigate a court system that they most likely cannot understand. The link between for the vast majority of these individuals and the courts is an interpreter; court proceedings are only

in English.[1] The labor of interpreters liberates respondents in court from the terror of not understanding their case. Therefore, the management of these interpreters, the treatment of their work, and their working conditions are inextricable from court users' ability to succeed in making a case to stay in the United States, and immigration courts' ability to guarantee due process to these individuals. The dissertation examines the conditions of interpreting labor under a private contract at several scales – from the mechanics of the interaction, to hearings across an individual asylum case, to the management of the language services contract itself. As a whole, the dissertation argues that transferring the contract for interpreting services from a long-standing language services provider to an ill-prepared military and intelligence contractor signals the broader trend of undermining asylum as a legal, needed form of mobility in the 21st century.

1.2. Interpreting Labor in Los Angeles Immigration Court, 2014 – 2018

I began observing immigration courts as a linguistic anthropologist in mid-2014 under the Obama administration, during a record-breaking, nation-wide backlog in individual immigration cases. The yearly budget of the Department of Homeland Security (DHS) ranged between about forty-four and seventy *billion* dollars during the years of this study.[2] The funds supported a bi-partisan program for a militarized border, including Customs and Border Patrol (CBP), detention infrastructure, and a deportation and litigation force, Immigration and Customs Enforcement (ICE), all of which enforce immigration laws. By the time my study began in 2014, this was

[1] During the years of this study, only about 10-15% of cases took place in English (see Executive Office for Immigration Review, Financial Year Statistics 2014 E1 (2015); Executive Office for Immigration Review, Financial Year Statistics 2015 E1 (2016); Office for Immigration Review, Financial Year Statistics 2016 E1 (2017); Office for Immigration Review, Financial Year Statistics 2017 18 (2018); Financial Year Statistics 2018 18 (2019).

[2] See Department of Homeland Security, Budget-in-Brief Fiscal Year 2014 3 (2014); Department of Homeland Security, Budget-in-Brief Fiscal Year 2015 1 (2015); Department of Homeland Security, Budget-in-Brief Fiscal Year 2016 1 (2016); Department of Homeland Security, Budget-in-Brief Fiscal Year 2017 1 (2017); Department of Homeland Security, Budget-in-Brief Fiscal Year 2018 1 (2018).

well-funded and well-oiled "deportation machine" (Goodman 2020). But these enforcement agencies do not review the cases they bring in. The Executive Office for Immigration Review (EOIR) is the administrative law agency responsible for reviewing the cases the DHS brings in, and each individual's unique circumstances involves painstaking work to figure out if they have a legal pathway to residence or citizenship under complex U.S. immigration laws. In the 21st century thus far, this agency has been funded at a much lower rate by its overseeing agency, the Department of Justice (DOJ). In contrast to the DHS's billions, the EOIR's yearly budget during the years of this project never exceeded five hundred million.[3] The courts went under-resourced courts, with judges working for considerably less pay than their peers in the federal judiciary, and basic resources for day-to-day operations stretched thin.

In mid-2015, in the Obama years and well before immigration enforcement was on the front pages, the DOJ awarded the contract for language services in all EOIR courts in the nation to a military contractor by the name of SOS International (SOSi). They won the contract by bidding lower than a premier language services agency, LionBridge, that had held the contract for 20 years before that, and cumulative 25 years total, claiming to be able to provide the same services for millions fewer dollars. SOSi was not a well-known interpreter agency in the immigration law community. Though it had won federal contracts in the past, these were not in court contexts – mostly, they had provided intelligence services for the Defense Department in the occupation of Iraq, projects of which are ongoing. These contracts catapulted this small company into a large government contractor, often at the center of scandal and corruption (Adolfo and Flores 2015), and even at odds with Defense Department itself in its dealings in Iraq

[3] See Department of Justice, Administrative Review and Appeals Executive Office for Immigration Review (EOIR): FY 2015 Budget Request At A Glance 1 2015; Department of Justice, Administrative Review and Appeals Executive Office for Immigration Review (EOIR): FY 2017 Budget Request At A Glance 1 2017.

(Kopplin and McCullough 2019). Providing language-logistics across these contexts present substantive differences. In a military occupation, a contractor might recruit locals as part of community trust-building and daily operations. These tasks stand in stark contrast to the bureaucratic minutia and professional trappings of scheduling professional interpreters for a daily docket in hundreds of domestic administrative courtrooms. Furthermore, their only domestic language services contract, with the Drug Enforcement Agency (DEA), was fraught with lawsuits, waste and fraud – in particular, billing the government for the services of interpreters with unnamed qualifications and expired certifications.[4]

Interpreters, as well as concerned members of the immigration law community such as attorneys and judges, were hesitant regarding the change-over. They were proven justified in these doubts when, lacking strong networks with domestic legal interpreters nationwide, SOSi struggled to get operations off the ground. First, they expected to subcontract the main substance of the work – the scheduling and management of interpreters – to other companies.[5] They were immediately unable to put this strategy into practice. When it became clear that SOSi had to schedule interpreters themselves, they had apparent difficulty identifying interpreters who were already working in immigration court as sub-contractors for LionBridge. Not only did SOSi management struggle to locate the contact information of interpreters, they were apparently unprepared for what to expect from the contract negotiation process with experienced, qualified interpreters, once they did get a hold of them. When they did begin to identify contract interpreters, the company offered contracts with rates that ignored industry-standard wages,

[4] see U.S. Department of Justice Office of the Inspector General Audit Division, Audit of the Drug Enforcement Administration Language Services Contract with SOS International, Ltd. Contract Number DJDEA-05-C-0020 Dallas Field Division, February 2012.

[5] Brief of Counsel for the General Counsel at 14, SOS International LLC and Pacific Media Workers Guild CWA, Local 39521 NLRB 21-CA-178096 (2018).

seniority, and experience. [6] Meanwhile, the contracts included unusually stringent clauses disallowing interpreters to work for other agencies, but maintained management rights to cancel assignments with very little warning. Upon review by the National Labor Relations Board, many of these clauses about which interpreters original complained were found to be violations of labor law, explored in depth in Chapter 5.

A great number of interpreters refused to take the offers, and SOSi could not schedule interpreters in time for cases (Agrawal 2017). In the words of the administrative law judge who eventually oversaw interpreters' disputes with SOSi, "chaos reigned" during this time.[7] The impact on the courts was immediately visible. As a court observer, I was a witness to the abrupt changes. SOSi frequently incorrectly scheduled interpreters. Many cases were double-booked, with two interpreters unsure if they were supposed to be elsewhere. Countless court hearings had no interpreter and needed to be delayed or worse, continued without one. To those not following the events of the contract closely, it may have looked as if interpreters themselves were flighty, irresponsible, and unhelpful.[8] But long-standing members of the immigration law community could certainly perceive that this was both a new situation, and connected to the Department of Justice's de-prioritizing language services. Many individual judges were vocal about their awareness that the disorganization was not the fault of the interpreters, even if they did not closely follow the events in detail.

The impact of the new contractor's mismanagement on interpreters was widely and deeply felt – from the frustration and indignity of being offered rock bottom wages, to simply not being payed at all, interpreters continued to express their collective dissatisfaction for many

[6] Noriega and Flores 2015; see also Brief of Counsel for the General Counsel at 15, SOS International LLC and Pacific Media Workers Guild CWA, Local 39521 NLRB 21-CA-178096 (2018).
[7] SOS International., at 17, NLRB No. 21-CA-1780896.
[8] This reflects a stereotype about interpreters that is explored at length in this dissertation, see Chapter 2.

months. Interpreters began to informally organize, collectively refusing to sign contracts with SOSi that offered what they agreed to be unacceptably low wages (Diño 2015; Flores 2016). Los Angeles was the main center of interpreter organizing in the nation, and it was visible as such. Interpreters protested outside Los Angeles immigration Court (LAIC) with signs directly naming the company and its practices, as well as the Department of Justice for prioritizing cost-cutting over quality interpreting services. Attorneys waiting in line for the elevators up to the courtrooms observed the display. At the demonstration, interpreters spoke to both English and Spanish-language media. Curious judges asked interpreters about their complaints on breaks. The National Association of Immigration Judges (NAIJ) posted news coverage of the upheaval on their website.

Eventualy, SOSi retaliated against several interpreters for their organizing efforts, including non-renewal of contracts. As the senior, experienced, and vocal interpreters became blacklisted or assigned fewer and fewer cases, SOSi brought in replacements. Interpreters, and some attorneys, argued that these replacements were less qualified (Foley 2016; Agrawal 2017). As an observer, I was able to confirm these findings from court hearings – newer interpreters were unfamiliar with the workings of immigration court, and therefore, the mechanics of how to interpret there. A drop in overall quality of communication was perceptible at and beyond this point.

In many ways, this moment was not unprecedented, but simply exposed harsh realities about interpretation in immigration courts. Conditions under the new contractor were not entirely new, just heightened in intensity. Interpreting studies had established that the work of interpreting is generally undervalued and not well understood by those who rely on it (Pöchhacker 2004, Hale 2004; Swigart 2019). Furthermore, having already conducted several

years to research on the working lives of interpreters in Los Angeles by this time, their poor treatment was somewhat unsurprising to me. What *was* somewhat shocking about these events wasn't that an agency was undermining quality interpreting for profit, but rather the extent of their aggressive profiteering practices. The situation amounted in a class-action lawsuit and a National Labor Relations Board (NLRB) case. Many of SOSi's actions were found to be violations of labor law. In 2018, an Administrative Law Judge at the NLRB ordered SOSi to award them back wages, and to re-classify interpreters as independent contractors.

1.2.1. Implications

A fairly heterogeneous set of reactions to the NLRB judge's decision followed from the language services industry, especially considering that it re-classified interpreters as employees. To the handful of petitioners in the case who were particularly targeted by SOSi's anti-labor tactics, it was a victory (Agrawal 2018). Others that saw independent contracting as the bedrock of flexibility and freedom for interpreters' working lives wondered if precedent of the case would "break the system" they used for picking and choosing the assignments (Estopace 2018b). This ultimately did not come about, as another NLRB vacated the decision in early 2020. While the decision stood, its potency for precedent in deciding future cases became null.

For analysts of language and labor, communications professions, and labor organizers of these sectors, it is extremely important that an NLRB judge has articulated the nature of communication-based labor in a legal framework. A major and rising sector of the communications industry is increasingly articulating demands for working conditions based on the science of language and communication (Diño 2017; Downie 2018). And while not unanimously agreeing to unionize, interpreters are looking to traditional labor organizing and collective bargaining tactics as a measure to gain respect and recognition in the workplace.

Therefore, the dissertation enters onto the scene of labor organizing in the communications sector at this conflicted moment of both expansion and retraction of policy and worker opinion on independent contracting.

1.3. The Setting: Los Angeles Immigration Court

Los Angeles Immigration Court (LAIC) is one of 54 branches of the EOIR. A conclusion that can be drawn from its disproportionately low funding, the court is under-resourced and overwhelmed. The court users arriving at LAIC, respondents, have one thing in common – they have received a letter in the mail called a "Notice to Appear" (NTA). This notice states that the government has found them to be in the United States without having gone through the proper channels. A person who has received an NTA may have overstayed a visa, hoping to work and live without proper authorization. Another may have willfully surrendered at a border checkpoint seeking asylum, turning themselves over to authorities at Customs and Border Patrol (CPB), and when released from custody registered the address where they could receive an NTA. Another person might have crossed the border some time in the past without surrendering to authorities, but got picked up by a local law enforcement agency or ICE for any violation of the law – from a traffic infraction to assault to drug trafficking. Despite all of the diverse conditions that these individuals may have faced, they all end up in the same court system to sort out whether they may stay, or if they will be punished by removal from the United States with no legal means of return – deportation.

While the NTA demands that individuals show up in court, it does not mean that they will be deported. It begins legal deportation proceedings against them. But if they do not arrive in court on the date in the NTA and continue to follow instructions provided by the court, they will receive a deportation order. Therefore deportation proceedings contain an inherent threat,

but the process also offers pathways to legal residence and citizenship. Through proceedings in immigration court, individuals may seek legal citizenship in a number of ways: applying for asylum, requesting temporary protective status based on conditions in their home country, asking for special consideration of the specifics of their situation, and more. Judges offer respondents time to find a lawyer, advice on finding a lawyer, and instructions on how to move forward with their cases.

Second only to New York, LAIC consistently has one of the highest intake of individual cases, and handles the most diverse caseload by nation of origin[9] (FY 2013-2017 Statistics). As non-citizens, respondents are not guaranteed an attorney, but they do have rights to due process. Presently, federal statute and case law includes language access as a keystone of the right to due process, as an extension of the right to understand one's own trial (Pousada 1979, Abel 2013:602). The need for interpreters is therefore built into the law and baked into the process.

At the time of the study, LAIC employed the most full-time interpreters of all immigration courts nationwide. Still, most interpreters were still independent contractors working for LionBridge, and later, SOSi. Each case is assigned to one judge. Clerks, who manage administrative tasks for the courtroom, work in multiple courtrooms. These are unusual circumstance for a federal court system, and often leaves judges to clerk for themselves, and DHS officers in remote detention centers to perform clerking duties over video-conferenced hearings. Burnout amongst immigration judges at this time was well-documented (Lustig et al 2009). Typical courtrooms at LAIC were small: 3-4 rows of benches for those waiting for their

[9] see Executive Office for Immigration Review, Financial Year Statistics 2014 E1 (2015); Executive Office for Immigration Review, Financial Year Statistics 2015 E1 (2016); Office for Immigration Review, Financial Year Statistics 2016 E1 (2017); Office for Immigration Review, Financial Year Statistics 2017 18 (2018); Financial Year Statistics 2018 18 (2019).

cases to be called, a desk for the trial attorney (ICE/government attorney), a desk for the respondent and their attorney, if they have one. The judge's bench includes a seated space for the interpreter, the judge, and the clerk.

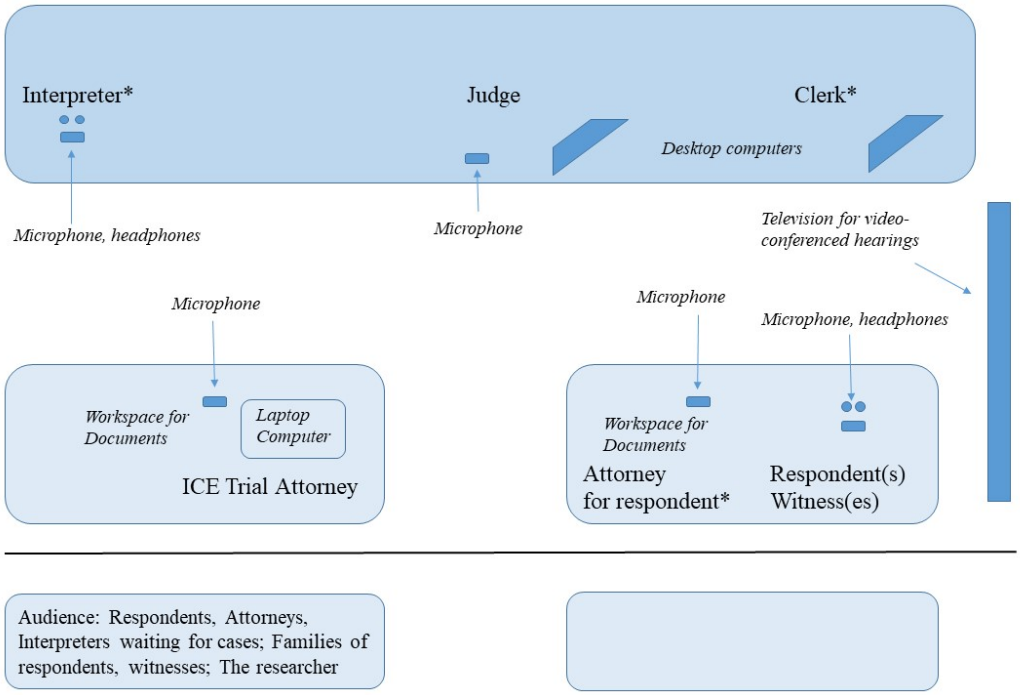

Fig 1.1.

This physical separation of the interpreter from the parties they are interpreting for, combined with the fact that there is only one interpreter working at a time, means that the interpreter uses audio equipment for interpreting, including a headset that feeds in audio from microphones provided for the judge, attorneys, and respondent. The respondent is provided headphones for the interpretation, and the interpreter speech in English directed to all parties in the courtroom by raising their voice. Despite this system, speaking and listening conditions in court vary tremendously depending on the judge, interpreter, language, and attorneys.

1.3.1. EOIR Language Policy

Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (2000) requires agencies that receive federal funding to generate "Language Access Plans" – a type of blueprint for ensuring linguistic minorities can meaningfully access services.[10] These documents evolve and improve as populations and services change. In 2012, the EOIR released a Language Access Plan that expanded the amount of courtroom speech that was required to be interpreted. Specifically, where previously it was common for interactions between judges and attorneys to not be interpreted at all, the plan required that this speech now be interpreted simultaneously. Meanwhile, discourse that includes a respondent would continue to be interpreted in the consecutive mode.

Therefore, the observations on this study took place during a time of language policy change and transition – changes that created more demands on interpreters. The simultaneous mode of interpreting requires not only more mental concentration on the part of the interpreter in the moment, but also more professional training and experience in advance. Interpreters in federal courts, and many other courts and non-legal contexts, use this mode of interpreting. However, in situations that are known ahead of time to be long and arduous sessions such as immigration court hearings, interpreters work in teams. After about twenty minutes of interpreting, they switch off, to avoid fatigue. Despite pushing for team interpreting after the adoption of the new Language Access Plan, immigration court interpreters were unable to convince the DOJ of this necessity. The policy therefore has two conflicting sides – first, it increases superficial "language access" by adding interpreted speech content. But it is also an austerity measure, that hopes to

[10] Exec, Order No 13,166, 3 C.F.R. § 13166 (2000).

save time and money by extracting more from interpreters over a shorter period of time. Budget priorities were also reflected the increasing use of telephonic interpreting during this time.

1.3.2. Legal Interpreting Professional Culture in Los Angeles and California

The location of the study is significant not only for conditions faced in the courtroom, but also for its role in the broader professional scene of legal interpreting. Los Angeles, in part for its cultural diversity, has long been a hub of the interpreting profession. California more broadly also has a high concentration of professional interpreters, in large part because it is the only state in which court interpreters are employees of the court. Interpreters in California State Courts have therefore been recognized as skilled professionals for a longer amount of time, and the culture of professionalism generally elevates the standard of quality for the field. California State Court interpreters are unionized (California Federation of Interpreters Local 39000), and while this union's history does not directly bear on this particular study, it does provide context for the higher levels of activism amongst interpreters in California and Los Angeles. Interpreters in California are familiar with the successful case of interpreters achieving employee status, respect for the profession, and the powers of collective action and bargaining for their profession.

1.4. Methods

1.4.1. Observational Data and My Own Working Conditions

A major dataset discussed as evidence in the dissertation consists of courtroom observations from the three-year observational study (2014-17). All immigration courts are open to the public, so in addition to the main body of evidence of on and off-the-record interactions in courtrooms, observations of interactions in the public space of the court such as hallways, the main lobby, in elevators and security lines informed the analysis. The observations include data from 22 courtrooms, each presided over by a different judge. Though countless hundreds of

hours of observations informed the development of ideas discussed in the dissertation, the observational dataset of roughly 80 hours of courtroom observations were selected for coding quality and uninterrupted access. This final set of observations come from 16 of the total 22 courtrooms observed on the project as a whole.

Courtroom ethnography is an established tradition in linguistic anthropology. Canonical works of conversation analysis and ethnography of communication have focused on courtrooms as a site to explore a wide range of interactional and social dynamics (Atkinson and Drew 1979; Conley and O'Barr 1990; Goodwin 1994; Matoesian 2001; Heritage and Clayman 2010). The rise of the courtroom as a site for examining language as a force of social construction is especially driven by its concentration of power-rich interactions, and symbolic force as a site of contest for cultural politics and futures (see Conley and O'Barr 1998; Mertz 1994; summarized in Richland 2005). This body of work has built a foundation for how "courtroom talk" functions, including multilingual interaction in courtrooms (Berk-Seligson 1990; Angermeyer 2013, 2014), in which speech, interactions, and approaches courtroom discourse are dissected to examine power dynamics, social and cultural function, and access to justice. The study takes on the methods that were developed through this body of literature, and adds to emerging innovations around multilingual courtroom ethnography. Specifically, methods in Chapter 2 I develop an approach to observe and identify communication labor as it plays out in courtroom discourse. I expand on traditions of locating communication labor to track its distribution across professional hierarchies and other pre-existing social strata. This deepens the analysis of political economy of language.

I followed a wide range of hearings with a variety of administrative purposes, as well as across language, nation of origin, judge and trial attorney. In addition to observations of

courtroom hearings in which all parties are present together, I observed and analyzed video-conferenced hearings for respondents who were held in custody at detention centers hundreds of miles from LAIC. At the time of this study, video-conferenced hearings were common in LAIC, and typically about five judges managed detained cases exclusively, with more judges handling a partial caseload over video-conference. In these hearings, interpreters were often present with the respondent in the detention center. However, as labor disputes escalated, the presence of an interpreter because an unstable factor, and judges began to rely more on dialing in interpreters over the phone. Their voices are projected over an audio system in the LAIC courtroom, at audio levels that can be inconsistent and interrupt the flow of conversation. Partway through the study, the EOIR hired more in-person judges at detention center courtrooms, leading to fewer video-conferenced hearings conducted in Los Angeles. However, findings about communication over video-conferenced hearings remain important, as video-conferenced court hearings, with interpreters dialed in over the telephone, are becoming more common and accepted in all sorts of courtrooms across the country.

1.4.1.1. Shorthand and Coding

Absolutely no recording is allowed in immigration courts, including activity in the hallways and lobbies. Therefore all data is transcribed from handwritten notes. I developed and used a shorthand specific to the procedures of immigration court proceedings, language and communication concerns, and the communication-based tasks. The shorthand allowed me to code the data for language-based tasks in order to track workload distribution and compliance with language policy and procedure. Codes were selected for relevance to concerns of the project and its hypotheses: presence of interpreters, languages selected, use of plain language, indicators of interpreter professionalism, etc. Later, these codes were used to identify particular

communication-based work tasks to understand patterning in the distribution of communication-based labor (CBL). Next, they were matched with particular language ideologies to identify patterns in working conditions. Finally, they were compared against interview data to identify consistent experiences across professionals.

1.4.1.2. Observer Impacts

Despite the fact that court is open to the public, members of the public are not a frequent sight in immigration court. In my time observing, I met no other court observers, and attorneys and judges often reacted with surprise to learn that I was not a local immigration attorney or office aide myself. This is understandable – I was a frequent visitor, I dressed like an attorney, sat with the others, and looked busy with papers as I wrote my fieldnotes. In the general busy blur that is the average day in court, I went largely "under the radar" as an observer. However, on occasion, attorneys or judges asked the purpose of my presence, either because they wanted to request the hearing be closed to the public, or because they were curious and friendly. As a result, I developed relationships with particular judges and attorneys, who were supportive if not very pleased to have neutral observers of the courts – at the time, immigration was not making the front pages, they had not had observers attend hearings, and they expressed gratitude that scholars had an interest in their work. On one occasion, a judge invited me to observe hearings in the seat of the interpreter on the bench (at the time the interpreter was standing near the respondents who were seated in the audience). On a few other late afternoons and lunch breaks, I discussed my thoughts on barriers to communication in immigration court proceedings, at the request of judges and attorneys. These were all positive exchanges, and appear not to have changed any one individual's behavior in ways that would distort the evidence.

1.4.2. Open-Ended and Life History Interviews

I conducted interviews with a wide range of professionals in the immigration law community in Los Angeles. Most importantly, with regard to the events unfolding around contract disputes, I conducted long, in-depth interviews with interpreters who worked in LAIC, as well as interpreters who played an important role in labor organizing. In many cases, I conducted multiple follow-up interviews. I interviewed attorneys who practiced immigration law in Los Angeles. I was fortunate to have access to a unique voice that is well represented in the dissertation, a judge who spoke on behalf of the National Association of Immigration Judges (NAIJ). In total, these interviews provided historical context, and expert insight into language access at EOIR. They provided important information about professional ethics, ideologies, and dispositions that shed light on courtroom observations.

In general, these interviews were fairly straightforward in question-answer format, which resonated both with participants' experiences being interviewed by the media, as well as the nature of talking about events unfolding at that very time. However, interpreters were more likely to prefer an unstructured format that allowed for them to tell stories and significantly expand and reflect on more abstract issues. Upon reflection, they had a stronger sense of what they wanted to convey, what questions they would like to be asked, and ideas about what we should discuss, rather than assuming the authority and knowledge of the interviewer. As a result, the interpreter professional worldview is proportionately better represented through interview data, which I interpreted as an attempt to make up for their marginalized position in the courtroom, and therefore minimized voice in courtroom observations.

Life history interviews of interpreters take a special place in this dissertation. The dissertation project arose from my masters' thesis (Rao 2015, 2021; Rao and Everhart 2021),

which was based on life histories of Mayan language interpreters, styled in life history analysis (Kroskrity 1993). These individuals requested and encouraged me to investigate working conditions in immigration court, which they felt were inconsistent and unsatisfactory. Their sense of urgency around improving these conditions came from personal experiences of their communities having been locked out of legal processes, and needing to individually act as the stop-gap for their families and communities as lifelong interpreters. Their professional expertise and knowledge only sharpened their insight that immigration courts were a problematic juncture of language and legal access. Their lifetimes of experience with navigating the language barrier and as communication workers is the foundation of the theoretical and practical goals of the dissertation: to value and compensate unrecognized communication-based labor.

1.4.3. Discussions in the Professional Community

Another source of perspective on professional outlooks on interpreting in immigration courts came from professional blogs, listservs, and comments and discussion on these. In general, the discussion on these comment boards and blogs represent the perspectives of interpreters who are actively invested in the professionalization of the field. For example, individuals who sought a contract working in immigration court as a temporary stop-gap or for side income, and do not picture interpreting as part of their long-term career plans, are unlikely to read or comment in these spaces. However, there is still significant value to the "snapshot" that these conversations provide into the moment of debate about the path to professionalization that faced interpreters at this time.

1.4.4. Policy Analysis

1.4.4.1. Federal Policy

The dissertation considers the policy priorities of the federal government and its agencies as evidence of broader ideologies and corresponding political economies. For example, the DOJ's austerity policies and budget restrictions on the EOIR, combined with loose oversight and monitoring of contractors, indicates that infrastructure such as training interpreters for immigration hearings were not considered policy priorities. Broadly, neoliberal governance of agencies that enforce and administer immigration laws shaped almost every condition of courtroom management and interaction. DOJ austerity policies of cost-cutting despite case backlogs, combined with increased militarization and securitization of the border in the form of funding for the Department of Homeland Security (DHS) (specifically Immigration and Customs Enforcement (ICE)) that brings in more cases, came down especially hard on the daily practice of managing packed courtrooms. The DOJ's privatization of language services, and lax regulatory stance on those who they contracted out the work to, led to inconsistent quality across courtrooms, languages, and cases. Taking broader policy priorities into consideration allows the dissertation to show that relying on private enterprise that is motivated more by profit than providing quality service and upholding due process resulted inconsistent access to quality language services, and therefore, due process.

1.4.4.2. Agency Policy

Policies such as the EOIR's "Language Access Plan" are analyzed for their own ideological positions, and the contrasts and similarities between their prescriptions for proceedings and how these play out on the ground. Additionally, the EOIR publishes guidelines for judges for carrying out common types of hearings. These "benchbooks" include scripts, in practice judges do not

read from these scripts, or follow them faithfully – their rights to judicial independence make these function more as suggestions. Nevertheless the benchbooks offer valuable insight into the outlook and institutional priorities of the EOIR itself, and are used as a source of evidence of ideologies, linguistic and political, of the institution itself – including those linguistic attitudes that make linguistic labor invisible, or dictate the distribution of linguistic tasks across workers.

1.4.5. National Labor Relations Board Case

Interpreters working in immigration court brought a complaint against SOSi, resulting in a National Labor Relations Board (NLRB) case, overseen by an administrative law judge. I attended all associated hearings from 2017-2018, and use observations from these, as well as associated case documents, as evidence throughout the dissertation. These confirm my findings about working conditions faced by interpreters in immigration court, before and after the change-over in contractors. The case is an important indicator of shifting attitudes on the legitimacy of communication-based labor, from the highest authority on legitimate labor in the nation. Finally, the case exposes the inner workings of management of interpreters in immigration courts that reflect important truths about the U.S. immigration law enforcement regime in the twenty-first century – most importantly, the purposeful intents behind its structural failures.

1.5. Theoretical Dispositions of the Dissertation

1.5.1. Communication-Based Labor

A major contribution of the dissertation is a theoretically sound elaboration of exactly how communicative practice constitutes labor, and how working conditions and political economy of this labor arises. In order to think through the nature of communication-based labor, the dissertation relies on theory of communication that recognizes the dialectical properties of language. The ethnography substantiates this theory by accounting for the full extent of the

embodied, enacting efforts it takes to communicate. There is significant theoretical precedent for this. Theorists of language have considered the emergent and constitutive properties of language since the early 20th century, considering the social properties of the written text (Bhaktin 1981), the activity of language (Volosinov 1973; Vygotsky 2012 (1962), and the social work that is generative of signs (Thibault 1997, Agha 2003).

Theory that presents language as practical consciousness situated in social life (Vygotsky 2012 (1962)) and material conditions (Leontiev 1978) developed into *activity theory.* Activity theory conceptualizes linguistic praxis dialogically, as a constitutive activity – both of the people who physically enact it and the environments in which they are situated (see Engestrom and Middleton 1996, Engestrom 1993). In this way, ethnomethodological studies and ethnography of communication had already taken up Soviet Marxist thinking about language only a few decades after it was introduced to the West. Scholars began to provide strong empirical evidence for materialist interpretations of language and interaction by closely observing interaction in context, and how communication is situated in physical environments. Some of these empirical studies focused on workplaces and working activities (Drew and Heritage 1992; Engestrom 1996; Goodwin and Goodwin 1996), others from contexts not traditionally thought of as "workplaces," such as Goodwin's canonical work in archeological and geological field schools (see Goodwin 1994 and 2018 respectively).

Framing communication as situated activity undergoing dialogic processes is a much more stable foundation for a theory of communication-based labor (CBL) than previous attempts, which tended to rely on market and exchange as starting points for conceptualizing "work." The liberal worldview reduces and assumes all individuals as free market actors instead of examining the very real ways that they are in fact constrained as workers. Ethnography that

approaches communication-based labor as situated activity uses thick description of how communication happens on the ground – the details of how people use their faces, hands, eyes, throats, lungs – whole bodies – to construct meaning and understanding for and with others. In this way, empirical studies can offer strong evidence for workers whose many contributions go unrecognized and unpaid, and are building movements around claims of doing this invisible work.

1.5.2. Professional Language Ideologies

In linguistic studies of the law, it is well established that a courtroom is a contested interactional space across social groups that are already unequal in society, (O'Barr and Atkins 1979; Conley and O'Barr 1990; Matoesian 2001; Eades 2012). But it is also an active workplace, policing and constraining employees. Different and unequally empowered professionals – judges, attorneys, and interpreters among them – bring to this space their beliefs, feelings, and judgements about language structure and use, known as *language ideologies* (Kroskrity 2000). The dissertation shows how these beliefs establish and uphold daily working conditions for communication workers.

Individuals acquire these beliefs from professional training, personal history, and cultural "common sense knowledge" about language and communication should be, look, and sound. The study of *professional language ideologies* shows that there are language ideologies that are endemic to particular professions or cultures of work, and that these guide professional decision-making, identities, routines, practices, and cultures (Kroskrity 2000, 2013; Collins 1998). Professional language ideologies, their relative power to each other, and the conflicts between them, set the tone for what it is like to work in a particular place. In a multilingual courtroom, professionals have to work through a particular frame of institutional expectations about

multilingual and interpreter-mediated conversation, what has been described as "institutional interpreting norms" (Angermeyer 2008; 2014). Institutional interpreting norms are enforced by the professionals who most align with the administrative worldview of the court– judges and attorneys, and the consequences of these standards, and the professional language ideologies that underlie them, establish working conditions in court that can be just as impactful as any physical working conditions.

1.6. Chapters of Dissertation

1.6.1. Chapter Two: The Distribution of Communication-Based Labor Across Professional Roles

The first chapter shows ethnographic conditions in immigration court that elaborate communication-based work: its embodied nature, invisibility in workplaces, and distribution across workers. I identify particular communication-based tasks that prove demanding but are not formally recognized as any one particular person's "job." Not only does this effectively erase the linguistic component of peoples' work, but also the resulting informality allows for haphazard distribution of these tasks, thereby exacerbating pre-existing inequalities between courtroom professionals. The case is a dire example of the consequence of institutional undervaluing, occluding, or altogether foreclosing the everyday work people do with language. I show how attorneys, judges, interpreters, court clerks, and respondents all do linguistic labor from very unequal positions, and how this labor is largely invisible, and unequally distributed and remunerated. The very invisibility and informality of linguistic labor allows professionals in higher positions to put the burden on the shoulders of the overworked, and this inequality generally goes unnoticed as "the way things get done." I identify language-based tasks and uncover the division of linguistic labor that naturalizes this harmful claim.

I argue for the importance of identifying and tracking linguistic labor as a way to understand the nature of larger courtroom, social, and economic hierarchies. Interpreters are overwhelmingly women of color, naturalized citizens. Furthermore, they are mostly non-employees, who put together multiple independent contracts to pay the bills, and live with much higher job insecurity. Not one of the other professional groups in the room face these conditions. Judges and attorneys have stable employment that provides them with healthcare, pensions, and salaries. All things considered, not only are interpreters being asked to do just as much or more communication work for a lot less pay, they are made to do so from more precarious employment, economic, and social positions. Therefore, analysis of language in the workplace should identify tasks that constitute effortful linguistic praxis or "communication-based labor," in order to turn these from invisible to visible. But it should also track the distribution of this labor in order to show how it is exploited, devaluation, and compounds pre-existing social and political-economic inequalities. I conclude by arguing that social scientists and their allies in labor should re-assess the valuation of a wide range of forms of work given the linguistic contributions expected of its practitioners.

1.6.2. Chapter Three: Language Ideological Regimes as Working Conditions

Building on the notion that communication based labor needs to urgently be re-examined in context, I outline working conditions for communication workers in LAIC as an example. I review findings about what is traditionally thought of as working conditions, such as scheduling and breaks. The chapter maintains the courtroom as a contested interactional space, one that reaffirms preexisting social hierarchies as its participants struggle against its conservative expectations (O'Barr and Atkins 1979, Conley and O'Barr 1990, Matoesian 2001, Eades 2012). The chapter continues to examine the courtroom as active workplace that regulates and constrains employees in their daily work practices. To reconcile these, the chapter argues that

working conditions arise from *professional language ideologies*, the beliefs about language that are endemic to particular professions or work and guide professional decision-making, identities, routines, practices, and cultures (Kroskrity 2000, 2013, Collins 1998).

I describe working conditions that arise from *language ideological regimes* – assemblages of ideas and feelings about how communication should look and sound that are powerful enough to order behavior. Conditions in LAIC illustrate how language ideological regimes establish, engender, and uphold working conditions for communication-based workers. I use evidence from on and off the record courtroom observations, with special attention to side-discussions of attorneys and judges about the language barrier. Evidence of professional language ideologies is drawn from first-person interviews with members of the immigration law community. Another source of insight into the linguistic worldviews of different professions are their own publications. Judge's benchbooks and agency-wide policy directives from the Office of the Chief Immigration Judge (OCIJ) serve as important sources of insight into the institutional language ideologies (Kroskrity 1993, 2000). I focus on particular ideologies that regiment LAIC courtrooms, among them referentialism and referential transparency, and how together they produce a regime of "referential reductionism," in which the nuances, demands, and challenges of cross-linguistic communication are constantly reduced – with devastating effects for court users and employees.

First, these findings show the urgency of the argument in Chapter One – these are the ideologies that together keep communication-based labor invisible, undervalued, undermined and unrecognized. Demonstrating in ethnographic detail how language ideological regimes can make work harder, unsafe, and precarious for communication-based workers is an important initial step to improving working conditions. As such, they are also the ideologies that uphold

adverse physical working conditions. Second, if language ideological regimes constitute working conditions for communication workers, examining these will raise important practical questions about how to resolve worker complaints and struggles, and what would it look like to improve these working conditions. Given that the courtroom is a microcosmic replication of pre-existing hierarchies in society, the analysis offers makes an objective to locate points of intervention to contest the structures that hold back genuine communication.

1.6.3. Chapter Four: A History of Misunderstanding

In the third chapter, I examine the course of one particular asylum case to illustrate the findings of the previous two chapters. The case shows the consequences of ignoring communication work and language ideological working conditions. The deportation proceedings of the unrepresented asylum seeker were conducted over video-conference, and he was detained in Adelanto, CA. The respondent indicated Hausa was his best language, and for some hearings an interpreter was present in Adelanto for Video-Remote Interpreting (VRI). In other hearings, attempts were made to dial in a telephonic interpreter in Los Angeles, leading to significant communication challenges. Communication difficulties were made worse by the respondent's frustrated claims that a Customs and Border Patrol (CBP) interpreter had misled him in his initial border interview. He also claimed that this interpreter spoke a significantly different dialect than his own, and this contributed to their lack of communication. The respondent's own mistrust in the institution's commitment to communication cascaded into a series of emotional events: the respondent questioned the interpreters' honesty, the trial attorney refused to adapt his speech to improve communication, and without a clean narrative from cross-examination, the judge found the respondent incredible in his testimony. Ultimately his application for asylum was denied, and these mismatched commitments to communication played no small role.

In this chapter, I detail the difficult communication-based work that courtroom professionals had to perform in order to carry out the hearings, and the adverse working conditions for interpreters that in turn made the process difficult on the judge and trial attorney. I argue that Department of Justice (DOJ) and Department of Homeland Security (DHS) priorities of cutting costs by contracting language services to profit-motivated agencies led to the inconsistency, lack of transparency, and on-the-ground lack of communication seen in this study. I demonstrate the difficult nature of communication work in multilingual legal settings, the specifically adverse working conditions of immigration court and its language ideological regimes, and the impact that and unregulated private contractor that prioritizes profit over quality interpreting and have on individual cases.

1.6.4. Chapter Five: Externalities of Privatized Language Services and Organized Responses, 2015-18

This chapter offers an in-depth discussion of the impacts of privatizing communication-based labor: for the integrity of the public services that rely on them, the workers in the institutions themselves, and preserving the rights of the users of these services. I describe how working and communication conditions worsened under neoliberal policies of privatization, austerity, and deregulation. I respond to the broader linguistic anthropological interest in the relationship between language and political economy (Hill 1985; Gal 1989; Irvine 1989; Kroskrity 2000) by showing the impact of these policies across already socio-politically unequal groups.

The main pieces of evidence around which the chapter are the case materials for immigration court interpreters' NLRB trial, all hearings of which I followed in person. First, I summarize events surrounding the selection of SOSi as the new language services provider in 2015, in particular, the company's efforts to exclude experienced interpreters who demanded

higher rates of pay. I describe how interpreters and the immigration law community responded, and were retaliated against. I then explore the consequences of the management of the contract, particularly considering the implications of the Department of Justice renewing SOSi's EOIR contract for another four years is 2016, then for another five years in 2020, this time under the Trump administration. I argue that the selection of an unprepared contractor signals not only austerity measures that are iconic of the neoliberal age, but an active investment in low-quality communication that degrades the institution of immigration review more broadly. A degraded foundation of communication in institutions that rely on cross-linguistic interaction is reflective of broader political aims to reduce the role of asylum and refugee law more generally, and the state of communication-based labor under neoliberalism. Finally, I argue that high quality communication must be public good in order to guarantee due process in immigration courts, and build a justice system prepared for the linguistic realities of the present and future.

1.6.5. Recommendations for Scholars, Legal Professionals, and Structural Reform

The dissertation concludes with practical recommendations for a different groups that are either central to the immigration law community, or who seek to assist in the rising need for assistance for migrants (Rao 2018). I provide recommendations for those working in and with public agencies that serve multilingual publics. Recommendations include clinical legal training around working with interpreters, improved labor protections for communication-based workers, and retroactive solutions for institutions to recover from deteriorated communication conditions that have arisen from these policies.

1.6.6. A Roadmap for Readers

The dissertation covers a broad set of interests and issues relating not only to immigration courts but communication labor, the legal profession, and courtroom administration and

policy. These topics are closely related, as the dissertation will show, however they can be taken in parts for particular purposes and readers. Linguistic anthropologists with an interest in communication-based labor and how working conditions for this specific form of labor are constituted will take an interest in chapters 2 and 3 in particular. Readers with an interest in the on-the-ground realities of hearings in immigration court will find examples of interactions in chapters 2 through 4. However, Chapter 4 offers the most in-depth replication of court conditions with an in-depth case study. Readers with an interest in broader policy issues regarding privatized language services will also find examples of how this manifests throughout, but the most focused analysis of the influence of privatized language services in Chapter 5. Chapters 5 and 6 offer the most direct discussion of policy, reform, and personal actions that individuals can take to improve conditions for migrants.

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Chapter 2

The Distribution of Communication-Based Labor Across Professional Roles

2.1. Introduction

All professionals in Immigration Court do exhaustive communication-based labor, all day long. The typical burden of daily courtroom practice is compounded by backlogs, language barriers, and limited resources. Many communication-based tasks are not formally recognized as any one particular person's "job," even though is the main bulk of the day's work for many participants, and their jobs could not be done without them. The informality with which communication-based tasks are treated effectively erases the communicative component of participants' work, and allows for their haphazard distribution. The distribution of communication-based tasks exacerbates pre-existing inequalities between courtroom professionals. Further, because the type of work that is being unequally shared is not conventionally even seen as formal "work," it is extremely difficult to resolve issues stemming from the unequal distribution of communication-based labor.

In this chapter I show that identifying, drawing attention to, and analyzing communication-based labor (CBL) can begin the much-needed process of recognizing, valuing, and compensating underpaid workers in a wide range of industries. I begin by reviewing previous work that approaches communication-based labor, and identify theoretical strengths and weaknesses for designing a framework that can be broadly applied. I then offer a Marxist framework for CBL that can unify the diverse range of work on language and labor and be applied across industries and informal work. I argue that ethnography of communication is a viable method by which to isolate and observe the working tasks that constitute CBL in the

Marxist framework. To illustrate the value of this approach, I then examine observations from the case study in Los Angeles Immigration Court (LAIC) using an ethnographic, observation-based model to identify and track the distribution of effortful communication-based tasks as CBL.

To conclude, I discuss how the distribution of CBL maps onto pre-existing socio-economic hierarchies, burdening those at the margins of society and the workplace. I argue that a model of CBL based in a strong theory of labor, matched with systematic observations of its distribution in the workplace, can provide new insight into working conditions, marginality, and precarity in a broad range of industries, workplaces, and everyday life. Finally, I discuss potential applied impacts of a serious reckoning with CBL. I argue that where many analysts have become unintentionally complicit in keeping CBL invisible, they can instead conduct labor analysis of interaction that offers real working people credibility in their claims of doing unpaid labor. Just as work in feminist studies denaturalized emotional labor in the past few decades (Kanter 1977; Hoschild 1979; Sacks (Brodkin) 1988) to the material benefit and liberation of countless workers, this approach to ethnography of workplaces can offer materially improved conditions for workers.

2.2. Literature Review

2.2.1. In Linguistic Anthropology and Closely Allied Fields

The idea that communication constitutes "work" has compelled social scientists for decades (Hoschild 1979, Rossi-Landi 1983, Fishman 1983, Hall 1995; Okita 2002; Heller 2003, Orellana 2001, 2003; Wilson 2006; Kitzinger and Toerien 2007; Bucholtz 2007; Piller and Takahashi 2013; Urciuoli and LaDousa 2013; Rodkey 2016; Cavanaugh 2016; Jimenez-Ivars and Leon-Pinilla 2018). Early feminist work on the exploitation of CBL focused on highly

gendered emotional labor, and its unequal distribution in the workplace (Kanter 1977; Hoschild 1979, Sacks (Brodkin) 1988) as well as in interpersonal relationships (Fishman 1983). The historical importance of these studies and subsequent work on emotional labor cannot be overstated; it has contributed to society-wide reconsideration of compensation and work assignment schemes in a number of industries. However, it is important to disentangle CBL from the work of care to at least some degree, to be able to do due diligence to each, as workers are often doing both simultaneously, and either can get lost in the fray. Many contributions to ethnomethodological studies of emotion work, including those that do admirable diligence to show the political economic context and consequences, use communication activity as evidence that emotion work is happening, without fully reckoning with the unique conditions of communication-based labor (McElhinney 1995; Kitzenger and Toerien 2007). Description or discussion of the role of communication *as such* in the work of care remained somewhat thin.

Others have been more interested in generating political-economic analyses of language (Bourdieu 1977; Irvine 1989; Gal 1989). These programmatic calls defined the direction of linguistic anthropology, leading to three decades of linguistic analysis that considers political economic context and consequences. However, these original works and the scholarship that it inspired centered commodities and market exchange as points of analysis (Duchene 2009; Shankar and Cavanaugh 2012). They also treat linguistic exchanges as a type of *free* market exchange in which economic actors are *able* to make choices to buy and sell these "language commodities" (Heller 2003, 2010a), or language "skills" or "capital" (Sonntag 2005; Park 2010) on an open market without political limits or uneven terrain. Even studies that set out to examine "communication work" align with this liberal worldview of free actors on a market selling their skills (Urciuoli 2008), "language products," or commodities with "added" linguistic value – not

surplus value (Cavanaugh 2016). By *starting* analysis at the final stages of commodification, and privileging markets of exchange as ethnographic sites, these studies make labor invisible and foreclose workers. Indeed, this is very different from framing social actors as exploited workers who are coerced into doing under or unpaid communicative labor.

Language scholarship that relies on liberal economic ideology and hastily analogizes linguistic exchanges to economic exchanges, which others have traced back to Saussure. Saussure's "crude economics" (McNally 35: 2001) ignores that communication-based labor, as all labor, exists outside of capitalism, and therefore needs to be accounted for on a more fundamental level. Furthermore, market-based understandings of language "[project] the categories of the modes of production of mercantile capitalism (commodity production) onto the language system" (Thibaut 1994: 203), a bias Marx likely would have criticized as fixed in bourgeois interests and ideology. But it continues to have a strong hold on the small field of language and political economy: research privileges a liberal, market-based understanding of language and communication rather than one that considers interlocutors' labor as the source of value. Holborow (2018) and Block (2018) offer similar critiques. Block diagnoses the issues as a lack of understanding of political economy itself (2018:27), and adds that this literature also uses the liberal framing of selling labor as a "choice" (2018:111).

The dominance of the market-based approach plays a role in recent linguistic anthropologists treating communication-based labor as "new" phenomenon that is particular to neoliberalism. Instead of naming communication-based labor as a form of labor that has always been present and necessary but ignored, scholars of language and work argue that it emerges in certain industries that are specific to "neoliberalism," "globalization," or "late stage capitalism" (Heller 2010; Boutet 2012; Urciuoli and LaDousa 2013). Scholars of this persuasion have

focused largely on identifying “language factories” that came up under the era of late capitalism. One iconic example is the heavy focus on call centers (see Cameron 2000; Duchene 2009; Sonntag 2005; for a full review, see Block 2018: 15; Holborow 2018). Not only does over-focusing on one industry foreclose a wide range of labor happening in other contexts, it eschews perhaps the most important call inherent in work on political economy – to demonstrate the workings of exploitation and reveal the struggle to change these conditions.

But this narrow focus does not dominate the entire field of inquiry into CBL. Even if not naming it as part of their research agendas, scholars are describing the distribution of CBL while building an ethnographic record of how language arises in workplaces. Hall (1995) describes the unequal demands of CBL across ethnicity, age, and sexuality for phone sex operators. Piller and Lising (2014) show the role of language skills in the hiring process of migrant labor. Anthropologists of childhood and education show how CBL is important to informal work that falls unevenly across different sectors of society by highlighting the unpaid interpreting labor of children helping their parents with day to day tasks and navigating bureaucracies (Orellana 2001; Orellana et al 2003; Antonini 2016). In wealthier families, Okita (2001) shows the unequal distribution of the work of language socialization in bilingual childrearing, with mothers taking on most of the burden. Bucholtz (2007) describes a type of semiotic labor by which young people communicate their “personal brands” to negotiate identity in daily social life. In diverse contexts, these linguistic anthropologists are showing how CBL is exploited in everyday life and reflects pre-existing hierarchies.

2.2.2. In Allied Social Sciences

Meanwhile, social scientists outside of linguistic anthropology have documented how unequal expectations of communication work map on to other social inequalities. Labor Studies

provides insight into the daily working of a number of professions that involve a great deal of language labor (Hoschild 1979; Fishman 1983; Daniels 1987; Brodkin 1988; Kamper 2003; Holmes 2009, 2013; Rodkey 2016; Warhurst 2016). Studs Terkel's oral histories of receptionists, salespeople, waitstaff, private and public service workers, and health workers (see 1972, 29-30, 37, 127, 142, 226, 353) show the exhaustion, physical demands, and psychological burdens of CBL, especially including work that is not considered elite or intellectual. Even without a rigorous scientific understanding of the mechanics of language, these studies have shown the diverse working conditions under which communication based labor is necessary, and that it is not specific to particular economic conditions, technological developments, or industries, or era. Many show how general working conditions undermine communication based labor or make it invisible, and how this invisibility creates or increases inequality. In her study of day laborers near the U.S.-Mexico Border, Elise DuBord shows workers use their English-speaking skills to perform the role of a "good worker," often an important aspect of being hired in the first place (2014,147). Her study also shows the extra demands on bilingual day laborers, who are tasked not only with the work of interpreting but also as informal worker-employee relations. They are paid for neither.

Similarly, others have found higher demands on bilingual workers to accommodate their accents to customers (Aneesh 2015), switch codes in service interactions for customers' comfort (Callahan 2009), and do extra politeness work (Lorente 2017; Lockwood et al 2016). Wingfield and Skeete (2016) discuss a form of invisible labor that they call "racial tasks" – the additional demands on racially marginalized workers in order to be accepted or assimilate into the "team," such as the extra verbal work of proving one's professional capacity in the face of collective racial biases. These studies identify communication-based labor as *part* of daily work (see also,

Boutet 2012), and build on the diversity of work contexts through which we can understand CBL. From here, we can explore and confront the unequal distribution and compensation of this labor.

2.2.3. A Marxist Theory of Communication-Based Labor

Despite the ongoing interest in this idea, neither a theoretically consistent model of communication-based labor nor a method for identifying, classifying, measuring or analyzing it, has emerged. However, two axioms from the ethnography of communication lend themselves to a materialist theory of CBL. First, the present linguistic anthropological consensus is that language is something we "do" (Goffman 1959, 1963, 1969; Sacks 1984). Linguistic praxis does not exist only on the plane of intellect – rather, we physically embody and actively perform language to be a successful communicator. Second, acts of language and communication have a direct and transformative impact on the social and natural world around us, and can be a tool for social actors to shape their worlds and surroundings (Austin 1962, 1979; Williams 1977; Gumperz 1982; Latour 1987; Goodwin & Goodwin 1996; Goodwin 2018).

To fill this need, we can employ Marx's dialectical explanation of the labor process, and articulate both the cognitive and the material aspects of CBL. The tension between "doing" communication and its transformative impact on the workers' material surroundings that is now endemic to dialogic approaches to language resonates with Marx's definition of labor: "(1) purposeful activity, that is the work itself (2) the object on which that work is performed (3) the instruments of that work" (Marx 1887 (1976), 284). Interpreting communication through this formula, the purposeful activity is communication activity that aims to get something done in the world – even if it is not consciously seen as part of the task at hand. The object on which the

work is performed is the workers' interactional domain. The instruments of the work are workers' bodies, through which speech and embodied communication are enacted.[11]

In this analytic frame, the labor process is generative of the world around us, as well as of ourselves. By engaging in the labor process, we fix ourselves into the world around us, change it, and in the process we too are changed (Marx 1887 (1976), 283). The notion of a labor process of communication that is constitutive of the material and social worlds around us is especially resonant from our understanding of "communicative action" as situated activity (Goodwin 2018). Indeed, the dialogic conceptualizing of linguistic praxis as constitutive activity (Volosinov 1986; Vygotsky1962; Williams 1977; Engeström 1998), and praxis that at once inherits and generates "language" itself (Bhaktin 1981; Agha 2003; Williams 1977), were all deeply influenced by Marxist thinking.

Thinking about language through a materialist dialectic is not only the most viable path to a strong theory of communication-based labor, it also moves away from the neoliberal impulse to privilege exchange as a point of analysis. A strong understanding of labor must take precedence over observations of exchange, circulation of values, and commodities, because labor outlasts capitalism. Not only is CBL not specific to neoliberalism – it is not specific to capitalism. Indeed, interpreting itself is an ancient profession. If as researchers we want to better the lives of our participants, we need a theory of CBL that commits to a liberatory agenda. A Marxist theory and method recognizes not only that CBL generates value, but specifically that it is surplus value that is the rightful property of those who do the work and are exploited by a capitalist class.

[11] This moves away from discussions of communication-based labor as "immaterial labor" (Boris and Parenas 2010, Mankekar and Gupta 2016) or "aesthetic" labor (Ramjattan 2018). Though the binary between industrial and immaterial labor has been previously and productively critiqued (see Yanagisako 2012), the proposal for communication-based labor does not entirely reject the premise of aesthetic or immaterial labor. Instead, it offers a strong alternative that maintains the important materiality of interaction.

Resulting research will not only reflect ethnographic realities of communication work more accurately, it can offer workers a resource in their struggles. The danger of committing to other kinds of research agendas on CBL is to willingly offer the capitalist class a window into how better to exploit our labor, a risk we can take for neither ourselves nor our study participants.

2.3. Method

2.3.1. Observations to Isolate and Identify CBL Tasks

It is an important step to name tasks that constitute communication demands on the part of professionals in the courtroom. Working with this definition of CBL, ethnographic observations of work can gather empirical evidence of the efforts people put into communication. Analysts can use ethnographic observations of workplaces with close attention to physiological demands of communication tasks necessary to the larger projects of the workplace to argue that particular tasks fit the definition of CBL.

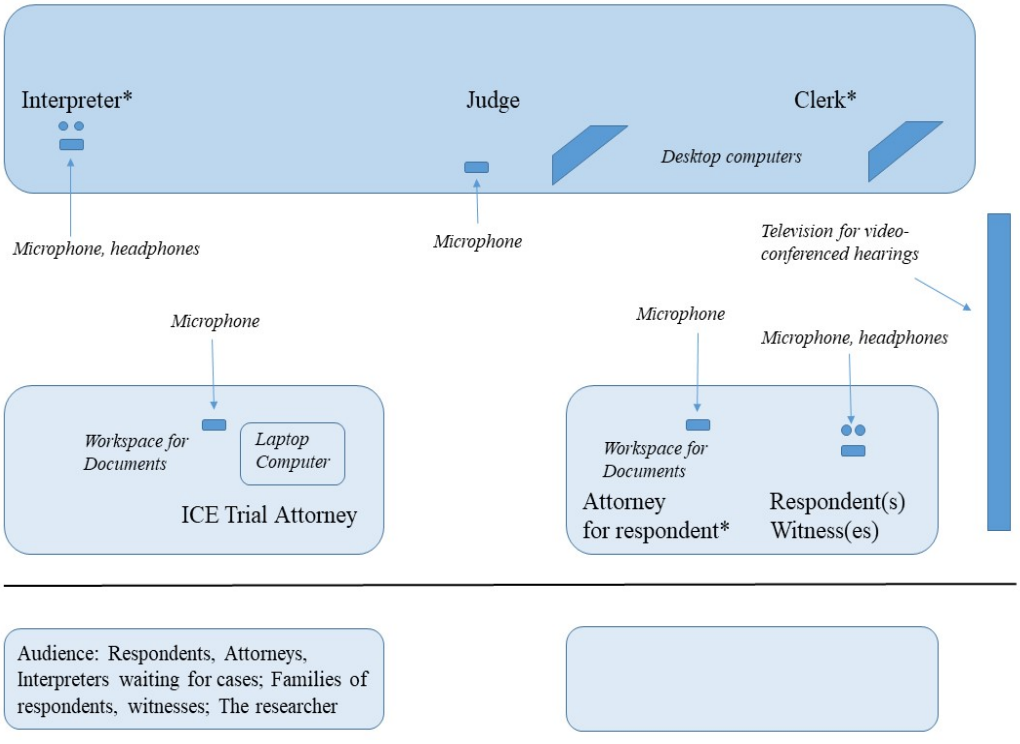
In LAIC, I isolated particular tasks from the larger proceedings that were (1) based in communicative action (2) necessary for creating an environment in which hearings could move forward (3) frequent across cases and hearings. I then created terminology to describe those communication-based tasks, created codes for each, and coded final observational data for frequency, and professional responsibility for each task. In this way, I was able to generate a system for de-naturalizing and tracking the distribution of communication tasks across professional roles.

2.3.2. Transcription

The data presented here comes from a three-year observational study in Los Angeles Immigration Court (2014-17). The data discussed in this chapter were selected to exemplify particular isolated forms of Communication-Based Labor. Nevertheless they come from diverse

types of hearings in immigration court: video-conferenced hearings, in-person hearings, minors, adults, a wide breadth of languages and nations of origin, and so on. Additionally, absolutely no recording is allowed in immigration courts, including activity in the hallways and lobbies. All data is transcribed from handwritten notes. I developed and used a shorthand specific to the procedures of immigration court proceedings, language and communication concerns, and the communication-based tasks. Therefore, certain details are not available – from micro-interactional dynamics to the interpreted speech content, as I was not trained in the many languages that were observed. However, this broad approach allowed me to include a wider set of cases and observations. Interpreted speech content, therefore, is noted in italic script in the transcripts.

2.4. Communication-Based Labor of Participants, their Roles, and their Working Conditions



*Not present for every hearing

Fig 2.1.

2.4.1. Participation Framework: Interpreters

Officers of the court – judges, ICE trial attorneys, clerks, and interpreters –start a typical day in Los Angeles Immigration Court at 8 AM. Because most are not employees, interpreters have to find public parking in the area and go through security with all members of the public first, a 30-45 minute window for which they are not compensated. Depending on which type of hearings the judge has scheduled on a given day, there could be up to thirty-five hearings in a session – listed on a docket that the interpreter does not have access to in advance. The courtroom workday typically and theoretically ends around three, with a lunch hour between twelve and one, but the work hours are unpredictable, as these depend on how hearings play out.

Nevertheless the intensity of the work is consistent. Courtrooms are crowded and unavoidably noisy for much of the day. Emotions run high for respondents arriving for their hearings – leading to more taxing work for interpreters: conveying, experiencing secondhand emotional drainage from embodying trauma. Courtroom professionals working heavy caseloads, and cases involve multiple agencies, jurisdictions, and vastly different types of hearings, and of course, multiple languages.

The scene is quite unlike many of canonical studies of courtroom interaction, which examine higher-profile trials, often in criminal court, for U.S. citizens and other social groups historically more valued by the justice system. The strain on resources – time, staff, funding – fundamentally shapes the ethnographic setting, as a courtroom, as an interactional space, and as a workplace. The audio equipment was unreliable, working across the video-interface was difficult and technological troubleshooting posed problems.

Interpreting is the work of conveying the meaning of spoken or signed language into another "target" language (Gonzalez et al 1991; Inghelleri 2013). Despite misconceptions about

interpreting as being the simple act of "talking" (Colin and Morris 1996; Hale 2004), interpreters in Immigration Court have significant and difficult responsibilities. Interpreters must attend to several elements of communicated content in order to transfer meaning across languages: the propositional content of spoken utterances, but also embodied and facial gesture, variation in prosody and emotion, idiomatic phrases, and so on (Wadensjo 1998, Russel and Hale 2008). The interpreter uses their cognitive capacity and facilities to engage in attentive activity, enacting their intentions on their interactional surroundings – intensive labor in the truest sense of the Marxian formula described earlier in this chapter. The interpreting is also expected to be in "simultaneous" mode, which is much like how it sounds – the interpreting occurs alongside the speech of the person for whom they are interpreting, with only a slight delay between original source content and its interpreted speech in the target language (Gonzalez et al 1991). This mode of interpreting is contrasted with consecutive interpreting, in which parties take turns and pause to allow for the interpreters' speech, allowing the interpreter to focus on listening and interpreting as separate tasks. Simultaneous interpreting is often discussed in terms of its high levels of cognitive demand on the interpreter – this mode causes interpreters to lose concentration and accuracy at a higher rate (Gonzalez et al 1991; Colin and Morris 1996). Indeed, interpreters interviewed on the project were quick to discuss the mentally draining aspects of simultaneous interpreting. One noted that early in her career she suffered frequent migraines from taking insufficient breaks, before other interpreters advised her she needed to stand up for herself and demand that she needed breaks from judges.

Around the time of this study, the Office of the Chief Immigration Judge had created a policy to impose simultaneous interpreting nationwide. Professional interpreters certainly recognize the values and of this mode. However, industry standard is that if simultaneous interpreting is the

courtroom setup, interpreters work in teams to take brief breaks and avoid fatigue, ensure attention and accuracy. Team interpreting was not offered or even considered by court administrators. In fact, interpreters often worked through lunch breaks or long hours into the afternoon. If a judge saw it as more important to continue with proceedings into the lunch hour, interpreters had no choice but to stay, even if they were losing concentration. All parties remained in court, no doubt tiring themselves; nonetheless, other parties can rest while others interact, but the interpreter is part of every interaction that happens, speaking constantly.

Another stressor on working conditions for interpreters are the misconceptions, or general non-consideration, of their professional role and value. Scholars of interpreting have long described what interview participants discussed and my courtroom observations confirmed: it is common that interpreters must fight to be treated as professionals in their own right (Hale 2004; Pöchhacker 2004; Swigart 2019). They are often told what to do and how to do it by non-interpreters, or asked to perform non-interpreting clerical tasks. Furthermore, some basic conventions around interpreter-mediated speech, paired with legal professionals' lack of awareness of interpreters' needs, lead to the subordination of the interpreter's presence and role. For example, it is standard protocol for legal professionals to ignore interpreters' non-English speech and continue to address one's speech to the respondent or witness (see Gonzalez et al 1991; Hale 2004), as if everyone were speaking the same language. Further, interpreters do not use reported speech, but entirely embody the speaker's message. This makes them relatively invisible in the interaction, and in a certain way, invisibility is a desired effect – to create a "seamless" feel.

But challenges arise when participants are not aware of what the interpreter needs them to do in order to be able to interpret well – most commonly, raise the volume of their voice or slow

the pace of their speech. Moreover, when it is a judge or attorney who is speaking in ways that are difficult to interpret, it is very difficult for interpreters to violate the strict hierarchy of the court to interrupt them to pause periodically to let them catch up, slow down, or raise or lower the volume of their voice. In the professional interpreting community, an entire suite of polite, deferent gestures has emerged to accommodate other professionals lack of awareness of how to engage in interpreter-mediated interaction. But it is often not enough – for example, interpreters have a conventional gesture for "slow down," but legal professionals infrequently understand it, are routinely ignoring them, and interpreters are not given a platform to explain. A last resort might be a "hands up" to stop a person speaking to long or too quickly:

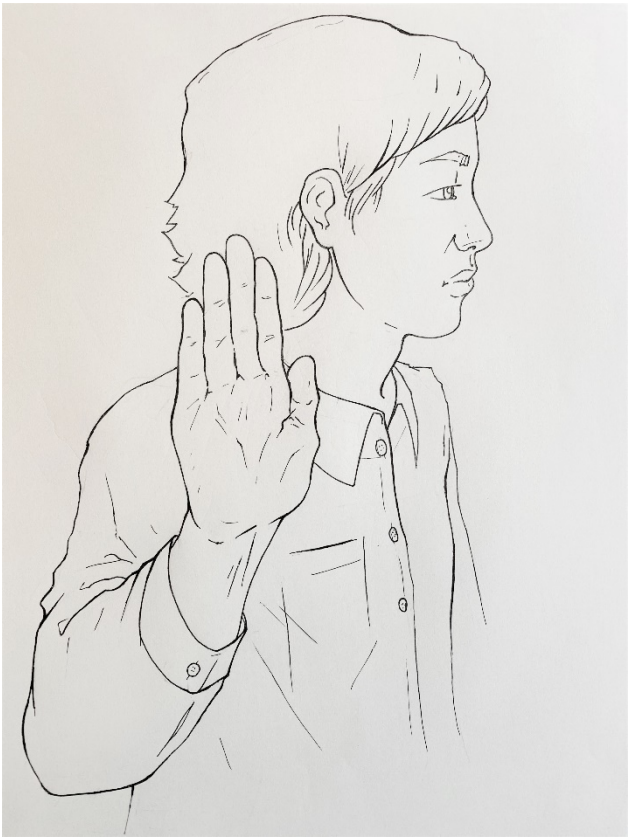


Fig 2.2.

This is uncommon and extreme enough of that I noted a few of these occasions, and that upon seeing an interpreter use this gesture, judges intervened to instruct the speaker. Interestingly, it is a gesture frequently used by judges to get participants to slow down.

In unfortunately common scenarios, legal professionals go so far as to vocalize trivializing thoughts about interpreters and their work. Such dynamics are often intensified by social conditions – most interpreters are women, people of color, naturalized citizens, and speak somewhat accented English, making them targets of overlapping forms discrimination of workplace discrimination. Scholars of courtroom interpreting confirm these tensions are representative in the struggle for the interpreting profession (Hale 2004; Wadensjo 1998; Berk-Seligson 1990; Moore and Mamiya 1999; Shlensinger and Pohacker 2008; Russel and Hale 2008; Doughty 2016, 2017; Swigart 2019).

The constant negotiations, back and forth, and precarity of working as an independent contractors are also an important consideration for working conditions. Interpreters bore a burden of high taxes, securing health insurance, and other personal costs of being classified as an independent contractor, with fewer of the advantages and freedoms that many suggest it affords. SOSi, the company contracted for language services, had strict rules that are associated much more with employee status – a dress code, break policies – even policies about to whom and when interpreters could speak. SOSi's strict contract and low wages added stress and tension to the working experience, and the threat of being less qualified replacements who would accept lower rates itself became a condition of work itself. Finally, interpreters were coerced into complying with these conditions in part because of the outdated "disqualification system," in which interpreters may be removed from a courtroom for any perceived mistake by a judge,

without any proof or assessment thereof. In this way, they experienced the "firing" threat of the EOIR, even though they were not employed by them.

2.4.2. Participation Framework: Legal Professionals

The work of attorneys is also often thought of in terms of working with language. Indeed, skill and capacity in the profession is rooted in a practitioner's leverage of texts – to employ language itself to squeeze messy social realities into the rigid linguistic mold of common law (Mertz 2007). Scholars have shown how this work emerges differently across legal professions - from attorneys (Matoesian 2001) to judges (Phillips 1998) to law professors (Mertz 1998, 2007). The examples in the chapter add to the potency of these findings by showing that legal professionals' efforts to manipulate our social worlds into the rigid frame of legal fact is accomplished through skillful speech performance. But it also shows this is not a simple performance or occasionally employed skill, but rather constant labor required for the base functioning of the courtroom. One example is the judge's task of audience design, constructing the conditions of speech and interaction to match the needs of present, future, and imagined listeners. They must orient all participants in court toward the official audio record and regulate recipiency of speech so that it is clear for an audience. Therefore, they create the boundaries of the record, correct and clarify for the record, and correct and clarify for participants in court. This can involve any number of aspects of communication that can be considered CBL, from stance (Goodwin 1986) to gesture (Streeck 1984). If someone is confused, it is the judge's job to present a solution, and these are all communication-based tasks that fall on them.

Showing the work of legal professionals in the courtroom is also a way to reveal what work they *should* be doing and do *not* do, and instead push off onto interpreters. There are a number of communicative tasks that align with the legal professional responsibility for

comprehension, but that legal professionals execute inconsistently. Nonetheless, these are necessary for hearings and interpreting to proceed, so the tasks end up falling on interpreters, who have less power in the courtroom to interrupt proceedings to refuse to do a task. In this way, because legal professionals are higher in the professional hierarchy of the workplace, they are both in a position to make work more or less difficult for interpreters. By parsing individual CBL tasks, we can observing who ends up taking up their broader responsibility to ensure "understanding."

2.4.3. Participation Framework: Demands on Respondents

Respondents are the litigants in immigration court. They have been summoned to court because the legal status of their residency in the United States has come into question, or needs to be adjusted – either they have been discovered by law enforcement to be residing in the United States without proper documentation, or they surrendered at a legal port of entry and applied for asylum. In court, respondents put in a tremendous amount of linguistic effort to participate in proceedings – from the effort it takes to understand proceedings, deadlines, and procedures, to that of putting together coherent narratives of traumatic events. It is a cultural and linguistic arena that is alien to most average citizens of any nation, and added language and literacy barriers on top of specialized legal terminology and procedure can be extremely confusing. But while their contributions factor into the division of communication based labor in the courtroom, respondents have vastly different motivations than courtroom professionals. The stakes for respondents are citizenship and bodily safety for themselves and their families, where the stakes for courtroom professionals are an orderly courtroom and their careers, or at least consistent employment. Therefore, while the respondents' linguistic efforts calculate into the division of communication based labor of the courtroom, it is under very different conditions,

and there is a need for a separate analysis of this labor that centers those very conditions. Gomberg-Munoz (2016) begins in a productive direction by describing the labor involved in constructing and performing migration narratives for political organizing. Nevertheless it is important to note that the more disorganized and haphazard the division of communication labor is in the courtroom, the more work falls on respondents to try to understand what is going on. We can examine the extent to this constitutes a failure of due process by examining the division of labor among the paid professionals in the courtroom.

2.5. Shared Communication-Based Labor Tasks in Immigration Court

2.5.1. Responsibility for Comprehension

In the legal professional worldview, interpreters should not be responsible for "understanding" (Mikkelson 1998); judges and attorneys are responsible for comprehension in the courtroom (Morris 1995). Reasonably, this can be explained simply by their authority being highest in the courtroom. But despite the cooperative nature of the process of understanding (Wadensjo 1998; Goodwin 2018), this authority puts more CBL tasks on the judge relative to other legal professionals in the courtroom. In addition to those named above, CBL tasks to aid comprehension were many, and diverse. Judges have different strategies, interventions, and practices for easing respondents' understanding of court proceedings. One judge took particular care to explain to respondents, who were in court for the first time, that when looking for a lawyer, they should take extra care to make sure the person is qualified. She had her own self-styled script to explain the difference between an attorney and a *notario* (a notary public unqualified to represent clients in court). As part of performing this script, the judge would present a thick volume on immigration law practice with two hands emphatically to the audience:

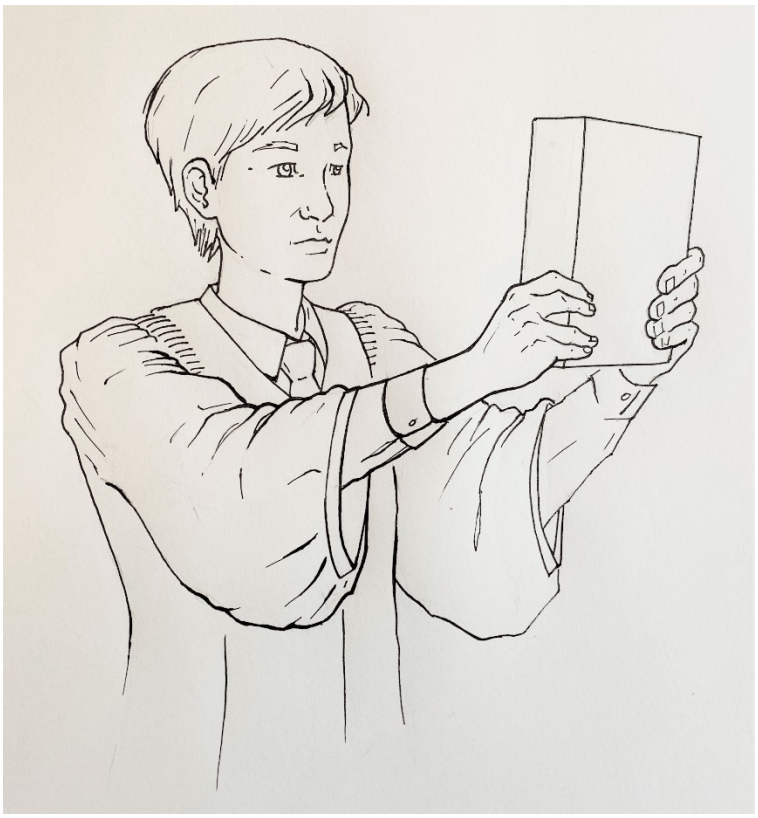


Fig 2.3.

Another judge took a similar approach to explaining to respondents how to file paperwork with the court on time. To emphasize the importance of the deadline and institutional markers of receipt, this judge used an emphatic and iconic demonstration of stamping a piece of paper as part of his explanation:

Judge: ((picks up stamp and shows it to respondent))

I want you to imagine your form being stamped by the BIA by this date

((pushes stamp down onto a piece of paper))

The extra time and effort that these two judges takes for these explanations indicates a stance that respondent understanding is part of their responsibility. But it also shows the significant communication-based labor that it takes to establish a groundwork of comprehension necessary for future hearings. The responsibility is shared between professionals: the creative work of

generating communicative strategies for understanding lies on the shoulders of Judges, interpreters must interpret these unpredictable statements and gestures.

Judges have the right and responsibility to interrupt proceedings to allow an interpreter to catch up with the speech and to permit interpreters' requests for clarification or repetition. They are supposed to be responsible for attorney and respondent speech – instructing them how and when to speak. However, the court observations on this project found that language-based tasks were treated informally, and policy on professional responsibility for these is not always enforced. This led to habitual improvised sharing of these tasks, personalized to each judge's style, and as a result, shifted dramatically from courtroom to courtroom. In this way it is important to discuss their labor, even judges and attorneys are not as relatively socially or professionally marginal as interpreters or clerks. Perhaps counterintuitively, it is precisely *because judges are in power* that it is imperative to track the distribution of the linguistic tasks that should be their responsibility. As these tasks are invisible labor, they can be displaced onto anyone, innocently and unknowingly burdening already overburdened professionals.

However, judges do not have explicit training in working with interpreters. All but two judges showed indicators of being unaware of what an interpreter needs in order to successfully interpret: a clear, raised voice at an even and slightly slower rate of speech, periodic pauses for them to catch up, and so on. Those two judges that did show strong signs of understanding interpreters' needs frequently forgot to enforce these rules, especially as the day went on or discussion of a case became complex, confusing, or demanding of the judge in some way other than communication (looking up files on the computer, searching for details in paperwork, etc.). These do not correspond to clearly defined or regulated tasks, but cultural beliefs within the courtroom itself about professional responsibility. In other words, it is unregulated labor, and the

methods by which it is shared are haphazard, inconsistent across courtrooms, and even inconsistent across cases within a courtroom.

2.5.2. Language Checks

In the beginning of hearings, officers of the court work together to establish a foundation for clear communication in proceedings. The first stage is to establish whether the respondent needs an interpreter, and if so, in what language – a multi-part process I describe as a "language check." In the Judges' Benchbook for Master Calendar Hearing procedures, a guide which includes designated scripts, delegates the language check as the judge's responsibility:

> 1. Go on the record, that is, turn on the tape recorder, for each master calendar hearing session.
> 2. Open the hearing:
> a. State the nature of the hearing as a master calendar
> b. State the name of the respondent and file number from the Notice to Appear (NTA)
> c. State the date of the hearing, the place, and your own name
> d. State the names of the attorneys
> e. State the name of the sworn immigration court interpreter
> 3. Address the respondent:
> a. What language you speak and understand best?
> b. What language did you first speak growing up as a small child?
> c. Place the respondent under oath

This script is not reflected in practice. The detailed level seen in question 3.b. is almost unheard of, and I never observed. Instead, these checks are often brief, casual, and vary significantly from judge to judge, hearing to hearing. Many language checks represent the *preference* of the respondent, such as, "Do you want to proceed in Spanish or English?" The script also does not illustrate the language checks that are necessary *before* opening the record, as a part of pre-hearing organizing – pulling files, checking the audience to see if the respondent and their

attorney is present, and so on. In the off-the-record organizing of cases, some judges take control over language checks as simultaneous to the shuffling of files and getting settled, sometimes using these as a way to manage the flow of cases. On a busy day with a full docket, one judge organized the order of cases according to the availability of interpreter and anticipated length of the hearing:

> Judge (to Officer in detention center): do I have a Hausa interpreter?
> Officer: yes there is a Hausa interpreter here as well
> Judge: okay
> ((long pause))
> maybe we should bring that up first…

Such off-the-record language checks occur alongside other tasks in an attempt to save time, such as pulling files or bringing up a respondent to the stand, and can become very casual. One judge, making limited eye contact with an attorney but not the respondent, offered:

> Judge to attorney: Spanish?
> ((Attorney shakes head no))
> Judge: I don't have a Quiché interpreter today. Spanish okay?

The casual approach to language checks displaces the work onto workers who are already occupied. In preparation for a hearing, most of the judge's attention goes to re-familiarizing with the content of the case, and the respondent's best language does not rank as a "fact of the case." The language check gets conversationally sidelined while the judge looks over paperwork or gets up to speed with a respondents' attorney. The interpreter, and less frequently, court clerks, take on the responsibility of the language check – either by attempting to quietly talk with the respondent themselves over the headset or looking over the docket or into the case file to see which language the case has been assigned. However, an informal language check, such as seeing which language has been assigned to the case in the official paperwork, is not always

sufficient, as many times these have been wrongly assigned or insufficiently checked in the previous hearing, it is not on the record, and the interpreter may not get the time or space to ensure this is the respondent's *best* language.

The interpreter has the least courtroom decision-making authority, which adds to the amount of work they must put in to perform a language check. Interpreters and respondents must talk quietly so as not to interrupt the main conversation between a judge and their clerk or a judge and the attorneys. Many interpreters use gesture to get the attention of respondents – waving, mouthing the name of the language they suspect the respondent needs, pointing to the headset or modeling how to put on the headphones through mimicry, and vocally performing a "sound check." Frequently this involves walking over to help them put on the headphones, make sure the set is on, adjusting the volume, and briefly talking with them to make sure they feel comfortable.

Occasionally respondents *will* show their familiarity with the courtroom space, providing the interpreters with non-verbal cues of their needs, such as holding sustained eye contact with the interpreter, indicating they know they are the interpreter, who always sits in that particular seat. They might point to the audio equipment, or take the initiative to put on the headphones. But this is not always possible. On one such occasion, a family that had never been in court before sat with their attorney but were consistently unsure when they were being addressed. While the judge communicated with the attorney, the interpreter gestured at the respondents to get their attention but was unsuccessful. The interpreter looked over the docket to try to figure out which language the case was assigned. Unable to figure it out with the information she had overheard, she gave up and did not participate for the remainder of the hearing. When the judge needed

information from the respondents that the attorney himself did not know, the attorney asked them himself and reported back.

In this way, the informality around language checks and the inconsistent styles by which they are executed have real consequences for communication in hearings. Sharing the work of the language check process before, during and after opening the record saves crucial time – especially because if the interpreter is for the wrong language, someone needs to locate the right interpreter. But, the informality of working off the record and without clear and consistent instructions can also multiply work and end up achieving nothing at all. The interpreter is expected to do the extra work of initiating the language check, even if it is extra work that amounts to nothing because of their general lack of courtroom authority.

2.5.3. Speech Instructions

Upon arriving in court, many respondents and witnesses are visibly unfamiliar with court conventions. While some respondents may have had contact with courts and the justice system in the United States, many arriving in immigration court have none, perhaps even limited or no contact with courts or tribunals in their country of origin. Officers of the court must make explicitly clear how to speak, when, and to whom – what the entire interaction should look and sound like in the eyes of the court. In order for officers of the court to be able to perform their duties, respondents must understand how to speak into the microphone, how much to pull up one's chair and sit up to get close enough to the microphone, how to use the headset and adjust the volume, to speak audibly and clearly, to answer questions *only* in the language they have designated as their "best," to address their speech to the lawyers and judges and *not* to the interpreter, and to only answer questions that are asked of them. Furthermore, there are certain physical requirements on interpreter-mediated conversation – everything works better when

parties keep an even rate of speech, a regulated volume of speech, when they do not speak over or interrupt one another. I describe the process of instructing respondents on the format of speaking in the courtroom space as "speech instructions." Speech instructions can occur any time throughout a hearing, and can be a trying and arduous task that takes CBL on the part of a number of parties.

Judges' approaches to speech instructions vary significantly. Of the 16 judges in focus in this chapter, 14 would habitually assume the clerk or the interpreter would do the initial work of speech instructions, such as explaining how to use audio equipment. This is more difficult for them, as without the authority to speak over the judge, interpreters and clerks are left to conduct speech instructions quietly, by mouthing instructions, or with exaggerated hand gestures from the bench. Interpreters often act out putting on the headphones, and check to make sure they are working with a "thumbs up" gesture. Sometimes they got up and physically helped the respondents set up. Judges became more involved with speech instructions as proceedings officially began on the record. In the sample, six judges had a type of "stock list" of brief directives to repeat verbatim, at a high rate of speech, to each respondent at the beginning of their hearing – speech that can be difficult or demanding to interpret and can get lost in the emotional intensity of opening the record and starting the hearing.

Of these six, only two judges showed an exceptional level of involvement in speech instructions, explaining the reasoning behind the rules in advance and using the instructions as a way to include the respondent or witness in the larger process of the proceedings. One judge described to a witness in a family member's asylum case how the proceedings would take place over video conference from Adelanto Detention Center through an interpreter:

Judge: *just so you understand*
the interpreter is in Adelanto
you won't be able to see her
but you'll be able to hear her
if you have any trouble hearing or understanding her
please let us know

The judge also had their own particular way of explaining the type of speaking that is peculiar to giving testimony in cross-examination, with two main points of explanation:

Judge: *you might want to say something*
but if it doesn't answer the question
don't say it
Witn.: *Yes*
Judge: *Second*
if you don't understand the question
let us know

But despite this level of involvement, the judge did not explain how to actually use speech with an interpreter. A different judge had a lay-language approach to this, through an interpreter:

Judge: *Unfortunately, I don't speak Vietnamese*
so I rely on the interpreter
So please give her time to interpret
so I don't miss anything
Does that make sense?

This judge's particular explanation, however, did not include an explanation of the cross-examination format.

Differences in approach are consequential. 10 judges in the sample only provided speech instructions themselves if there was evident and disruptive confusion. Instructions are frequently ineffective, causing respondents to become confused and use inappropriate speech conventions that all officers of the court must work to repair. A judge must repeat, rephrase, perhaps with

added gesture, volume or emphasis. In one video-conferenced hearing, a judge who had "stock list" of speech instructions for the beginnings of hearings, but would reserve detailed instructions for when a respondent admitted not understanding, tried to explain to a respondent that she could have more time to find an attorney. But the respondent did not reply according to court conventions:

Respondent:	*I don't know how to read*
	my friend look at the legal aid list
	I think I will defend myself
Judge:	*Did anyone offer you anything or threaten you in return to not get an attorney?*
((Respondent is non-responsive))	
Judge:	*Do you understand you could have more time to get an attorney?*
Respondent:	*Yes but I repeat that I don't have money*
Judge:	*Yes but I need you to respond to "do you understand"*

Though they were well into the substance of the hearing, this was the first time that the judge had explained that the respondent needed to only answer "yes" or "no" to the questions, and not say any more. When the specific rules of courtroom speech conduct are not made clear from the beginning, it creates a domino effect of repair work. All courtroom professionals must work together to re-instruct respondents, backtrack questions, repeat, justify and explain procedures. These scenarios create the most unnecessary work for the interpreter, who then has to interpret for a non-responsive or confused respondent, amidst many persons talking over one another. It is interpreters who must recover the confidence and emotional stability of the respondent, who is often frustrated that their ability to express themselves has become constricted by courtroom conventions that no one *really* took the time to explain. When judges do not recognize that it was the lack of speech instructions that is causing difficulty, an interpreter must do the work of repair alone. Clear speech instructions are not only an important CBL task that gets displaced onto

interpreters, if no one does the task, the communication based labor multiplies most for the interpreter.

2.5.4. Comprehension Checks

Though approaches vary, immigration judges periodically check with respondents to gauge their level of comprehension of the proceedings, particularly around instructions for moving forward with the case. Immigration judges most consistently inquire about respondent "comprehension" when closing a hearing, as it is at this time that they provide respondents with instructions about the next steps that they and their attorney must take for their case. What I refer to as "comprehension checks" are built into guidelines for proceedings, but without explicit scripting, for example:

> 8. Explain to the respondent the right to counsel
>
> > a. Stress that volunteer counsel may be able to represent the respondent free of charge if he or she is without funds to retain the services of an attorney
> >
> > b. Give the respondent the legal assistance office list for your jurisdiction and, if the respondent lives outside your jurisdiction, furnish the legal assistance office list for his home area
> >
> > c. Ask the respondent if he or she understands the explanation of the right to counsel
> >
> > d. Then ask the respondent if he or she wishes a postponement to find an attorney [12]

In practice, the above emerges most frequently as the tokens, "Understand?" or "Understand, yes or no?" Comprehension checks not only take time and significant interactional effort, they tend to multiply the interactional work for the judge. Scripts and guidelines for Immigration Judges may include comprehension checks, but they do not include suggestions or scripting on how to

[12] Executive Office for Immigration Review, Initial Hearing: the Pro Se Respondent 1 (n.d.), now archived at https://www.justice.gov/eoir/archived-resources.

improve a respondent's understanding if they report confusion – in other words, the assumption is that the answer will always be "yes, I understand." In strictly practical terms, the more a judge inquires of a respondent's comprehension of the proceedings, the higher a yield of "misunderstanding' it is possible that they will report, and the higher yield of repetition or rephrasing they will then have to offer.

Therefore, the default judicial behavior regarding comprehension is to show concern with respondent comprehension when it presents a challenge to court proceedings. At this point, an officer of the court must invest interactional effort to resolve the respondents' confusion. Though it is not common practice to outsource this labor to interpreters, it is almost universal for judges to act with little regard for the extra workload that backtracking creates for interpreters. In this way, minimal investment in comprehension checks in early stages accumulates into more responsibility and difficult work for interpreters at later points in the hearing – if not later in the case, with an entirely different interpreter on a different hearing date.

2.5.5. Lay Language: The Work of Repair and Re-voicing

A particularly exhausting form of courtroom CBL that is multiplied with communication barriers is rephrasing legal language into lay language, either to alleviate or avoid respondent confusion. Attorneys and judges insert plain language explanations into the process of the hearing. Judges re-voice or recast what someone else has said to make it more intelligible. In the judicial benchbook guideline for a Master Calendar Hearing, "The charge must be explained to the respondent in *non-technical* language" (emphasis added).[13] However the guidelines offer no suggestions of what this might sound like in non-technical language. Furthermore other

[13] See Executive Office for Immigration Review, Master Calendar Hearing Checklist for the Immigration Judge: the Pro Se Respondent 1 (n.d.), now archived at https://www.justice.gov/eoir/archived-resources.

guidelines for judges only offer extremely technical explanations to provide to respondent, such as the script explaining the consequences of deportation:

> If you are ordered removed, any applications for relief you may have pending before this court will be deemed abandoned and will be denied. Additionally, you will become ineligible for certain forms of relief, such as voluntary departure, cancellation of removal, adjustment of status, or change of status for a period of ten years.[14]

It is up to the judge explain in lay language important concepts such as "removal" (deportation), or "forms of relief" (legal avenues to residency or citizenship). Five judges in this sample habitually took particular care to use lay language as a regular part of procedure. But across the sample lay language rephrasing was a type of backpedaling when a respondent was actively confused as to how to participate in the proceedings.

Whether it is because legal language is an obscure register, or because syntactically it can be cumbersome to interpret, respondent confusion was standard – signaled by non-responsiveness, questions, or directly saying they did not understand. Attorneys must assess why their phrasing failed, to either repeat the same phrase or rephrase it in a way that is more interpretation-friendly. Unfortunately, trial attorneys rarely have experience directly interfacing with migrant communities, and can have little to no understanding of how to work with interpreters or across languages (see Ahmad 2007). Cross-examining respondents and witness is the major interaction they do have across languages, and this does not happen in every hearing. The resulting impact on courtroom interaction is that the attorneys themselves can be incapable working outside of legal language to find a plain language equivalent, or worse, unwilling.

[14] Executive Office for Immigration Review, Initial Hearing: the Pro Se Respondent 4 (n.d.), now archived at https://www.justice.gov/eoir/archived-resources.

In one scenario, an interpreter asked an ICE attorney cross-examining a respondent in lay language twice to repeat, as the respondent did not understand. Unable to find a better way to rephrase in lay language, the attorney resorted to confusing legal language. Furthermore, she was facing away from the microphone to look through documents on the table, making her speech almost unintelligible. Even after the interpreter asked her to repeat three times, she did not adjust her body to face the microphone. As the interpreter continued to ask for multiple repetitions from the attorney, the attorney became frustrated and her questions became more convoluted. The interpreter took a professional risk, and asked the judge to tell the attorney to speak up.

Judges sometimes direct attorneys to rephrase their questions until non-comprehension is widely evident and entirely unrecoverable, at which point they can intervene. Out of respect for the attorneys' roles and responsibilities, a judge will wait until the trial attorneys give up themselves, showing signs like silence, a shrug in the direction of the judge, repeating the same re-phrases, or express frustrated sighs. Once this is the case, a judge may intervene to re-voice attorney speech in lay English, or an interpreter may have to ask permission to rework the phrasing in the target language. To avoid an accusatory stance to an attorney failing to rephrase their question effectively, one judge would sometimes nod once slowly with eyes lowered, and say quietly, "why don't I give it a try." At this point, the judge and the interpreter must rephrase the attorney speech in a way that has not already been attempted, as well as rephrase in such a way that when the situation is remedied, the speaking turn can return to the attorney. But because it is not the judge's role to help attorneys cross-examine respondents and witnesses, communication has to reach a certain point of non-functionality before a judge will intervene. Up until this point however, is especially difficult and frustrating work for interpreters. Further, once authority intervenes, interpreters must still do just as much of the work of repair, and they must

do so without overstepping their very limited authority. Therefore, plain language rephrasing tends to burden both interpreters and judges, as interpreters have no choice but to work through the entirety of these frustrated interactions, and judges are responsible for resolving such problems.

2.6. Conclusion

In Marjorie Orellana's extensive ethnography of the school and home lives of immigrant children (2001; 2003; 2007), she invoked the potential debt our society owes immigrant children for their cultural and language-based work. More than a decade and a half on, it seems we have not heeded the inherent call of this insightful observation. Instead of examining our society at large for the ways CBL continues to be exploited, the intersecting inequalities that the invisibility of this labor perpetuates, and how these findings can contribute to the interests of social justice, the field has taken the notion of linguistic work more as an intellectual exercise to identify and describe language "jobs." Moreover, the idea of Orellana's that has been taken up is not as much her crucial point about exploited child labor, but her description of children as cultural and linguistic "brokers" – another market-based metaphor that indicates neoliberal biases of this scholarship and eclipses the unjust and coerced nature of this labor that needs redress.

In-depth ethnographic observations can reveal invisible work put in across professions, as well as who is unequally burdened as a result of that very invisibility. By focusing not only on the somewhat obvious language workers, interpreters, but also judge and lawyers, I demonstrated one way to highlight invisible CBL. I was able to do this by modeling a definition of communication based labor after well-established approaches to language as both dialectical process both social and anchored in the material world (Vygostsky 1962; Williams 1977) and in embodied activity (Streeck, Goodwin and LeBaron 2011; Goodwin 2018). I observed and

identified specific linguistic tasks, and in the interest of social, political and economic justice, demonstrated impacts of unfair divisions of labor in any type of workplace.

In total I showed how specific language tasks that institutional guidelines and policies assign inconsistently and unevenly distribute communication-based labor across courtroom professionals. This is an undertreated root cause of respondents' unequal access to meaningful engagement in proceedings, a significant threat to due process, and the integrity of public serving institutions broadly. Additionally, I demonstrated potential for de-naturalizing communication labor in previously examined workplaces, from foodservice (Barrett 2006) to unpaid research interns in archeological and geological field schools (Goodwin 1994, 2018), by showing the broad applicability of methods of isolating and describing communication-based labor tasks. Denaturalizing assumptions to show the value of uncompensated labor is a project in which analysts of language can advocate for the equality and economic advancement of working people, a role that no doubt we should take up with enthusiasm.

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Chapter Three: Language Ideological Regimes as Working Conditions

3.1. Introduction

As early as twenty years ago, The Executive Office Immigration Review (EOIR) was made aware that court interpreters felt they were not treated with enough respect in the workplace. The Institute for Court Management, an independent research group based in the National Center for State Courts, published a report "Immigration Court Interpreters: Their Standing as Professionals" (Roldan 2000). The study surveyed immigration court interpreters, support staff, and judges, and found that while all professionals felt that interpreters were *important* to courtroom proceedings, interpreters were the only group that reliably saw themselves as a skilled professionals that was key to providing due process to court users. The report discussed misconceptions of the interpreting profession as the source of conflicts, and recommended clarifying roles and responsibilities to better align with the formal profession, such as de-assigning administrative or clerical tasks.

Fifteen years later, during the data collection for this chapter, interpreters had made some gains, including the recommendation of de-assigning clerical duties for interpreters. But the observational data collected during my ethnography of Los Angeles Immigration Court confirms virtually all of the findings of that report: non-interpreters hold a generic respect for interpreters, at the same time, have little understanding of the roles and requirements of professional, qualified interpreters. These misconceptions cause frictions and frustrations in the workplace – on the ground, not much has changed. In this chapter, I examine institutional policies, first-hand professional experiences, and courtroom interactions to examine the fundamental challenges that allow these professional misunderstandings to persist. In particular, I focus on *professional*

language ideologies, beliefs about language and communication inherited from professional cultures, to account for working conditions in court. I argue that these beliefs, which can be largely out of step with the reality of communicating across languages, establish and uphold working conditions for all courtroom professionals. I show these conditions are especially adverse for interpreters, and put basic due process rights at risk.

3.2. Methods

Both legal and language professionals are deeply allegiant their professional worldviews, and therefore research on language ideologies in a space where their views often clash warrants a variety of methods to uncover latent beliefs and predispositions about language. The chapter first turns to institutional policy and guidelines for hearings to uncover the ideal vision of what communication in immigration court should look like, according to the agency that oversees the courts, the Executive Office for Immigration Review (EOIR). The analysis considers both what prescribed in the policy and guidelines, as well as what they omit and assume, about language and communication.

At the same time, there is no guarantee that judges comply by guidelines, and can simply rely on personal or cultural defaults to make decisions about communication. Therefore, the chapter uses courtroom observations of hearings, as well as conversations that occur off the record between hearings, to expose professional language ideologies. Because the language barrier in the courtroom is such a persistent challenge and such a mundane aspect of the everyday work of immigration court hearings, professionals in the courtroom constantly discuss language and communication amongst themselves. This metalinguistic commentary ranges from debates about the best way to explain proceedings to respondents, to opinions on the extent to which everyone

needs to “understand” one another to carry out hearings. These stances correspond to particular professional language ideologies; the histories of which are described in the next section.

Finally, first-person ethnographic interviews account for the actions and behaviors observed in court. In these interviews, individuals reflect on their experiences working in court: working conditions, communication challenges with respondents, conflicts with other professionals in court. One interview with an immigration judge, discussed at the end of this chapter, was particularly illuminating of the ways that professional ideologies clash on matters of language, and how these disagreements shape the working environment of the courtroom.

3.3. Language Ideologies

Empirical study of courtroom interaction, language, and the law has long established that the courtroom is a contested interactional space that upholds, and often magnifies pre-existing social inequalities (Atkinson and Drew, 1979; Conley and O’Barr, 1990; Matoesian, 2001; Mertz 2007; Eades, 2012). An underexplored dimension of these inequalities comes from the fact that the courtroom is also an active workplace, with rules, regulations and traditions that police and constrain employees in its ranks. Different and unequally empowered professionals – judges, attorneys, and interpreters among them – bring to this workplace their beliefs, feelings, and judgements about language structure and use, known as *language ideologies* (Kroskrity, 2000). Individuals acquire these beliefs from personal history, professional training, and cultural “common sense knowledge” about how language and communication should be, look, and sound. The study of *professional language ideologies* shows that there are language ideologies that are endemic to particular professions or cultures of work, and that these guide professional decision-making and shape identities, routines, practices, places and cultures of work (Collins, 1998; Kroskrity 2000, 2011). I will begin this chapter by describing the dominant language

ideologies governing linguistic behaviors and decision-making in immigration court. I then turn to evidence from court, policy, and first-hand experiences to demonstrate how these constitute a *language ideological regime* and account for working conditions in court.

3.3.1. Language Ideologies Endemic to Common Law and American Legal Traditions

3.3.1.1. Monolingualism

During the founding of the United States, the debate over the utility of official language was much more favorable to a multilingual society than it is today (Perea 1992, Kloss 1997, Del Valle 2003). The founders of the country had a positive outlook on multilingualism: they believed the values of American democracy transcended language, that German and Northern European ethnolinguistic minorities would support the republic and the democratic cause if allowed to maintain their linguistic traditions, and that the English language would always be conserved in common law (Schmid 2001, Battistella 2005).[15] But since then, language ideologies adopted from European nationalism of the late 19th century, that claim the internal linguistic homogeneity of a people, have written over the multilingual pasts of North America (Silverstein 1996). In fact, these multilingual roots have been so effectively erased by nationalistic language ideologies that many Americans, including judges authoring legal precedent, believe that the United States has always had English as its official language, despite it not now, nor ever, having been the case (Del Valle 2002).

Over the past century, the notion that the right to an interpreter as an extension of the right to due process has developed rapidly, justified by the notion that linguistic access constitutes "meaningful participation" in one's own case (Abel 2013: 602). The idea picked up

[15] This was of course, based in a strong racism against Native peoples, whose languages were not considered as worthy of translating these ideas into, and who were not considered as a part of the nation.

institutional expediency after the passage of the Civil Rights Act (1964) and the Court Interpreters Act (1978). Such legislation grew from the concern that too often, children and family members acted as interpreters in legal settings. State courts followed suit, in many cases surpassing the federal courts in providing mechanisms for language access (see Abel 2013: 595). Today, the need for qualified and professional interpreters is widely agreed upon, and case law continues to build in favor of language access. But what it means to be *qualified or professional* language services, and where this standard should be applied, is still contested ideological ground.

In one sense, language access through an interpreter fits in the ideological frame of monolingualism – one language still dominates system-wide, and there is no alternative court in a minority language. On the other hand, an added layer of interpreted discourse complicates the mechanics of the core process of the common law system, the monolingual English adversarial trial (Berk-Seligson 1990, Angermeyer 2008). But the legal community does not, or perhaps cannot, see the constant micro-interactional challenges to communication in the trial process as a threat. Quite the opposite, despite practical challenges of multilingual courtroom discourse, the adversarial trial process is thought of universally exportable in across cultures and languages:

> "Legal scholars seldom question whether or not the nature and character of the adversarial trial process is challenged, let alone transformed, when it is transplanted to societies with strikingly different cultural traditions than those of the Anglo American world. A belief in the fixed, universal character of the adversarial trial across different sociocultural contexts turns on a particular view of courtroom language, one that sees language as a neutral, transparent medium within which brute facts and abstract concepts are enunciated" (Ng 2009: 370).

The nationalist frame of monolingualism in the justice system also underprepares government agencies to contend with the multi-dialect reality of persons seeking asylum. For example, the

Department of Justice had contracted Lionbridge, an interpreter agency whose nationalist and monolingual ideological preferences made securing an appropriate interpreter a gamble:

1	Judge:	and we need an interpreter right?
2	Officer:	yes
3	Judge:	eastern armenian?
4	Officer:	yes
5		*((Judge calls Lionbridge telephonic services))*
6	Operator:	thank you for calling Lionbridge what language please?
7	Judge:	eastern armenian
8	Operator:	so I don't have any separate dialects for armenian
9		I don't have western or eastern
10		I just have armenian
11	Judge:	okay well… we'll see what we get
12	Operator:	okay
13	Atty:	life is like a box of chocolates

Eventually, they did secure an Eastern Armenian interpreter, but the telephone connection was lost several times. The hearing was reset for a later date to ensure an interpreter on the books.

3.3.1.2. Referentialism

The referentialist linguistic worldview is hegemonic in American English-speaking cultures, detailed at length by Hill (2009). Language users who subscribe to referentialist ideology imagine language as a vehicle that migrates "content" from one person's mind another, where it arrives perfectly intact, with no confusion, context, or associations unintentionally tagging along. In this view, the purpose of language is to convey referential meaning, or "information." But in reality, use of language in context involves the transfer of more than just referential meaning; we constantly communicate associative and pragmatic meaning when using language. So to truly imagine language in the referentialist language ideology, one must also

believe that words have fixed meanings that could not, or would not, change depending on context. Therefore, the referentialist linguistic worldview is largely blind to pragmatics and context or the role these play in co-producing meaning in real time. Ethnographers of language have gathered significant empirical evidence disproving the referentialist worldview, finding instead that meaning is in constant flux, and shifts based on participants' physical, affective, associative contexts.

The hegemonic power of this ideology makes its continued study crucial. Mertz discusses the prominence of referentialist ideology in legal professional culture around texts:

> " … Referentialism or *Textualism* … views written texts as in a sense self-contained, as carrying determinate meaning that inheres in the written words themselves. What is central about texts, in this view, is their referential or semantic content, and that content or meaning exists within the writing, the written text. Anthropological linguists and sociolinguists have demonstrated, however, that when written texts are mobilized for human use, they necessarily depend on and create context in order to have meaning" (Mertz 2007, 46).

It is important that the linguistic worldviews of the legal profession prevail, to maintain their position at the top of the hierarchy of the workplace. Enforcing referentialism and textualism, therefore, is key to upholding the supremacy of the legal profession in the courtroom. Meanwhile, these ideologies spawn their own further ideologies that present more direct conflicts – a few of which are explored below.

3.3.1.3. Referential Transparency

Related to referentialism is "referential transparency," endemic to American English speakers and prominent in the American legal system (Haviland 2003). In this view of language and communication, referential meaning is perceived as infinitely and instantly transferrable through (English) speech. Haviland expands on Silverstein's (1996) observations that American English speakers not only believe there is pre-existing linguistic "content" in one's mind that can

be easily transferred through the medium of language, but that language is a type of tool that consistently and directly relays the inner states of its speakers. This, in turn, props up the belief that speakers of English are morally unambiguous, their intentions always clear.[16] In the linguistic worldview of referential transparency, speakers always know and truthfully report on their intentions. In reality, miscommunication is common and clarifications are constant, because language is *not* a perfect tool for these complex mental and social tasks. Arguably, miscommunication is just as much a feature of communication than an event exceptional to it, exactly for the many misinterpretations of pragmatic context ignored in the ideology of referential transparency.

The ideology of referential transparency establishes difficult working conditions in a courtroom – first by oversimplifying the demands of communication work, and second by imposing unrealistic expectations about how communication will look, feel, and sound. These unrealistic expectations are particularly demanding on interpreters. For example, one direct result of the power of the ideology of referential transparency is a strong distrust of interpreters. Ethnographic studies of interpreter-mediated courtrooms show that attorneys and judges perceive interpreters to be unreliable reporters who may intentionally or unintentionally spoil original or intended meaning (Eades 2010: 69, Angermeyer 2008: 392). First person interviews with interpreters on this project confirm this. These interpreters discussed their first-hand experiences of being dismissed, belittled, or accused of making mistakes without evidence. Legal professionals' distrust of interpreters stems from the ideology that interpretation should represent a "verbatim," "word-for-word," "translation" that all experts of language know empirically to be

[16] Such beliefs about transparency stand in stark contrast to ideologies of opacity, in which speakers believe language is *not* a reliable tool with which to relay one's inner thoughts, feelings, and truths, and that one can never truly know what another person is thinking. Examples of these attitudes are found in many Polynesian and Pacific linguistic cultures see Robbins and Rumsey 2008, Duranti 2015 for examples.

unachievable (Morris 1995, Hale 2004). Nevertheless, the ideology of referential transparency leads its holders to believe that not only should an "exact" translation exist, but that if it seems to not match up in aesthetic or timing, if indeed it doesn't *feel* exact, that would be the fault of the interpreter – either by moral corruption, incompetency, or both.

The simplifying impulse of referential transparency leads to misconceptions that an interpreter is like a machine or a calculator. In a worldview where interpreters are thought of as machine or tool, interpreters should be invisible, as they are a sort of "technological fix" to a practical problem, not a person whose work is equally substantive to carrying out the case as everyone else (Laster and Taylor 1994). While many interpreters may agree that if their presence is not imposing it could indicate they have done a good job, the dehumanizing view of "interpreter as machine" reduces the work that interpreters do in court to "simply talking," and keeps much of their work invisible. It also can lead to total erasure, where the legal professionals managing the courtroom space forget the interpreter is present, and interpreters are unable to do their job. One interpreter described how detained hearings often started without the interpreter because they would be locked out of the courtroom. The judge, appearing via video and in another locale entirely, would not know to direct the guard to let them in: "So many times you're standing outside the courtroom literally pounding on the door saying, 'this is the interpreter, may I come in and do my hearing.'"

3.3.1.4. Decontextualization

Perhaps the most fundamental operating linguistic ideology in U.S. legal professional culture is that of *decontextualized language* (Mertz 1998; 2007). Decontextualized language is a prestige approach to language as a tool to mold any material, social, or political phenomena into the framework of the law. In the legal worldview, a lawyer's task is to remove any social and moral

contexts of the objects, conflicts, and events at hand in order to insert the matter into the legal-linguistic frame. Moral questions, historical conditions, or socio-economic realities that impinge on conflicts are seen as extraneous context that must be removed in order to get to the facts of the case and do the work. This work is done by legal professionals and by legal professionals only, as it is a skill obtained in their unique legal training. However, the scholarly consensus remains that despite the goal to decontextualize the facts, this linguistic reformation still "imports" the moral regimes of the dominant culture, ultimately acting as more conservative force than the neutral process it claims to be (Yovel 1997, 2000).

Ironically, because the practice of decontextualized language insists on exclusively legal conceptual categories, the very blindness to macro-structural orders of gender, sex, race, and others that accompany these categories, allows them to migrate into the legal process and outcomes intact, reproduced in its institutions. Linguistic hierarchies – across dialect, accent, code, register – are certainly among the long list of social-contextual information deemed unimportant to legal matters, but nevertheless bears heavily on legal reality. One result is that the importance of language as a social factor is constantly disregarded, minimized, or disposed of at the first sign of inconvenience to practice or procedure – just as the judge was quick to "take whatever he could get" instead of further investigating the relevance of dialect to the case.

3.3.1.5. Lexical Reductionism

The sum of these ideologies, taken to their logical extreme, leads to significant erasure of pragmatic meaning and clashes in multilingual spaces on the ground. Monolingualism and referential transparency, combined with a constant minimizing the importance of language, evidently leads to the notion that cross-linguistic transfer of meaning is a simple task. This is imagined as a type of relexification, in which each "word" is simply replaced by another "word"

in the “other” language, irrespective of syntax, morphology, morphosemantics, and so on. In one instance, an attorney stopped what he was saying to severely instruct an interpreter to “just translate what I am saying!” He then slowed down his speech to speak word by word, with exaggerated pauses in between.

3.3.2. The Regime of Referential Reductionism

Ideologies of decontextualization, referentialism, and referential transparency, monolingualism, and lexical reductionism powerfully combine to create a “regime of language” (Kroskrity 2000) in legal spaces. It is a conglomeration of ideologies that is especially diminishing of the complicating powers of language – a regime of referential reductionism. The regime of referential reductionism establishes working conditions in the courtroom for all professionals by demanding behavior align with its unrealistic prescriptions for communication. Referential reductionism backs up the hierarchy between professions, privileging legal ideologies about language over more fact-based understandings of communication (Colin and Morris 1996:17). This phenomenon is worsened by feelings that legal authority is rooted in an authority over language (Phillips 1998, Mertz 2007), leading legal professionals feel secure in making uninformed claims about comprehension, and unrealistic demands on interpreters. Overall, this degrades communication conditions – which are working conditions for both legal and language professionals in court.

Rhetorically, legal professionals acknowledge the generic importance of interpreters and their role both in scholarship (Ramji-Nogales 2009; Lustig et al 2008; Marks 2015), and in my courtroom observations. Judges frequently thank interpreters and describe their gratefulness for their assistance as they sign paperwork confirming interpreters’ hours worked. In a Judge’s professional publication, the then-president of the National Association of Immigration Judges

(NAIJ) suggested that interpreters should have leeway to provide their expertise and input on proceedings (Marks 2015). But in practice, interpreters are not consistently treated in accordance to how foundational they are to daily practice. They are treated as always potentially dispensable, and their presence is always to be determined by a legal expert, not a language expert. In this way, no matter how much judges and attorneys might feel or say interpreters are important, they all still work under a regime of language ideologies that aggressively minimizes the nuanced role of language. The situation oversimplifies the work of interpreters, who work through those nuances, and are held responsible for any fallout. In other words, the regime of referential reductionism allows legal professionals to performatively tip a hat to interpreters, while treating their work as simple. The insistence that communication challenges are negligible, when in fact these can be among the most grueling aspects of immigration court proceedings, further degrades working conditions. The next section examines these phenomena in context.

3.3.3. Consequences: Working Under the Regime of Referential Reductionism

3.3.3.1. Disposability of Interpreters

Just before departing office in 2000, Bill Clinton signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." The order requires agencies that receive federal funding to generate "Language Access Plans" – a type of blueprint for ensuring linguistic minorities can meaningfully access the services the agency offers. These documents evolve over time. In 2012, the EOIR released a Language Access Plan that expanded the amount of courtroom speech that was required to be interpreted. Specifically, where previously it was common for interactions between judges and attorneys to not be interpreted at all, the plan required that this speech now be interpreted in the simultaneous mode (a cognitively demanding mode of interpreting in which the interpreter produces interpreted

speech while listening simultaneously to the person they are interpreting for). Meanwhile, discourse that is directed at or includes a respondent would continue to be interpreted in the consecutive mode (the mode of interpretation in which the person whose speech is being interpreted stops fully before the interpreter begins relaying back their interpretation). They referred to the total approach as "full and complete" interpretation.

Therefore, the observations on this study took place during a time of language policy change and transition. Where the disposability of interpreters had once been a regular part of practice, institutional policy was beginning to recognize that interpreters were quite key to a transparent process. Los Angeles Immigration Court was unique in that these practices had already been in general use. But this was exceptional, and a result of local court culture more than formal central policy. The policy was still in awkward tension with the legal professional tenet that attorneys are tasked and trusted with explaining matters to their clients, an idea that itself relies on the linguistic ideology of referential transparency. Faced with the very real limitations of securing interpreters on the ground, judges frequently reverted back to previous practices of waiving the right to an interpreter and trusting attorneys to explain proceedings to their client, at another time and place and using their own resources. In the following observation, a judge and an attorney discussed whether an interpreter was necessary for a bond hearing of a respondent video-conferenced in from a courtroom in a detention center. I observed them in court in Los Angeles while they prepared to begin the hearing for the respondent, who was detained in Adelanto, CA, and appeared over a video-interface:

1 Judge ((*to the officer at Adelanto Detention Center)*): do I have a Twi
2 interpreter there?
3 Officer: No
4 Judge: Mr. [Attny], is Twi his best language?
5 Attny: Yes, Your honor I speak Twi

6		I can waive the interpreter for the bond
7	Judge:	You speak Twi?
8	Attny:	Yes
9	Judge:	That's right you were criticizing one of the interpreters, some
10		young guy…

Another judge may have decided to postpone the hearing until they could book an interpreter. But instead one of the more insidious manifestations of referential transparency emerged here – since interpreting is imagined like making simple, robotic calculations, the belief is that the only qualification interpreter has is knowledge of a language. Taking this logic to the extreme, an interpreter is not particularly necessary if there is someone else present who speaks the language. The belief is that the content and logic of the hearings is legal, unrelated to the litigants' experience and therefore language services are an luxury, or an auxiliary service for the added benefit of lawyers and the judge, not necessarily the respondent. This exact type of thinking was what the recent language access plan intended to move away from.

Later, the judge articulated the linguistic needs of the respondent for the record:

11	Judge:	he normally requires the services of a Twi interpreter
12		we don't have one today
13		we don't have one scheduled today
14		to the attorney you are willing to waive the interpreter?
15	Attny:	yes
16	Judge:	you speak Twi fluently?
17		Mr. [Respondent], do you understand any English?
18		(*((inaudible audio over video interface))*
19		if I ask you if you want Mr. B to represent you?
20	Respondent:	((looking down)) yes please

The bond hearing went on without the respondent's participation. Finally, at the end, the Judge resumed directing speech at the respondent:

21	Judge:	another thing Mr. [respondent]

22	I don’t know if you understand
23	(*((inaudible response))*
24	Mr. [attny] can you repeat it in the Twi language?
25	not right now
26	but when you confer with him?

In this way, the judge’s improvised solution is that the attorney will explain the instructions of how to pay his bond and process his paperwork, at a different time and outside of court. Lines 9-10 show the attorney has presented conduct of belittling interpreters in the past. But this does not lead the judge to question the attorney’s motivations. Quite the opposite, the judge’s decision to allow the attorney to relay the information from the hearing at a later time indicates a tacit belief that attorneys can and often do know more about how to handle communication; the judge may also take the attorney’s criticism of the interpreter as a sign of sincere care for his clients. The possibility that the attorney could be using the cultural distrust of interpreters to his advantage, and potentially taking advantage of clients, does not seem to occur to the judge. The judge may have had particularly positive relationship with this attorney, and known them to be in good faith. But the regime of referential reductionism makes the presence of an interpreter a luxury option for this hearing, and deprioritizes transparent proceedings – leaving plenty of room for predatory lawyering practices outside of the courtroom.

3.3.3.2. Judge’s Benchbooks

Deportation proceedings include a series of different types of hearings. For each, the EOIR provides judges with guides called “benchbooks,” which include checklists, instructional material, and scripts. While some judges do not abide by these scripts as much as others, the benchbooks give a window into institutional expectations and assumptions of how judges and respondents communicate with and understand each other. The type of language blindness that

arises from referential reductionism is evidenced in the *lack* of guidance regarding linguistic communication and the particularities of interpreter-mediated discourse. For example, in an initial intake hearing, the script recommends asking respondents if they understand the current interpreter after only a couple of short questions such as "what is your name and address?". This minimal amount of communication between interpreter and respondent is highly insufficient to determine a respondent and interpreter's level of comfort and comprehension of one another, but is standard throughout other hearings as well.

Another example of the reductive attitude to communication is that the guidelines suggest asking if respondents "understand," but without any guidance for the complicated set of interactions that might happen if a respondent reports that they *do not* understand:

> c. Ask the respondent if he or she understands the explanation of the right to counsel
> d. Then ask the respondent if he or she wishes a postponement to find an attorney
> e. If the respondent chooses to take a postponement to find an attorney, stress to him or her the necessity of contacting all of the offices on the legal assistance office list.[17]

Findings in the field of conversation analysis indicate the first question is designed to elicit a "yes" response (Raymond 2003, Hayano 2013). This type of polar question is used not only to disallow interruptions to the core process, but specifically to retain institutional power (Raymond 2003). In this way, the benchbook script envisions a world in which respondents say that they understand the question, allowing a judge can maintain control of the situation.

[17] Executive Office for Immigration Review, Initial Hearing: the Pro Se Respondent 1 (n.d.), now archived at https://www.justice.gov/eoir/archived-resources.

The looseness of the guidelines also speaks to values of judicial independence and style. Judges are expected to use their experience to handle any response, even if one particular response is preferred. For example, the judge is expected to know how to "stress" something to a respondent, without any instruction or clarity on what such pragmatic content might look like on the ground. But even assuming a judge will generate a creative explanation or some prosodic "stress" perfectly, the assumptions built in to the script are numerous and risky. The picture it paints assumes that an interpreter is present, in the correct language and variety of language, that the extent of understanding or lack thereof can be intuited, and that respondents will be transparent about their ability to understand, even under immense pressure to "behave." Importantly, all of these assumptions are propped up by the notion that linguistic content can perfectly be conveyed through the medium of language, the core assumption in the ideology of referential transparency. The hearings as the EOIR envisions them are full of transparent, simple linguistic transactions.

3.3.3.3. Non-parallel Professional Understanding

Many in the legal profession remain unaware of what the skills, qualifications, and extent of work interpreting entails, and that interpreters are trained professionals, not simply bilingual individuals. Legal scholars have identified these issues as stemming from a gap in professional training (McCaffrey 2000; Ahmad 2007). Some judges who invest in making their courtrooms a friendly, welcoming space learn about the interpreting profession by informal interactions off the record. Meanwhile, attorneys are less likely to gain this practical understanding, as they do not have as much access to off-the-record courtroom interaction, small talk, and down time. Put simply, attorneys are in less of a position to develop friendly relationships with interpreters and gain cross-professional understanding.

In short, a legal professional's knowledge of the interpreting profession is likely to be incidental. At the same time, interpreters' knowledge of the law is required. Interpreters need to have extensive understanding of the law and legal practice to be considered reasonably qualified for their work. They must possess a thorough understanding of legal terminology, rules and procedure, professional ethics to carry out the basic work. To excel, interpreters benefit from a strong understanding of legal tradition and legal-linguistic culture, abbreviations, and morphosyntax. Many have training in paraprofessional skills, were trained as lawyers in their home countries, or are themselves pursuing law degrees or paralegal certification. It is not uncommon that a senior interpreter will have more accumulated and contextual knowledge about the on-the-ground realities of the practice of immigration law than a junior attorney representing a respondent.

Yet, legal professionals still set the rules, and therefore working conditions, for language professionals. One interpreter brought up what was at the time the recently imposed Language Access Plan:

> "There was a memorandum issued by the Chief Immigration Judge calling for 'full and complete' interpretation, what *he* is calling 'full and complete interpretation.' That's a term coined by the judge. It's not really a term of ours, but it's a term coined by the judge. The judge is really referring to is the portions of the hearing that we're supposed to do simultaneous interpretation, the portions when the respondent is not being addressed directly."

This interpreter was not the only one to speak somewhat pointedly, or jokingly, about the fabricated nature of this terminology, and its distance from the terminology and categories of professional interpreting. It is indeed representative of the unequal ground they stand on. Importantly, the lack of understanding of the interpreting profession by the creators of this policy has real consequences for the working conditions of interpreters. Here, the policy change

multiplies the work of the interpreter, but no accommodations are made to make that extra work more feasible for the interpreter. Professional interpreters pointed out that if constant simultaneous interpreting was expected of them, they would also need to implement "team interpreting," a system in which the interpreter can relay off to a colleague in order to take breaks and avoid cognitive burnout. They claim this request was not heard out by any official.

The courtroom hierarchy of language ideologies prioritizes the legal profession's referentialist understanding of language over interpreters' practical understanding of meaning transfer across language. The regime of referential reductionism creates the illusion that interpreting is so simple that interpreters would have no need for a substantive understanding of the law or its pragmatic systems, when in reality interpreters are required to know a significant amount more about the law than lawyers are required to know about the mechanics of language or the interpreting profession. This unequal professional understanding creates not only awkward working relationships, but also extremely difficult working conditions for interpreters. Legal professionals with a less than complete understanding of their profession write the policy governing their work, attorneys can object to anything they may perceive or feel as an interpreting "mistake," a judge can even end a senior interpreter's career based on such a perceived mistake. While this last item is a rare occasion, it is not unheard of, and indeed did happen during my fieldwork at Los Angeles Immigration Court. The possibility in itself speaks of the precarity that impacts interpreters most of the professionals working in immigration court.

3.3.3.4. Physical Working Conditions

The invisibility of the interpreter that arises from the ideological regime of referentialist reductionism also creates physical working conditions. For the most part, these have to do with the physical arrangement of seating and organization of persons in the court. One interpreter

discussed at length how de-prioritizing of interpreters' professional needs leaves them with unpredictable equipment:

> "What ends up happening is that interpreters attempt to use the equipment and it hasn't been properly charged, or its broken, it's not on the right channel, any number of situations can occur, and it is unusable. So the interpreter, trying to comply with the chief judge's mandate to provide "full and complete" interpretation, will sit by the respondent and use the whisper mode. And the judges appreciate that. And at first glance, one might ask, well what difference does it make, whether you use the equipment or you sit by the respondent. Well, it makes a *huge* difference. Because, yes. Most of us are capable of whisper interpreting those non-direct discourse portions … but it takes a toll on us. It stresses our vocal cords. We can develop nodules on our vocal cords which is not a good thing. Contrary to what a lot of people think, whisper interpreting over prolonged periods of time is a lot *more* stressful on one's vocal chords, than simply interpreting with equipment in a low voice."

Observational data attests to the subpar upkeep of audio equipment, and consequent re-organization of seating to accommodate whispered interpretation. Indeed, standard clinical care of vocal professionals warns against the "stage whisper" needed for whisper-mode interpreting given the stress it puts on the larynx (Sataloff et al 2019). Further, scholars on court interpreting note that whisper interpreting may be confusing and difficult for the recipient of the interpreting to hear (Colin and Morris 1996, 89). In this way, a set of language ideologies ends up producing the actual physical working realities and conditions of work – in this case, at the disadvantage of interpreters *and* respondents.

3.4. Reflections of Immigration Judges

The problems involved with the ideology of referential transparency are certainly on the minds of professionals in the immigration law community, and not just interpreters. One judge participated in an interviewed as a representative of the National Association of Immigration Judges (NAIJ). We discussed a variety of problems with barriers to language access. The judge

vocally supportive of interpreters and their importance in the process, and particularly saw them as a check on an imperfect system that allowed "less than stellar" attorneys to take advantage of immigrants. They described scenarios in which "full and complete" interpreting was crucially needed, because it empowered the respondent to correct mistakes or inaccurate information their attorney was relaying to the judge. The judge discussed the ways in which many attorneys fall short of judges' expectations of communicating with clients:

> NAIJ: Their responsibility as attorneys to their client is to make sure that they provide the most effective representation. And if they don't adequately explain the proceedings, if they don't adequately help prepare those applications, if they don't put in the necessary time, particularly in applications like asylum, that requires living traumatic events, if they don't really help them feel safe so that they can share their stories, they have *failed* as attorneys. And as a judge, there's only so much I can do in the courtroom. In a courtroom, I can try to make it feel as safe as possible, but its still a public setting to a certain degree… its an adversarial setting. My role is limited to make sure they understand the nature of the proceedings to give them a chance to share their stories, but I'm not there to hold their hand before, I'm not there to *prepare* them in advance of the hearing, I'm not there to really to be their *advocate*. I'm there to make sure that due process rights are protected. But… its due process rights *in the courtroom*… So, the issue of, *unfortunately*, attorneys who do not provide the most *effective* representation is that… they … shortchange their clients. And so the clients present applications that… they don't have the opportunity to really *effectively* help their case. Because all they've been told for example is, 'here's a piece of paper write down why you can't go back.' Nobody has sat down and really talked them through and helped them for example in a chronological way, in an organized way, asked them questions and helped them go through their experience. So if you tell somebody, 'tell me all the stuff you've suffered and why you can't go back'… Well, unless you've been really been trained to organize your thoughts, unless you've really been trained to focus on the specific issues, you are going to present your story in the confines of your educational, cultural, personal background. So, its going to be and hit and miss. Sometimes it could work, sometimes it doesn't. That contributes to the language issues… it presents challenges to try to figure out how best to get the …the necessary and relevant information.
>
> [Author]: Because then that's what you're doing in the courtroom when it should have been done before.
>
> NAIJ: Correct, correct.

From this perspective, for the judge to be able to manage proceedings once everyone is together in court, attorneys need to perform the communicative and care work of helping respondents process, think through, and represent their narratives. This specific form of communication work is extremely difficult, especially when individuals are suffering from trauma, isolation, or any of a host of mental health issues that may arise in the process of seeking asylum. The frustration that the judge expresses here is specifically with the fact that attorneys are acting as if simply offering *words* is enough to get across everything that needs to be conveyed, that language will be a perfect tool to show what their client keeps inside them. In other words, the judge is frustrated that attorneys are relying on ideologies of referential reductionism, that do not match up to the real demands of communication on the ground, oversimplify communication, and ultimately do not hold up to the policy of full and complete interpretation.

The same tension and frustration between judges and attorneys arises in court as well. In one hearing for a detained respondent, an attorney tried to proceed with the hearing despite the lack of an interpreter:

1	Judge:	since we do not have an interpreter we have to reset
2	Attny:	we just need to see what form of detention he needs
3		there is no need for rights advisal
4		there is no need to take testimony
5		so [the respondent is] willing to waive the interpreter
6		for this bond hearing

The judge did not accept this logic, and continued to move to reset the hearing when there would be an interpreter. But the attorney continued to insist, leading to direct conflict between himself and the judge:

7	Attny:	respectfully, he still wants to go through with it today
8		because of the delays that happened
9	Judge:	you want me to make a decision without the respondent
10		understanding what's going on?
11	Attny:	he's being represented and I understand English
12	Judge:	do you understand Sylheti?

After this rhetorical question, the attorney continued to repeat his argument that representation was sufficient replacement for understanding English proceedings, and the fact that the respondent did not need to testify that day meant his right to an interpreter could be waived. The judge simply ignored him and reset the case, as seemed to be her intent throughout the interaction. However, it is worth noting that she took time to ask these pointed questions of the attorney, that highlight ways in which he was not taking up his responsibility to clearly and fairly communicate with his client, and perhaps was depriving his client of his due process rights to fully understand his case.

While this attorney and client may have had legitimate frustrations about how long his client had been detained, and that it was getting extended for the lack of an interpreter, the judge's battle was an ideological one. The judge was fighting back against the notion that translation is simple and the attorney can simply tell him what happened later. The judge's perspective rejects the blinders of referential reductionism, and indicates a more realistic assessment of communication: the respondent many need to ask questions, details may need to be expanded, and meaning emerges from ongoing interaction. Interestingly, neither this judge nor the one interviewed are particularly aware that they are rejecting primary linguistic tenets of the legal system and their profession; they do not recognize the source of their frustration is a core professional belief. The disagreements move forward as a matter of *quality* of professional

practice – not a core problem in the profession causing difficult working conditions in the first place.

3.5. Conclusion

Both judges confront the *language ideological working conditions* that regiment the communication order of the courtroom and threaten the integrity of outcomes. In this chapter I focused on the very issues with which they are concerned, the ideological regime of referential reductionism, a collection of related ideas about how language works that together oversimplify the demands of cross-linguistic communication. Under this ideological regime, legal and language professionals must work through culturally and professionally inherited ideas about communication that are counter-productive to getting work done, or doing work well. Legal professionals are left to rely on personal experience and intuition to guide them through complex multilingual interactions, and language professionals are left completely out of control of their working conditions. The consequences are untenable and unfair – pre-existing inequalities across courtrooms, locations, and languages are compacted by the variability in these working conditions. The findings reveal that in order to truly offer with due process and dignity for respondents in immigration court, we will have to reckon with some of our most deeply held beliefs about language: that we can be honest and transparent easily with language, that interpreting is simple and mechanical, and that the presence of an interpreter means that language access is achieved and progress is made. Critical reflection on these assumptions, and the ideologies that belie them, will in turn offer an opportunity to improve working conditions for all professionals in immigration courts, and as a direct result, improve language access for respondents in deportation proceedings.

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Chapter Four

A History of Misunderstanding: Barriers to Communication

4.1. Introduction

In late 2016, hearings for a Nigerian asylum seeker's final credible fear review began before a judge in Los Angeles, CA, where I was an observer. The respondent was detained in the high desert in Adelanto, CA, two hours away by car. The respondent was not represented by an attorney and instead represented himself. The hearings took place over several days over video-conference. Hearings were scheduled around interpreter availability for his indicated best language of Hausa. In some hearings an interpreter was present in Adelanto with the respondent. In others, the court dialed in an interpreter over the telephone. These inconsistent and less than ideal circumstances led to significant communication challenges, and are the subject of this chapter.

Communication difficulties were made worse by the respondent's frustrated claims that a Customs and Border Patrol (CBP) Officer had pressured him to do an intake interview in English, in which he told the office he was not proficient. He further claimed that an interpreter had misled him into not providing answers in his asylum interview at the border. He claimed the interpreter spoke a significantly different dialect of Hausa than his own, to the extent where they could not understand each other. The respondent's own mistrust of the institution's commitment to communication exacerbated a series of emotional events. He reacted with frustration to the trial attorney's questions, which were convoluted and complicated in English, and likely difficult for the interpreter to convey, or understand an interpreted version of. At times, the respondent

questioned interpreters' honesty, at others, the trial attorney questioned interpreters' abilities. The trial attorney responded with his own attitude of mistrust, declaring that the respondent was being difficult and not putting in his own effort to understand. The attorney had his own mistrust of the interpreters. Abiding by the professional language ideology that interpreters alone are responsible for communication with non-English speakers, the trial attorney refused to adapt his speech to improve communication. Finally, without a coherent narrative from cross-examination, the most important part of an asylum claim (Kagan 2003; Schroeder 2017), the judge found the respondent incredible in his testimony and denied his application for asylum.

The case study in this chapter illustrates the intensive nature of communication-based labor tasks and how, despite its invisibility, this work can exhaust courtroom professionals. I detail the difficult communication-based work that courtroom professionals had to perform in order to carry out hearings – specifically in cross-examining the respondent. I analyze the language ideological working conditions that arose from professional dispositions. The case illustrates some ideologies discussed in the previous chapter, but additionally discusses phenomena not previously discussed in the literature on language ideologies. The chapter examines ideologies about communicative understanding and comprehension that have implications for studies of language ideologies, language and the law, and the legal profession.

4.2. Literature Review

Linguistic anthropologists and conversation analysts have conducted extensive work on cross-examination in courtroom trials for decades. The body of work that came out of these documented a range of communication work: scaffolding questions to build narrative (Atkinson and Drew 1979), designing questions to maintain control of the narrative (Danet), eliciting information to challenge narratives (Drew 1992), and even enlisting witnesses into constructing

their own identities in ways convenient for argumentation or narrative (Matoesian 2001). However these studies examine courtroom settings quite that offer very different working conditions than immigration courts – usually criminal jury trials in well-resourced that are courts well-equipped in staff and technology, with participants using a shared code (Atkinson and Drew 1979; Drew 1992), including many high-profile and publicized cases (Matoesian 2001). Most of these seminal works examined criminal trials where cross-examination is highly performed for the audience of a jury. Studies that deal with trials of diverse linguistic capacities also tend to focus on criminal trials for juries (Haviland 1988; Berk-Seligson 1990), for whom almost all proceedings are designed in plain language. In this way, the findings of these studies are a starting point for discussions of difficulty communicating across languages in court, but cannot capture the full extent of communication phenomenon in under-resourced courts, especially administrative courts where there is little motivation to use plain language. More recent work, especially Philip Angermeyer's work on multilingual civil disputes in New York City Small Claims Court (2008; 2009; 2010; 2014), examines more approximate circumstances to those in Los Angeles Immigration Court.

Meanwhile, a long tradition of literature on strategies, styles, and conventions of cross-examination does account for a broader range of trial contexts (Wellman 1962 (1903); Hardwicke 1903; MacCarthy 2007; Melilli 2008; Gibbons 2014; see also Gaines 2016 for a meta-analysis). The cottage industry of style guides and advice on cross-examination is spurred on by minimal exposure to trial practice in law school and the general infrequency of trials in the professional lives of attorneys. Without frequent opportunities to practice, attorneys seek to develop these skills throughout their careers. All of this contributes to a very high metalinguistic awareness about the genre and practice of cross-examination, and to it being a highly culturally

regulated practice in the profession. However linguistic anthropologists tend not to look to these metalinguistic reflections for insight into the talk of cross-examination itself, instead focusing on the immediate linguistic content of the interaction itself. It would be a mistake for linguistic anthropologists to continue to ignore the prescriptive culture and conventions around cross-examination. Therefore the analysis of the case study draws heavily from discussions on best practices of cross-examination.

Cross-examination is also constrained by the law: federal rules of evidence indicate that the court, embodied in the judge, must intervene on cross-examination in a number of scenarios. Among these is that an attorney cannot use the process of cross-examination to cause a witness "undue embarrassment".[18] This is particularly complicated because the process of being cross-examined involves a baseline level of stress. Exactly what constitutes undue embarrassment is vague. The rule has been entangled with the rising tension between the rights of victims and the rights of the accused. First, the right for victims to testify privately and be spared the psychological discomfort of confronting their accused perpetrator was severely limited in *Coy v. Iowa*, in which the Supreme Court found this practice violated the defendant's right to confront their accuser.[19] The Supreme Court later limited this decision in *Maryland v. Craig*, which upheld the right of a witness to be cross-examined by a closed-circuit videocast instead of being present in a courtroom with the accused, in order to avoid emotional distress. Both involved aggravated sexual assaults and the testifying witnesses were children. Importantly, these were primarily interpretations of the Confrontation Clause that had secondary impacts on rules of evidence and undue embarrassment.[20] Therefore, current thinking focuses on the rights of the

[18] Federal Rules of Evidence 611.a.3.
[19] U.S. Constition amendment VI, § 6.
[20] This is likely to become limited or overturned on re-examination. "Justice Scalia, who authored the majority opinion in *Coy* and the dissent in *Craig*, has mounted a sustained campaign for its re-examination and has authored

accused more than feelings of humiliation, embarrassment, and confusion that might degrade the quality of communication needed on the ground for cross-examination.

"Embarrassment" writ large – the humiliating and confusing experience of recounting traumatic events in a language, narrative format, and severe institutional setting with which one is not familiar – is a core experience for respondents in immigration court. Being questioned is likely to be at the least very alienating to the respondent, and at most, will lead to a state of mental health trauma and crisis, as sociolegal scholars have noted (Paskey 2016). One dimension that is less explored is the specific humiliation of not being understood or being framed as incomprehensible and unable to comprehend in the trial process. *This* form of humiliation, indeed embarrassment, has not yet been accounted for in rules of evidence or sociolegal scholarship at any length. How this might in turn relate to the experience of communicating across languages has not been elaborated in any breadth. The case study shows that the emotional distress of not being understood should not be underestimated as having severe consequences for undue embarrassment and the process of cross-examination, and as result, for due process itself.

Finally, sociolinguists have long had an interest specifically in asylum hearings in a number of national contexts. Previous observational studies of asylum trials and interviews have detailed how institutional practices come up against linguistic difference: how institutional code choice (Maryns 2005) and language ideologies (Blommaert 2009) shape the framing of asylum seekers and their cases, the institutional limits on asylum narratives (Blommaert 2003), and the use of linguistic difference itself as a bureaucratic tool (Eades 2005). Broadly, they find that the

three recent Court opinions that have explicitly overturned much of the reasoning and foundation upon which *Craig* is based (see Weissenberger and Duane 2011, 396 – 401 for discussion). Scalia's legacy on rights of the accused is likely to continued by the current right-wing control of the Court.

institutions' handling of asylum cases are not prepared for the many nuances and challenges of multilingual communication (see also Jacquemet 2011, 2014). The case study examined in this chapter confirms many of these findings, from lack of institutional preparedness for the challenges of communication to the language-ideological blindness to these challenges (Jacquemet 2011), and examples of the findings of this literature are also found throughout this case examined closely in this chapter.

However, previous sociolinguistic work in asylum contexts inherits several assumptions from the "interethnic communication" analytic tradition of Gumperz (see 1982) that are unworkable in analyzing this case and others like it. Critiques of these assumptions have circulated since the beginning of intercultural communication scholarship (see Singh 1982; Singh et al. 1988). One problem is the assumption that is possible to isolate and examine linguistic content separate from institutional racism and the prejudices of individual institutional gatekeepers (Singh et al 1996). The intercultural communication literature claims that gatekeepers are simply unaware, and that if made aware of language and linguistic practices will aid in solving difficulties of communication (for expanded critiques see Coupland et al 2001, Pennycook 2001). One effect is that the work ultimately suggests that solutions to "problems" of communication are the personal responsibility of individuals, and without having closely examined social inequality, puts a surprising amount of that responsibility for these "problems" on those on the receiving end of racial prejudice. Closely related is the curious absence of analysis of constraints of inequality and political economy. Singh's Marxist insight into these blind spots is helpful:

> "Interethnic interactional sociolinguistics… fails to see that industrial bureaucratic societies, having transcended the old contradictions, are now mired in some new ones and that transcendence out of those can come not by preaching flexibility to

> ethnics, but perhaps only out of their resistance to hegemony, the all-encompassing hegemony of capital. (Singh et al 1996, 240).

Later on, applied linguists addressed political economy more directly and practically their approaches to intercultural communication (Ricento 2015; Piller and Takahashi 2011, Piller 2017). Recent analyses of asylum hearings add theoretical nuance, developing concepts like "language barriers" into "transidioma" to account for the linguistic demands on participants as they work across languages (Jacquemet 2005, 2011). But the overwhelming focus remains on microscopic mechanics of grammar and speech as explanations for "failures," while tending to relegate political-economic factors, such as pervasive racism and unequal distribution of communication infrastructure and resources, to ethnographic setting and context rather than as core explanatory data.

The result is a grammatical anatomy of excerpts of spoken discourse referred to "communication breakdowns." The assumption therein is that "successful" and "unsuccessful" communication is empirically observable or distinguishable at any point in an interaction as distinct, bounded events. Without any personal input or account of participants' experiences of the interaction, this perspective is inherently biased to the institution of record. "Success" is likely to simply match a threshold that allows the institutional process to continue extracting what it needs from participants, not necessarily a level of understanding or communication that the non-institutional actor might need, desire, or deserve. Second, a model searching for "breakdowns" defaults to an aesthetic of communication that can have mechanical failures as well as mechanical fixes. The labor analysis of the dissertation, based in a dialogic understanding of discourse (see Heath and Luff 1996; Streeck, Goodwin, and LeBaron 2011; Goodwin 2018), offers an alternative model of communication that is emergent, dialectical, and cooperative.

Using this model avoids stays open minded to the idea that we can always continue to perfect understanding, which is never finished or complete.

Finally, in settings in which one party is at an extreme disadvantage or likely to feel limited rights to speak or vocalize confusion, we must consider that a participant may come away from an interaction and feeling profoundly not listened to or understood. Indeed, this may happen while all other parties and observers can feel confident that communication was "successful." To privilege this viewpoint would be biased at the least. To account for these many complications, I propose an alternative to trying to pinpoint or isolate exact moments when something "went wrong," but still account for difficulties communicating – a structural-historical analysis of communication. In the next section, I describe my approach to interactional data from the final asylum hearings.

4.3. Methods

A structural-historical analysis considers the political-economic constraints that structure the setting of interactions, and therefore structure interactions. First, it takes into consideration the physical realities impinging on communication, including barriers across time, space, government agencies, and bodies – in this case, the video-interface and telephonic connection, the transcript of the respondent's credible fear interview at the border facility, and physical barriers across time and space. Second, the analysis accounts for historical forces acting on the interactions in court. The design, funding, and structure of agencies inspires little motivation for these professionals to communicate or coordinate well. But detained individuals' entire cases, and in many cases, entire lives, depend on interacting with these professionals and systems to seek asylum.

Therefore in this case, even though the interaction examined in the chapter only took place over a few scattered days from 2016-17, the analysis considers communicative dispositions and emotional artifacts from the respondent's interactions with agents and interpreters at the border the added difficulties of detention, and communicating over video-conferenced hearings. It also strongly considers political-economic factors: the job security of interpreters, interpreters' professional inability to point out problems with legal professionals' language and behaviors, communicative and physical affordances in the courtroom, quality of those resources and technology. This marks an important departure from previous work. For example, where previous studies of interpreter-attorney dynamics have explored interpreters making requests for attorneys to change their speech behaviors, or taking issue with attorneys' phrasing (Berk-Seligson 1990), the interpreters discussed in this case did not have enough job security to take such risks. Quite the opposite, it was during this exact time that the language services contractor responsible for scheduling interpreters was denying contracts and fair pay to qualified interpreters for a wide variety of reasons. Later, a judge found many of these scenarios violated labor law as threatening and coercive (discussed at length in Chapter 5). All of these are historical conditions that impinge on the possibilities of communication.

Structural-historical analysis of interaction builds on well-established Vygotskyian approaches to interaction that provide theoretical and methodological tools to understand how people use environmental resources to build meaning and communicate with others (see Goodwin and Goodwin 1996; Goodwin 2004, 2018). The case study adds to these by shows how environments can be leveraged to hold back *certain parties* from communicating, while acting as resources for others. Some parties can misappropriate, control, or monopolize communicative resources. For example, in a video-conference case, the judge controls where the video camera

points. They can use this control to commit to the type of caring, cooperative communication that is well documented in conversation analysis (see Goodwin 2004; Streeck, Goodwin & LeBaron 2011). But it can also be unintentionally kept from certain parties, or even cynically misused against them. The very tools, resources and contexts that allow us to communicate can be leveraged *against* certain people to uphold pre-existing hierarchies, especially as these hierarchies are what determine the distribution of material resources in the first place. Previous studies of co-operative action have focused on groups of people who are highly motivated to understand each other – families, students and teachers, workplaces where coordinated action is a matter of life and death, or courts that have the luxury of time and resources. The methodological tools of cooperative action, taken with structural-historical conditions as core data, allows the study to the opposite situation: adversarial setting in which one or more participant is not clearly motivated to gain a strong understanding of another.

To conduct an analysis without assuming all parties have the *will* to understand one another, or an equal landscape of communicative resources, I employ the notion of communication-based labor. I look for communication-based labor (CBL) tasks such as clarifying questions, repetitions, comprehension checks, repair and rephrase sequences, as indicators of a wider collective effort for meaning-making and building toward collective understanding (Wadensjo 1998; Streeck, Goodwin, and LeBaron 2011; Meyer, Streeck and Jordan 2017; Goodwin 2018). Importantly, I also take *lack of effort* as indication of ideological leanings. Finally, the case study shows we should not presume communication is successfully "happening" at any time to be able to isolate when it "breaks down." A structural-historical analysis considers a broader timeline to include the total accumulation of all communicative actions across the case. This can include accumulated feelings, stances, and dispositions (Williams 1977, Bakhtin 1981) – in this case, the

respondent's resentment and distrust from previous experiences with other immigration enforcement agencies, and an attorney's mistrust of interpreters.

Scholarship in the area of law and social sciences has modeled what a historical-structural analysis of communication might look like. In the first empirical, national study of immigration hearings held over tele-video conference, Eagly (2015) considers the institutional, structural, emotional, and physical constraints on immigration attorneys' capacity to serve their clients in hearings held over televideo conference. The study found with basic tasks of conducting hearings across tele-video conference led to respondents' depressed engagement in their asylum hearings. This is crucial because it indicates that the tele-video medium poses a threat to meaningful participation in one's trial, a core right of due process. The findings in this case study, and the dissertation generally, are consistent with and provide further linguistic evidence for the findings of the landmark 2015 study. Finding early on that my observations closely matched the findings of this study, I adapted methods to observe for similar phenomena in the case study, with attention interactional phenomena.

The case was particularly set up well for linguistic analysis. Even though no recording of any kind is allowed in immigration court, I was able to take detailed notes because there were many long pauses, proceedings were very slow, interpreting was slow, and there were many requests for repetition from multiple parties. This meant that I could often correct my notes if I had transcribed something wrong or missed some speech. In short, the very difficulty communicating that is the subject of the analysis is the reason that the case was easier to transcribe than most, though it remains an imperfect approximation.

Finally, I had uninterrupted, continued access to hearings. Despite the fact that dates of hearings are often unpredictable and subject to cancel because of changing availability of

interpreters, I was able to follow all Adelanto-Los Angeles video-conferenced hearings in a complete and consecutive order. Following the transcription conventions of the dissertation, interpreted dialogue is indication in italic text. Furthermore, it should be noted that the transcription of the hearings is edited for the logic of the arguments made in this chapter. To transcribe the entirety of the hearings would be impractically long to include here, but are on file with the author.

4.4. The Setting of the Case Study

As many like him, the individual in this case surrendered at the United States Border, where he expressed a fear to return to his home country, in this case, Nigeria. This initiates a credible fear review, conducted by an asylum officer. His interview was conducted in English, a language in which he claimed to have difficulty, a situation that is unfortunately not uncommon. The interview is designed to elicit the individual's general narrative and specific claims of persecution that might constitute a "well-founded fear" to return their home country – the basis of a claim to asylum. While an asylum officer is not a judge, they are well versed in asylum law, and tasked and trained to identify the threshold of what constitutes a "credible fear." Asylum officers are sometimes present for credible fear interviews, but in this case, they were on the telephone, as was the interpreter. A Customs and Border Patrol officer was present with the respondent at the border facility during the interview. The asylum officer makes a recommendation about the strengths of the asylum seeker's claims, which they can then appeal.

In this case, the officer found the asylum seeker did not have a credible fear. The asylum seeker appealed that decision to be reviewed by an immigration judge. He was brought to a detention center in Adelanto, CA, where his case continued under a judge at the courtroom housed in the detention facility. During this time as a respondent in court in Adelanto, the judge

would have taken testimony similar to the asylum interview conducted at the border facility. Partway through the case, the judge was transferred to Los Angeles Immigration Court, where he completed all of his remaining cases from Adelanto by video-conference. I followed this courtroom closely in the course of my fieldwork, and happened upon the case this way. The data from this chapter is from the respondent's final hearings of the respondent's credible fear review in front of the judge – a decision which cannot be appealed.

The case was overseen by an experienced judge who had a professional history as a practicing immigration attorney in the non-profit sector – a minority in a field of colleagues that increasingly have gained their experience with immigration law as ICE trial attorneys (Terrio 2015, 165). This may have contributed to another unique factor about the judge - he was open minded about matters of multilingual communication, notably more than his colleagues. He made a point to thank interpreters, made attempts to remember and call them by name, and frequently described the specific reasons why he was grateful for them. He often apologized to interpreters for his quiet voice, recognized that it made it difficult for them, and said he would try to start speaking up more for their sake. Though I only observed it once, he did use his Spanish skills to communicate with an unrepresented respondent, at the permission of the trial attorney and noting it as unusual. His liberal disposition to multiple languages may have offered communicative resources in some scenarios. In general, his courtroom culture was relaxed. He habitually engaged in lighthearted conversation, sometimes also with me, and was among the judges who liked to inquire about the progress of my study.

The role of the ICE trial attorney is to seek deportation in every case.[21] The trial attorney representing the government (ICE) on the case also seemed to pick up on the relaxed

[21] The ideology behind this practice is itself debated (see Cade 2014; Corcoran 2014).

environment of this particular courtroom. He also engaged in small talk and friendly, sometimes even joking, discussion off the record with myself and the judge. In the hearings described below, we were the only three persons in the courtroom in Los Angeles. All other participants were in the detention center courtroom in Adelanto, CA, or on the telephone.

4.5. The "Content" of the Case

The judge denied the respondent's application for asylum on two specific accounts. First, the judge determined he had provided "material support" to the group terrorist group Boko Haram when he negotiated a ransom in his own kidnapping. Ironing out the details of this narrative in the trial – where he was taken when kidnapped, who he was able to contact during this time and how, who paid his ransom and how – took an exceptional amount of time and communicative effort in cross-examination. The process would have benefited from more skill on the part of the trial attorney, but he was an early-career attorney, still being socialized into the practice of cross-examination, and sometimes resistant to that socialization process itself. The respondent, judge, interpreter, and trial attorney all expressed confusion at some point, if not complete lack of understanding and total frustration with not feeling able to communicate. At times, they gave up on communication tasks as a result.

The second reason the respondent's asylum claim was denied is that he was found to be an incredible witness. This was crucial, as he did not have any evidence to present other than his own testimony. He claimed to have lost his documentation in the journey to crossing the United States border, and upon the chance to describe further, it became more clear that his claim was that he had been robbed. Without any documentation, the judge needed to weigh the evidence of his initial credible fear review interview conducted with the asylum officer at the border. In order to do this, the judge considered more testimony on his own examination and the government trial

attorney's cross-examination of the respondent about that initial credible fear interview with the asylum officer. The consistency between these sets of testimony is the main resource the judge used in decision-making.

Without other forms of evidence beyond testimony, the case has much in common with other trial talk that has been analyzed by linguistic anthropologists, where the outcome largely rests on the credibility of witnesses (Matoesian, 2001), a crucially important factor to asylum cases. In this case, the credibility of the respondent hinged on his claims that the interpreter who had been called in for his initial credible fear review interview at the border had made mistakes, and instructed him not to fully answer the interviewer's questions. This claim, and the language ideological arguments it was met with, are explored in section 6, "Language Ideological Working Conditions and Credibility of Comprehension Claims." Finally, in section 7, I discuss the cumulative impact of feelings, dispositions and ideologies across time and space that contribute to the finding that the asylum seeker was an incredible witness.

4.6. The Division of Communication-Based Labor

4.6.1. Professional Rights, Roles and Responsibilities

By federal rules of evidence, it is the judge's responsibility to manage courtroom procedure, and move proceedings in the direction of ascertaining the facts of the matter at a reasonable pace. It is a judicial responsibility to ensure understanding, even in multilingual scenarios (Morris 1995), arising from the ideology that that an interpreter should not change any original meaning. I argue that the linguistic ideologies of referential transparency, that meaning can be static across contexts (Haviland 2003), and "talk as text," the idea that meaning is inherent in linguistic content rather than the emergent in situated contexts (Wadensjo 1998), dictate decision-making roles and responsibilities. The distribution of this labor and ideological

power generate even more communication work. I also show how cultural norms around evidence, as well as on-the-job socialization of trial attorneys, increased the amount of communication work needed to manage the bottom line of communication in this case, at times overwhelming them as they were limited in time and resources.

4.6.2. Speech Instructions

Throughout the hearings, the judge had to repeat speech instructions to the trial attorney, the respondent, and the interpreter at a rate much higher than typical hearings. These instructions slowed down proceedings, and often were unsuccessful in getting the parties to use the appropriate speech conventions for interpreted speech to ease the flow of talk across languages. Therefore, an alternative or added explanation for the respondent's continued confusion is that the speech instructions in the very beginning of the hearings were not effective, clear, or followed by the participants. As discussed in Chapter 2, speech instructions are a crucial CBL task, and one that is associated with judges – though they do not always execute it themselves. The judge's speech instructions at the beginning of the hearings did not prove effective and could not always overcome the emotional tension growing across the trial. This would lead other parties to attempt their own speech instructions, such as the trial attorney did here:

1 ICE: *please allow me to finish my question before you answer*
2 *I'll restart*

This instruction did lead to a temporary silence from the respondent, and the trial attorney was able to begin his question again. But his question had many parts and complex phrasing, leading the respondent to try to respond to particular parts at time, perhaps not knowing when the question was over. In his own perception, the attorney wasn't quite finished, and he took the respondent's attempts to answers parts of his question as an interruption:

ICE: *please wait for me to finish my question*

Judge: *Mr. [Resp] please wait for the interpreter to finish to answer the question when he asks the question the interpreter pauses that's when you answer the question*

But these instructions were only somewhat helpful, as the trial attorney's questions had multiple dependent clauses and passive construction. The complex phrasing combined with the consecutive style of interpreting forced the interpreter to pause multiple times within the question itself to capture its many parts. To be able to sense which of these many pauses indicated the end of the question, one would have to have a keen sense of legal reasoning and verbal culture, and the particular style of building intended meaning into the content of questions in cross-examination. In this way, these speech instructions could never have been sufficient. Instead, a significantly higher amount of effort was needed from the ICE attorney for self-repair, rephrasing into plain language, and question formulation. These proved demanding for the attorney, as observed in the next sections.

4.6.3. Managing the Tele-video Interface and the Audiosphere

There is no "tech assistant" in immigration courtrooms tasked with maintaining equipment, adding a significant amount of baseline work for the judge and if available, their clerk, and slowing down the general setup of video-conferenced hearings. More significantly for the linguistic analysis, proceedings also slow down because participants do not share the same space and physical affordances. A notable amount of time is spent ensuring everyone is literally "on the same page": making sure everyone has up-to-date copies of forms, searching email inboxes to find copies of those forms, waiting for scans and emails to be sent back and forth between court administrators. Such issues as faulty equipment and cumbersome technological

connections have been found representative (Eagly 2015), and this dissertation confirms these findings.

The hearings in this case show the extent to which the lack of shared affordances and environmental resources interrupts the communication process has yet to be significantly documented. One afternoon, the judge, the trial attorney, detention officer, the Adelanto court administrator (over email), and the respondent spent the first half hour of the hearing simply making sure they were all looking at the same documents. Once they found and shared amongst themselves the most up-to-date versions of all documents over e-mail and in person, and everyone began to print out their copies in each location, the judge tried to begin the formal hearing. But, he wasn't able to because of the limitations of the physical setting:

8 Int: Your Honor if you could speak more loudly
9 I cannot hear you over the printer
10 okay I'll wait until they stop printing

In this time the judge and the trial attorney conferred about the details of the case and discussed the e-mail miscommunication about the documents. After this, perhaps forgetting about the sound issues, the judge then began to speak to the respondent when they were done their discussion:

11 Judge: to the respondent
12 um
13 Mr. interpreter, are they still printing?
14 Int: Yes Your Honor

While the judge waited, he made his own copies, and the trial attorney simply waited. They were able to begin a little over five minutes later.

Such conditions are not only representative but emblematic of the tele-video interface. Participants were not always aware of when others could or could not hear them talking because of the inconsistent quality of the audio transmission. Interruptions experienced by one party but not known another often made it necessary to stop and start over. Without technology assistance, these conditions make more communication tasks for the judge: they must manage the audiosphere of the courtroom, make sure everyone can hear one another, and guide participants to speak at times when it was possible to hear. These tasks exists in in-person hearings as well, but are considerably easier, as workers have access to communicative resources such as gaze, and the modality of gesture.

The physical constraints also add emotional layers of confusion and frustration that come with not feeling able to communicate:

15 ICE: *so sir*
16 *the asylum officer knew your name*
17 *wrote down your date of birth*
18 *the fact that you gave incorrect date of birth*
19 *the incorrect number of people with you*
20 *when you were arrested*
21 ((pause))
22 do you want me to start over, interpreter?
23 Judge: why don't you start over

At the judge's direction, the trial attorney began to repeat slowly, with many more pauses, allowing the time needed for consecutive interpreting. But audio quality constrained them:

24 Int: Can you repeat the question?
25 ICE: it's not a question
26 it's a narrative

27 I would just like you to interpret what I'm saying
28 Judge: I don't think he heard you
29 Int: it's kind of breaking up

These extremely challenging mechanics of interpretation and communication are standard over tele-video conferencing. The constant need to stop, physically adjust the setup, and address others' inability to hear produced its own "domino" effect of repair, repetition, and rephrase throughout all hearings on this case. In the next section, I explore the taxing labor of repair sequences.

4.6.4. Rephrase and Repair

In Chapter 2, I discussed the ways in which rephrasing in plain language and conversational repair constitute communication-based work. The case study in this chapter illustrates the effort necessary to do the repair work *well*. In addition to physical constraints on hearing, another reason the testimony took particularly long was that the cross-examination was particularly slowed, as efforts for rephrase and repair were often minimal. The attorney repeated the same unsuccessful questions about the physical harms with which Boko Haram threatened him:

30 ICE: *If you had not paid the money to Boko Haram*
31 *would anything have happened to your person?*

This is the type of convoluted question format and vocabulary that might confuse a layperson in English (Hardwicke 1903) and is complicated further by interpretation (Berk-Seligson 1990: 81). First, the negative, conditional, and subjunctive construction of the question is cumbersome. Second, the phrase "your person" to indicate one's physical body, is obscure and antiquated even in English. The respondent replied with long, detailed narrative descriptions of his kidnapping

and subsequent escape, but the narrative did not answer the attorney's intended question. This type of misalignment to the question is considered "non-responsive" in the courtroom context, a worst-case scenario in cross-examining a witness (Melilli 2008). The trial attorney would interrupt and slightly rephrase his question each time, but still using negative, compound questions, passive voice and oblique phrasing. In line 32-33, we see the attorney thinks it is because the responding is ignoring him, not that his own phrasing could have been imperceptible or confusing. Eventually, the judge intervened:

32 ICE: *Sir I'm going to ask you for the third time*
33 *I really need you to concentrate*
34 Judge: ((gestures with hand to stop))
35 Mr. [ICE]…
36 I don't…
37 ICE: I can't seem to -
38 well
39 I can't seem to get the answer
40 I even tried saying it with yes or no
41 I don't know what else to do

After the trial attorney surrendered with this implicit permission, the judge rephrased the question to the respondent in simpler syntax, and received the following reply:

42 Resp: *Yes, I would have been killed*

The judge then sought approval from the trial attorney for his rephrasing:

43 Judge: I believe that answers your question?
44 ICE: Yes

It is well established that repair is a "routine" of courtroom discourse (Drew 1992; Philips 1998). The effort and skilled labor associated with it however, is underexplored. At the same time,

while the work that repair requires might be avoided by posing effective and clear questions in cross-examination, question formulation is another communication task that can be exhaustive and for which training happens on the job.

4.6.5. Question Formulation and Cross-Examination

As seen in the above excerpt, question formation was a difficult task for this ICE attorney. In the following excerpt, he read from the script of the respondent's credible fear interview at the border while trying to form his questions:

45	ICE:	*Do you remember telling them you were neither black nor white*
46		*that you were half-caste?*
47		((no response from respondent))
48		*When they asked your race or ethnicity?*
49		((no response))
50		*((interpreter repeats))*
51		((no response))
52		*((interpreter repeats))*
53	Resp:	*my ethnicity?*
54	ICE:	*when the officer asked you what was your race, ethnicity, or tribe?*
55	Judge:	Mr. [ICE], that question is confusing
56		please restate the question
57		there's like
58		three…
59		excuse my colloquial speech

In line 45, the attorney does not frame the quotation, such as with the words "quote" "unquote," or other markers which might have assisted the interpreter or the respondent in understanding that he was reading directly off of the transcript of the credible fear interview, and quoting the respondent himself. Upon not hearing a response, the attorney does not repeat his question or start over in a total rephrase, but rather initiates a self-repair sequence and extends the ongoing sentence (see Schegloff, Jefferson, and Sacks 1977; Romaniuk and Erlich 2013) that the

interpreter has to continue to interpret consecutively. The result is that the respondent only hears interrogative *phrases* detached from their original context – in other words, fragments. In lines 48-54, the judge exercises his right and responsibility to intervene again– in this case, in the interest of time and directing the questions toward clarity. Though he may have expressed some frustration, he also shows an awareness that this is a task expected of him – to socialize the attorney into trial practice.

4.6.6. Socialization

In lines 30-44, it is clear that the work of rephrase and repair in cross-examination is tiring the trial attorney. It is difficult because he is still being socialized into it as a skilled practice, creating more work: the attorney must put effort to "get it right" on the fly, the judge must correct him, the interpreter must work with unclear statements, and the respondent himself must put effort to understand the confusing statements. When the judge rephrases his question, it has the function of easing proceedings as well as demonstrating to the trial attorney the value and substance of a straightforward question. The courtroom as site of socialization enlists the judge into a type of pedagogical shaming on the spot, lifted from the culture of legal training (Mertz 2007).

In lines 55-59, the judge is aware that he had broken the frame by not addressing his speech to the imagined audience of the record, and therefore had ceased his task of audience design. But he quickly switched back to legal register to solve the apparent problem with proceedings. He listed the inconsistencies between the trial attorney's questions to mark the record to explained why he was asking the attorney to rephrase and simplify – another communication-based task that multiplies his own work. Not only has the judge been enlisted in socializing the attorney into the practice of cross-examination by indicating he is falling short of

expectations, he must change the attorney's linguistic practice to push him to improve and better perform by modeling ideal practice. The judge also has the added task of noting his reasoning for interrupting the attorney for the record.

4.7. Accumulation of Structures of Feeling

The excerpts analyzed above are early on in the cross-examination. The emotional tenor of all-around frustration only increased as more repetition, rephrase, and repair became necessary to elicit answers instead of more narrative from the respondent. The respondent began to express lack of understanding and ask for repetitions at almost every turn. The attorney continued to rephrase in ways that were not helpful for the respondent. Often the respondent stopped attempting to respond to the trial attorney's questions with the yes or no answers required of him. Instead, he began to respond with extended narratives that sometimes related to the topic of the question, but did not necessarily provide the information that the attorney was searching for. By contrast, on his direct examination the judge used active phrasing, short questions, and plain language in his examination of the respondent, and was frequently able to elicit both yes or no answers, as well as facts and testimony that were ultimately very important to deciding the case. Most, if not all, of these questions were just as adversarial as the trial attorney's questions, could be perceived as just as accusatory and suspect and often about similar gaps in his story, but managed to continue the flow of discourse between them.

After the judge's examination, the trial attorney declined to re-direct. There are number of possible reasons he may have chosen to forgo this entitlement: general frustration around lack of understanding, embarrassment at being called out on his professional deficiencies by the judge, and the difficulty of the communication-based labor involved in cross-examining the respondent. Perhaps he did not believe it was possible to elicit any more from the respondent.

The respondent, meanwhile, expressed emotional reactions to past experiences of not being taken seriously at his border interview, the feelings of not being understood, and that officials were not trying to understand him. The trial attorney himself became further frustrated by these accusations, adding to the accumulated emotional valences throughout the process of not understanding, and not being understood. The charged moment in which the trial attorney elects to give up trying to achieve a clear understanding indicates the powerful role of emotional dispositions in collective non-understanding.

4.8. Language Ideological Working Conditions and Credibility of Comprehension Claims

The way that language ideological regimes engender and enforce working conditions for communication workers in the courtroom (discussed at length Chapter 3) were on full display in this case. Monolingual ideologies and the general dismissal of dialect and variety (Blommaert 2009, Maryns 2005), despite the respondent's claims of difficulties with interpreters' linguistic varieties, played a major role in deciding the respondent's credibility as a witness. The notion that interpreting is simple, that interpreters should work like a machine, and interpreted speech acts as a "verbatim" or "word for word translation," and other manifestations of the ideology of referential transparency (Haviland 2003), informed legal professionals' attitudes to interpreting and interpreters, and contributed to their frustration when communication was less than perfect. The belief in finding "the truth" through process of cross-examination that is axiomatic in legal culture relies on the ideology of referentialism, the belief that words have fixed referential meaning, which do not shift across time, context, or subject position (see Hill 2009, 90). Similarly, lexical reductionism, the imagination of interpretation as a process like relexification, the individual replacement of words in mirroring sequence (see Chapter 3 Section 4.5) emerged throughout, and is best illustrated in line 27, "just interpret what I'm saying." To the attorney,

there is not meaning to convey, but rather linguistic content to replace. Meanwhile, the legal professionals in the room demonstrate a blindness to the mechanics and complications of multilingual communication, found in other studies of multilingual legal settings (Berk-Seligson 1990; Jacquemet 2009, 2011, 2014).

Difficult working conditions for communication workers put communication itself at risk. In the hearings, the officers of the court had severe difficult communication work conditions. They gave up in many instances, explored at length in the sections below. In addition to the ideologies that were common across cases and courtrooms observed in this dissertation more broadly and have been previously described in the literature on courtroom interaction, I elaborate language ideologies that have not yet been discussed in the literature but are especially visible in this case. I focus on these because they entail assumptions and beliefs about comprehension that have broader implications for the justice system and due process, as well as for the assumptions made in linguistic anthropological literature itself. I am calling these ideologies (1) misunderstanding as an event (2) binary comprehension, and (3) confluence of institutional understanding.

4.8.1. Misunderstanding as an Event

One persistent ideology about comprehension in the case was that misunderstanding would be obvious, marked, and identifiable to all parties in discrete temporal zones. Professionals expected visible "moments" in which parties do not understand one another, and communication "breaks down." There are many consequences of this ideology. In this case, the judge and attorney expected that respondent should be able to identify all "mistakes" that the interpreter at the border made in his initial credible fear interview. This is asking the impossible,

given that the respondent's fundamental claim was that he did not understand what was going on, and that the interpreter did not understand him:

60	ICE:	*at the beginning of the interview*
61		*the asylum officer asked you if you understood the interpreter*
62	Resp:	*it was at the beginning*
63		*when someone asks you if you understand them in your language*
64		*you say yes*
65		*but when the conversation goes far away*
66		*you realize*
67	ICE:	*did you understand them yes or no*
68		*when they asked you if you understood the interpreter*
69		*did you say*
70		*quote, not a problem, unquote?*
71	Resp:	*that was at the beginning*
72		*when we started*
73		*but when we go far*
74		*I realized there was a difference between his language and my language*
75		*the officer gave an entire introduction with this interpreter*
76	ICE:	*are you saying that you understood the entire introduction*
77		*but you began to realize you did not understand later in the conversation*
78	Resp:	*yes I understand the introduction*
79		*but when we go far away in the interview*
80		*I misunderstand him*
81	ICE:	*at what point did you stop understanding*
82		*can you tell me?*
83	Resp:	*when we started talking I understood him*
84		*after more than two minutes*
85		*the way I talked to him in Hausa*
86		*he said he couldn't understand me*
87		*anytime he ask me a question*
88		*and I answer*
89		*he asked me to repeat my question*
90		*because he didn't understand me*
91	ICE:	*throughout I only see one or two indications he didn't understand you*

92 *are you saying it happened more than once or twice*
93 *that he didn't understand you*
94 Resp: *there was some cases where we understood*
95 *but most of the time we don't understand each other*

Throughout this interaction we see that the respondent tries to explain a very common human experience of realizing that someone does not understand you while the interaction is ongoing. In lines 62-66 he points to problems with one of the most fundamental assumptions of legal proceedings – that a person can assess mutual intelligibility with another person after a mere few sentences. This reflects a common misconception that any amount of knowledge of a language indicates complete fluency – an ideology that is baked into courtroom procedure itself. The attorney insists on the weaknesses of this worldview by trying to further work from the assumption that miscommunication arises in specific events that are identifiable. Throughout these interactions, the attorney and the judge conflate the respondent's passive understanding of the interpreter with the interpreter's passive understanding of the respondent. For example, the ICE attorney cites the introduction, narrated out loud by the interpreter, as a reason that the interpreter should have understood the respondent, even though it involved no respondent speech (Line 77). The respondent's claims however were that the two of them *did not understand one another*, and that this meant different levels of and continual unbounded moments of partial, but insufficient comprehension for him to feel secure in the interview.

But to the respondent, the temporal boundaries are not discrete. He realizes that the attorney has this stilted view of misunderstanding as a moment, and even tries to explain the ongoing general state of confusion and partial level of comprehension by claiming there were several consecutive indications of general lack of understanding (lines 83-90). The attorney does not accept this explanation, and still insists the respondent should be able to point to a *moment* of

misunderstanding happened in the transcript (lines 81-82), and name the amount of times that it happened as (line 91). But the attorney fails to gain control over the respondent – as one guide on cross-examination quips, “Nothing could be worse than allowing the witness to tell the story in his own words” (Gibbons 2014, 27). Here the respondent never submits to the framing of misunderstanding as event.

4.8.2. (Mis)understanding as Binary

The legal-linguistic worldview considers all events interpretable through its epistemological-linguistic frame, claims all this information *should* be interpreted through that frame and sees the meaning that legal professionals want to convey as the most important and relevant (Mertz 2007). In a cross-cultural context, this worldview becomes one of institutional communicative hubris – that all content it puts into the world is “understandable,” and it can understand anything communicated to it (Ng 2009). Others moving through the bureaucracy are not afforded the same confidence or communicative position. Court users, including asylum seekers, must do everything they can to try to understand what is going on around them, grasp for even partial understanding. They must also change everything they can about the way they express themselves in the hope that they might be understood and accepted as morally good, from narrative and testimonial practices to comportment and behavior. The added demand of this alone can also lend itself to an experience of partial understanding.

But courtroom professionals act as if understanding is either happening or not happening – that it is binary. In line 67-70, the ICE attorney attempts to frame understanding as a “yes or no” question. In many situations, this might indeed have been an easy yes or no. But in this case “understanding” was very nuanced. The trial ttorney had difficulty adapting to thinking about communication as something other than “successful” or “unsuccessful.” The assumption that

passive understanding can scale up to the ability to converse with someone, indeed *communicate* with someone, also relates to another ideology of comprehension that featured prominently in this interaction, the idea that misunderstanding is binary – one either understands, or they do not. In Line 94, the respondent somewhat goes along with the logic of misunderstanding being a discrete event. But in line 95, the respondent gave more nuance to the situation, by qualifying this understanding as "most of the time." Most of the time does not isolate moments of understanding, in fact, this concept can indicate any measuring and boundary, or vagary of boundary, of time. Most of the time can also indicate another dimension in addition to time – quality of understanding. The respondent continued to resist the notion that one either does or does not understand:

96	ICE:	*at the end of the interview*
97		*the officer gave you an **entire** summary of the interview*
98		*through this interpreter*
99		*and you said it was alright*
100	Resp:	*when…*
101		*during…*
102		*when we finish*
103		*even before that*
104		*the interpreter says he speaks Hausa from Ghana*
105		*I speak Hausa from Nigeria*
106		*I -*
107		*but the officer didn't give me a chance to get an interpreter from Nigeria*
108		*the interpreter did not excuse himself to find an interpreter who speaks*
109		*Hausa from Nigeria*
110	Judge:	*but Mr. Resp, you didn't answer the question*
111		*did the officer go over the questions with you*
112		*did the officer read your answers back to you at the end of the interview*
113	Resp:	*no*
114		*no they didn't read it*
115		*and the interpreter was on the phone so not all of us were in the same*
116		*place*
117	Judge:	*are you saying the answers in the interview were not read back to you?*
118	ICE:	*I said the summary*

119		*not if the questions were read back to him*
120	Judge:	*okay I'm going to restate the question*
121		*though it may not be the same question posed to you*
122		*it's a better question*
123		*did the asylum officer read back a summary of your answers*
124		*so you could say if there is anything else?*
125	Resp:	*yes your Honor*
126	Judge:	*okay go ahead*
127		*so the summary was read back to you at the end of the interview*

In Lines 104-109, we see the respondent is appealing to something much more fundamental than the court is willing, or able, to deal with. The experience of fuzzy, occasional, partial comprehension between varieties of a language, which might explain that his comprehension of the interpreter and the interpreter's comprehension of him, was not so black and white, and can never be, by the very nature of varieties of language. The court showed little interest in this distinction, and instead continued on the project of trying to uncover if the respondent had understood the final read back of his interview. For some time after this interaction, the judge and the trial attorney try to collectively clarify the extent to which the asylum officer provided assurances at the end of the credible fear review. However, they do not return to these points about the *quality and extent* of the respondent's comprehension, indicating the institutional interest in comprehension is just enough for baseline procedures to continue. The respondent's ability to feel comfortable communicating his narrative becomes a luxury.

Interestingly, the judge and attorney's communication actions in this excerpt are an excellent example of how understanding is not binary, and in fact the experience of searching for understanding and reaching for shared meaning requires all parties to put in a certain amount of work, focus, concerted and demanding attention (Goodwin 2004; 2018). In line 99, "you said it was alright," is not a question. If he used question intonation and I did not note it, it still may not

have made it through the layers of interpretation. Rather, it would be appropriate to ask if it the quote was correct. The selective enforcement of language rules that lands mostly on the respondent, and not the trial attorney, may be in part because it is yet another communication task to correct it.

Ultimately there was almost no way to answer the question – it simply comes off as an accusation, to which the respondent feels compelled to explain narratively (see Drew 1985). The judge misses this detail while muddling through the interaction himself, and says in line 110 that the respondent did not answer the "question" – not realizing that he himself has not completely understood what is happening – and there was no question to answer. Between the attorney and the judge, they use three words for the same referent: summary, questions, and answers (lines 97, 111-12, 123). But in the collective experience of trying to understand, it is easy to forget, lose track, get confused, mishear, and participants generally struggle to anchor on to the same meanings as others – an endless grey of understanding, but never quite a black or white of "understanding" or "not." Importantly, all individuals have the social experience of partial understanding by the very existence of varieties of language. However, both of the legal professionals in this scenario are from racial-economic status that would allow them to assign responsibility for lack of understanding to non-standard speakers. They are extremely unlikely to have been on the disadvantaged end of institutional communication in which they were the non-standard speakers, partially understanding, but made entirely responsible for all communication because authorities believe if one can understand some speech, they can understand it all.

4.8.3. Confluence of Institutional Understanding

The second reason the judge cited for denying the asylum application was his finding that the respondent was not a credible witness. This finding centered on the respondent's claims of

miscommunication with the border interpreter, and that interpreter's dishonesty. The ICE attorney had also argued for the incredibility of the respondent's claims about the interpreter. But importantly, the ICE attorney and the judge had different reasoning for rejecting the respondent's claims about not being understood by the CBP interpreter – even though they come to the same conclusion, they relied on different language-ideological logics to arrive there. Their different understandings of a proper threshold of comprehension, and what that this physically looks like in the artifact of the credible fear interview transcript, emerge in courtroom discourse.

The judge and the attorney were unified in the assumption that records from CBP and the asylum interview would be a transparent, authoritative, and truthful depiction of actual events, and would therefore indicate moments of misunderstanding clearly. We have already seen some evidence of this in lines 81-93. They continued to approach the interview transcript as an unquestionable illustration designing questions around its assumed infallibility:

128	ICE:	*You also told the credible fear interviewer that you escaped*
129		*and you didn't mention a reason*
130		*can you reconcile that?*
131		((The respondent begins to answer but the interpreter talks over him to
132		finish interpreting the entire question))
133	Resp:	*during the hearing of the credible fear review*
134		*they were asking me to give a **short** answer*
135		*so I did not give them the details*
136	ICE:	*where was that in the interview*
137		*can you point to where the interview they told you to give short answers?*
138	Resp:	*there was no page number but during the interview and the interpreter*
139		*told me I need to give short answers*
140		*that I don't need to give a long answer*
141		*the detail would be in front of the judge*
142	ICE:	*didn't the asylum officer tell you*
143		*if you have a credible fear you wouldn't have to see a judge*
144	Resp:	*yes*

145 ICE: *so you trusted the interpreter over the officer?*
146 Resp: *I believed what they were saying*
147 *I believed both of them*
148 *so it could be a mistake*

The ICE attorney's reasoning is that the respondent would have understood who the source of the speech was even though he could only partially access one code (line 145), a logic that on its face does not consider partial understanding – even the basic concept of only understanding one language that is being spoken. In line 137, the attorney assumes that the interpreter would have admitted out loud, in English, his own violation of his professional code and his oath – a violation that almost inevitably would have culminated in his termination.

In line 138, the respondent appears to try to say it happened, but is not in the transcript. The idea that such a conversation would make it on to the transcript, and not just remain in Hausa between the interpreter and the respondent, indicates the attorney's complete trust that he has in a different agency, as well as its sub-contracted associate, even though he is not a part of this agency and has no connection to it. The ICE attorney's reasoning for believing the transcript is deeply unintuitive and fairly illogical – but it is an intense manifestation of ideologies of referential transparency – the interpreter is such a perfect machine, even a robot, that "it" could not have had a side conversation that the transcriber would not have access to.

The ICE attorney seems unable to see the interpretation's motivations to try to get out of the interview. This is likely because he does not understand the impossible difficulty of trying to interpret for a person speaking a different variety or language – a situation I saw many interpreters pushed into in immigration courts, and there is evidence was the case here (line 107). The attorney's commitment to the referentialist worldview, and the professional hierarchy that keeps interpreters unable to speak up or advocate for themselves, makes him struggle to see that

the interpreter has significant power in the process to corrupt the interview. For example, as early as lines 107-109, the respondent claims that the interpreter did not want to continue with the interview, tried to recuse himself, but was not allowed by the CBP officer. If indeed this were true, this interpreter's later demands to give "short answers" (line 138-139) could have been a smart way for this interpreter to manipulate an interview that he was struggling with into ending early. But the attorney's trust in the CBP interpreter continues the operating assumption that he himself can comprehend everything that happened from the transcript despite these complex conditions. He relies on this to set up the respondent as incredible witness:

149	ICE:	*you are saying today that they made a mistake*
150		*the **interpreter** that is*
151		*and*
152		*but you're saying today that the interpreter made a mist-*
153		((pause))
154		*with regard to why you were harmed by Boko Haram*
155		(pause))
156		*regarding how Boko Haram hurt*
157		*how*
158		((pause))
159		*regarding how you escaped Boko Haram?*
160		((respondent is non-response))
166		*is that correct sir?*
167		((respondent is non-responsive))
168		*that the interpreter made mistakes on the most salient parts of your claim?*
169	Resp:	*Yes*

The ideology of a clean confluence of understanding between unrelated institutions has particularly high stakes for the respondent. Customs and Border Patrol is run by a different agency (Department of Homeland Security) than EOIR, which is overseen by the Department of Justice, and the contracts for interpreters are therefore different. Because of the private nature of these contracts, there is no route for this research to identify this interpreter to assess their

qualifications. The judge showed no motivation to inquire into the identity of the interpreter. Because of the disconnect in agencies and the use of private contracting, the possibility of trying to understand the truth of communication in any other way is extremely limited. Instead, it falls back on using a questionable document as evidence, with more interest in uphold the idea that all agencies produce reliable documents than in the interest of the truths of this case.

4.9. Final Arguments and Decision: Accumulation of Feelings and Ideologies

Despite the problems with the legal conceptions of comprehension and communication, often pointed out in the respondent's own arguments, the judge and attorney maintain linguistic ideological positions described above. Each ideology bore on the final arguments and decision. Their reasoning depended on the idea that if there were times when the respondent and the interpreter understand one another, then they should have been able to understand each other entirely as people throughout this interaction. In the following account of the conclusion of the case, the ideologies discussed in this chapter so far take a central role in deciding the fate of the respondent – though some more than others.

When ICE finished questioning, the judge informed the respondent that he would ask questions now:

170 Judge: *Just in the abundance of caution*
171 *I'm going to read the summary*
172 *that the asylum officer said they read to you*
173 *I'll go slowly*
174 *I'll let the interpreter stay caught up*

He proceeded to read the summary allowing for slow consecutive interpretation – putting considerably more time and effort into pauses and matching the pace of the interpreter.

175 Judge: *Mr. [Resp] that's the summary*
176 *do you have any memory of that being read back to you*
177 ((non-responsive))
178 *sir?*
179 *Mr. Resp do you have any recollection of that being read back to you?*
180 Resp: *yes I remember that*
181 Judge: *you understand everything the interpreter has read to you?*
182 Resp: *yes Your Honor I understand everything*
183 Judge: *Ok*
184 *when the officer read that back to you*
185 *and you said yes*
186 *that was correct*

The judge uses a completely different communicative strategy to elicit the answer from the respondent than the ICE attorney had used. While it may have taken more effort and time it was more effective in getting the answer and a firm assurance that at the respondent understood what he was referring to. After the judge was able to get to this point he was able to move on to his credibility decision. However this also relied on a logic of confluence of institutional understanding and integrity:

187 *Sir I have two questions*
188 *one*
189 *why did you not tell the officer that you had not been harmed*
190 *if that had not been included in the summary?*
191 ((non-responsive))
192 *Mr. Resp do you want to answer it?*
193 Resp: *yes Your Honor*
194 Judge: *Mr. Resp why did you not tell that he left out that you had been*
195 *harmed in Nigeria?*
196 Resp: *Your Honor*
197 *according to them when we do the interview*
198 *I did not need to give the details*
199 Judge: *I understand that*

200 *why would the age of*
201 *your parents' age be more important than whether or not you had been*
202 *harmed in Nigeria?*
203 *Can you explain that?*
204 Resp: *he asked me what happen if I went back to Nigeria*
205 *I said I would've been killed*
206 Judge: *sir you need to answer my question*
207 Resp: *Your Honor I didn't forget that I had been beaten*
208 *But they asked me to be short*
209 *that I would give the details before the judge*
210 *and I told him when they asked me*

The belief in the interpreter as a machine, that either works or doesn't work, functions or doesn't function, allows not only an incredibly over-simplistic view of interpretation itself, but no nuance or complexity about the motivations of interpreters themselves. Indeed, it is very possible that this interpreter was tired of conducting an interview in a register, dialect, or variety of Hausa that he did not understand, and was looking for ways out of it after his attempts to recuse himself were unsuccessful. The interpreter may have made diligent efforts at understanding in the beginning of the interview, when superficial questions about family members' age members dominated the interview, and by the time of discussing the complex claims and narrative the interpreter was worn out trying to understand the respondent. This is not unheard of. As a court observer, I witnessed several occasions of judges requesting that interpreters work in languages, varieties, dialects that they were not comfortable with, even languages completely unrelated to the ones in which they were qualified. Later, another questionable practice of using English in an interview came up:

211 Judge: *Mr. Resp you were also interviewed by a customs and border patrol*
212 *officer you didn't tell them you were harmed in Nigeria?*
213 Resp: *that officer asked me*

to conduct the interview in English
and it was not all the interview I could understand
in English

His explanation was not satisfactory for the judge, but the respondent persisted nonetheless:

Resp: *Your Honor I told them that I **hear** English*
the language I speak and understand is Hausa
and I learned Arabic in school
Judge: *I just want to understand*
there are 16 pages in his interview
how could you understand and answer all these questions
*if you can only **hear** English and not speak it?*
Resp: *Your Honor I do not speak professional English*
so I could not answer his questions the way I mean to
and the asylum officer made me
*he told me to **try** to answer*
*he kept pushing me to **try***
*to **try***
Judge: *if you tell the CBP officer*
did you tell him you are having difficulty answering his questions
Resp: *during the interview I called him I had the difficulty answering his questions*
he kept saying to try
to just try to answer
Judge: *this is some writing on these pages that look like initials*
did you initial these pages?
Why did you initial these?
Resp: *Your Honor he asked me to just initial these pages*
so he could give to his boss
so he could review what I say
Judge: *now Mr. [Resp]*
the officer read this back to you the interview
let me just read this back to you
((reading from the transcript)) *I state that my answers are true and correct*

underneath the statement there is some writing that resemble the initials in the other pages

is that writing yours

Resp: *yes Your Honor I remember*

he read to me and I signed my name

Judge: *well if you understand that by signing your name*

you are certifying it?

((non-responsive))

well sir

why would you not tell the officer that there were mistakes

and there were things that you didn't include in the interview?

Resp: *it was difficult to explain myself in English*

it was difficult to explain myself

The respondent does a fairly good job of explaining that receptive understanding does not indicate one's abilities to produce speech in a language. But he still found himself unable to convince the judge of the foundational corruption of CBP as delegitimizing the interview. When the hearing moved to the ICE attorney's final argument, the main objections to the respondent's credibility as a witness revolved around linguistic comprehension:

Judge: *Mr. [ICE], your position*

I should note that the country conditions are quite extreme

ICE: *I believe he is excessively inconsistent*

he pointed out interpreter mistakes at the points that were most crucial to his claims

for example

in testimony he said he would be harmed for his religion

in his credible fear interview he said in fact on page 14

he says it three times

I believe if there was a problem with the interpretation

it wouldn't have been made so many times

if we were to believe the testimony today

basically the asylum interviewer would have ***made up*** *most of the*

272 *interview*
273 *the government's position is that asylum should not be granted in this case*
274 *and certainly not withholding of removal*

To the trial attorney, it is not possible that the interpreter may have added more commentary in Hausa that did not make it in to the record that he is looking at on paper. It may be that because of the power of referential transparency and "interpreter as machine," interpreters are so invisible to the ICE attorney that it did not occur to him that the interpreter could have played a role in "making up," or guessing, content (line 272). But in general, he argues that any officer of the agency would do such a thing is a somewhat ridiculous premise, and submits a complete trust in the actions and choices of this completely separate agency and its officers to be able to make his argument – a foundational aspect of the belief in institutional confluence of understanding.

Additionally, ideologies of monolingualism, comprehension as binary and misunderstanding as an event guide his argument. He ignores all claims about dialect and variety, defaulting to a monolingual perspective – assuming the interpreter and the respondent were working in the same frame. In line 262, he again relies on the notion of interpreter "mistakes" or discrete events in which parties do not understand one another, without addressing the credibility of the testimony that the nature of misunderstanding was quite different – partial, and on a continuum of confusion. Finally, unable to reckon with the notion of partial understanding, his conclusion becomes extreme – the only way the respondent's claims could make sense if someone was fabricating content. In other words, the ICE attorney cannot picture, or allow the idea of, a world in which the interpreter, unable to recuse himself from the assignment, could make guesses at what the respondent was saying and relay back inconsistent meaning that sometimes might be accurate, and other times might not.

The judge on the other hand did not rely on the ideology of understanding as an event and institutional confluence as completely as the ICE attorney did in his argument. In his final decision, even though the judge assessed the respondent's claims about interpreter reliability as incredible, he cites entirely different reasoning than that of the trial attorney:

275 Judge: *for several reasons I've decided to deny your application*
276 *one*
277 *I do think you provided*
278 *although not willingly or voluntarily*
279 *material support to boko haram*
280 *two*
290 *I don't find you to be credible as these are some inconsistencies*
291 *in your testimonies*
292 *I do believe boko haram is a very horrible organization*
293 *but it does seem that their interest in you was because you*
294 *were a young person*
295 *and they wanted you to work for them*

Nevertheless the judge showed some awareness and consideration of the less-than-ideal communication circumstances at the border facility:

296 Judge: *regarding the border interview I will only give moderate weight*
297 *as there is a fairly obvious mistake*
298 *that his father had married four men*
299 *but there is moderate weight because it was indicated that*
300 *the respondent did understand the English language*
301 *and the respondent did indicate he did not want to change his*
302 *answers to the questions at the end of the interview*
301 *although there is a statement from the interpreter*
302 *quote*
303 *at some point I cannot be specific with him so it might be a little longer*
304 *unquote*

To a linguist, lines 301-304 are crucial, as the interpreter's comments corroborate the respondent's claims of partial understanding. But despite giving somewhat lesser weight to this evidence, the judge still felt compelled to make a binary assessment of comprehension:

305 Judge: *The court finds a communication **was** effective between officer*
306 *and respondent*
307 *the respondent on several occasions stated he did understand the*
308 *language that was being used*
309 *and that the answer is in the document were correct*
310 *in regard to the statement that he was told to keep his answers brief*
311 *the court finds this implausible*
312 *as he told a minor story*
313 *involving being pushed off the motorbike*
314 *in detail*
315 *other parts of the interview **were** long and detailed*
316 *so the court finds this implausible*

The judge also reinforces the ideology of misunderstanding as event in his final decision, in reference to an inconsistency in the respondent's testimony:

318 Judge: although later the respondent said this was a mistake attributed
319 interpreter
320 the court notes again
321 he made no mention of this mistake
322 when the statement was read back to him
323 he has not been found to be a credible witness

Instead of arguing about the general impossibility of misunderstanding, the judge focused on contradictions in respondent's testimony of actual events of the interview (lines 310-16). He points to these as evidence that the respondent was misleading about claims that the interpreter asked him only to offer "short answers" (Line 134). The judge however still did subscribe to the

belief that understanding is binary to be able to come to this conclusion. He indicates that the interpreter must have been able to understand the respondent and therefore assumes the respondent must have been able to understand the interpreter – conflating passive understanding with total understanding, and temporary understanding for total understanding.

4.10. Conclusion

The ideas about comprehension that the judge and the trial attorney vocalize in the process of the trial itself are at interesting odds with their ideas about how the respondent should have been able to understand his credible fear interview. Specifically, they express the idea that understanding is black and white – you either do or you don't understand – even while they themselves are in the middle of the slow, painstaking, and deeply effortful process of working toward meaning (Wadensjo 1998; Goodwin 2018). In this case, it took four people constantly working together to establish a shared minimal baseline of "understanding" – and even then, parties came away dissatisfied, defeated, and humiliated. But the legal professionals continue to prescribe the idea that misunderstanding is a moment, an event, an isolated mistake rather than a collection of feelings and experiences of confusion, muddling, and struggling, even as they go through it themselves. This is evidenced especially by the attorney's stated belief that the respondent should have been able to point to more than a few mistakes in the transcript to prove definitive "misunderstanding."

The weaknesses of this worldview are many, and the case shows that it stops these legal professionals from truly examining the complications of the asylum seeker's claims about his experience at the border. It is also the viewpoint of power in a monolingual society, in which bureaucrats and persons in position of varying power are unlikely to have experience of not understanding, of not being understood, and of the cruelty and disregard with which people are

treated when they are experiencing partial or lack of understanding. The emotional experiences of embarrassment and humiliation that come with not understanding or not being able to make oneself understood can color a total interaction or several interactions, carry over from previous experiences onto future interactions. Legal professionals must become familiar with these experiences of partial understanding, from the disempowered point of view. Without rights to dignified, quality communication, a broad range of litigants cannot fully participate in their cases, and the court itself cannot be the reason that court users experience this confusion.

Meanwhile, sociolinguistics can learn from the power of these feelings of humiliation and frustration, as well as the faults the ideology of misunderstanding as an event. Analyses of asylum interviews, hearings, and trials in which the sociolinguist searches for the "moment things went wrong," are all too common. This case is important to show how this exact logic can be leveraged against an asylum seeker, and therefore should not be espoused by analysts of interaction, especially as we know well that the experiences of communication are much more complicated. Considering the relations of labor and capital can help account for these complications in productive, less limiting ways.

In this record of communication, there is no reason to search for a moment of communication breakdown, in fact, it is difficult to find a time when it is possible to confidently say that parties are communicating at all. Previous analyses of communication breakdowns cannot help us understand the ongoing partial understanding seen here. We should also consider the warning in Singh et al (1988) that without a strong understanding of the relations of contemporary capital, "interethnic sociolinguistics is in danger of merely using the new significance of communication to peddle its handbooks for flexible adaptation to the demands of capital." Instead, employing a structural-historical analysis that considers emotional and interactional pasts and material

realities of political economy moves away from the impulse to locate a moment of "communication breakdown." This type of analysis offers a broad understanding of how our institutions enlist professionals into communication work without providing them tools or training to do that work well – leading to their own frustration, and the humiliation and unequal treatment of litigants across language.

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Chapter Five

Externalities of Privatized Language Services and Organized Responses:

U.S. Immigration Court Interpreters 2015-2018

5.1. Introduction

In mid-2015, during the Obama years and well before immigration enforcement was on the front pages, the Department of Justice awarded the contract for language services in all immigration courts in the nation to a military contractor by the name of SOS International (SOSi). Bidding lower than the premier language services agency that had held the contract for 20 years before that, and a total of 25 years, SOSi claimed to be able to provide the same services for millions fewer dollars. SOSi was not a well-known interpreter agency in the immigration law community. Though it had won federal contracts in the past, these were not in court contexts – mostly, they had provided intelligence services for the Defense Department in the occupation of Iraq. The consequences of the selection of this contractor, and of the subsequent rebellion of the immigration interpreting community, is the subject of this chapter.

First, I summarize events surrounding the selection of SOSi as the new language services provider in 2015, in particular, the company's efforts to exclude experienced interpreters who demanded higher rates of pay. I describe how interpreters and the immigration law community responded. I then explore the consequences of the execution of the contract, with a focus on the disproportionate externalities across groups and long-term concerns. Finally, the chapter

considers the implications of the Department of Justice keeping SOSi on after the trial period, and then renewing their contract for another five years in 2020, this time under the Trump administration. In an attempt to account for the government's policies of vesting in sub-par communication, the chapter concludes by proposing that quality communication must be considered a quality public good in order recover the promise of the justice.

5.2. Ethnography of a contract

5.2.1. Methods

I conducted fieldwork in Los Angeles Immigration Court and with the local immigration law community from late 2014 to early 2018, which gave me a broad scope on how SOSi's language services contract implementation played out on the ground. First, I was present in Los Angeles, observing hearings, having informal conversations as well as formal interviews with legal and language professionals while SOSi entered the immigration courts. Many of my main interlocutors resisted the company and its practices. I reached out to interpreters as they began to organize, meet, and discuss working conditions online. As a supporter of transparency in the immigration courts process who had an understanding of their workplace and profession, interpreters welcomed me at labor organizing activities and meetings in and around Los Angeles. I maintained these relationships and continued to conduct interviews about events as they unfolded for years afterward. Between ongoing conversations with community members, which here remain anonymous, and continued ethnographic observations and fieldwork, I was able to corroborate interview findings and personal accounts about the underlying reasons for worsening working and communication conditions in immigration court.

Throughout their collective organizing interpreters leveraged media to air grievances. They often sent me articles, and I followed industry news myself to keep up with coverage.

Conversations about the state of the contract takeover also took place in professional newsletters and blogs. I followed a number of these, and observed conversations in commenting fora, to keep up with the rapid changing pace of the landscape nationwide, and to get a read on professional outlooks on the contract and the implications of the way it was executed. Additionally, I have analyzed contract solicitation materials from the Department of Justice against events and personal accounts to assess compliance with expectations of the work of the language services contract.

When interpreters brought their complaint against SOSi, I followed the resultant National Labor Relations Board (NLRB) trial. I attended all hearings of the trial both in a satellite Los Angeles NLRB site and in its Washington DC headquarters. At the trial, I was able to see testimony about events I had followed for years. Interpreters gave testimony about events I had heard about from their professional perspective, but the trial also allowed me to hear about the events from the perspective of SOSi management, many of whom also gave testimony. Some of these SOSi employees attested to interactions and events I had no direct access to, or was unlikely to get willing accounts of from their staff through an interview. Throughout the trial, I took my own handwritten notes. A main piece of evidence are the pre-trial briefs from the NLRB general counsel to the judge. These documents allege facts of the case, describe evidence, and outline the government's arguments and counter-arguments on behalf of the interpreters. I only use alleged facts from these that are corroborated by my sources, that directly cite evidence from discovery, or are found to be strong evidence by the judge, for which I cannot find any underlying problematic reasoning in that finding. Finally, I use the administrative judge's final decision on the case, which cites and summarizes a significant portion of the testimony from interpreters as well as SOSi management.

The consistencies between these testimonies, media coverage, my observations, professional community discussions, and the interviews I conducted tell a clear story of mismanagement that is both familiar from private contracting and public services (Sclar 2001), though perhaps unusual in its extremity. Through the ethnography, I fill in the lived details of job insecurity, financial instability, and confusion that were persistent in these years for interpreters, as well as the cumulative impact on proceedings in immigration court. The chapter narrativizes the story from the perspective of 5 years beyond the first events after much evidence has come to light. Evidence from case documents is cross-checked by several legal professionals for credibility, as well as with my own observations. Therefore I rely largely on these documents to describe the events surrounding language services in immigration courts during this time.

5.3. The Unfolding of the Contract on the Ground

5.3.1. Events Summer 2015-Summer 2016

In mid-2015, a surprising rumor began to circulate in the immigration law community. The long-standing provider of language services in immigration courts, an interpreting agency by the name of LionBridge, had lost the bid to renew their language services contract with the Department of Justice. Interpreters, attorneys, and others impacted by the decision only seemed to know a few scattered things about the company, and not with certainty: the company had bid lower on the solicitation, offering the same services for lesser cost to the government, they had perhaps received favor in the contract solicitation process as a woman-owned business, and they were not an interpreting agency but rather a military contractor whose main federal contracts had been with the Department of Defense.

SOS International, or SOSi, is indeed a woman-owned business and military contractor based in Reston, Virginia. Founded as an interpreter agency in 1989, the company has mostly

provided intelligence, logistics, and operations services to the Department of Defense. By 2015, the company's main experience with language services was in services contingent to occupation operations in Iraq. They held one domestic contract with the Drug Enforcement Agency, after which a Government Accountability Office audit found they had charged the government for questionable services and therefore engaged in possible waste and fraud.[22] Interpreters felt especially nervous about this unknown company taking over for a veteran interpreter agency. Though LionBridge was perhaps not a company they felt any personal loyalty to, it was an agency that had relevant experience, having held the contract for the past twenty years and for twenty-five in total. Furthermore, managing field interpreters in battle site or law enforcement operations is quite unlike scheduling interpreters for daily court dockets in hundreds of courtrooms, across 54 courts, detention center-based courts, in four different time zones, in both rural and urban contexts. Logistically, the work of the contract is quite complicated, and unrelated to past projects SOSi had worked on.

Fears about the company's fit for the contract were immediately given credence. SOSi only had one other office outside of the greater Washington D.C. area – putting them in a different time zone than a great portion of working interpreters and courtrooms. They struggled to make the on-the-ground connections to subcontract individual interpreters nationwide from the beginning, and had little to go on. In fact, they had no plans to manage the day-to-day operations themselves as a company. Instead, their outlined strategy was to subcontract major areas of operations:

> "SOSi's intended plan was to contract with these various interpretation services to hire independent contractor interpreters to perform the work orders which EOIR

[22] see U.S. Department of Justice Office of the Inspector General Audit Division, Audit of the Drug Enforcement Administration Language Services Contract with SOS International, Ltd. Contract Number DJDEA-05-C-0020 Dallas Field Division, February 2012.

> would send to SOSi. SOSi negotiated with and worked out agreements with these agencies but ultimately did not carry through on their contracts with these agencies because SOSi's intended training piece of its contract had not been fully developed or implemented yet, and by the time it was, the contracts with the interpretation services subcontractors had already expired. (Tr. 1292-1295)." [23]

It is not public information what these agreements entailed. But when these contracts with language service agencies expired, SOSi had to move their central staff and resources onto the contract to be able to deal with the fallout. Case documents revealed that that SOSi not only planned to subcontract the procurement of interpreter contracts to other companies who *did* specialize in domestic language services, but they also planned to subcontract training, evaluations, and scheduling. The scheduling database, the creation of which was also outsourced, proved problematic and caused delays and confusion.[24] It was an ambitious plan to offload all of the substantive work of the contract.

The impracticality of the plan caused problems almost instantly. SOSi's training plan, a core part of their contract with the DOJ, was not complete in time to manage work with the interpreter agencies they had subcontracted. The contracts they had with these agencies expired in the meantime.[25] It fell upon SOSi to devote and direct their own resources and labor to identifying, contracting, and scheduling interpreters, a significant amount of work they were not planning or prepared to do.[26] Without significant connections in the domestic legal interpreting community, let alone the immigration law interpreting community specifically, they were unsuccessful. They were not able to identify the interpreters who had worked in immigration courts for LionBridge, and LionBridge was under no contractual obligation, and certainly had no

[23] see Brief of Counsel for the General Counsel at 14, SOS International LLC and Pacific Media Workers Guild CWA, Local 39521 NLRB 21-CA-178096 (2018).
[24] *Id.* at 18.
[25] *Id.* at 14.
[26] *Id.* at 14.

motivation, to release those names to SOSi. SOSi began to search for interpreters through professional networking websites such as LinkedIn, and met some limited success.

But a number of interpreters who made much or most of their income still had not been contacted. Some indicated to me that this was because they had never felt the need to build a professional online presence on websites like LinkedIn, as they were established in immigration courts for so long that they did not need to advertise their services. Hoping to protect both their jobs and the integrity of the immigration court system, a number of interpreters themselves individually reached out to SOSi. When they made contact, interpreters were shocked to learn the details of SOSi's contracting offerings. Not only were the rates they offered far below industry standard, the contract came with extreme provisions and caveats. A cancellation policy allowed SOSi to cancel assignments as late as 6 PM the evening before with no pay.[27] Interpreters were required to sign an exclusivity agreement that disallowed contractors to work for any other entity,[28] and a Code of Conduct agreement that included binding agreements to not discuss anything "embarrassing" to the company on social media, or to discuss anything about the company with public media.[29] The contracts and these components were presented to interpreters as non-negotiable.

I spoke to a few interpreters who told me they simply refused on principle to settle for such low payment, and had state or other certifications and areas of interpreting expertise that allowed them to work in a wide range of well-paying court systems or bureaucracies. With these options available, they did not return to immigration court and brought their skills elsewhere. But a number of other interpreters made their main income through interpreting in immigration court,

[27] SOS International., at 10, NLRB No.21-CA-178096.
[28] *Id.* at 16.
[29] *Id.* at 17.

had a passion for the work there, or feared what would happen to the respondents if quality language services were not provided. Many of the interpreters I interviewed would consider themselves in all three of these categories. Their investment in the work and sense of serving immigrants led them to assist SOSi in Summer 2015, first in identifying themselves as veteran immigration court interpreters to SOSi. But interpreters also helped the company further when management clearly struggled to book hearings. As they were on the ground in the courts, interpreters noticed that hearings suddenly and frequently did not have interpreters booked, were double-booked with two interpreters, or a single interpreter was booked for two hearings in different places at the same time. Some interpreters volunteered to assist with organization and scheduling. One interpreter pointed out they knew this work was "outside of their scope," of their paid responsibilities, but that they were "invested," and felt compelled to help. This organizational work went unpaid, but interpreters expressed a feeling of duty ensure hearings went as smoothly as possible:

> "We did the transition for them. We didn't get paid, we didn't get the credit for it, but we cared that much about our jobs."

Additionally, interpreters felt they needed to work collectively among themselves to face the new organizational challenges presented by the contract transition. They established a network of communications nationwide through e-mail and the WhatsApp chat app and put out almost daily communications and updates over e-mail. Operating this way, a large group of interpreters across the country, but mostly in California, collectively withheld from signing the initial contract offering. This led to several calls in October 2015, in which interpreters collectively bargained up to a better minimum rate. Los Angeles-based interpreters took a particular lead in this organizing and negotiations, which dozens more interpreters attended.

Just as many and sometimes more attended meetings about joining a union. In early Fall, a number of immigration court interpreters might have said they thought things were looking up with SOSi. A smaller group among them even expressed optimism that they thought it was a chance to impose an "industry standard" of quality in immigration court interpreting,[30] a field of legal interpreting that was lacking in government certifications, regulation, and enforceable professional standards.[31] As time went on, SOSi's mismanagement and disorganization persisted, and new problems emerged. SOSi would frequently cancel assignments or move them to other interpreters with little or no explanation, and no compensation for lost time. The travel policy of strictly disallowing expense reimbursements, turned out to be extremely costly to interpreters. Unable to turn a profit on them, many interpreters chose not take these assignments. According to one interpreter:

> "I've never accepted a travel case for SOSi because their rates are so low. I'm never interested in accepting travel assignments from them…. In general the rates they offer are very low, there are a lot of expenses that are not reimbursed, such as ground transportation, meals, hotel room deposits, so it's questionable in many instances if you even make a profit, as an independent business person, or if you even *lose* money, away from your home for prolonged periods of time…"

This left lesser common language cases, which are frequently travel cases, especially vulnerable to not having a scheduled interpreter, or being scheduled with an unqualified individual willing to accept a lower rate. Further, the language services contract specifically puts the responsibility of travel costs on the contractor to disincentivize reliance on costly travel assignments, and instead motivate the contractor to invest resources in locating interpreters local to each court. Unfortunately, this approach of pushing market actors to produce community benefits proved

[30] *Id.* at 20.
[31] *Id.* at 19.

ineffective, as SOSi's approach was to rely on travel assignments but to find ways to cut costs by avoiding the work of procuring local interpreters and offloading the costs of travel onto the interpreters they hoped to assign.[32]

Eventually some interpreters did not receive payment on time. By early 2016, many had received incorrect payments, or were not paid at all. Interpreters began to feel that even with their help, SOSi was not prepared to handle the work of the contract. One interpreter told a reporter,

> "When I ask them when they're going to pay me the rest of the money they owe me there's no answer," [she] said. "Then they'll ask me if I can tell them what days I worked and which cases. Why do I have to provide that information when they're the ones giving us work?" (Flores 2016).

Interpreters formalized and expanded their organizing and communications. Many signed petitions objecting to company practices, including late payments and disqualifications of interpreters that they perceived as unjustified and unfairly targeted at active organizers.[33] As a group, interpreters wrote letters appealing to officials at the Department of Justice and the Executive Office of Immigration Review, who they perceived as responsible for contracting SOSi, and who they hoped would be concerned about their non-payment.[34] They reached out to professional organizations such as the American Immigration Lawyers Association (AILA) for support. Interpreters also continued to meet periodically to discuss organizing a union. They received support from the Interpreters Guild of America (IGA) and eventually, The News Guild-Communication Workers of America (TNG-CWA, from here, CWA) sponsored their union

[32] RFP # DJJI-15-RFP0881 at 4, 2014. The Request for Proposal (abbreviated as RFP) was originally accessed on fedbizopps.gov, a retired website migrated to beta.sam.gov.
[33] see Brief of Counsel for the General Counsel at 3, SOS International LLC and Pacific Media Workers Guild CWA, Local 39521 NLRB 21-CA-178096 (2018).
[34] *Id.* at 3.

drive and organizing. By way of this union support, individual interpreters were able to file unfair labor practices with the NLRB.

5.3.2. Protests and Retaliation

As the original one-year contracts that interpreters negotiated began to expire, SOSi retaliated directly against the strongest interpreter voices and organizers. SOSi did not renew their contracts, effectively firing them, though these interpreters had never experienced any negative reviews of their work. However, these particular individuals had experienced management frustration at their organizing efforts. These particular interpreters had already been experiencing other, more oblique forms of retaliation. Interviews and testimony revealed that interpreters given unusual assignments that are out of line with court administration practice, such as being assigned to the same judge's courtroom for weeks on end, having cases abruptly taken away or changed, or assigned with very little warning.[35] These latter cases saw particular issues in non-payment, as well.[36]

In August 2016, leaders in interpreting organizing participated in demonstrations outside of Los Angeles Immigration Court in August 2016, about 15-20 persons total. They gathered in a public area where attorneys must line up to attend court hearings and held signs that read "Shame on the DOJ, they just don't want to pay!" and "EOIR, you went too far!" The largest were four-by-ten foot posters that read in bold red and black letters that read "Shame on DOJ for contracting SOSi!" and "Shame on DOJ for turning a blind eye to injustice." Online and television news, including two major Los Angeles Spanish-language television stations, covered the second demonstration, for which several interpreters gave interviews. Several of the main

[35] *Id.* at 51.
[36] *Id.* at 52.

participants in this demonstration were instrumental in organizing the collective bargaining, resistance to the company nationwide, joining the union, and beginning and maintaining the conversation about SOSi's mismanagement of the contract.

SOSi management actively pushed other interpreters to inform on protesting interpreters. One manager asked an interpreter to take photographs of the protest, and identify particular individuals in the crowd – especially seeking information on those interpreters widely known as active in organizing.[37] After thanking the interpreter for reporting this information, he went so far as to inform another contracting interpreter that he knew they were at the protest.[38]

5.3.3. Misclassification

The independent contract agreements (ICA) that SOSi offered to interpreters included a number of provisions that are inappropriate for independent contractors. For example, there were strict rules about dress code and requirements to wear a SOSi badge. But more importantly, the company's general relationship with and treatment of interpreters reflected employee status. Interpreters worked for SOSi indefinitely and provided a service that was core to the business of the company. Managers had significant control over the timing and location of interpreters' assignments, who were frequently put in a position of not being able to negotiate, as SOSi would de-assign them if they did not comply. If interpreters expressed an interest in particular assignments, court locations, or timing, they were often punished with assignments they expressly did not prefer, and informed they would not get as many chances for assignments at all in the future.[39] The company maintained control over whether interpreters could be re-instated if a judge disqualified from their courtroom.[40] SOSi required that interpreters follow an extremely

[37] *Id.* at 184.
[38] *Id.* at 186.
[39] *Id.* at 147.
[40] *Id.* at 148.

strict behavioral code, which disallowed them from talking with each other or on social media about the company.[41]

For these reasons and more, the NLRB did find that interpreters had been misclassified as independent contractors and in fact were treated as employees. The administrative law judge overseeing the case wrote in his decision that although it was a close case,

> "…a pattern emerges in which SOSi dictates the terms and asserts control far beyond what is required under its contract with EOIR. Interpreters wear SOSi-branded name badges and are prohibited from soliciting business for themselves while on SOSi assignments. They are prohibited from competing with SOSi for EOIR interpretation work. SOSi's Code of Business Ethics restricts their use of social media, discussion of SOSi business with the news media, and dissemination of certain personal information which is often useful for concerted activities – e.g., colleagues' compensation data and contact information. SOSi also has complete control over who is offered assignments, and it punishes interpreters who refuse assignments by offering them fewer future assignments."[42]

In the end, because SOSi was not as careful about walking the independent contractor-employee line, the NLRB found that they treated interpreters as employees, and therefore that they had violated a number of the interpreters' rights under the National Labor Relations Act, which protects employees.

5.3.4. Professional and Community Responses

Outspoken interpreters' frustrations went deeper than the problems with payment and intimidation from managers. Many felt it was a fundamental injustice for DOJ to contract a a company motivated so aggressively by profit that it was willing to lower the overall quality of services. Interpreters also believed that these practices would ultimately put immigrants in danger. As one interpreter told a reporter, "It's not just about us but the people who are going to

[41] *Id*. at 147.
[42] SOS International., at 10, NLRB No.21-CA-178096.

suffer are the respondents, the immigrants in these proceedings… What's going to happen when they don't have an interpreter there or don't have a qualified interpreter in court?" (Flores 2016).

Other professionals in the immigration law community aligned with this assessment. During the contract switchover to SOSi, I observed judges openly express frustration that the Department of Justice de-prioritized interpreters, including on the record when court was in session. Waiting to find out if they would be able to secure an interpreter in the correct language for the day, one judge told a respondent and his attorney off the record, "interpreters are paid for by the Department of Justice, and they keep the interpreting budget low." Meanwhile, the National Association of Immigration Judges (NAIJ), the Immigration Judges' union, did not take any official or voted stance on supporting interpreters efforts, but did show support by posting news coverage that showed interpreter's concerns in a positive light on their website. In this way, they communicated to their involved members that there were identifiable reasons for the recent problems with interpreters – and it was not interpreters' fault themselves.

In a similar unofficial yet meaningful signal, two former presidents of the American Immigration Lawyers Association (AILA) made public comment to the media, noting the importance of interpreters to proceedings. One noted specifically that he had personally noticed the decline in quality of interpreting after the contract switchover:

> " 'Some of the newer immigration court interpreters don't know all of the necessary language,' said Victor Nieblas, former president of the American Immigration Lawyers Association. For example, he said, he has had interpreters not know what an "LPR" means — the common shorthand for "legal permanent resident." He said he has noticed more problems in how the system operates since SOSi took over, along with what he's heard from interpreters he talks to" (Foley 2016).

Meanwhile, the current president of AILA wrote letters of support for dismissed interpreters. In Los Angeles, attorneys signed interpreters' petitions when they saw them

protesting. While it is difficult to create an exact quantified metric on support of the legal professions' support of interpreters during this time, there was enough moral and symbolic support to encourage interpreters in their organizing.

5.4. Externalities of Private Contracting Language Services

5.4.1. Impacts on General Immigration Court Practice

Because SOSi is a private company, it is not public record which individual hearings they failed to secure interpreters for, who the contractors working at the time were, or what their qualifications were. My ethnographic observations in the years after SOSi obtained the contract indicate that the impact was severe: at the immigration court with the second-highest intake in the country, in a linguistically diverse major metropolitan area widely considered a base of the interpreting profession, hearings frequently were postponed for lack of an interpreter. The prolonging of cases with little progress, in turn, can create a sense of disengagement in respondents, especially in detained cases (Eagly 2015). The consequences for the success rate of cases and the integrity of the system are extremely serious to say the least.

A further concern regarding the interpreting profession is that the strong commitment that experienced interpreters feel to their work in immigration court does face a horizon when challenged with low pay and disorganized management. Less professional and effective interpreting from new personnel unfamiliar with immigration court and professional industry standards created more work for other courtroom personnel, and made hearings longer and more difficult. Additionally, where there is usually a slow and steady influx of newer, less qualified interpreters who can take time to be socialized into the standards of the profession by senior, experienced interpreters, the SOSi fallout created an exodus of professional and experienced interpreters, and a new interpreters were met with a vacuum of senior colleagues to learn from.

While it is positive that these experienced interpreters may have brought their quality services to other court systems in need, it is just as likely that some turned to other work entirely, some of whom had essentially been fired. Perhaps more importantly, the overall implications for professional standards specifically in immigration court interpreting are concerning. Because immigration law is a unique and complex area of the law itself, it difficult to quickly achieve and maintain an overall high standard of quality of services after an exodus of interpreters experienced in this challenging area of the law. If the contractor controlling both in-person and telephonic interpreting services is one that has a strong record of solely prioritizing profit over quality services, there is a general threat to the overall quality of services. This, in turn, threatens to worsen cross-professional perceptions and relationships described at length in Chapter 3.

5.4.2. Disproportionate Harms Across Languages

Interpreters of "lesser-spoken languages," languages that are requested at a lower frequency by court systems, uniquely impacted by mismanaged coordination. As there is no certification for legal interpreting for many such languages, interpreters rely on their cumulative years of professional experience to qualify and justify the rates they charge for their services. An interpreter would for example, assess their experience alongside that of certified and experienced interpreters of more common languages, as well as rates paid by various comparable court systems, to negotiate their own personal rate. They may have less competition, but are at a higher risk of being replaced by an unqualified individual if the hiring agency uses the "rareness" of the language to deny the existence of qualified individuals and avoid paying fair rates. Lesser-spoken languages also require disproportionate travel assignments. Given that many interpreters found themselves unsure if they were able to make a profit on SOSi's travel assignment policies and parameters (Noriega and Flores, 2015), this almost certainly led to a disproportionate

amount of lesser-spoken language hearings unfilled, or, filled by under or unqualified individuals.

A similar cycle of de-professionalization, and limits to professionalization, perpetuates, and the career becomes unsustainable for interpreters who genuinely put in many extra hours and capital into studying, continuing education, and professional development. Many speakers of lesser-spoken languages who are able to achieve careers in interpreting came to this country already having had professional careers or scientific degrees in other countries, and if they cannot make a living interpreting, do have other options to make a living when faced with the precarity of interpreting. In my years working with interpreters, I have spoken to a number of individuals who eventually gave up interpreting, despite their passion for the work, because it was an unstable profession. Many of these individuals interpreted for lesser-spoken languages. These long-term, broad consequences may not be at the forefront of consideration for the Department of Justice when selecting a language services contractor, but there are indeed implications for the equality of administration of immigration court hearings across populations and over time.

5.4.3. The Expanding Role of Military Contracting in Civil Public Administration

SOSi is one of many military contractors to seek federal language services contracts (Rafael 2012), and compared to others in the defense industry holding language services contracts, is a relatively small company. Reaching as far back as the Bush administration, defense contractors have begun acquiring language services agencies in anticipation of the increased role of communications in U.S. imperial projects. Privatized language services in the hands of military contractors have already made an indelible mark the history of government accountability in the U.S. Most famously, a number of the personnel accused of war crimes committed at Abu Ghraib

were language services employees working for Titan Group, a communications firm which at the time was a subsidiary of the Fortune 500 consulting firm Accenture Inc. (Minow 2005; Brown 2013). These individuals were criminalized, scapegoated, prosecuted, and cast as a suspicious interloper as interpreters, distracting from the company's liability. At the same time, the interpreters themselves were never charged as war criminals, in part because the parent company claims that their working relationship with the subcontractors was tenuous and had ended (Baker 2010; Leander 2010).

A defense contractor being awarded the EOIR contract marks a new stage in this trend of endless grey areas of accountability – the integration of defense contractors into administrative courts, an area of civil affairs that is not heavily integrated with military culture. Selecting a defense contractor to complete work in civilian spaces runs the risk of importing the cultural problems associated with lack of oversight into our administrative courts and domestic language services industry. Given that accountability and oversight are main objections to the use of private military contractors (Dickinson 2011), and that problems with oversight of SOSi began almost immediately, the case speaks as a cautionary tale of expanding the role of defense contractors in domestic courts and contracts for language services.

5.4.5. Oversight and Transparency

Early in their organizing, interpreters sought to bring their complaint to the entity saw as the responsible party: the Department of Justice, for contracting an unprepared company for such an important task, just to save money. But the Department of Justice Language Services Unit did not respond to interpreters' complaints in substance. The response they received was lackluster. The Language Services Unit claimed the issues represented a dispute between subcontractors and contractor, not in the purview of the government to resolve. Indeed, the Department of Justice

was not the operator of business, and was not responsible for labor violations. Furthermore, a major argument supporting the outsourcing of government work is that markets are better than the state at performing oversight over operations (Trebilcock and Iacabucci 2003; Moore 2003). Therefore, from the perspective of the agency contracting out the work, offloading oversight is main goal of outsourcing the work in the first place. The non-response of the DOJ to immigration court interpreters and interpreters' associations letters reflects this position. Their response to the media was similar:

> "A Justice Department spokesperson told BuzzFeed News that the contract was awarded to SOSi 'based on the best value to the government,' and that the 'Department has no role in setting compensation rates for vendor employees," referring all questions on pay rates and other working conditions to SOSi." (Noriega and Flores 2015).

However, during the transition from 2015-16, SOSi was on a one-year probationary period to test fitness for the contract. The level of dysfunction that was being widely known and ultimately not denied by SOSi – they were openly receiving help from interpreters to be able to carry out the basic work and responsibilities of the contract – should have been incontrovertible evidence that they were not prepared to handle the work of the contract long-term. But even after this troubled first year, the contract was renewed for the remainder of the solicitation period. Two years later, the Department of Justice later awarded yet another contract to SOSi in immigration courts, this time for telephonic interpreting services. Then, in 2020, the government renewed SOSi's contract to continue providing interpreting services at EOIR for another five years, further creating a sense that they can credibly handle domestic language services contracts in large federal agencies – a suggestion that the evidence here strongly counters. In this way, at the expense of thousands of real peoples cases and no doubt, lives, the government laundered the reputation of SOSi as a reasonable language service provider, an industry in which they now

have a foothold for more contracts despite falling short. In the next section, I explore this lack of preparedness and the implications for the language services industry.

5.4.6. Preparedness and Mismanagement

The events I observed, combined with the evidence revealed in discovery and the interpreters' NLRB trial demonstrate that a general and debilitating disorganization within SOSi that indicates the company was not prepared to deliver the work for this type of domestic contract, let alone one of this size and complexity. Testimony revealed erratic management practices that suggest SOSi was simply a small company working on a contract that was at a scale far beyond its capacity. The judge summarized the issues:

> "Chaos reigned in the early months of the EOIR contract, as SOSi experienced challenges putting the organizational pieces in place and recruiting former Lionbridge interpreters to cover all of the immigration court hearings."[43]

Managerial staff turnover on the contract was high, with multiple managers working on and overseeing the contract over the short period of the onset of their contract responsibilities in 2015.[44] Communication amongst managers was often inconsistent and their handling of the work indicated a limited understanding of the work of managing hundreds of individual contractors. For example, one interpreter had a phone call with a manager who first indicated that her contract could be extended, and offered her assignments. Shortly after, he called back, now saying that in fact other management did not want her contract renewed, because of her involvement with the union and the protests, and that she was "part of the group" that upper management did not want to work with any longer.[45] In this way, even in the non-renewals of

[43] SOS International., at 17, NLRB No.21-CA-178096.
[44] Brief of Counsel for the General Counsel at 15, SOS International LLC and Pacific Media Workers Guild CWA, Local 39521 NLRB 21-CA-178096 (2018).
[45] *Id*. at 177.

contracts, SOSi was disorganized. Similarly showing that different management staff had different levels of awareness of individual interpreters' contract status, interpreters who had been notified by one manager that their contracts would not be renewed would still get calls for assignments from another manager.[46]

As the judge summarized, "SOSi lost a lot of money during the first year of the EOIR contract due to the fact that the pay rates and travel cost for interpreters significantly exceeded the amounts it estimated when bidding on the contract and could bill to EOIR."[47] This mismatch of SOSi's expectations with industry realities, combined with the ambitious plan to subcontract major parts of the business of the contract, might have been suspect to those reviewing the contract for selection. From this perspective, the Department of Justice had simply rewarded the lowest bidder, seemingly not having thoroughly examined the viability of the details of SOSi's plans for the work. Indeed, their response to a reporter indicated as much, saying that they awarded the contract to SOSi "based on the best value to the government" (Noriega and Flores 2015).

SOSi appears to have had continued difficulty scaling up to the demands of subcontracting interpreters as independent contractors, almost certainly because they did not plan to do this work themselves. Even though the independent contractor classification is widely used in the language services industry, it still takes careful consideration on the part of management. Each contract is carefully and individually negotiated, and independent contractors must be allowed to retain significant and specific forms of independence to avoid violations of labor law.

[46] *Id.* at 88.
[47] SOS International., at 36, NLRB No.21-CA-178096.

Management of various levels seemed at the very least unaware, or even disregarding, of labor law and appropriate treatment of independent contractors. For example, attached to independent contract agreements was a code of ethics agreement that prohibited contractors from discussing pay with one another, making comments on social media that were "offensive or embarrassing to the company," [48] or talking to the news media "unless explicitly permitted." As interpreters began to talk with media and demonstrate publicly, SOSi management surveilled particular leaders in organizing, calling them "the group of seven."[49] Management as high as a Vice President of the company specifically noted in internal e-mails that he did not want these individuals working for the company any longer because they participated in concerted activities that are protected by labor law when workers are treated as employees.[50] When one manager discovered interpreters had discussed rates with each other and agreed on a base rate as a group, she threatened to report them to the "Department of Justice Anti-Trust Hotline," and to investigate further "evidence of collusion."[51] In testimony, she appeared genuinely unaware that this was far from a violation of anti-trust law, but that SOSi's prohibiting employees from discussing pay, or her threatening them for doing so, can certainly constitute a violation of labor law.

Agencies must invest in professional management who understand the nuances individual contracts. But SOSi management were, or at least acted, unaware that they were often crossing the line and in fact treating interpreters as employees. While it is unclear if SOSi management

[48] Id. at 61.
[49] Brief of Counsel for the General Counsel at 112, SOS International LLC and Pacific Media Workers Guild CWA, Local 39521 NLRB 21-CA-178096 (2018).
[50] SOS International., at 63, NLRB No.21-CA-178096.
[51] Brief of Counsel for the General Counsel at 57, SOS International LLC and Pacific Media Workers Guild CWA, Local 39521 NLRB 21-CA-178096 (2018).

acted out of ignorance, disregard for labor law, or simple profit seeking, it is the case that by transgressing the grey area between independent contractor and employee status, they violated labor law on several counts. The extent to which SOSi treated interpreters like employees in combination with their management practices draws more attention to their lack of preparedness to carry out the work of the EOIR language services contract.

Meanwhile, interpreters often spoke of reviews of the company on Glassdoor, a website where employees can review employers. Out of sixty-four reviews analyzed around the time of EOIR fallout, twenty-four made specific references to disorganization, high turnover or underprepared management.[52] One review posted specifically as "Immigration Court Interpreter":

> **Pros**
> Actually my score is zero stars. Nothing pro, except gaining experience in working with unprofessional companies who are ill-prepared and outdated for today's current business.
> **Cons**
> They are aggressive bidders for government contract awards. They underbid everyone to win it, yet have no idea how they are going to pull it off. When it comes to fulfilling the contract, they have nothing in place.

Other immigration court interpreter reviews discussed working conditions and low rates. Therefore, at the very least they struggle to treat the fine line between hiring independent contractors and hiring employees, but also at most, struggled to complete the work without aggressive management tactics. Ultimately the company itself was struggling with something that Lionbridge struggled with as well, which is that the EOIR contract was very difficult to make a profit on (Diño 2015). The government pressure to accomplish the work on a low budget

[52] These reviews are to be taken with a grain of salt, as former employees may write them with a particular sense of frustration and not as a general assessment. Furthermore, one review indicated management had pressured employees to write positive reviews. Nevertheless, consistent themes that came up at this moment in time do capture feelings and impressions that are important to confirm other aspects of the testimony.

can uphold an unprepared company's impractical idea of how to execute the work, creating a cycle in which a government simply asks too much for too little, and the company most willing to get the contract is the least prepared to actually carry it out well.

5.5. Motivations for the State's Illegibility

Scholars and watchdogs of the courts have noticed the pitfalls of private contracting for language services in immigration courts. In a report on immigration courts for the Brennan Center, language access expert Laura Abel especially points out the lack of transparency in Lionbridge's testing practices as a particularly problematic area to have so opaque (2011). This chapter has demonstrated that since that time, conditions have worsened severely. But there also does not appear to be any increased interest in scrutinizing the contract or contractors. For the remainder of the chapter, I will account for one central question: why would the government award the EOIR language services contract to a company that did not have the organizational capacity or infrastructure to carry out the work? By extension, why, after their excess of problems handling the contract, would they keep them on for the remainder of the solicitation, and then renew their contract in 2020? Journalistic investigations down the road may reveal a conflict of interest or other factual explanation for the selection of this contractor for immigration courts. But without any indications of such so far, this case is helpful for the larger project of theorizing the motivations and scheme of privatization of public services, and therefore, the broader strokes of neoliberalism. In particular, it is a crucial case to study to understand language use under neoliberalism, and the conditions of communication labor under neoliberalism (Holborow 2018; Block 2018).

A default explanation for the selection of this contractor is that the DOJ's actions, or inaction, fit a pattern of austerity policy, a hallmark of neoliberalism in which a logic of

preventing alleged government waste justifies constant cutbacks in public spending (Bear 2015). Indeed, the ethnographic record shows the austerity frame works in tandem with restrictive immigration policies (Cabot 2014). This, in turn, reflects extractive nations' typical and contradictory stances on migration and asylum, in which they criminalize migration (De Genova 2002) and make the asylum process impenetrable as the principle of asylum loses political expediency (Hamlin 2012).

But at the same time that the DOJ claims to seek value for the government, awarding this contract to the lowest bidder may appear to "save" funds but is probably extremely inefficient over time. 85% of EOIR's caseload depends on interpreting, the agency suffers from crippling case backlogs, and will only see more delays with a contractor that continually causes interpreter delays or "no-shows." This contradiction is not a mistake. Actively destabilizing a primary function of the agency that tends to go under the radar, in this case cross-linguistic communication, reflects a hallmark privatization strategy. The twentieth century has seen a sweeping trend of jurisdictions placing untenable burdens on an agency, and eventually branding it "broken" and in need of full market control when challenges inevitably manifest, a process iconicized in the reforms to the US Postal Service (Cancelosi 2013) and public universities (Brown 2011; Newfield 2016).

In this way, not only is the government di-vesting from the courts, they are in-vesting in the courts' dysfunctionality by degrading communication, a core function of the trial process. First, I show how the government is not only divesting resources from communication but is also actively *in*vesting in lower quality communication by accounting for two entities it seeks to make illegible: first the agency itself, then the applicant seeking justice. Next, I describe the immediate harms caused by the practices of prioritizing profit-oriented contractors and the illegibility they

help produce, which are disproportionate for speakers of lesser-spoken languages. I explain the market motivations for these goals. I conclude with a vision of quality communication as a public good as an avenue to providing respondents with meaningful engagement with their cases.

5.6. Creating the Illegible Agency

Immigration enforcement agencies are disproportionately overfunded and heavily privatized; immigration adjudication disproportionately underfunded and almost entirely government-run, with the exception is language services (Chacon 2017). The paradox poses a simple question of crucial importance: why does the DOJ perceive language services as the sole component that can be outsourced, especially while support for migrant court users is nearly non-existent? It is not that the adjudication system outsources legal support or representation to migrants, it is simply not a right or provided, despite being an empirically demonstrated make-or-break factor for individual cases (Eagly and Shafer 2015).

The ethnographic record shows that to maintain and wield power, States are motivated to keep themselves illegible (Taussig 1997; Das and Poole 2004; Hoag 2010). In a recent example, when localities began to provide migrants with guaranteed legal services, the Trump Administration's DHS began to move cases away from these jurisdictions (Bond-Graham 2020). An arcane immigration bureaucracy that is nearly impossible to navigate even for lawyers, is an iconic example of the State complex Das (2006) describes, in which the State gains power by enacting fine-grained invocations of the law on persons and lives, while animating a "magical," unreachable presence. The result of the State's successful efforts to at once impose and occlude itself is slowing migrants from pursuing, or succeeding in their pursuit of, legal avenues to citizenship. Meanwhile, migrants live in various shades of unstable limbo (Barenboim 2016), at the mercy of the sometimes exclusionary, sometimes incorporating, but always exploitative,

State – a triangulated relationship between State, labor, and capital whose relations with language are explored below.

5.6. Creating the Il/legible Applicant

A long conventional strain of thought in political anthropology, drawn from largely historical examples, suggests that States embark on projects to render subjects legible and in turn, subjects resist these attempts (Scott 1996; Cohn 1996). More contemporary ethnography add nuance to these findings, showing how States remain in flux, attempting to both incorporate and exclude certain subjects at its margins to constitute themselves and instantiate their power (Das and Poole 2004; Hoag 2010). Recent ethnography suggests that under regimes of neoliberalism, this must be refined further to consider conditions under austerity and other policies (Bear and Mathur 2015; Hoag 2011). The study aligns with this evolution in thought, particularly that not one of these approaches is incorrect, but can be expanded on in greater, richer detail.

The current study contributes significant insight into the practical realities of language to this body of work. Studies of language, the law, and marginal subjects show that the State is deeply vested in maintaining the notion that certain subjects are themselves illegible, their spoken accents impenetrable (Matsuda 1991). Language standardization projects continue that work in every domain of public life, from public education to bureaucracy itself (Milroy 2001). By rejecting language diversity, preaching a standard in the school system, and divesting resources from particular regions that traditionally speak non-standard varieties, the State renders certain subjects illegible and others comprehensible, standard, or even eloquent. In this way, the divestment itself produces social strata that can claim it simply does not understand certain speaking subjects.

A similar process unfolds with States' relations with migrants. Scholars have found that certain government agencies are not vested in scrutinizing migrants, and in fact often allow for and benefit from their illegibility (Cabot 2012; Reeves 2013; Ordonez 2016). The study of language services in US immigration courts indicates that States pick and choose what to scrutinize, and what to draw gaze away from, for the convenience of its own agendas (Cabot 2012). Indeed this looms as an inevitability in an age when State interests are powerfully, if not entirely, driven by the interests and contradictions of capital (Brown 2011). In the next section, I describe how the selective casting of migrants as imperceptible by divesting from communication resources and infrastructure ultimately does work for the ends of capital, specifically, the generation of an unprotected workforce.

5.7. The Generation of Unprotected Labor

The paradoxes and indeed, the hypocrisies, described here reflect a larger trend in immigration policy identified and explored by sociolegal scholars over the last two decades as a "crimmigration crisis" (Stumpf 2006). During this era of lawmaking and use of the law, the criminal justice system has been leveraged to increase deportability of migrants, discursive lines have blurred to cast undocumented immigrants as "illegal," and the punishment for mere violations severely outweighs their harm to society (DeGenova 2002; Chacon 2007, 2015; Legomsky 2010; Eagly 2010). Meanwhile, predictions that deregulation under neoliberalism would lead to the retraction of the state proved to be merely a selling point and fantasy for far-right lawmakers, but ultimately did not pan out (Sclar 2001; Hann 2018). Instead, in selective areas, the law is actively leveraged to the ends of capital, to produce labor precarity (Zatz 2019), including that of migrant labor (Paret and Gleeson 2017; Gomberg-Munoz 2016; Gleeson and Griffith 2020). The combination of the crimmigration legal complex and the neoliberal State's

aims at creating precarious conditions for immigrants are now well-documented (Coutin and Yngvesson 2008; Menjivar and Abrego 2012; Menjivar 2014; Hallett 2014; Abrego and Lakhani 2015; Vasquez 2015; Leyro and Stageman 2018).

But the ways in which the State generates unstable communication conditions for this same agenda, as we have seen in with the privatization of communication work in immigration courts, has not seen the same level of attention. Importantly, the investing of public resources into building communication infrastructure to fail reflects the same patterns and structure of hypocrisy seen in the crimmigration crisis and general abandonment of asylum law. An immigration bureaucracy that at its core does not guarantee effective or quality communication with those who seek its protection will not serve its purpose. It will, however, create a dysfunctional courtroom environment in which the ideals of asylum law are ever-present but feel far-off and unreachable. Meanwhile, the State has offered avenue for legal residency but the *migrant* appears to not meet their responsibilities to communicate.

Under these difficult communication conditions, a person cannot help but give up trying to understand, give up trying to be understood, and give up on their case, a cumulative effect demonstrated in the case study in this dissertation and in other ethnographic observations of immigration court proceedings (Eagly 2015). Those who abandon hope in their cases and in the system will by default become unprotected labor, by losing the legal protections that come with engaging in one's immigration case in good faith. In this way, where the State appears to retreat in one arena by outsourcing language services to an underqualified contractor, but the broader wheels of industry are greased by the general dysfunctionality of an immigration court system in which communication is *never* easy. On a mass scale, the effect of such a low commitment to quality communication is the generation of precarious labor.

5.8. Quality Communication as a Public Good

In some ways this seems to paint an unredeemable portrait of the U.S. immigration courts, its core communication capacities compromised and its motivations against the spirit of the law it purports to administer. In this final section, I describe the radical rethinking that is needed to redeem the communication foundations of this and other bureaucracies of justice: to move on from suggesting language is an object one should have the right to access, to conceptualizing communication as a public good, which is of high quality, equally, and universally available in all public life.

To illustrate what this might look like, we must imagine in detail the inverse of the DOJ's approach to the language services contract. What would this situation have looked like if the government had put resources into developing the interpreter network, supporting professionals, developing certification, and procuring interpreters close to EOIR locations, instead of driving down wages by awarding the lowest bidder? The benefits can extend to other public services and the broad incorporation of immigrants in society. In this alternative approach, the agency commits to the notion that in a true community, members communicate with each other in public, and that people need to feel safe and free to be authentically able to communicate. Just as earlier chapters argued that the legal capacity of a litigant's right to protections from undue embarrassment in cross-examination needs to be expanded to spare court users the humiliation of not being understood, we need to expand our description of "access" to include freedom from the fear and anxiety (Bukhari 2010), and indeed freedom from humiliation, that comes with being rendered imperceptible by those with power over one's life.

The neoliberal patchwork of contractors, private agencies, and private enterprise that are supposed to deliver "access" to our most fundamental protections and needs has evidently failed.

From public utilities, education, to healthcare, access in the 21st century has only meant the extension of suffering and indebtedness for millions of people. Perhaps the highest profile project of access to privatized goods in this time, the Affordable Care Act, has simply incorporated more individuals into a system of medical debt and bankruptcy, curbing none of the predatory practices of profit-seeking healthcare and pharmaceuticals. There is no reason to migrate these failures into our justice system.

And yet much of this is not new, and therefore we also cannot inherit these failures from the past either. Access is an outmoded liberal logic of empire. It claims the infrastructure of extraction is a gift to those it subordinates and exploits. But whatever good railroads, roads, ports might do, these will always disproportionately ultimately serve capital and those who control it. Communication infrastructure is not different. To control it, and therefore who is perceptible through it, is to control the extraction of labor of those who rely on it. In this way, access without a guarantee of high quality goods is a thin promise for workers, but a firm guarantee of their precarity for the interests of capital. To move forward creating a compassionate society in which we are free to communicate in public, the only option is to embrace communication as a high quality public good – not only for migrants, but for any and all members of the public in our infinite variety of ways of communicating with each other.

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Chapter Six

Conclusion: Policy and Ideological Change to Support Asylum Seekers and Interpreters

6.1. Introduction

The dissertation has presented a set of problems that hold back respondents' meaningful engagement in their immigration cases: the labor of interpreters, their link to courtroom proceedings, is largely invisible, undervalued, and misunderstood. This leads legal professionals to communicate in ways that are less than helpful for both interpreters and respondents, and court agencies to allow less-than-qualified companies to run language services at a national level. The problems impinging communication depicted in this dissertation can feel overwhelming for individuals to change: they are historical and structural, the corruption runs deep and in the hearts of opaque, severe bureaucracies, and the barriers between us readers and researchers and the individuals impacted can feel like an abyss. In this conclusion, I hope to show the individual actions, advocacy, and shifts in outlook and understanding of interpreting in migration contexts that are needed on the part of the public and academic communities to make progress in supporting migrants to be able to safely seek legal pathways to citizenship. I make suggestions for future research throughout, and end with final recommendations for professional practice.

6.2. The Myth of Interpreter Replaceability

Especially during the intensification of family separation at the U.S. Mexico Border in the Summer of 2018, calls for volunteer interpreters from legal aid groups were common, public, and widely circulated on social media. This planted the seed of an idea that many of people had never had before – "I know a language, therefore I can be an interpreter." This notion is not only

the first myth to bust about interpreting, it can be wildly dangerous in the wrong hands at the wrong moment. In asylum, medical, mental health and other crisis scenarios, the presence of a professional is just as crucial as the presence of a certified doctors, attorneys, and social workers. In these and other cases, even the smallest interpreting mistake can mean a matter of life and death.

Calls for "volunteer translators" reproduce a conventional crisis narrative: "This is an emergency, and we need as much help as possible, as fast as possible. Anyone is better than no one at all." Here, the need for interpreters becomes temporary, interpreter positions become fillable despite skill or certification, and the mode of communication inconsequential—all of which constructs this metanarrative: interpreters are perpetually replaceable. Historically, treating interpreters as replaceable has not only threatened interpreting as a profession but also has generated the exact shortage of interpreters that becomes highly visible in a state of emergency like the family separation crisis.

Years before the "moment of crisis," companies like SOSi, as well as private law firms and even mission-oriented legal aid groups, created these false shortages by refusing to pay qualified candidates. Many interpreters who were experienced and qualified walked away from the profession for careers that were more sustainable, predictable, or where they were simply better respected in their day-to-day working environment. These very same employers who created unsustainable circumstances by refusing to pay fair wages are not held responsible for creating this shortage and making any potential emergency or crisis a worse situation, in fact they are not even seen as part of the problem, or are even celebrated as groups to support and with financial donations and free communication labor.

6.2.1. Resisting the Manufactured "Interpreter Shortage"

Ideas about language that permeate public consciousness allow the cycle of undervaluing communication labor, and therefore the public itself must begin to re-think language before the next "crisis." Individuals can assess where they may volunteer their language skills that are lower-stakes scenarios, and therefore, are less likely to do harm. It is extremely common for public library systems to have volunteer programs to help non-English speakers or partially English proficient individuals with their English skills or filling out paperwork, job applications, and other skills that will also help with citizenship and asylum applications. While this does not put the volunteer in the exciting fray of conflict, it can make a serious difference in immigrants' lives and confidence to face the austere immigration process.

With some introduction to working, volunteers can move on to other opportunities to begin gaining interpreting skills include local political organizing groups and bilingual organizing. The Los Angeles Tenants Union in Los Angeles or the Center for Participatory Change in Asheville are just a couple of examples of community-based organizations that offer interpreter training for individuals hoping to do good in communities. While some situations may be relatively high stakes, such as eviction defense, these organizations allow community interpreters to advance over time instead starting off with extremely complex scenarios like border processing.

When making donations, individuals can inquire and ensure organizations pay interpreters fair wages so that these organizations know that donors know quality language services matter. Additionally, individuals can research organizations that specifically train interpreters, such as California Legal Rural Legal Assistance, Comunidades Indigenas en Liderazgo (CIELO) in Los Angeles, or Asociacion Mayab in San Francisco. By directing financial and volunteer resources

to these more appropriate venues, the public can pressure legal groups to pay interpreters what they deserve.

6.2.2. Resisting the Replaceability Framework in the Academic Community

It is important that anthropologists and other academic professionals understand the key facets of this replaceability framework so that we do not reproduce it. The interpreter replaceability framework relies on multiple language myths. One of the most prevalent suggests that speaking ability in a language also signals interpreting ability. Speaking ability, however, does not indicate that a person can adequately interpret in a high-stakes, legally complex scenario, especially one involving a vulnerable population that includes traumatized people and very young children. Interpreting involves a set of complex skills acquired through years of training. And, contrary to what the calls for "volunteer translators" might suggest, interpreting is distinct from translating, which involves the medium of text.

The replaceability framework also perpetuates the myth that professional indigenous interpreters do not exist. To the contrary, the professionalization of indigenous interpreters has been on the rise in the United States for decades. Many indigenous migrants who themselves sought and were granted asylum and had no choice but a trial by fire learning of interpreting skills, have started community-based organizations to train interpreters. Asociacion Mayab in San Francisco and Maya Vision in Los Angeles were founded in this way, with the purpose of training new generations of professional interpreters to work in high-pressure environments, doing legal, medical, community and educational interpretation. Although the languages that these organizations support are indeed uncommon and often framed as "obscure," many of these interpreters are easy to find—so long as we look for them, support their work, and insist they are not replaceable with relatives, children, or non-professionals. Just like any other professionals,

we would we not let uncertified people without our degrees or IRB certification do our research or teach our classes. We should not act like we are above these conventions of profession when we do act to protect our own.

6.2.3. Resisting the linguist-savior complex

A particular subset of academics should heed these warnings carefully: those who do linguistic fieldwork with languages often cast as "exotic" using a colonial frame because of numerically low amount of speakers. We should seriously consider the racism of insisting that, despite these diasporic groups having lived in the United States for decades, there simply must be no professional interpreters in these languages, and that we linguists and ethnographers must be the only ones who know and can interpret their "special" languages. This de-humanizing picture of rare and indigenous language speakers in which they have taken no control of ensuring their communities rights are protected is rooted in colonial expectations indigenous peoples being locked into traditional ways. It is also part of a long history of framing indigenous peoples as in need of rescue by whites, not having been exploited by them.

In contemporary linguistic anthropology, including work that focuses on asylum trials, this notion also aligns with patterns in research ethnographic fieldwork in which the researcher is framed as having saved the day by "solving" a communication "problem." Typically in such research and writing, the solution to communication problems is to have someone around who simply knows language better, which frequently seems to be the researcher. The theoretical and methodological flaws in this outlook are that were discussed at length in Chapter 4. The human consequences of this type of hubris and racism are not yet known, but certainly are undesired and avoided. Linguists should seek out and make connections with professional interpreters in

languages in which they specialize academically, so if they are contacted to interpret without pay, they can make an appropriate referral to an expert.

6.3. Practical Training for Legal Professionals

Law students aspiring to defend migrants from the current deportation regime are faced with their own communication crisis. Just as training in the linguistic performance of a trial can be limited in law school, legal training to work across languages can be virtually non-existent (McCaffrey 2000). Current pedagogical approaches to the language barrier in clinical legal education vary significantly, and many are not informed by empirical knowledge about communication. The result is that students do not receive the training they need to work with non-English speaking clients.

At the end of a long afternoon in immigration court, a judge asked me what conclusions I had come to after taking copious notes observing his courtroom for a year. I rattled off a list of adjustments attorneys could make to improve communication in the courtroom. For example, earlier that day, an attorney had stacked her paperwork on the left of her desk and pivoted her head and body to read from them, away from the microphone on her right. This made it difficult for the interpreter to hear the attorney's speech in the audio feed from the microphone. Overhearing our conversation, another trial attorney chimed in that these were simply things attorneys learned over time; the judge agreed. But I was not so willing to settle for that answer – and I knew I was not alone. Just months before, I had audited Judge Ashley Tabaddor's Immigration Law Practice course at UCLA Law, in which students simulated filing paperwork, and would routinely lose points for missing small details. She made it clear that "the small stuff" has consequences on the ground. She briefly touched on the role of interpreters, but did not explore the difficulties of communication across languages, with clients privately, or in the

courtroom. I was comforted knowing that if they elected to take UCLA Law's Family Legal Clinic or Criminal Defense Clinic, students would get first-hand experience working with interpreters, who also served as guest lecturers in the course.

A review of the literature shows that clinical legal faculty have historically recognized the importance of building relationships with the interpreting profession (Ahmad 2007) and training law students to work with interpreters (see Dutton et al 2013). But recent literature reveals concerning approaches to the language barrier in clinical legal education – from enlisting unaffiliated social workers for language assistance, to using the skills of law students in the course. Solutions range from recruiting pro bono interpreters with unspecified qualifications (see Espenoza 2019), enlisting undergraduates and research assistants with varied experience and practice as interpreters (see Hing 2016), and enlisting pre-existing language capacities of law students and social workers in detention centers and border facilities (Harris 2018). Notably, these approaches are not informed by empirical knowledge about effective cross-linguistic communication, which broadly shows the necessity of well-trained interpreters (Abel 2013). Empirical research based in a strong understanding of language and communication is needed to formalize clinical legal training for working across languages that can be applied to a broad range of contexts including and beyond immigration law.

This curricular gap prompts several research questions. In the absence of a unified theory of how to teach law students to work with interpreters and across languages, what variety of pedagogical practices exist in clinical legal education of immigration law? Are existing methods effective and valuable for students, and do they carry on using these communication skills in their careers? In light of increased matriculation responding to the Trump Administration (see Ward 2018), how will a new generation of law students bring their own language skills to bear

on immigration law clinics? What challenges emerge from demands on multilingual law students, pedagogically, ethically, and for the client-clinic relationship, and do these create unequal learning experiences across student demographics? The implications for the future of immigration law practice are significant, and with further research now, damage can be mitigated.

6.4. Language and the Military Consulting Complex

Some implications of certain aspects of this study have yet to be seen in the historical record. It will never be known how many cases were impacted by the selection of SOSi as the language services provider in EOIR courts, as it is impossible to quantify given the lack of transparency around government contractors. Perhaps future research can follow the line of reasoning that military contractors taking up language service contracts in civilian affairs, especially in relation to artificial intelligence and other projects of great interest to military contractors. Further research may take up any number of aspects of concern discussed in superficially in the dissertation: lack of training for judges, under-resourcing and the rise of telephonic and video conferenced hearings, sharing of clerks and physical working conditions, and so on.

6.5. Anti-Blackness and Language Discrimination

Of special and particular great concern is the everyday anti-blackness witnessed by the author in courtroom proceedings, in which differences between varieties and languages from the African continent were not taken as seriously as those of other regions and associated with other races. Furthermore, a pattern was identified in which judges acted more confidently and devoted more time to cases in languages that may culturally be more closely associated with English – particularly the Spanish language. Meanwhile, languages that some may feel are culturally

"distant," judges appeared more mechanical and emotionally detached in their behaviors – withholding eye contact, prosody, and other forms of communicative effort and engagement. This is itself a racialized pattern. Without video recording evidence for these patterns, this was not a practical point of discussion for this dissertation, but is of extreme importance for future research.

6.6. Recommendations for Legal Practice

Both private legal practice and legal aid groups play an important role in assisting migrants throughout deportation proceedings. However, their staff attorneys often need the assistance of interpreters. In interviews, I spoke with interpreters who felt betrayed by both private practice attorneys and legal aid organizations that sought out their services for free, as it was for a good cause. They pointed out that the attorneys were paid, and probably would not consider doing the work for free. Personal experiences like these add to the distrust between professions described in this dissertation.

It is common and with total openness that otherwise commendable legal aid groups harm the interpreting community by using free labor. Circulating the idea and expectation that interpreters should work for free under any circumstances perpetuates the same cycle of de-professionalization in which companies like SOSi engage and benefit from. These groups make the problem worse by seeking help from the general public, instead searching well-known interpreter rosters of qualified and professional interpreters. Legal aid groups can not only stop doing this hard, they can begin to support the active professionalization of the interpreting field not only by fairly compensating interpreters, but also by training staff not to convince children or other family members to interpret for their parents but to search rosters to search for qualified, credentialed interpreters. By the same token, paralegals and bilingual staff should be

compensated fairly for their language skills, and if a significant portion of their work includes in-office interpreting, they should be provided with courses or training in interpreting.

These small changes can go a long way to changing the perceptions, ideologies, and patterns described in this dissertation as harmful to respondents as they move through the immigration court system. Structural changes to services for migrants can signal that quality language services are available and worth supporting. The notion of quality communication as a public good, that we can provide equally across a broad set of contexts, can become easier to imagine and put in place. But first we must show the potential in our existing institutions by making these changes.

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