INTERPRETING COMMUNITIES: LAWYERING ACROSS LANGUAGE DIFFERENCE

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As the rapid growth of immigrant communities in recent years transforms the demography of the United States, language diversity is emerging as a critical feature of this transformation. Poor and low-wage workers and their families in the aggressively globalized U.S. economy increasingly are Limited English Proficient, renewing longstanding debates about language diversity. And yet, despite a growing awareness of the challenges posed by limited English proficiency to the social, economic, political, and cultural well-being of poor immigrants today, relatively little attention has been paid to the role of language difference in poverty lawyering. This Article confronts the complexities of lawyering across language difference. Starting with the principal model for poverty lawyering—client-centeredness—it suggests the inadequacy of the model for meeting the challenges of language difference, particularly when an interpreter is interposed in the paradigmatic lawyer-client dyad. After exploring the nature of interpretation and the role of interpreters, the Article argues in favor of a more collaborative relationship among lawyers, clients, and interpreters than is often seen in poverty law practice. Specifically, it suggests that the disruption effected by the introduction of an interpreter may be more productive than is typically realized, and invites a normative reconceptualiztion of the traditional lawyer-client relationship. Ultimately, the Article urges the embrace of an emerging set of practices known as community interpreting, and argues that its increased attention to cultural context, third-party relationships, and community involvement is consistent with the methods and goals of community lawyering.

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INTRODUCTION

In Merced, California, a twelve-year-old Laotian boy serves as an interpreter for his Hmong-speaking mother and her English-speaking doctor, and inadvertently mistranslates the doctor's instructions for her prescription medications; the mother overdoses.[1] In a jail in Prince William County, Virginia, a monolingual Spanish-speaking man is imprisoned for three months

1. *See California Seeks to Stop the Use of Child Medical Interpreters*, N.Y. TIMES, Oct. 30, 2005, at A22.

after criminal charges against him are dismissed, because no one comes to release him and he is unable to communicate with anyone in the facility.[2] And a family court in Long Beach, California refuses to hear a divorce case because the indigent client failed to provide her own interpreter.[3] Cases like these, in the health care system, the criminal justice system, and the courts, have begun to draw public attention to the ways in which inadequate attention to the country's growing language diversity increasingly jeopardizes life and liberty interests, particularly of poor people. And yet, as growth in immigrant communities dramatically alters the challenges faced by poverty lawyers, one of the critical sites for the protection and advancement of the interests of poor people—the lawyer-client relationship—remains largely unexplored in the context of language difference.[4] This Article examines the phenomenon of lawyering across language difference, the radical disruption it effects on the traditional lawyer-client relationship, and the fundamental challenges it poses to the prevailing, client-centered model of representation for poverty lawyering. Troubling though they may be, I argue that these disruptions and challenges pose important opportunities for poverty lawyers to reimagine a more open, dynamic, and porous lawyer-client relationship than exists in traditional lawyering theory and practice.

Shifting immigration policy coupled with international and domestic macroeconomic trends over the past two decades have produced vast demographic changes, including a large and growing population of Limited English Proficient (LEP)[5] immigrants throughout the United States.

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2. *See* Theresa Vargas, *N. Va. Prisoner Lost in Translation*, WASH. POST, Aug. 4, 2006, at A1.

3. *See* Memorandum from Dick Rothschild, W. Ctr. on Law and Poverty, to People Interested in Access to Court Issues (Feb. 2001), *available at* http://www.wclp.org/files/AccessUpdateXVIII.PDF.

4. To the extent that language difference in the legal context has received scholarly and practitioner attention, it has been almost entirely in the context of courtroom interpretation. *See infra* notes 12–16 and accompanying text.

5. The term Limited English Proficient (LEP) is subject to various definitions. I adopt a modified version of the definition provided in prior guidance from the U.S. Department of Health and Human Services Office for Civil Rights, according to which LEP persons are those who "cannot speak, read, write or understand the English language at a level that permits them to interact effectively with" service providers. Policy Guidance on the Prohibition Against National Origin Discrimination as It Affects Persons With Limited English Proficiency, 67 Fed. Reg. 4968, 4969 (Feb. 1, 2002) (applying this definition in the context of health care and social services). *But see* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47,311, 47,313–14 (Aug. 8, 2003) (revising the prior guidance and adopting a vaguer definition). Limited English proficiency is best understood along a spectrum rather than in binary terms of proficiency and nonproficiency, as individuals may possess varying degrees of proficiency in English without reaching the threshold necessary to interact effectively with service providers. Finally, although Limited English Proficiency embraces both spoken and written English, the focus of this Article is on spoken communication.

Limited English proficiency increasingly correlates with poverty, as well as with race and immigration status, thereby posing urgent demands upon poverty lawyers.[6] Indeed, the demographic pressures are so great that the present and future success of poverty lawyering requires increased attention to how to lawyer across language difference.[7] And yet, the principal model for poverty lawyering—client-centeredness—is inadequate to the challenges of language difference. As a result, core concerns of client-centeredness, such as the enhancement of client autonomy and client voice, are compromised, and many lawyers are left ill-equipped to address the needs of LEP individuals and communities in precisely the moment when lawyering for LEP clients is becoming a vital component of social change.

The core challenge to client-centeredness arises from the integral role of interpreters in the process of lawyering across language difference. Except in those limited circumstances where poverty lawyers are bilingual,[8] interpreters figure prominently in the representation of LEP clients. Their very presence disrupts the one-lawyer, one-client, dyadic norm on which the client-centered model (and traditional lawyering more generally) is premised, and their active engagement injects the subjectivity of a third person—her thoughts and feelings, attitudes and opinions, personality and perception—into what previously had been the exclusive province of the lawyer and client. The paradigmatic direct bond of communication between lawyer and client is now mediated, and therefore modified, by another individual. As a result of this perceived

6. *See infra* Part I.A.

7. For a review of the historical development of the poverty law movement and its roots in the legal aid movement of the early twentieth century, see Philip L. Merkel, *At the Crossroads of Reform: The First Fifty Years of American Legal Aid, 1876–1926*, 27 HOUS. L. REV. 1 (1990). *See also* Ruth Margaret Buchanan, *Context, Continuity, and Difference in Poverty Law Scholarship*, 48 U. MIAMI L. REV. 999 (1994) (analyzing the evolution of the literature and the theories of practice of poverty lawyering).

8. Statistics regarding bilingual lawyers are difficult to come by, but it is readily apparent that their numbers are insufficient. This is particularly true with respect to less common languages; yet even with respect to Spanish, bilingual legal resources are inadequate. This reality is implicit in a guidance memorandum regarding language access issued by the Legal Services Corporation. *See* LEGAL SERVS. CORP., GUIDANCE TO LSC PROGRAMS FOR SERVING CLIENT ELIGIBLE INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY (2004) [hereinafter LSC GUIDANCE], *available at* http://www.lri.lsc.gov/pdfs/05071801.pdf. It is also implicit in a series of important articles written by Paul Uyehara regarding the imperative for legal services programs to improve language access for LEP clients. *See* Paul M. Uyehara, *Funding the Mandate for Language Access*, DIALOGUE, Winter 2004, at 16 [hereinafter Uyehara, *Funding the Mandate*]; Paul M. Uyehara, *Making Legal Services Accessible to Limited English Proficient Clients*, MGMT. INFO. EXCHANGE J., Spring 2003, at 33–37; Paul M. Uyehara, *Opening Our Doors to Language-Minority Clients*, 36 CLEARINGHOUSE REV. 544, 544–57 (2003). For a discussion of the shortage of bilingual legal aid lawyers in Canada, see PRA INC. INFORMATION INFO STRATEGY, DEP'T OF JUSTICE CAN., A STUDY ON LEGAL AID AND OFFICIAL LANGUAGES IN CANADA § 5.0 (2002), *available at* http://www.justice.gc.ca/en/ps/rs/rep/2003/rr03lars-1/rr03lars-1.pdf.

intrusion and real disruption, many lawyers view interpreters with suspicion,[9] and may wish to confine the interpreter's role to that of a machine, not unlike a telephone, merely transmitting "exact" translations, free of subjectivity, from one side to the other. And yet, when properly understood, the linguistic complexity and cultural embeddedness of interpretation reveal the lie of verbatim translation and underscore the inescapable subjectivity of all interpretation.

Once we acknowledge the subjectivity that inheres in interpretation, we can move in one of two directions: either to squelch that subjectivity and attempt to force the interpreter back into the fictive box of technology; or to embrace the subjectivity, draw it out further, scrutinize it rigorously, and engage it dialogically. Most lawyers, and the legal system as a whole, attempt the former. I argue unambiguously for the latter. By accepting the interpreter as a partner rather than rejecting her as an interloper, by resolving the dynamic of dependence and distrust in favor of collaboration, lawyers can enhance LEP client voice and autonomy while increasing their engagement in the communities from which their clients hail.

Moreover, by opening ourselves up to the active engagement of interpreters in the lawyer-(interpreter-)client relationship, we also expand our understanding of the universe of actors, contexts, and discourses that any lawyer-client relationship involves. The interpreter visibly marks outside influences, considerations, and concerns that animate all lawyer-client relationships. She literally embodies the third person who, by virtue of her effect on both the lawyer and the client, shapes and alters the content and form of lawyer-client communication. But even when the lawyer and client speak the same language, even when there is no interpreter present, *there is always a third person in the room*. Absent an interpreter, both lawyers and clients still draw upon or are otherwise influenced by actors and forces that, while not physically manifested in the interview room, profoundly affect the lawyer-client relationship. A client's pastor, family considerations, involvement in a community group, or concern for her reputation in the community may inform her views. Similarly, the expectations of a lawyer's supervising attorney, her professional aspirations, or her political commitments may shape the lawyer's perspective. These third-party influences operate invisibly within the confines of the client interview room. An examination of lawyering across language difference, however, can render them visible and thereby generate a more

9. *See, e.g.*, Kathy Laster, *Legal Interpreters: Conduits to Social Justice?*, 11 J. INTERCULTURAL STUD. 15, 18 (1990) (noting lawyers' "suspicion of interpreters who cannot seemingly match, word for word, court-room dialogue").

nuanced understanding of the lawyer-client relationship, one that more fully accounts for the social contexts in which the lawyer and the client reside.

The challenges of lawyering across language difference, properly understood, can help us begin to reconceptualize the lawyer-client relationship not as a closed system, as it is traditionally understood, but as a more porous, though still privileged, relationship in which a range of mediating forces is recognized, negotiated, and embraced.

In Part I of this Article, I review five interrelated phenomena that compel greater attention to the project of lawyering across language difference: demography, legal obligation, ethical duty, dignitary concerns, and commitments to antisubordination. I argue that the astonishing growth of the LEP population, its diffusion across both urban and rural areas of the United States, and the correlations between limited English proficiency and poverty demand reconsideration of poverty lawyers' legal, ethical, and political commitments. In Part II, I provide a sociolinguistic overview of communication generally, and of interpretation in particular, drawing attention to the semantic complexity and inherent cultural embeddedness of all communication. This discussion foreshadows the fundamental challenges to the traditionally conceived lawyer-client relationship posed by the introduction of an interpreter into the lawyering process. I take up those challenges directly in Part III, where I argue that the involvement of an interpreter confounds traditional lawyer and client roles, transforms the very structure of the lawyer-client relationship, and threatens fundamental values of client-centeredness, such as client autonomy and client voice. I propose an admittedly troubling typology to describe and better understand the multiple and complex roles interpreters necessarily play in the lawyering process: interpreter as guardian, interpreter as advocate, and interpreter as linguistic and cultural authority.[10] I suggest that these correlate roughly to interpreter roles as co-client, co-counsel, and expert.

In Part IV, I explore the emergence, development, and professionalization of a form of interpretation known as community interpreting. I advocate the integration of properly trained community interpreters by lawyers as vital collaborators in the lawyering process because of the linguistic and cultural knowledge they bring, and suggest the interpreter-as-expert construct as a particularly useful framework for engaging interpreters in dialogue about their role, their expertise, and the limits of both. This constitutes a rejection of the cramped view of interpreters that is often advocated, and an embrace of the role disruption that the involvement of interpreters creates. Finally, in Part V, I argue that the robust involvement of community interpreters in the lawyering process

10. *See infra* Part III.B.1–III.B.3.

invites a normative reconceptualization of the lawyer-client relationship, away from the closed, one-lawyer, one-client dyad and toward a more open architecture that embraces multiple actors and privileges social and cultural context. Thus, the embrace of community interpreting encourages community lawyering.

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The challenges of lawyering across language difference manifest in such diverse ways that no one scenario, real or imagined, can capture them all. With this caveat in mind, I nonetheless advance the following dialogue, based loosely on the experiences of students in the International Human Rights Clinic at American University Washington College of Law, as a means of introducing some of the key questions I seek to address in this Article.[11]

> *Margaret and Grace are law students in an asylum clinic who have been assigned the case of Mae, a young Burmese woman. Ever since their first client meeting several weeks ago, Reverend Sen, a local Burmese pastor who serves as Mae's interpreter, has accompanied Mae. Reverend Sen's English is very good, and the students are grateful that he has agreed to help, as they had been unable to find any other volunteers. Although the students believe that Mae has a meritorious claim, they are concerned that she did not file for asylum within one year of her arrival in the United States, as the asylum statute requires. They meet with Mae and Reverend Sen to discuss the status of the case, and the following conversation ensues:*
>
> *Margaret: Mae, you told us earlier that when you got to the U.S. you were very sick and that you stayed at a Burmese church in Texas. Is that right?*
>
> *Reverend Sen: (interprets into Burmese)*
>
> *Mae: Yes.*
>
> *Margaret: Is there someone there that we could speak to?*
>
> *Reverend Sen: (without interpreting into Burmese) Why is it necessary for you to speak with them?*
>
> *Grace: Reverend, would it be possible for you to just translate what we said? If Mae has questions about why we would like to speak with them, we can answer her then.*
>
> *Reverend Sen: I have helped many Burmese to apply for asylum, and I don't see why this information is important. Please explain it to me before I translate for Mae.*

11. While there is an inherent artificiality to narrative reconstructions, the dialogue presented here largely tracks my understanding of the actual conversations that transpired between the student-lawyers, the client, and the interpreter in a single case in the clinic. Based on my experience as a practicing lawyer and a supervising clinical professor working with almost exclusively LEP client populations, I believe the issues that arise here are representative of those that frequently arise in the course of lawyering across language difference.

Margaret: In order to qualify for asylum, Mae must file her application within a year of entering the country, unless we can show that there were some exceptional circumstances justifying the delay. So, we would like to be able to talk to the people at the church in Texas to see if they can corroborate the fact that Mae was in poor health when she arrived. That might help us explain why she is applying late.

Reverend Sen: I understand. I will translate the question.

. . . .

The meeting continues, and a short while later, this exchange ensues:

Grace: Mae, I know this is very difficult for you, but we would like to ask you a few more questions about when the soldiers attacked you.

Reverend Sen: (interpreting into Burmese)

Mae: (suddenly looking away and starting to tremble) Okay.

Grace: The soldier who raped you, had you ever seen him before?

Reverend Sen (to the students): You already asked her about this incident.

Grace: We just need to get some more detail. The more detail we have, the more credible Mae's story will be and the better her chances of getting asylum.

Reverend Sen: I don't think you should be asking these questions again. It is very difficult for her to answer. Already you can see she is becoming upset.

Margaret: We don't mean to upset her, but this is a really important part of her story.

Reverend Sen: Margaret, let me explain to you about Burmese culture. Burmese women are not to talk about such things. She has been taught that what happened to her is shameful, not just for her but for her entire family. And it is shameful for her to talk about it now.

Grace: Reverend, as difficult as it is, Mae needs to learn how to answer these questions, because the judge and the government will probably ask them at trial even if we don't.

Reverend Sen: (speaking in Burmese to Mae)

Mae: (shaking her head side to side and speaking in Burmese)

Margaret: What did you ask her?

Reverend Sen: I told her that you had some sensitive questions to ask and asked if she would be willing to answer. She said she will answer your questions.

. . . .

Finally, toward the end of the meeting, the students ask Mae if she would be willing to undergo a medical exam in order to obtain corroborating evidence of the physical injuries she suffered in Burma. The students explain that it will include a pelvic exam. Mae agrees. Two weeks later, the students and Mae are in the doctor's office with another volunteer interpreter—this time, a woman—and Mae becomes distraught, as the students discover for the first time that Mae did not previously understand that a pelvic exam would be involved.

This brief exchange presents three sets of critical questions. First are questions concerning the semantic integrity of the interpretation: Why did

Mae not understand that a pelvic exam would be involved? Was it because of the manner in which Reverend Sen interpreted the information, or did the Reverend fail to interpret it at all? Second are questions of interpreter role: How does the role of the interpreter fit into the established structure of the lawyer-client relationship? Should Reverend Sen be serving as an advocate for Mae? Should he be her guardian, or a gatekeeper to information? For whom does the interpreter work, the lawyer or the client? Should he be serving as a cultural expert? How do gender, class, and social status affect the relationships between the student-lawyers, the interpreter, and the client? And third are questions regarding fundamental values of client-centeredness: Why is it that Mae speaks so little in this exchange? How can her voice be amplified? How does the involvement of the interpreter affect her sense of autonomy?

I. FIVE IMPERATIVES FOR FOCUSING ON LANGUAGE DIFFERENCE

To date, scholars and practitioners addressing language difference in the legal context have focused almost exclusively on courtroom interpretation,[12]

12. *See, e.g.*, HERBERT S. ALTERMAN ET AL., EQUAL ACCESS TO THE COURTS FOR LINGUISTIC MINORITIES: FINAL REPORT OF THE NEW JERSEY SUPREME COURT TASK FORCE ON INTERPRETER AND TRANSLATION SERVICES (1985); SUSAN BERK-SELIGSON, THE BILINGUAL COURTROOM: COURT INTERPRETERS IN THE JUDICIAL PROCESS (1990); CAL. COMM'N ON ACCESS TO JUSTICE, LANGUAGE BARRIERS TO JUSTICE IN CALIFORNIA (2005); WILLIAM E. HEWITT, COURT INTERPRETATION: MODEL GUIDES FOR POLICY AND PRACTICE IN THE STATE COURTS (1995); JUSTICE ACTION GROUP, REPORT TO THE JUSTICE ACTION GROUP ON ACCESS TO MAINE COURTS FOR INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY (2005); Lynn W. Davis et. al., *The Changing Face of Justice: A Survey of Recent Cases Involving Courtroom Interpretation*, 7 HARV. LATINO L. REV. 1 (2004); Deborah M. Weissman, *Between Principles and Practice: The Need for Certified Court Interpreters in North Carolina*, 78 N.C. L. REV. 1899 (2000). An important exception is Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work With Language Interpreters*, 6 CLINICAL L. REV. 347 (2000). Relatedly, Sue Bryant and Jean Koh Peters have done groundbreaking work on cross-cultural lawyering, in which they include attention to language difference as one dimension of the cross-cultural lawyer's work. Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001) (discussing a collaborative project with Peters). Similarly, Christine Zuni Cruz has observed that "law is cultured by the dominant societal view," and urges law schools to teach "the necessity of both cross-cultural communication skills and a vocabulary for understanding culture and community." Christine Zuni Cruz, *[On The] Road Back in: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557, 568 (1999). She continues:

> [A] lawyer representing a client with a difference in language faces multiple issues. From the initial interview to trial or other resolution of the matter, each of the basic lawyering skills must be modified to accommodate the difference in language. From the competency of the interpreter, the interjection of a third party into an interview, the language skill of the attorney who does not make use of an interpreter, the questioning, the language itself, to the politics surrounding the use of a language other than english, language difference can greatly challenge the lawyering skills of the average attorney and raise issues of the competent representation of the client by the lawyer.

Id. This single paragraph identifies numerous important issues, many of which are explored at length in this Article.