Spring 2021

How Indigenous-Language Court Interpreters and Clients Navigate the U.S. Court System Under Strict Court-Interpreting Guidelines

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by

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A thesis submitted in partial fulfillment of the
requirements for the degree of
Bachelor of Arts
in
University Honors
and
Applied Linguistics

Thesis Adviser
Alissa Hartig Ph.D.

Portland State University
2021

1. Background

For those with limited English proficiency (LEP), interpreters are an invaluable resource, and the U.S. has laws dictating the protection of LEP individuals. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," mandates that discrimination on the basis of national origin (and, by extension, language ability) is a violation of the Civil Rights Act of 1964, and also orders Federal agencies to "ensure that the programs and activities they normally provide in English are accessible to LEP person[s]" (Exec. Order 13166, 2000). In broader terms, this Order serves two primary purposes. First, it is concerned with reinforcing Title VI of the Civil Rights Act, also known as the Court Interpreters Act of 1978, which "establishes that LEP individuals have the right to language services (interpreting, translation) in federal courts; this applies to all federal bodies, including immigration courts. Its second purpose is to require that federal agencies devise and implement systems that aid LEP individuals in meaningful access to appropriate language services. In spite of this, refugees are not necessarily guaranteed to have this civil right met to the full extent that the law promises, and access to the bare minimum in language services continues to be a barrier for LEP persons in U.S. federal agencies.

Indigenous-language clients are at a heightened risk for injustice, as indigenous language interpreters in particular are few in number, and meaningful access to their services is not guaranteed (González, Vásquez & Mikkelson, 2012). In the state of Oregon alone, there has been an increase in requests for interpreting services for languages indigenous to Latin America:

> From 2015 to 2016, requests for indigenous languages increased by 42 percent.
>
> In 2017, there were 133 requests for a Mam interpreter across the state. Requests are likely to be nearly double that in 2018, with 97 requested in the first six months of the

> year[, and] there have already been 33 requests for Q'anjob'al interpreters in the first half of 2018, and there were 33 all year in 2017. Requests for K'iche' interpreters have already surpassed last year's numbers, with 25 in the first half of this year, and 24 in all of 2017. (*OregonLive*, 2018)

The number of available indigenous language court interpreters (ILCI), however, remains disproportionately low, despite the increasing demand for their services. Mam, a language indigenous to the highlands of Guatemala, was the most highly-requested indigenous language in the state of Oregon in 2018; within Oregon, however, resides only one registered court interpreter for Mam.

It should be noted that the term 'indigenous' is used here in reference to communities who speak a "'minorised language within a state with a dominant language and who do not have a state of their own'" (Fouces, 2005 qtd. in Howard et al., 2018). Additionally, these communities may have been and continue to be vulnerable to historical and structural inequity and violence, including, but not limited to, "linguistic discrimination and marginalization in the name of nation building, lowering of the social status of their languages, contraction in domains of use, language shift among new generations, and a halt to their languages' internal development" (Howard et al., 2018, p. 24). While a number of languages qualify under this definition (both within and outside of US national borders), this study considers the experiences of two interpreters, who happen to interpret for Mayan languages indigenous to Guatemala and Southeastern Mexico, spoken by communities who have experienced violence and discriminatory practices at the hands of the dominant language group.

Recent figures show that a large portion of migrants arriving from Latin America are indigenous, and come seeking asylum. Last year, it was estimated that approximately half of the

"[250,000] Guatemalan migrants [that had] been apprehended at the U.S. Mexico border…[were] Mayans" (Nolan, 2019). The reasons for increased migration en-masse concerning this particular group are less clear. Beyond financial, political, and even climatic motives ascribed to language majority groups, there are "almost no hard statistics [...] available on anything related to Indigenous people crossing the border" (Ahtone, 2018). Moreover, there is little evidence to suggest that government agencies and agents take measures to verify an apprehendee's first language or place-of-origin, further complicated by the fact that "many Indigenous migrants [from Latin America] speak neither English or Spanish" (Ahtone, 2018). Many are subject to racial profiling as soon as they reach the border: the *New Yorker* reports that when "Mayan-language cases...came from Customs and Border Protection, [they] were 'listed on the court docket as Spanish,'" (Nolan, 2019). Consequently, indigenous migrants, entrusting themselves to the U.S. justice system, face the possibility of being assigned incongruous linguistic aid. While certain companies do exist, and claim to offer language interpretation services to indigenous communities, these options are limited, and reportedly do little to guarantee the quality of interpretation offered, as reported by the participants of this study.

These oversights have devastating consequences. Asylum cases more drastically showcase the life-and-death stakes that indigenous groups face, where the risk of persecution is substantially increased, both in countries-of-origin and the host countries themselves. Mayans, for example, have endured a long history of persecution in Guatemala, "[having] bore the brunt of almost four decades of civil war [ending] in 1996," (Martin, 2019, p. 6). In recent years, violence against Mayans civilians and activists alike, reminiscent of that civil war, has increased (Martin, 2019, p. 6), understandably contributing to their increased numbers at the border and their need for asylum. Adding to that difficulty is the fact that, unlike criminal court, family

court, and juvenile court, immigration court does not assign clients legal representation. This, in combination with the scarcity of linguistic resources, can mean the difference between being granted asylum and deportation, and the possible risk of succumbing to whatever threat a client was initially fleeing from (Killman, 2020; Gonzalez et al., 2012; Wennerstrom, 2008). Though many Mayan people do know Spanish to varying degrees, they are not often proficient enough to make their case in the L2 (Nolan, 2019, p. 17). That being said, many reportedly feel obligated or pressured to accept a Spanish interpreter regardless, a response to the long history of war and persecution that they have and continued to face (Nolan, 2019).

While requests for Mayan language interpreters have increased, the few indigenous language court interpreters (ILCI) in the U.S. are overwhelmed trying to meet the demand (Associated Press, 2018; Nolan, 2019). With migratory trends continuing as they are, the issue is anticipated to grow, with mounting strain placed on ILCIs, and potentially dire consequences for the clients who need them. With little supply to meet such a large demand, cases are often delayed while the search for an adequate interpreter continues.

1.1 The Role of the Interpreter

In the modern day, interpreters continue to be thought of as intermediaries, with the emphasis heavily placed on invisibility (González et al. 2012; Killman, 2019; Lee, 2009; Lee, 2011). They are also more commonly ascribed to have subhuman traits or functions, frequently compared to that of machines, the assumption being that, like a machine, they are tools to be used, rather than active participants in the communicative process (Lee, 2009, p. 380). More broadly, and optimistically, the interpreter's role is defined by their ability "to remove the language barrier between the court and speakers from culturally and linguistically diverse

(CALD) backgrounds, and to place them on an equal footing, as if the language barrier did not exist" (Lee, 2009, p. 379). This role is dictated by a code of ethics, presumed to protect clients and interpreters alike, as well as uphold the integrity of sanctioned legal settings. While codes may differ slightly between jurisdictions, the core guidelines remain the same (Wennerstrom, 2008, p. 3). In addition to basic confidentiality agreements concerning privileged information, an interpreter's ability to self-assess their fitness (or lack thereof) for a particular case, and a sworn duty to report ethical violations, the basic tenets are as follows:

(a) ***Accuracy and Completeness*****:** prioritized above all else, interpreters are expected to render a complete and accurate interpretation or sight translation that preserves the level of language used without altering, omitting, or adding anything to what is stated or written, and without explanation.

(b) ***Representation of Qualifications*****:** interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

(c) ***Impartiality, Conflicts of Interest, and Remuneration and Gifts***: Interpreters are expected to refrain from conduct that may give an appearance of bias," and remain impartial. Additionally, during court proceedings, interpreters are expected to avoid all interaction with other participants (attorneys, witnesses, clients, etc.) except in the discharge of their official functions.

(d) ***Professional Demeanor*****:** under this guideline, it is specified that interpreters be as unobtrusive as possible.

(e) ***Scope of Practice*****:** Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are

> interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.
>
> (Administrative Office of the U.S. Courts, 2018)

These tenets–particularly those stipulations stressing accuracy–presuppose language to be a predictable network or assembly of "fixed or decontextualized meanings," and interpreting to be a rather simple process "of linguistic transfer," swapping an L1 word for its L2 equivalent (Lee, 2009, p. 380). This is a harmful untruth. Consequently, the interpreter's identity begins to be marred by contradiction. Although they are said to become "officers of the court" once sworn in (Administrative Office of the U.S. Courts, 2018), they are not permitted to interact with others or seek clarification during hearings, in a way similar to how a lawyer or judge might ask for clarification (see tenet *e* above)—Cardenas describes an incident where she is yelled at by a judge upon asking him to speak louder (Cardenas, 2001, p. 24). Following from Lee's definition, an interpreter is supposed to serve as the bridge between members of the court, eliminating the problem posed by a language barrier; on the other hand, they are not allowed to "alter[...] or add[...]" anything, or offer explanation, even at the expense of an utterance's intelligibility and mutual understanding between members of the court (see tenet *a* above). They are also "not expected to exercise professional judgment, [...or] provide clarification" (Lee, 2009, p. 380), even though they are experienced professionals in their craft, and clarification may be necessary in order to retain an utterance's original meaning.

Killman (2019), Bahadir (2017), and Lee (2009) all advocate for the reframing of the interpreter's identity or role within legal spaces. A study conducted by Lee (2011) – in which experienced court translators and interpreters are assessed on how well they can faithfully

reproduce the style of a client's original utterance – found that "[t]he majority of the subjects deviated from the source text in some aspects[, and] none of them consistently produced faithful translations" (p. 25). She ultimately concludes that the ideal of a "neutral" and "unobtrusive" interpreter is unrealistic, as the process of interpretation and translation is inevitably "governed by a mixture of socio-cultural conventions and the translator's personal knowledge, expectations, and attitudes. The absolute neutrality claimed in official discourse [...] is an illusion" (p. 25). In line with her findings, it is argued that interpreters are better thought of as *communication facilitators*, which both allows for a more nuanced view of language and communication, and "recognises the accountability of both lawyers and interpreters in communication in the courtroom" (Lee, 2009, p. 380).

1.2 Concerning Accuracy: Cross-linguistic and cross-cultural factors

In much of the literature, the topic of accuracy has been explored through instances of mistranslation—instances where an interpreter's rendition (either of a single word or a whole phrase) fails to capture the client's original meaning or intent. *PBS* reports an instance where a Spanish-language interpreter caused distress for an accused party by mistranslating a traffic violation—"[t]hough the man was accused of running a red light, his interpreter told him he was accused of a 'violación,' which in Spanish does not mean 'violation,' but 'rape.' The interpreter should have used the word 'infracción'" (Beitsch, 2016). Another example shows a Spanish language interpreter not only offering legal advice, but also creating words that did not exist in Spanish, thus confusing the exchange of information; "as a result, [the defendant] was sentenced to 40 years in prison" before being granted an adequate interpreter for the appeals process (González et al., 2012).

While the aforementioned instances more clearly demonstrate the kind of injustice that can result from an unreliable interpreter, misinterpretation is harder to diagnose in other instances. From a study concerning immigration court hearings: “an applicant stated that he took a large risk (*aventura*) in his journey to the United States. This was translated as English ‘adventure’ conveying […] that the applicant traveled to the [U.S.] looking for ‘excitement and fun’ rather than to escape persecution” (Anker 1992). Vocabulary is often polysemic in nature—words often come packaged with more than one meaning, often only discernible through context alone. While it is quite possible that the interpreter was simply unfit for this particular case, or was simply unaware of the possible meanings associated with ‘aventura,’ this example showcases the kind of influence that a poor translation can have over the outcome of a case.

1.3 Certification and Registration

As it happens, tools for assessing the overall quality of the language services available to indigenous language speakers are either non-existent or in their nascent stages. While it’s possible to receive certification to interpret for languages with a large number of speakers (Spanish, Russian, Japanese, etc.), there often are not certification processes for indigenous languages. There are no government-issued certification tests for either Mam or Tzotzil, the languages that the participants of this study interpret for.

Some theorists have proposed creating a more rigid standard by which interpreters could be evaluated and certified (Cardenas, 2001; González et al., 2021). An interpreter can become court-certified in a select few languages (usually those with a substantial body of speakers, or a nation state: Spanish, Russian, Japanese, etc.), but this does not typically apply to indigenous languages, such as the ones cited in this study: the government does not offer a certification A

demonstrable standard is difficult to actualize for any given language, given the onerous process of accounting for the multiplicity of dialects and regional jargon that exist within any community, indigenous or otherwise.

1.4 The Present Study

This paper is, firstly, concerned with the challenges unique to indigenous individuals within U.S. court contexts. By interviewing indigenous interpreters, I discuss how these challenges are addressed in client-interpreter relationships, and what unique challenges interpreters themselves face as participants in the judicial process. The literature, in general, asserts that 'accuracy' as defined by the Code of Ethics is ill-defined, and does not reflect the actual use of language, or leave room for any differences between languages. Additionally, the literature argues that the certification processes available do little to ensure that LEPs receive adequate interpreters, and that the absence of any vetting systems routinely has a hand in court outcomes.

The present study analyzed interview data gathered from language interpreters who interpret for languages indigenous to Latin America. The interview questions were divided into three general categories: (1) the unique challenges that indigenous-language clients (as opposed to majority-language clients) encounter in U.S. court settings, (2) the unique challenges that indigenous-language interpreters (as opposed to majority-language interpreters) encounter in the execution of their duties as court officials, and (3) whether or not the civil rights of indigenous-language speakers were being honored and upheld by U.S. legal institutions.

2. Methods:

The decision to focus on interpreters, rather than members of indigenous populations themselves, was motivated by two factors: (1) to protect the autonomy and privacy of vulnerable populations and individuals, and (2) to get the perspective from experienced court interpreters who are familiar with the inner workings of the U.S. justice system. Participants were recruited through Oregon and California court interpreter dockets, with preference given to those languages indigenous to Latin America. Both of my participants are, to different degrees, intimately familiar with the communities they interpret for: Oswaldo grew up in the highlands of Guatemala speaking Mam, while John has spent a significant part of his life living in Chiapas, learning the Tzotzil language from local residents. They were, therefore, uniquely able to identify flaws, negligence, and abuses both within and beyond the courtroom that others, even those who have gone through the court system (clients, defendants, witnesses), may not be privy to.

Project data was gathered through semi-structured participant interviews, conducted via Zoom, in accordance with Portland State University's COVID-19 protocol. There was approximately 3.5 hours of recorded audio data, between one interview with John, and two with Oswaldo (one initial interview, plus one follow-up). Orthographic transcripts of the interviews were then made, either in part or in whole for the purposes of analysis. A qualitative analysis of the data was then conducted. General, identifiable themes emerging from the interpreter accounts were noted, many of which aligning with the literature. It should finally be noted that, although encouraged to use pseudonyms, both participants declined

3. Findings & Discussion

Before discussing the findings, it is first important to understand the participants and their backgrounds, which are briefly detailed below:

3.1 Oswaldo

Oswaldo is in his mid-twenties, and was born in the Northwestern highlands of Guatemala. Having moved to the United States with his parents as a child, he received the majority of his education in the U.S., and speaks Mam, English, and Spanish, although he describes his Spanish as being more conversational. He officially started interpreting for Mam in 2016, when he interned with an immigration law firm in the Bay Area of California, who were seeking Mam interpreters at the time. Though he actively sought a position with this firm, the fact that they were actively seeking Mam interpreters indicates a growing demand for Mam speakers. After a year with the law firm, Oswaldo reached out to a non-profit organization based in San Francisco that offers training sessions for would-be and current indigenous-language interpreters. This nonprofit's mission is to provide Mayans in the Bay Area with linguistic resources, including , and to advocate on the behalf of the Mayan community at the social, communal, and legal levels. When asked if he'd always planned to be an interpreter, Oswaldo responded as follows:

> **Oswaldo:**
>
> No, I think it just came about without me really planning for it. Eventually […] I did get to dive more into it and understand how it works, as well as just the challenges – well, mostly just the logistical challenges – of being a Mam interpreter or an indigenous language interpreter. But, for me, it's mostly a side gig, while I'm still in school, and it's helped me along the way.

While his services have been, on occasion, solicited for immigration court cases, Oswaldo predominantly works on family, juvenile, and criminal court cases.

3.2 John

John is a university professor who specializes in an area related to indigenous languages. Though Tzotzil is not his first language, John's research into the language and community began in the late '60s, and originally focused on the music of the people of Chiapas and their gossip patterns. Through his research, he began learning their language. Since those initial research projects, John has spent part of every year in Chiapas, and estimates upwards of ten years in total spent with the Tzotzil people in Southeast Mexico. To this day, his scholarship focusing on Tzotzil and its speakers is highly-regarded in the U.S., and he has published an extensive body of work on the topic. Like Oswaldo, he did not enter his studies with the intention of later becoming an interpreter:

> **John:**
>
> I got to be known in the legal community in [the Pacific Northwest], and little by little people started asking me to do expert testimony on cases that involved indigenous Mexicans in different courts, in both Oregon and California. And then at some point, somebody managed to figure out that I was also a Tzotzil speaker. And I think this was much later. So this might have been [...] maybe 1995, or 1996, I suddenly [...] began to get calls from courts, mostly federal courts, who had the wherewithal to track me down as a Tzotzil speaker. And then I started doing Tzotzil interpreting.

Unlike Oswaldo, it seems that John did not initially seek interpreting opportunities out, but rather, they found him. Both Oswaldo and John were recruited on a needs-basis: as demand has

been growing for indigenous-language interpretation services, people like John and Oswaldo have become invaluable.

3.3. On Certification, Training, and the Vetting Process

Both Oswaldo and John paid particular attention to the training and certification processes that interpreters must officially undergo to work in court settings. For indigenous languages, however, the notions of training and certification are less straight-foward than they are for majority languages, especially those that rarely or never circulate through U.S. courts. In Oregon, it was reported that "[t]here are several indigenous languages that aren't requested as often, and some requested this year that the courts had not seen before," (Associated Press, *OPB*, 2018). This issue is then, undoubtedly, an uphill battle, not only for the interpreters and clients, but also for the legal institutions who must act quickly. However, it seems that government agents, in some cases, don't themselves understand the types of training available to majority and minority languages: a Mam interpreter was reportedly challenged by an opposing lawyer for not being certified (Nolan, 2019), despite there being no existing test by which to court-certify Mam interpreters.

In lieu of certification is the process of *registration*, a temporary license to serve as a court interpreter. Oswaldo recounts this process:

> **Oswaldo:**
>
> Currently you can work in the courts as [...] a temporary interpreter, where you're given authority by a standing judge to interpret for a period of about six months in the superior courts of California, and this has to be renewed every six months. You have to file some

> paperwork to do it. It's not a very complicated process, but they do so [...] by having faith in the interpreters.

Oswaldo emphasizes the faith component here, a theme also identified in the literature (Associated Press 2018). Having faith, however, does not mean that clients have meaningful access to language resources. This is especially true for indigenous languages, for which existing scholarship and resources do not exist in such abundance. Oswaldo goes on to explain the materials used for his registration process:

> [The registration process] just involves a-uh English assessment exam, which is just a short conversation […] for them to gauge how well you speak English, and then the written portion […]and that's only in the English. They don't have anything for the target languages, because […] there's no work that has been done to actually have it in the target language.

While his experience isn't necessarily indicative of widespread practice across the U.S., it is still a notable example of those stipulations outlined in Executive Order 13166 and the Court Interpreters Act not being honored. In lieu of registration materials in the target language (Mam), Oswaldo was instead required to show competency in English only. This practice does not serve the best interests of clients, who depend on our legal institutions to provide them with appropriate language services. This practice also seems to contradict those measures laid out in the Court Interpreters Act of 1978, which mandates that all certified, qualified, or skilled interpreters be assessed in both English *and* the target language (H.R.14030 - 95th congress, 1977-1978; 28 U.S. Code § 1827 - interpreters in courts of the United States, 1992).

The data demonstrates that interpreters, in general, may lack trust in the agencies purporting to assess their language ability. These findings align with those doubts that

government bodies have the ability or desire to vet interpreters as the law mandates (Killman, 2020; Lee, 2011; Lee, 2009; Wennerstrom, 2008; . To foreground this point, John firstly describes the experience of a Zapotec interpreter he knows, his services having been solicited for immigration court. Here he uses the term *'certification,'* though it is unclear if this process is more or less akin to the registration that Oswaldo mentions:

> **John:**
>
> So I said, "So how'd you [become certified]? What did they ask you in this test?" He said, "Well, you know, they say some words in English. And I...say this in Zapotec. [T]hey don't know what I'm saying. I could say anything, you know, I could just make up any nonsense I like, and they're gonna have to, you know, if [...] it sounds fluent, they're gonna say that's fine. Because what do they know about Zapotec? Nothing, they don't know what I'm talking about."

This Zapotec interpreter, in John's words, alleges that existing certification/registration tests for indigenous languages can be easily undermined, because government bodies know very little about these languages.

3.4 On Accuracy: Cross-Cultural and Cross-Linguistic Factors

There is a lack of consensus between how much faith the court and legal agents purport to have in interpreters (agents of the court themselves, once sworn in), and how much agency the interpreters in actuality have on the job. Some government agents report having faith in interpreters to interpret accurately (Associated Press, 2019), as dictated by the court code of ethics. That trust, however, is not necessarily reciprocated, in that both participants reported having little trust that government bodies understood their role within legal spheres. Both

acknowledge the problematic notion of *accuracy* as it pertains to language interpretation. As John states:

John:

So professional interpreter training will teach you a whole series of principles. [T]he main precept is accuracy. You're supposed to be accurate in your translation. Now, accuracy, of course, is not an absolute notion [and] from a linguistic point of view, it's an absurd notion. Because what does accuracy mean? [D]oes it mean, you have to translate everything that's said? Well, yes, it does, I suppose. But the problem is, it isn't always possible to do that.

The Code of Ethics does not allow room for this kind of nuance, which is to fundamentally misunderstand language at a broad level. To follow a literal interpretation of the accuracy clause in the strictest sense is not necessarily feasible, nor ethical, in practice. John uses Spanish as an example to make his point:

John:

So if I were to say, you know, the, say something, I don't know: "The table is heavy, and I can't lift it," in English. And Spanish, you'd have to say, "The table is heavy and I can't lift *her*." Right? Because it has to agree, the pronoun has to agree, both of them, a pronoun for heavy and a pronoun for table, has to agree with the gender of the noun 'table.' So we don't translate that in English. And no one would consider that an error.

Even though omitting the gender-appropriate pronoun in an English interpretation technically breaks interpreting guidelines, the courts don't view this as a breach of the accuracy tenet. John gives one other example in Russian:

John:

When you say "I was at home," if it's a woman, you say it one way. If it's a man, [you] say it the other way. So, now, if you were to translate this into English, it would still just be "I was at home," but if you're translating the other way, you'd have to decide: who is the *'I'* there? Is it female or male? And according to the rules of professional translation, you can't do that. Because by the rules of professional translation, you're supposed to always translate in the first person.

Mam poses similar complications, a prominent example found in the relational pronoun system. To describe the location of an object, or the parts of an object, Mam speakers will reference the body in order to make these locative descriptions (England, 1975, p. 54). Oswaldo describes this in a little more detail:

Oswaldo:

I think Mam and other Mayan languages are very related to their environment. So one example is when we speak about certain objects. You know, [...] as opposed to indicating a part of an object [...] with a very specific word, like in English, we'll use the body as a reference. So let's say that [we set something] on the top of [...] let's say, a table: you would say, "on its *head.*" The exact same word that you would use for your head, you use it to let someone know that you're referring to the top of whatever object that you're referring to. [...] *'Edge'* is the same word as *'toes.' 'Corner'* is the same word as *'elbow.'*

A literal interpretation of these utterances into English would hinder understanding between the client and members of the court. For an interpreter to add further confusion is not only antithetical to the interpreter's job description and purpose, but also has the potential to place a client's believability into doubt, which, as explored above, can have dire consequences. However, to interpret these relational pronouns as their sociopragmatic equivalent in English is

to violate interpreter ethics. This most prominently highlights the contradictory space that court interpreters occupy, as doing what is best for clients jeopardizes their employability, while strictly adhering to court guidelines poses potential harm to a client's wellbeing.

Dialects pose another problem for clients circulating through legal institutions. Dialectal variation is a naturally-occurring part of any language. This, however, makes finding an adequate interpreter for indigenous-language speakers all the more difficult, as interpreters are few in number, and courts already have a history of struggling to assess indigenous-language interpreters. Given that few materials exist with which to register Mam interpreters, Oswaldo expresses his skepticism regarding for-profit companies who claim to be able to assess for Mam accuracy:

Oswaldo:

Now, if you work for an agency--for some of the large interpreting agencies--they will have some of their own testing, but I've gone through a couple of them, and they report that they'll have someone assess the target language, but I [...] I wouldn't imagine they would know. 'Cuz especially with Mam, Mam has different variants, and I don't--not that I don't trust--but I don't really believe that they are necessarily gauging how they say they are, because it's hard enough to find target language interpreters, it's hard enough to have someone that speaks every variant or is going to be able to accurately say that this interpreter interpreted the material given to them correctly, when everyone has their different variant, and there are so many variants in the states. So, I don't think there's necessarily a vetting process, or a well-established vetting process.

As mentioned earlier, John did not begin his research in 1966 with the intention of becoming an interpreter. However, he cites two incidents that served as catalysts for his eventual

interpreting work, both of which being rooted in the fundamental misunderstanding of the importance of account for linguistic variation. In the first incident, John recounts interpreting for two men convicted of taking part in a massacre during the Zapatista Rebellion in Chiapas during the 1990s. The men – both Tzotzil speakers – had initially been assigned an interpreter who did not speak their language:

> **John:**
>
> So I asked [them], "Did you [...] have interpretation here?" Because they didn't either speak much Spanish. And so I was talking to [one], and he said, "Oh, yeah, we had an interpreter. We couldn't understand him." So what does that mean? Well, it turned out that they were speakers of the language called Tzotzil. Their interpreter was a Tzeltal speaker, it's cousin language, which is very close, but it's not any closer than, let's say, Spanish and Portuguese. So the court hadn't bothered to figure out that they were different languages.

The example indicates that government bodies are either lacking any appropriate measures or methods to determine a client's L1, or simply haven't allocated time and energy into addressing this particular hurdle. If the interpreter did indeed know that his clients couldn't understand Spanish, as John alleges, then the interpreter knowingly broke two tenets of the code of ethics (see *Subsection A* of the Background), both in terms of authenticity and in being able to self-assess their ability to serve as the interpreter in that particular case. The court, by extension, failed in its execution of Civil Rights law. Just as important as receiving any linguistic advocacy at all is receiving appropriate linguistic support. This does not align with those stipulations laid out in Executive Order 13166, particularly in regard to the provision of systems by which LEPs may meaningfully access language resources and linguistic support.

However, this issue can be problematic for even those majority languages that have a large number of speakers and linguistic resources available. John further elaborates on this:

John:

> But in this case, it was even worse, because there was a Spanish translator, and the interpreter in this particular case actually [...] was a native speaker of Cuban Spanish, which, again, if you know anything about Spanish, you know, it's really, really different from any kind of Mexican Spanish. And for most of us who speak Mexican Spanish, it's almost incomprehensible. Without a little bit of training. It's just you know, it's really different phonologically, really different vocabularies, just [...] the language is different. So there was lots of misunderstanding between the interpreter and the witnesses. And it was compounded by the fact that the witnesses didn't speak Spanish anyway. And the interpreter was aware of this.

The issue presented here is three-fold: indigenous-language speakers were not only assigned a Spanish interpreter (a language they did not speak very well in the first place), but were assigned an interpreter who spoke a variety of Spanish that the clients would likely not have been exposed to in Chiapas.

Furthermore, there are not always concepts that can be directly translated from one language to another. Mam, for instance, does not have a word for *'asylum'* as we use it—this can prove to be problematic, when U.S. immigration court requires asylum seekers to state, in explicit terms, that they are in need of asylum (Killman, 2019). Oswaldo expands on this:

> I think one of the difficulties I see [...] when [people] want to apply for asylum, is just being able to stress that, or being able to explain that whatever situation they went through, has to do in part with either them being indigenous or being women. I think back

home, a lot of people experienced racism. But then, they come to think that that's just a facet of life, that's just part of life, and that it's inherent, that they, in a way, are relegated to being treated that way. And so then once they are asked these questions, a lot of times [...] we encourage them to mention [that]. But it's not, it's usually not something that crosses their mind. And that makes it difficult for them to be able to [...] explain that the way that we understand what *'racism'* is, because there's not a direct word for racism in Mam. As far as I know, the closest word is just like '*prejudice.'*

The civil war that has plagued Guatemala for several decades has most prominently affected the Mayan communities, to the extent that oppression and violence is still felt by those groups today (Martin, 2019; Menchu, 2020). Asylum trials are unique, in that an asylum verdict is entirely dependent on a client establishing what is called "credible fear"—that they have a "well-founded fear of persecution or torture" should they return to their countries-of-origin (Killman, 2019, p. 79). To accomplish this, it is recommended that clients state this in very explicit terms, with words that, as Oswaldo notes, may not exist in the L1. To interpret these concepts to asylum seekers, therefore, requires the interpreter to supplement their translations with helping words or additional information, both of which are strictly in violation of interpreter guidelines.

Literacy is also a hurdle that can easily lead to challenges. Oswaldo comments on the politics of written translations, and his reluctance to provide them. While people request written Mam translations from Oswaldo, he explains that this is not necessarily indicative of progress, nor are translations always commissioned with a client's wellbeing in mind:

Oswaldo:

When it comes to translations, I know that most people in my community and in the Mam community are not taught in written Mam--written Mam is a new subject. It's not

> widely adopted, especially by older folks, who either didn't go to school or didn't spend enough time in school, or they weren't in school during the rejuvenation of written Mam in the academic schools. [S]ometimes...people will be coaxed or pressured into signing things that they didn't read. My worry is that if they ever try to make an effort to translate those documents into Mam, that they use it as a pretense or excuse to say that these people have read or they understand this written material, because it's in their language.

Although literacy rates are increasing in Mayan communities and other communities indigenous to Central and South America, written Mam has emerged relatively recently. Those without access to education go without learning this skill. The concerns that Oswaldo highlights above have indeed arisen in other cases. The *New Yorker* reports on an instance of this issue: "[a] wife emerged and was asked to spell her name, she looked at the ground and whispered in Mam, 'I will not be able to spell my name. I did not go to school to learn how'" (Nolan, 2019). The consequences of this issue, at worst, are dire. During the height of the border crisis, wherein migrant children were separated from their parents and held in detainment centers, many sick children would go untreated for hours, or were possibly never treated, resulting in widespread illness throughout the centers, and even death (Pompa, 2019): of the seven child deaths recorded in 2019, five of the children were indigenous. In response to this, it has been noted that:

> President Trump placed blame for the deaths on the children's fathers, who had signed intake waivers stating that their children did not need medical care. The waivers were in English, and officials provided a verbal Spanish translation—two languages that the fathers did not speak fluently or at all (Nolan, 2019).

In this case, federal agencies failed in adherence to Executive Order 13166, specifically in regard to the provision of meaningful and appropriate language access; this is against the law. Though,

even if the Executive Order had been followed, and intake waivers in the appropriate target languages had been provided, there is no accounting for literacy. The example that Oswaldo recounts above, about the particular state of Mam literacy rates, highlights the necessity for considering factors in addition to language alone, those being those sociocultural and historical factors that are indeed relevant and worth considering.

4. Discussion & Conclusion

As the rate of migration continues to inflate, and indigenous-language speakers come to the U.S., access to language support continues to be a hurdle, though it is hard to understand the situation at a broader level, given the scarcity of data available for these more vulnerable populations. The majority of literature referenced in this paper pertained only to majority communities whose languages enjoy a certain amount of prestige in their countries-of-origin. While the interview data gathered here is somewhat limited in scope, feedback both from Oswaldo and John indicate that it's not only the matter of access to language services that is lacking, but also the quality assurance of language services that is lacking. As mentioned above, it is the Department of Justice's job to ensure that Federal agencies provide meaningful access to language services, but also a means by which to assess interpreters for quality. The lack of data available on minority language communities, especially those who experience a heightened risk of persecution, could contribute to the fact that they are so often neglected and forgotten by the U.S. justice system.

That being said, for both majority and minority languages alike, the Code of Ethics binding court interpreters is written in a way that fundamentally misunderstands how language operates, and places interpreters in a contradictory space, wherein adherence to or detraction

from the core guidelines poses potentially harmful consequences on either side. To refer back to one of John's quotes (p. 21), the assumption that Spanish is monolithic across countries, and free of any variation, has the potential to harm clients at the mercy of our justice system. Language must be considered at a more communal level (e.g. finding a Mexican-Spanish interpreter for a client who speaks Mexican-Spanish) in order for Executive Order 13166 to be actualized to the full extent that it promises.

In lieu of existing support systems that ought to be offered by U.S. legal institutions, the onus then falls on the interpreters themselves to design materials, provide training, and vet would-be interpreters. While John seemed resigned to the notion that the system would remain broken, Oswaldo reports that groups of interpreters are rising to the challenge, himself included:

Oswaldo:

> For the moment, I'm working with a small group and we're working on having our own group with our own vetting process, that knows and caters to the interpreters.

This suggests that, with rising demand for indigenous-language interpreters, interpreters are advocating for indigenous-language speakers by working to solve issues of access, and means of assessment.

It should be mentioned that, while I have gathered data from people working within the field of interpretation and translation, I do not suggest that the findings presented here are generalizable to the profession at large, or the people working within it. It was, instead, only my intent to compare the information given by the participants to that of what scholars in the field of Interpreting and Translation studies (and Legal Interpreting studies) are and have been saying, as well as to contribute to the discourse of an under-researched area of interpreting studies. It should also be noted that I am not a court interpreter myself, nor am I a speaker of an indigenous

language. Therefore, the views represented here are relayed from an outsider's perspective. Future research would benefit greatly from voices more intimately familiar with the topic.

Future research could gather more data from indigenous-language court interpreters, in order to better understand their experience with the U.S. court system, what problems they and their clients uniquely face (as opposed to interpreters and clients of majority languages), and where justice isn't being appropriately served. It may also be worth investigating independent groups of interpreters, like the ones Oswaldo mentions, to better understand how they're approaching this issue.

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