Addressing Linguistic and Cultural Issues in American Criminal Cases

Michael O'Laughlin

Boston University, USA

Abstract. *This article traces the development of court interpreting in the United States. It is now a profession, with training and certification available. Nevertheless, there is a clear unevenness in the quality and availability of interpreters, especially for rare languages. This article provides some sense of what interpreting is – and isn't – and which tasks interpreters find most difficult. The author relates how he began to work as an interpreter in the 1970s, and he explains his current work as an expert witness. A person who needs an interpreter sometimes also needs an expert, either to explain foreign words, customs and attitudes, to challenge substandard police interpreting, or to establish that the defendant was unable to say in English what he or she allegedly said. Evidence is now often in languages other than English, and an expert is needed if warnings were not understood or statements were not properly translated.*

Keywords: *Interpreter, Profession, Expert, Language, Culture.*

Resumo. *Este artigo acompanha o desenvolvimento da interpretação nos tribunais nos Estados Unidos que hoje em dia constitui uma profissão, com formação e certifição disponíveis. No entanto, há um claro desequilíbrio na qualidade e disponibilidade dos intérpretes, especialmente no que diz respeito a intérpretes de línguas raras. Este artigo fornece uma noção do que é – e não é – a interpretação e quais as tarefas que os intérpretes consideram mais difíceis. O autor relata como começou a trabalhar como intérprete nos anos 70 e explica o seu trabalho atual como perito. A pessoa que precisa de intérprete precisa também, por vezes, de um perito, seja para explicar palavras, costumes, ou atitudes estrangeiras, para impugnar uma interpretação de qualidade inferior, ou para demonstrar que essa pessoa seria incapaz de dizer em inglês o que ela supostamente disse. Atualmente as provas são frequentemente apresentadas noutra língua que não o inglês, sendo necessário um perito, caso cientificações não tenham sido entendidas ou declarações não tenham sido traduzidas adequadamente.*

Palavras-chave: *Intérprete, Profissão, Perito, Língua, Cultura.*

Two evolutions

This article will describe briefly the evolution and current practice of court interpreting in the United States, and then note several types of criminal cases in which the defen-

dant required more than an interpreter, cases in which an expert witness was needed to explain a cultural difference, a misunderstanding, or to make it clear that the defendant could not have participated in an alleged conversation, due to his or her lack of English proficiency. As I briefly tell the story of American court interpreting, I will also make a few references to my own experiences in the legal system, my own evolution. I began to work in the courts as a Spanish interpreter in the 1970s. I then started teaching legal interpretation to others in the 1990s. I eventually became the director of an interpreter training program at a university. Finally, I combined my scholarly training with my interpreting experience to offer my services as an expert witness regarding language and cultural issues. The cases I will be referring to at the end of this article are ones in which I participated in personally.

Changing demographics

The time in which we live has been called an "Age of Migration" (Castles and Miller, 2009). Western Europe in particular is now in a state of crisis as it attempts to absorb some – and repel other – refugees and migrants from the Middle East, Africa and elsewhere. London is now composed of 40% international residents, as are several other major capitals. Large numbers of people are on the move all over the globe. Climate change will cause these shifts in population to increase further.

Although not currently in a state of crisis, the United States is also being transformed by a considerable increase in immigration. In the US these changes began when immigration laws were modified in 1966. Most immigrants to the US now come from Latin America and the Orient, not Europe, as formerly. Because it is difficult to immigrate to the United States, many of today's immigrants have entered the country illegally. The United States is also home to large numbers of refugees. The contribution of immigrants to the US economy is considerable, and their place in American culture is growing.

Because the largest numbers of immigrants today come from Latin America and Asia, linguistic diversity has exploded in the US. The number of languages spoken in homes in the United States is now over 350 (Castillo, 2015), and as much as 21 percent of the US population now speaks a language other than English when at home, according to the October (2014) Report of the US Census Bureau.

Slowly growing awareness

Over the past 50 years the US legal system has slowly taken steps to respond to the growing presence of so many newcomers to American society. The initial concern of the justice system was to provide non-English-speaking immigrants who were witnesses or defendants in a criminal case with qualified interpreters. Although interpreters are needed in all types of cases, criminal cases were given priority.

One may ask, why do immigrants need interpreters in court cases? There are four fundamental reasons:

1. Conventional wisdom holds that US immigration is shaped like an hourglass, with a fairly large number of people at the top of the income scale, and an even greater number at the bottom. The smallest number of immigrants falls in the middle-class category.[1] In practical terms, this means that the largest group of immigrants (i.e., the ones at the bottom of the hourglass) do not have the educational background, nor the time, to study English once they arrive, because their primary concern is their immediate financial survival.

2. A second reason that court interpreters are so widely needed is because adolescent and adult immigrants, especially those with less education, do not – or cannot – automatically learn English from their environment. According to the Critical Period Hypothesis, the older a person is, the more difficult it is to learn a new language (Gass and Selinker, 2001: 335-344) and most immigrants come as adults. Older children and adults learn second languages in a manner that is completely different from young children and almost never achieve the same fluency as they have in their first language. Adult learning is deliberate and normally painstaking.
3. Entering a new language-world is not easy for adolescents or adults. It is normally stressful and challenging. Language inability and errors must be slowly ameliorated over many years of effort. Migration itself brings with it many psychic burdens, as one's assumptions are challenged and replaced, and one's ability to function and one's self esteem are undermined. To feel "foreign" and "unwelcome" is to lose one's self confidence and self-esteem. Even if one is willing to engage with the new culture and new language, migration is a process that lasts for the rest of one's life, and requires not only considerable effort, but ego strength, self-confidence, risk-taking ability and motivation.
4. After the initial optimism wears off and migrants realize how difficult it is to learn a second language, increasingly conscious of social distance and even xenophobia in the host country, many stop trying and their second language becomes fossilized. Thus, there are migrants all over the world that never learn to speak properly the language of the country in which they live, and others that never really try to learn the language at all. This is a common, even normative phenomenon for lower-skilled migrants.
(Machleidt, 2015)

Even if less-educated immigrants are, after a certain period, able to learn the rudiments of communication needed at their workplace, or achieve some surface fluency in English, they find that the complex linguistic environment of an American courtroom is much too challenging to navigate without assistance. Thus, court interpreters are needed, even by some who manage to move around in the everyday English-speaking environment without too much difficulty. In recognition of this reality, the term used for someone in need of an interpreter in the US is not "immigrant," or "non-English speaker," but "Limited English Proficient" person, or LEP. This is the term used by the federal government, and there is even a government website outlining their rights called lep.gov. Is there a clear division or cut-off line be made between those who are LEP and those who are not? No, indeed; the LEP phenomenon should be viewed as a continuum, according to Muneer Ahmad:

> Limited English proficiency is best understood along a spectrum rather than in binary terms of proficiency and non-proficiency, as individuals may possess varying degrees of proficiency in English without reaching the threshold necessary to interact effectively with service providers.
> (2007: 1001)

Many millions of people living in the United States are LEP, and most of them need interpreters in court. According to Census figures, between 1990 and 2014 the number of LEP persons expanded almost 100%, from nearly 14 million to 25.3 million (U.S. Census

Bureau, 2014). As noted previously, across the United States, 21 percent of the population now speaks some language other than English at home, although not all of these persons are LEP. In some states, that percentage is much higher. It is 30 percent in New York, and 40 percent in California (Davis, 2016: 2).

First steps

Until the 1970s there was no general law providing LEP persons in the United States access to justice (Cronheim and Schwartz, 1976). In court the decision to appoint an interpreter rested with individual judges, and most had little knowledge of, or interest in, language matters. A precedent had been established in 1907, when the Supreme Court had ruled, in *Perovich v. U.S.*, that the fact that a judge did not appoint an interpreter for a defendant in a murder trial was not an error, not an "abuse of the judge's discretion." Lower courts afterwards followed the precedent set by this case: interpreters were not required. Only in 1970 was there a case which pointed the way towards a more just and enlightened practice. This was *U.S. ex rel. Negrón v. New York*, the appeal of a New-York-state murder case to the federal district court. The grounds for the appeal was that no interpreter was provided for the defendant at his trial. The federal judge's decision on *Negrón* – that this was indeed a serious error – invoked the Sixth and the Fourteenth Amendments to the Constitution, i.e., the rights to a trial, to confront one's accusers, and to due process. The *Negrón* case established new standards. Without using the precise terminology, it established the principle of "linguistic presence," a corollary of the principle that a defendant had the right to be present in court for his or her own trial. If one cannot understand one's trial, then, although one might be physically present, one is linguistically and mentally absent, just as in the case of a mentally-incompetent defendant. The first state court case to follow the same line of reasoning regarding "linguistic presence" was *Arizona v. Navidad*, in 1974 (González *et al.*, 2012: 159–163).

Later in that same decade, in 1978, the US Congress enacted the Court Interpreter's Act, which established the right to a certified or otherwise-qualified interpreter in federal court. Because there was no process to certify interpreters, a Federal Court Interpreter Certification Examination program was also created by the act. This great step forward was due, in part, to the fact that in 1974 the Supreme Court had determined that discrimination on the basis of *national origin* included not providing meaningful access for LEP individuals to federally-funded services (*Lau v. Nichols*, 414 US 563 (1974)). The fundamental law invoked was Title VI, the 1964 Civil Rights legislation, which established that no one can be discriminated against due to race, color or national origin (42 United States Code § 2000d).

The growth of interpreter services in court systems across the US which began in the 1970s was steady during the 1980s and 90s. Unfortunately, the federal certification of interpreters did not live up to expectations: the examination was so difficult that almost all interpreters failed, and the number of languages in which testing was available never got beyond three: Spanish, Haitian Creole, and Navajo. However, at the state level, certification expanded significantly. President Clinton then signed Executive Order 13166 in 2000, endorsing the *Lau v. Nichols* interpretation of the national-origin prong of the Civil Rights legislation and requiring all federal agencies to comply. In 2002 the US Department of Justice issued *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Pro-*

ficient Persons (67 Federal Regulations 41455 (2002)). Federal law was evolving in favor of LEP persons.

My own beginnings

I am well aware of how court interpreting began in the US, because I took a minor part in it. My first real job after leaving the university was as a court interpreter. In fact, I was the first interpreter hired as a full-time employee by the County of Santa Cruz in California. When I applied and was interviewed for this newly-created position, the only real qualification which concerned the administrators who interviewed me was whether I could speak Spanish. I was told that when I was not needed in the courtroom, I would be working in the clerk's office, typing traffic citations.

The year was 1978, and courts in California were just beginning to address the need for interpretation in the courts. The federal Court Interpreter Act had been passed that same year. Before I was hired in Santa Cruz it had been the practice in the courts of that county to ask an employee who spoke Spanish to "help out" in the courtroom. I remember there was also an older woman who was sometimes paid to go over and interpret in court, but no one seemed particularly happy with her work. Little or no provision was made for persons who spoke a language other than Spanish, other than to find some volunteer locally who spoke the language.

When I first began that job I was sent to Watsonville, an agricultural town in the southern part of Santa Cruz County where the majority of the inhabitants were Mexican fieldworkers who cultivated and picked the strawberries, lettuce, mushrooms and other produce grown there. The court in Watsonville was a simple affair, and the judge a former policeman. He liked to get to the bottom of the cases before him as quickly as possible, so he would ask the defendants at arraignment, "How do you plead, guilty or not guilty?" – This was a question that judges were no longer permitted to ask, since it played upon the ignorance of unprepared defendants. When someone pled guilty at arraignment, which was what generally happened, the judge would simply give them a fine, or send them off to jail. No lawyers, no trials, no delays – his system was quick and efficient, if not very fair. My "training" as an interpreter in his court consisted of watching Mary, one of my coworkers in the clerk's office, as she interpreted in the courtroom. I think I watched her for a week, maybe two; then it was my turn.

It was simply assumed in those days that there was nothing complicated about court interpreting. The only requirement was speaking the language, and it was assumed that almost any educated person could do it. My own ability to speak Spanish, I must say, was not very good in 1978, and, by today's standards, I was a terrible interpreter. I did not know the techniques of interpreting, and I was desperately trying to learn legal vocabulary "on the job." I didn't know back then how bad I really was, but it was still embarrassing for me to stand up and interpret in a predominantly Mexican town like Watsonville, where I assumed everybody spoke Spanish better than me. I once asked Mary, "Why me? Why doesn't somebody else do this?" She told me, "Nobody else has the confidence." Mary was alluding to the fact that I had a university degree, and that made a big difference in Watsonville. Luckily, the County of Monterey, the next county over from Santa Cruz, started a program that year to train and certify court interpreters, so I did get some training. Oddly enough, Monterey was one of the few places in the United States where interpreting was taught, at both the Monterey Institute of International

Studies and the Defense Language Institute, which taught foreign languages, and trained military interpreters. However, not much of that knowledge must have crossed over into legal interpreting in Monterey, because the course I attended at the courthouse was pretty basic.

Everywhere it was the same. Across the country, as the number of LEP persons increased, the use of more professional, trained interpreters did as well, albeit very slowly. Several centers of court interpreter training were established, the most famous being the National Center for Interpretation at the University of Arizona, founded in 1979. From the same circles in Arizona later emerged the basic text of the profession, a magisterial volume now in its second edition, *The Fundamentals of Court Interpretation* (González *et al.*, 2012). The National Center for State Courts, also founded in the 1970s, became an important resource for state court systems which were attempting to improve interpreter services. On their part, the interpreters created a professional organization, the National Association of Judicial Interpreters and Translators, which certifies interpreters, holds an annual conference, facilitates communication between court interpreters, and produces position papers on matters of importance to interpreters and the courts.

What is, and what is not interpreting

So what is interpreting? It has always existed in some form. However, what is considered modern professional interpreting debuted on the world stage at the Nuremburg trials in Germany after World War II, where the proceedings were interpreted simultaneously, using microphones and headsets (Baigorri-Jálon, 2014). Although most bilingual people grow up occasionally interpreting for those around them, this kind of casual "interpreting" is not at all what a trained interpreter does. What a person without interpreter training does, when asked to interpret, is to speak to each person in their own language. The "interpreter" speaks to Person A, and then speaks to Person B. Then the interpreter turns to speak again to Person A. Communication proceeds in the form of parallel conversations in two different languages.

I explain to my students that this is not interpreting, but brokering. A broker is a go-between, someone who not only communicates between two people or groups, but perhaps leads them to agreement. Interpreting is not brokering. A trained interpreter is not having two parallel conversations (O'Laughlin, 2011: 182–184). An interpreter listens intently to an utterance, committing it to memory, and then repeats exactly what was just said, but in the other language. Rather than functioning as a broker, the interpreter is more mechanical, more like a telephone, allowing Person A to have a direct conversation with Person B (Berk-Seligson, 2002a: 210). If the interpreter is able to interpret simultaneously, then that conversation proceeds at the same speed as any other conversation. However, if the person doing the "interpreting" is not trained, what usually happens is that the "interpreter" does not merely repeat, but brokers and summarizes as needed. Instead of hearing what everyone has been saying in a court hearing, for example, a LEP litigant using an untrained, ad-hoc interpreter may only hear a summary, such as, "Well, the attorneys have been discussing your situation, and the judge really thinks you should move out of that house."

Paradoxically, to interpret properly one must *not* do many things, while doing others at a very high level. At the top of the list of things not to do is to take sides or do anything other than repeat what has been said. Court interpreters, unlike community interpreters,

carefully avoid becoming involved in the cases they work on, or even speaking to the LEP participants at any length. They must be neutral, and be seen to be neutral and disengaged. What is at the top of the list of things that must be done, and done well? The three basic skills of the court interpreter are consecutive interpretation, simultaneous interpretation, and sight translation. Many might suppose that the most difficult task of the court interpreter is to interpret for someone on the witness stand, when consecutive interpretation is employed. This is the moment when the interpreter is most visible. Although interpreting for a witness is difficult, and involves more memory work, I do not believe it is the hardest task, because any testimony given using an interpreter must slow to the interpreter's pace. The interpreter is actually in a position of greater control when interpreting for a witness, because everything goes through the interpreter.

The most difficult task for the interpreter is actually to interpret simultaneously for the defendant when there are legal discussions between the judge and the attorneys, or when there is a witness on the witness stand who uses a great deal of specialized terminology. In these circumstances, the interpreter has no control over the pace of the proceedings, or over the technical nature of the arguments, or the heights of the rhetoric. Everything said in the courtroom must be 1) heard, 2) understood, and 3) interpreted. The speed of the average courtroom proceeding, and of speech in general, is 160 words per minute, and it is actually very difficult to simultaneously follow and comprehend a proceeding, while at the same time one is producing an interpretation in another language. Just *hearing* all that is being said is hard for someone who is speaking at the same time. The fact that legal language and technical references are constantly being used compounds the problem. Nevertheless, it is common for interpreters to be called upon to repeat all that is said for hours at a time. As fatigue sets in, this difficult job can become almost impossible.

One researcher had this to say about simultaneous interpretation:

> The task is extremely complex: though simultaneous listening and speaking rarely occurs in every day verbal behavior, simultaneous interpreters managed not only to listen and speak simultaneously for reasonable lengths of time, but also to carry out complex transformations on the source-language message while uttering their translation in the target language. From the point of view of cognitive psychologists the task is a complex form of human information processing involving the perception, storage, retrieval transformation, and transmission of verbal information. Furthermore, linguistic, motivational, situational, and a host of other factors cannot be ignored.
> (Gerver, 1976: 166-167)

This is, then, an extremely difficult task, because courtroom exchanges can be highly technical and filled with legal jargon, and the exchanges can also take place very quickly. The interpreter normally does not know who will speak next, or what they might say. If the content of the case being discussed is unknown, it is usually difficult for an onlooker to follow and comprehend a discussion taking place between a judge and the attorneys, let alone interpret it simultaneously into another language, yet that is what an interpreter is required to do.

Another problem the interpreter must resolve is the differences between legal traditions: once he or she has understood the legal concept just mentioned – for example, "perjury", "continuance without a finding", "indictment", or anything else – then

an equivalent must be found in the target language. If there is no equivalent concept, then the interpreter must paraphrase. All this takes quick thinking and considerable familiarity with the two legal systems and their respective vocabularies. When the target language is another Western language, the search for an equivalent legal term is usually not impossible, but if the target language is not part of the Western tradition, then an equivalent term may not exist.

I also mentioned a third activity above which is part of the interpreter's basic skills: this is sight translation. Sight translation is the reading of a document, and interpreting it as one reads. One might be handed a birth certificate, or a decree of divorce, or any other document and be asked to read it – or rather to translate it – out loud. Sometimes interpreters must decline to immediately produce a sight translation. If a document is too long or complex, or if the material is a video or sound recording, then an interpreter should not attempt to render a translation of it on the spot.

Language mixing

Because the task of court interpreting is so daunting, it is not error free. Errors are made by court interpreters all the time, simply because an interpreter is making split-second decisions about the meaning of complex speech. (Many mistakes are simply errors of omission. This normally happens when speech is so complex that the interpreter cannot follow some idea, and therefore leaves it out.) However, no matter how often an interpreter makes errors, when interpreting fast-paced arguments or complex legalese, these are not the errors that interpreters themselves remember. The most memorable errors, and the most humorous, arise when one is interpreting for an LEP person and that person throws in English words or phrases. These English words, in the mouths of the LEP community, have usually changed their pronunciation to conform to the phonetics of the community's native language. It is not uncommon for an interpreter to interpret for a LEP person for a considerable length of time without any difficulty, and then suddenly have no idea what was said, because the person has spoken in their version of English.

I will give a few examples concerning Spanish-speaking LEP persons: I once interpreted for a Puerto Rican who had filed a suit against his employer, claiming that he had been discriminated against on the job because he was Hispanic. One of the examples of mistreatment which he offered was that he was assigned to work outside in the winter, when others were not. In a deposition he was asked what clothes he wore outside, and he explained that at work he wore overalls, but in the winter he put on "*ropa* warmer", which I took to be a combination of Spanish and English and translated as "warmer clothes". (Please note that this does make sense.) However, as the discussion about his clothing continued, I realized that he had not said "*ropa* warmer", but "*ropa warmar*" i.e., "clothes from Wal-Mart". His point was that he had had to go out to buy heavy clothing in order to stay warm on the job.

Here is another example: a Spanish interpreter moved to my state, Massachusetts, and she began working in the courts before she had fully mastered the local lingo. One day she consulted the other interpreters in the courthouse about why so many people there were talking about not eating. "What is this about *no como*?" she asked. "Why do people here say, *Yo vivo no como*?" (I am alive, but I do not eat.) All the other interpreters had a good laugh when they heard this, because, in that particular city, many of the Hispanics lived on North Common St., and after much repetition and distortion in Spanish,

"North Common" had come to be pronounced "*No' Como*"'. The correct translation of *Yo vivo no como* is "I live on North Common".

Because immigrants living in the US are surrounded by English words and names, they all add or mix English into their speech (Cabral, 1985; Stavans, 2003). The resulting mixed speech can be mispronounced English, such as the two examples given above, or loan words, i.e., English words taken up into the other language. Some Portuguese speakers in the US, for example, often speak of being *bizado*, which means "busy", sometimes "very busy", and will prefer *aparcar* or *parquear* to *estacionar* when speaking about parking a car. Pidgin English is also heard, and codeswitching, which is to go back and forth between two languages. An experienced interpreter will generally know the most common loan words and how other words have been transformed, to the point that he or she does not give the mixture of English and the other language any thought. However, a change of mentality is sometimes needed, because one must learn to accept that one is often interpreting immigrant English into mainstream English. I tell my students, "If you simply cannot understand what someone is saying, it is probably English".

Problems in the current era

There have been many advances in the creation and maintenance of a corps of capable court interpreters in the United States. Nevertheless, as one looks back over the developments of the nearly 50 years since the *Negrón* decision, the results are still mixed. In some places court interpreting is functioning at a respectable level, but in others, it is not. A few states in particular have moved much too slowly to recognize the LEP's right to an interpreter in court. The Georgia Supreme Court, for example, did not rule until 2010 that a criminal defendant had a right to an interpreter (Davis, 2016: 4) and, according to the National Center for Access to Justice in New York, ten states—Alaska, California, Illinois, Nevada, New Hampshire, North Carolina, Oklahoma, South Dakota, Vermont and Wyoming – do not mandate interpreters in all criminal and civil cases (Davis, 2016: 2).

It can be said that, despite the evolution of court interpreting in the United States into a profession, progress in one language does not necessarily transfer over into other languages, and progress in one region or group of courts does not necessarily transfer over into all courts. Interpretation in Spanish is more common, more studied, and more supported than interpretation in other languages. When an interpreter is needed in the United States, 70% of the time the LEP person speaks Spanish. For this reason, the norms of court interpretation have focused on this language. In other languages, the resources can be much fewer, and the standards lower.

Because the United States welcomes immigrants from all over the world, it is inevitably the case that interpreters are needed for some very rare languages. In the case of a rare language, sometimes the "interpreter" is simply the person in the ethnic group who has been in the United States the longest or who has learned the most English, but otherwise has few qualifications, academic or otherwise. When using an interpreter for a rare language of this sort, special preparation is required by the court, as well as greater awareness and flexibility on the part of the professionals who are working with the interpreter (National Association of Judicial Interpreters and Translators, 2006).

In essence, the level of achievement in the field of court interpreting is inevitably uneven, because of variations in language and locality.

Pressure from two directions

When the current US Secretary of Labor, Thomas Perez, was in charge of the Civil Rights Division of the Department of Justice, he began a program of enforcement to assure greater LEP access in state courts. In 2010 he wrote a pointed letter to administrators in all state courts. In this letter he recognized that some states were making progress with LEP issues, while others needed to make improvements (U.S. Department of Justice, Civil Rights Division, 2010). The Department of Justice has continued to investigate conditions in state courts and to urge courts to achieve greater compliance since then. The Department prefers to work in collaboration with the states which are not in compliance, rather than take more aggressive actions, such as filing a lawsuit against them. If a state is ready to make needed improvements, then a Technical Assistance Agreement may be drawn up, as happened in 2015 with the State of Hawaii (U.S. Department of Justice, Civil Rights Division, 2015). A more punitive measure would be to issue a Letter of Finding, which the Civil Rights division did in the case of North Carolina (U.S. Department of Justice, Civil Rights Division, 2012). In the letter mentioned above, then-Assistant Attorney General Perez made it clear that LEP persons needed greater access and more services, not only in the courtroom itself, but at all stages of litigation and criminal process.

At the same time that the Department of Justice began insisting on greater access to justice for LEP persons, the numbers of persons needing assistance, and the number of languages they speak, has continued to increase. Some states now find themselves in a budgetary bind over the procurement of interpreters. In 2014 an article appeared in the *New York Times* regarding problems in the state of New Mexico and elsewhere: "As the Demand for Court Interpreters Climbs, State Budget Conflicts Grow as Well" (Santos, 2014). Particularly in those states with a high number of LEP residents, like New Mexico, where one in three residents speak another language at home, state budgets have repeatedly failed to cover the costs of interpreters. Supplying interpreters seems to be a growing problem, even in areas of the country which traditionally did not have a significant immigrant population.

In California, the state with the greatest number of LEP persons, and where the greatest number of languages is spoken, interpreter problems have become acute (Davis, 2016: 6-8). Interpretation for civil cases has only been provided by the state government in California since 2015, and interpreters in California are fighting just to be adequately paid (Interpreters Guild of America, 2016). The Massachusetts Trial Court, facing an increasing need for interpretation and federal demands for greater access, is trying to somehow reduce the cost of meeting these needs. To that end, it has taken steps to downsize interpreter services and to pay interpreters less than the state's own standards provide. The administration is also assigning fewer interpreters to do the same amount of work. All of these measures have reduced the availability of interpreters. The interpreters responded by filing a complaint with the US Department of Justice and a lawsuit before the courts of Massachusetts (Feathers, 2015; Massachusetts Association of Court Interpreters, 2016).

As the number of LEP persons grows, and the cost of providing interpreters services becomes more burdensome, many courts have considered "technological solutions", namely Video Remote Interpreting or telephonic interpreting. Since interpreters must normally travel to a court, and then wait before being used, the expectation is

that using this technology would vastly reduce the cost of providing interpreter services. However, the implementation of these measures is controversial, for two reasons: the interpreters who provide video or telephonic interpreting are usually paid less than in-person interpreters, may have much lower abilities, and are typically not certified legal interpreters. Therefore, they do not have the skills, technical vocabulary and local knowledge which is needed to render proper service. The second problem is that court interpretation is very tasking and complex work, as detailed above, and hearing and understanding all that is said is difficult for someone who is actually present in the courtroom. The likelihood that court interpreting could be done adequately by someone who is not even in the room is slim. For these two reasons, remote interpreting, either by phone or by video, normally equates to a considerable reduction in quality. In the legal context, this is a very serious issue. There may be situations where remote interpreting is warranted; it may be fine for simpler exchanges, such as a deposition, with its question/answer, question/answer format. It also is adequate for basic communication, or as a last resort when no interpreter is available. However, until better guidelines emerge on the use, and the limitations, of remote interpreters, their usage in court will remain controversial (González *et al.*, 2012: 1059–1090).

Beyond the courtroom

Despite the problems mentioned, court interpreting is nevertheless now a normal, standardized feature of civil and criminal justice in most of the United States. How it will be paid for, or how it will evolve in the current era of advancing technology, is not clear, but foreign-language interpretation is established in the United States as a criminal defendant's right and a normative feature of justice. Now there is a new aspect to consider: the federal government has been pushing steadily for more attention to the language rights of LEP persons, both in civil proceedings and in earlier and later stages of criminal cases, meaning at police stations, in probation offices, and other venues. In the field of legal interpreting, this seems to be the new frontier, the area where expansion and adaptation of services can be expected. In particular, I believe that in the future there will be more and more attention paid to interpretation issues at the time of an arrest, when evidence is being gathered by the police.

My work as an expert

I have evolved from being a court interpreter and interpreter trainer to working primarily as an expert. For this work I am almost always hired by a defense attorney, and almost always for a criminal case in which the defendant is either an immigrant or is LEP. My work as an expert is usually concerned with what happened in an encounter with the police, or with police evidence, such as a wiretap or a statement made during interrogation.

A small handful of my cases concern what has taken place in a courtroom, usually in the context of an appeal. For example, I testified in the case of a man who was freed from jail after 19 years for a murder he did not commit. The defendant was from the Dominican Republic, and the evidence was clear that the actual killer had spoken with a Puerto Rican accent. I testified about the differences between the two accents and how readily these differences would be apparent to the witness, given his background. These language issues in this case were not explored in the original trial, so the motion for a new trial were allowed due to ineffective assistance of counsel. I was pleased that my

testimony led to the release of an innocent man (*Commonwealth v. Echavarria* ESCR 1994-2407). I have also worked on cases on appeal over the interpretation provided, or not provided, to a defendant or a witness during a trial.

Procedure under intense focus

However, most of my cases concern encounters with, or actions taken by the police. After the criminal justice system was reformed by the Warren Court (i.e., when Justice Warren was Chief Justice of the Supreme Court in the 1960s), one primary concern of criminal defense attorneys in the United States has been police procedure. The reforms made by the Warren Court stemmed from the recognition, after decades of observation, that black and poor defendants, especially in the South, were afforded little in the way of due process. Even in death-penalty cases, a defense attorney might be appointed only for the day of trial, and a police official might extract a confession from a suspect using any means at his disposal. The eventual reaction to these abuses in the Supreme Court was a reformulation of criminal law to focus on procedural rights found, or rooted, in the Constitution, such as the right to remain silent, or the right to not be subjected to unreasonable searches or seizures (Stunz, 2011: 196–215). These reforms have had a broad impact on the courts, shifting much of the focus in criminal cases onto the actions taken by the police in obtaining evidence and deciding to prosecute. If, for example, a kilo of cocaine is discovered by the police, the defense attorney must try to show that the steps leading to its discovery were procedurally improper. If a defendant gives a statement, then the defense attorney will try to have the statement suppressed, since one has a Constitutional right to remain silent.

For this reason, my work as an expert also focuses on police procedure and equal protection. To return to the example above, involving the discovery of cocaine, if the police maintain that the defendant gave them permission to search his vehicle, I might verify whether the defendant knows enough English to have given the police that permission without the assistance of an interpreter. For example, in one recent case of mine, a man with drugs in his car supposedly had a conversation with the police and answered such questions as, "Is there any contraband in the vehicle?" My testing showed he spoke very little English, not enough to have a conversation, and did not know the meaning of words such as "contraband". Of course, I take several measures to ensure that the subject is not underperforming on the tests I give, knowing that he would have every interest in so doing. For example, in this case one of the things I did to make sure the client was not faking a lower proficiency in English was to show up at his house speaking only in English, since nothing about my appearance would suggest that I speak Spanish. I quickly verified that he could not have a conversation in English (*Commonwealth v. Peguero*, ESCR2014-434) Another example of this type of English proficiency case would be that most common of crimes, the DWI, or Driving While Intoxicated. Did the police give the testing instructions and options in English? If they did, then how could the defendant have understood them, if his English is rudimentary or nonexistent? There are many cases of this sort in our courts, and I have worked on over a hundred of them.

Cultural differences

Sometimes I am called upon to explain the cultural background of a defendant. Cultural commentary is seldom needed in the case of someone from Latin America or Europe, because the culture of these places is somewhat familiar, and is often not that different from

the culture of the US. However, if the defendant is from the other side of the world, or comes from a remote or underdeveloped area, then an awareness of that person's culture or background is usually not part of the experience of the average American. Cultural issues should be presented and considered as part of criminal cases involving foreigners or immigrants, in part because otherwise judgments will be made based entirely on the dominant culture's assumptions. To be fair, a finder of fact must be informed regarding any cultural matter that is beyond his or her experience. In this way, any member of a minority or foreign culture before the court receives the same treatment as does someone whose culture is well-known to the finder of fact (Renteln, 2004: 6). In fact, I have found that an expert report or testimony regarding cultural issues can be not only illuminating, it can become central to the case. Through the expert, an attorney can lead a judge or jury to see the extremely different mindset of the defendant, or that a lack of education and sophistication make him or her less culpable. In many cases there are misunderstandings due to the differences of culture or language, and these can be corrected by the expert (Moore, 1999). For example, I worked on a case of an African high school student charged with Indecent Assault and Battery. There were many misunderstandings in that case. For example, the victim and her father had not made clear that the two high school students who met in the public library were romantically involved. Because of an error on the defendant's passport, the police also thought that he was older than he really was. I detailed the many problems in the case, including issues with the Miranda Warning and the statement of the defendant, and it was simply dismissed once the district attorney read my report (*Commonwealth v. Nyanquor*, 1134 CR 3244).

In some cases where the culture of the defendant is quite different, the defense can even invoke the "cultural defense", which is the proposition that, although the actions taken may have been illegal in the United States, there was no mens rea, no criminal intent, because of a different cultural mindset (Renteln, 2004). I have had several cases like this, such as that of the Cape Verdean who faced deportation because of having used corporal punishment on his children (*Commonwealth v. Mendes*, 1407 CR 3160), or the Chinese student who went to the campus police to confess to rape (*Commonwealth v. Wang*, HSCR2013-00077).

This student was involved in a complicated love triangle: his girlfriend had another boyfriend in China. He and the girl had sexual relations, and the other boyfriend soon found this out. Such a revelation could have huge consequences for her. A girl who has had sexual experiences with other boys will not be regarded as very marriageable in China. In fact, she may be seen as completely compromised. Just as in traditional Western societies, in China there is a double standard for men and women, and a boy, by contrast, would not suffer any stigma or social consequences himself if it were known that he had had sexual experiences with more than one girl.

To learn more about this case, please see Appendix A.

I will now turn to cases involving language issues.

Multilingual police officers

Most times the solution police use to overcome a language barrier is to find a police officer who can speak the same language as the witness or the defendant. One of the reasons they do this is because they know that another officer will automatically be "on their side" (González *et al.*, 2012: 471). I am called to examine many cases like this,

and I often discover that the officer in question does not speak the other language well enough to use it on the job. Typically, these bilingual officers are what is known as "heritage speakers", that is, they are not immigrants, but the children of immigrants. They themselves have grown up and gone to school in the United States, where instruction is in English. However, the language used in the family, especially by the parents, is not English, but their native language. Heritage speakers usually speak English perfectly, but speak their parent's language imperfectly. Although their pronunciation is usually very good, their vocabulary can be quite limited (Velásquez, 2015: 156; Hislope, 2003: 14). Most of them have never lived, as a teenager or an adult, in a country where their parent's language is spoken, nor have they ever read a book in their parent's language. Most bilingual people, including interpreters, speak one language better than the other, and heritage speakers are no exception. Their primary language is English, and they cannot express themselves fully in their parent's language (Portes and Schauffler, 1996).

There are many cases involving this issue. Independent interpreters are seldom used by the police, and there is little awareness of problems of bias and language competence of police officers (Berk-Seligson, 2002b, 2009). In fact, this has been called the most serious problem that LEP persons caught up in the criminal justice system face:

> The increased tendency for law enforcement agencies to use officers who possess only minimal proficiency in the language in which they interrogate or interpret during custodial interrogations, in combination with their conflicting adversarial role, is the most significant barrier to equal access in the criminal justice system for LEP populations.
> (González *et al.*, 2012: 471)

I would like to illustrate what can happen when a policeman is the interpreter by excerpting from the report from one of my cases, *Commonwealth v. Torres*, 1434 CR 3814. This concerned a man from Honduras who was in Massachusetts temporarily, while working on a job site. He was staying at a Days Inn motel, and this motel was also used as temporary housing for some poor families with children. Some of these children were in the habit of invading his room, where they would talk to him, lie on the bed and watch TV. Some mornings when he was not working he would cook eggs and feed them, because he had a fondness for children. One morning the fact that he let the children into his room got him into trouble: a five-year-old girl was about to fall off the bed, so he grabbed her to prevent the fall. As he did so, she turned her head and her lips brushed against his. This made her feel uncomfortable. She was learning to distinguish where people could and could not kiss each other, and had been told that she could not kiss anybody on the mouth. She went to tell her mother what had just happened, and the mother became alarmed and feared the worse – that the man had purposely kissed the girl, and put his tongue into her mouth (in the same way that he had in fact kissed the mother!). The police were called, and the man was later interrogated, using a police interpreter.

This interrogation was carried out by a detective, who perhaps believed himself capable of getting a confession out of even a very cunning pedophile. To arrive at an admission, he exploited every nuance of what he was hearing, and used a number of manipulative tricks to overwhelm the suspect. Unfortunately, the police interpreter, although considered to be the best in that area, did not have the interpreter skills nor the basic language ability to convey all of what was being said by the suspect or the

detective. In the end, there was indeed a confession, but it may have been the interpreter, rather than the suspect, who made the confession.

I testified at a motion hearing to suppress this statement, which focused not only on the errors detailed here, but on the Miranda Warning, which was similarly flawed. The police interpreter also testified, and freely admitted that his Spanish and his interpreting were not error free. The result of the hearing was that the statement was suppressed. Later, at trial, the suspect was found not guilty. Although this case ended in acquittal, the suspect was not released from custody because he was a transient; he spent many months in jail awaiting trial on the serious charge of Indecent Assault and Battery on a Child under 14. Of course, this positive outcome was due to there being a recording of the interrogation. Recordings are now required for interrogations in serious cases in Massachusetts.

To learn more about this case, please see Appendix B.

The Miranda warning

The Miranda Warning and the linguistic and psychological concerns that come to bear when an uneducated, mentally challenged, or LEP person is warned have been extensively studied (Dearborn, 2011) with the greatest contribution being made by a group of scholars led by Richard Rogers. The work of the "Rogers Team", as it is known, has now been gathered and summarized in a book called *Mirandized Statements* (Rogers and Drogin, 2014).

In addition, the many problems and complexities of the language used in Miranda Warnings, including the use of legalese, grammatically-complex sentences, words with multiple meanings, passive constructions, abstract nouns, conditional clauses, and unfamiliar vocabulary has recently been outlined in a most helpful list of recommendations entitled, *Guidelines for Communicating Rights to Non-native Speakers of English in Australia, England and Wales, and the USA*. This was created by an international group of concerned scholars and professionals, the Communication of Rights Group, and it represents the distilled results of a generation of research. I make use of all this scholarly material when I write a report about a LEP person's ability to speak and understand English and to comprehend the specific language of the Miranda warning.

When the Miranda warning is given in a language other than English, another set of issues arises, and it usually concerns the written translation of the Miranda warning, or the ability of the policeman reading the warning to actually pronounce the words and to convey the content of the warning (Shuy, 1998: 52–54). There is no required language for the Miranda Warning, either in English or in any translation. I sometimes find that the written translation of the Miranda Warning contains serious errors, because the translation was done by a person with no training in translation, and often with limited literacy. More often, I find that the police officers reading or speaking the warning have not said it properly. This happens because the police officers in question are heritage speakers and have a limited vocabulary in their parent's language. When such persons attempt to read a Miranda Warning, they find many words that are not part of their everyday vocabulary, and they cannot pronounce them.

For an example of a Miranda case, please see Appendix C.

What did the suspect say?

I have had cases in which the words constituting the evidence of the case were in a language other than English. The critical words might be found in a confession or a statement, or they might be recorded in a text message, or the wiretap of a phone call. Whether a statement is taken by the police from a suspect, or a phone is being tapped, if the conversation is not in English, disputes often arise over the meaning of what has been recorded. In cases like this, the only solution is to create what is called a Forensic Transcription and Translation (FTT) (González *et al.*, 2012: 999–1042; National Association of Judicial Interpreters and Translators, 2009). An FTT is a document with three columns. In the first column are the names of the speakers and any notes about extraneous noises, movements or gestures seen in a video, or periods of silence. In the second column is the language found on the recording; this is the transcript. In the third column one creates a translation of the words in the second column, if they are not in English. An FTT is a very powerful tool, because the original words can be seen and easily compared with the translation. Although time consuming to create, an FTT can lead quickly to the resolution of the case, because everyone can see exactly what was said, and also what it means.

In 2014 I worked on a very large case involving a Colombian drug trafficking circle, *Commonwealth v. Areiza*, WOCR2011-00765. This drug distribution network was being closely monitored by the federal authorities and by the state police. The police had placed hidden GPS devices on the dealers' vehicles, and the dealers' phones were being tapped. In order to obtain extensions on the court orders required to tap the dealer's phones, the police wrote long and detailed affidavits which included translations of some of the phone calls they were recording. (Regarding the reliability and acceptability of this practice, see Berk-Seligson, 2000). The police reported that the dealers were speaking in some unusual dialect which they could not identify, and the police admitted in their affidavits that they did not understand all of the words they were hearing.

When this case went to court, the police analysis of the recorded phone calls was immediately called into question by the defense attorneys, who pointed out that the police could not be sure of what was being said in the supposedly unknown dialect. The police had also left out parts of the conversations which they considered irrelevant. This was true: the police translations were clearly inaccurate and speculative. To resolve these problems, I was hired by the defense to determine what was actually on these wiretap recordings. Because the words were often indistinct and sometimes purposely vague or coded, transcribing and understanding the conversations was not an easy task. However, I realized that the speakers were *paisas*, and were speaking an urban dialect from Medellín called Parlache. The dealers may have felt confident that few would understand their conversations, because Parlache is little understood outside of the slums in which it originated (Castañeda Naranjo and Henao Salazar, 2001, 2006). I was only able to determine the precise meaning of everything the *paisa* drug dealers were saying because one of my students at the time was from Medellin, and she reviewed the entire FTT.

To learn more about this case, see Appendix D.

Conclusion

Because we live in an increasingly globalized, multilingual, multicultural world, efforts must be made to include everyone and treat everyone fairly. In the courts of the United

States, equal access to justice for linguistic minorities is a matter of law since 1978, and progress has been made in supplying qualified interpreters to litigants in the courts, and even beyond the courtroom. The provision of interpreters to LEP persons in the courts of the United States is necessary to the administration of justice and is also a matter of public safety. There has been steady progress in improving the quality of court interpreters. Nevertheless, today the results are still uneven, because the number of people needing interpreters continues to increase, and the money allotted to pay for more interpreters is inadequate. The number of languages in which interpretation is needed is also quite high and is increasing. More resources are needed to meet the new demographic realities. Interpretation is a matter of fundamental fairness. In addition, immigrants make an enormous contribution to the American economy, and the least that should be done for them in return is to provide them with interpreters if they need to appear before a court.

If the evidence in the case is in a foreign language, if the Miranda warning was delivered in a foreign language (or in English to someone who speaks very little English), if a non-professional interpreter was used to extract a confession, or if there are major cultural differences that figure in a case, then something more than an interpreter is required. Because there are more and more immigrants, and more and more cases involving misunderstandings, inaccuracies, cultural differences, and the like, experts in language and culture like myself are sometimes needed to ensure accuracy, fair treatment and "equal justice for all". In the four examples which I have given above, an expert report or expert testimony was essential to a basic understanding of the evidence and to a proper resolution of the case. If the LEP litigant in each of these cases had merely been provided with an interpreter, they would have understood their trials, but they may have nevertheless lost their cases. As I explained in the first half of this article, an interpreter's job is to repeat what has been said by someone else. If a case contains important evidence in a foreign language, or there is a considerable cultural difference, or if the interpreter used was incompetent, then only an expert in foreign languages and cultures can do the research, write the reports, testify and clarify these matters.

Notes

[1]This assumption has been challenged by a recent study which found that since 2000, at least if one considers the jobs that immigrants are doing, rather than their socio-economic status upon arrival, the fastest growth has been in the middle-income sector. The "hourglass" shows some signs of filling in through the midsection. However, the same study confirmed that most immigrant jobs were in the lower sector, and that the new middle-income jobs went to those immigrants able to speak English (Capps *et al.*, 2010).

Cases

Arizona v. Natividad, 111 Ariz. 191 (Ariz. 1974)
Commonwealth v. Echavarria, ESCR 1994-2407
Commonwealth v. Mendes, 1407 CR 3160
Commonwealth v. Nyanquor, 1134 CR 3244
Commonwealth v. Peguero, ESCR 2014-434
Commonwealth v. Ramirez, BRCR 2014-175
Commonwealth v. Torres, 1434 CR 3814
Commonwealth v. Wang, HSCR 2013-77
Lau v. Nichols, 414 U.S. 563 (1974)

Perovich v. United States, 205 U.S. 86 (1907)
United States ex rel. Negron v. New York, 434 F.2d 386 (2d Cir. 1970)

References

Ahmad, M. (2007). Interpreting Communities: Lawyering Across Language Difference. *University of California at Los Angeles Law Review*, 55, 999–1085.

Asociación de Academias de la Lengua Española, (2010). *Diccionario de americanismos*. Madrid: Santillana.

Baigorri-Jálon, J. (2014). *From Paris to Nuremberg: The Birth of Conference Interpreting*. Amsterdam and Philadelphia: John Benjamins.

Berk-Seligson, S. (2000). Interpreting for the Police: Issues in Pre-Trial Phases of the Judicial Process. *Forensic Linguistics*, 7(2), 212–237.

Berk-Seligson, S. (2002a). *The Bilingual Courtroom: Court Interpreters and the Judicial Process. With a New Chapter*. Chicago: University of Chicago.

Berk-Seligson, S. (2002b). The Miranda Warnings and Linguistic Coercion: The Role of Footing in the Interrogation of a Limited-English-Speaking Murder Suspect. In J. Cotterill, Ed., *Language in the Legal Process*. Palgrave MacMillan.

Berk-Seligson, S. (2009). *Coerced Confessions: The Discourse of Bilingual Police Interrogations*. Berlin and New York: de Gruyter.

Cabral, A. (1985). *Portingles: The Language of Portuguese-Speaking People in Selected English-Speaking Communities*. PhD thesis, Boston College, Boston.

Capps, R., Fix, M. and Yi-Yang Lin, S. (2010). Still an Hourglass? Immigrant Workers in Middle-Skilled Jobs. Online, available at http://www.migrationpolicy.org/research, last accessed 1 March 2016.

Castañeda Naranjo, L. S. and Henao Salazar, J. I. (2001). *El parlache*. Medellín: University of Antioquia.

Castañeda Naranjo, L. S. and Henao Salazar, J. I. (2006). *Diccionario de parlache*. Medellín: La Carreta.

Castillo, J. (2015). At least 350 languages spoken in us homes. CNBC New Report Nov. 4. Online, available at http://www.cnbc.com/2015/11/04/at-least-350-languages-spoken-in-us-homes-new-report.html, last accessed 5 March 2016.

Castles, S. and Miller, M. (2009). *The Age of Migration: International Population Movements in the Modern World*. New York and London: Guillford, 4th ed.

Cronheim, A. J. and Schwartz, A. H. (1976). Non-English-Speaking Persons in the Criminal Justice System: Current State of the Law. *Cornell Law Review*, 61, 289–311.

Davis, W. (2016). Justice Moves Slowly for Those Who Need Interpreters. *American Bar Association Journal*, Online, available at http://www.abajournal.com/mobile/mag_article/justice_moves_slowly_for_those_who_need_interpreters, last accessed 17 March 2016.

Dearborn, D. C. (2011). You Have the Right to an Attorney, But Not Right Now: Combating Miranda's Failure by Advancing the Point of Attachment Under Article XII of the Massachusetts Declaration of Rights. *Suffolk University Law Review*, 44, 359–375.

Feathers, T. (2015). Translators: Courts Fail Immigrants: Interpreters File Complaint that State Doesn't Provide Adequate Services to Non-Native Speakers. *The Sun*, Lowell, Massachusetts, 26 August, 1, 8.

Gass, S. and Selinker, L. (2001). *Second Language Acquisition: An Introductory Course*. Mahwah, New Jersey and London: Lawrence Erlbaum.

Gerver, D. (1976). Empirical Studies of Simultaneous Interpretation: a Review and a Model. In R. W. Brislin, Ed., *Translation: Applications and Research*, 165–207. New York: Gardner.

González, R. D., Vásquez, V. and Mikkelson, H. (2012). *Fundamentals of Court Interpretation: Theory, Policy, and Practice*. Durham, North Carolina: Carolina Academic Press, 2 ed.

Hislope, K. (2003). A Reading Study of Spanish Heritage Speakers. *The Reading Matrix*, 3, 1–21.

Interpreters Guild of America, (2016). Online, available at http://www.interpretersguild.org/, last accessed 20 March 2016.

Machleidt, W. (2015). Auggangslage und Leitlinien transkultureller Psychiatrie in Deutschland. Online, available at http://www.psychiatrie/de/data/downloads/36/00/00/Beitrag_Machleidt.pdf, last accessed 14 March 2016.

Massachusetts Association of Court Interpreters, (2016). Online, available at http://www.macigroup.org/, last accessed 25 March 2016.

McConville, M. (2011). *Criminal Justice in China: An Empirical Inquiry*. Cheltenham, United Kingdom and Northhampton, Massachusetts: Edward Elgar.

Moore, J. (1999). *Immigrants in Courts*. Seattle and London: University of Washington.

National Association of Judicial Interpreters and Translators, (2006). Position Paper: Preparing Interpreters in Rare Languages. Online, available at http://www.najit.org/publications/RareLanguages200609.pdf, last accessed 19 March 2016.

National Association of Judicial Interpreters and Translators, (2009). Position Paper: General Guidlines and Minimum Requirements for Transcript Translations in Any Legal Setting. Online, available at http://www.najit.org/documents/Guidelines%20for%20Transcript%20Translation.pdf, last accessed 13 March 2016.

O'Laughlin, M. (2011). How to Use an Interpreter: A Manual for the Legal, Medical, Business and Service Communities. In A. Karp and W. Wolf, Eds., *12th Annual Conference Volume, Juvenile Delinquency & Child Welfare Law 2011*. Boston: Massachusetts Continuing Legal Education.

Portes, A. and Schauffler, R. (1996). Language and the Second Generation: Bilingualism Yesterday and Today. In A. Portes, Ed., *The New Second Generation*. New York: Russell Sage.

Prado, M. (1993). *NTC's Dictionary of Spanish False Cognates*. Chicago: NTC Publishing Group.

Renteln, A. (2004). *The Cultural Defense*. Oxford and New York: Oxford University Press.

Rogers, R. and Drogin, E. (2014). *Mirandized Statements: Successfully Navigating the Legal and Psychological Issues*. Chicago: American Bar Association.

Salazar, A. (1990). *No nacimos pa' semilla*. Bogota: Planeta.

Santos, F. (2014). As the Demand for Court Interpreters Climbs, State Budget Conflicts Grow as Well. *New York Times*, June 14.

Shuy, R. (1998). *The Language of Confession, Interrogation, and Deception*. Thousand Oaks, London, New Delhi: Sage.

Situ, Y. and Liu, W. (1996). An Overview of the Chinese Criminal Justice System. In O. Ebbe, Ed., *Comparative and International Criminal Justice Systems: Policing, Judiciary and Corrections*. Boston and Oxford: Butterworth-Heinemann.

Stavans, I. (2003). *Spanglish: The Making of a New American Language*. New York: HarperCollins.

Stunz, W. J. (2011). *The Collapse of American Criminal Justice*. Cambridge, MA and London: Harvard.

U.S. Census Bureau, (2014). Table DP02, 2010-2014 American Community Survey 5-Year Estimates: Selected Social Characteristics in the United States (2014 Table DP02). Online, available at http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/DP02/0100000US|0400000US25, last accessed 18 March 2016.

U.S. Department of Justice, Civil Rights Division, (2010). Language Access Guidance Letter to State Courts from Assistant Attorney General Thomas E. Perez - August 16, 2010. Online, available at http://www.lep.gov/guidance/guidance_DOJ_Guidance.html#SC, last accessed 10 March 2016.

U.S. Department of Justice, Civil Rights Division, (2012). Letter of Finding Against North Carolina Courts. Online, available at https://www.justice.gov/sites/default/files/crt/legacy/2012/03/08/030812_DOJ_Letter_to_NC_AOC.pdf, last accessed 11 March 2016.

U.S. Department of Justice, Civil Rights Division, (2015). Technical Assistance Agreement between the Department of Justice and the State of Hawaii. Online, available at http://www.lep.gov/old_posts/oldposts.htm, last accessed 11 March 2016.

Velásquez, E. (2015). *Reconocimiento léxico y comprensión lectora de los estudiantes de español como lengua de herencia*. PhD thesis, University of Houston, Houston.

Wang, Z. (1996). The Police System in the People's Republic of China. In O. Ebbe, Ed., *Comparative and International Criminal Justice Systems: Policing, Judiciary and Corrections*. Boston and Oxford: Butterworth-Heinemann.

Yum, J. O. (1991). The Impact of Confucianism on Interpersonal Relationships and Communication Patterns in East Asia. In L. Samovar and R. Porter, Eds., *Intercultural Communication: A Reader*. Belmont, California: Wadsworth, 6th ed.

Appendix A

The students thought that going to the campus police and saying that the girl was raped would save her reputation, and they assumed the police would handle the matter quickly and informally, as is done in China (McConville, 2011: 504). Although the charge of rape in China can be punished by death, what the police do in most cases with someone who has committed this crime, or a similar offense, is more like Western-style mediation and moral instruction than it is a meting out of punishment. Based on the belief that people are generally good, though corruptible, and that the best tool is education, the Chinese system of informal justice focuses on reformation and the restoration of harmony. Confucian teachings are the basis of moral reasoning in China (Yum, 1991) and the Confucian underpinnings of this approach to crime are evident:

> The history of mediation in China can be traced back two thousand years to when the principles of Confucianism reformed the Chinese people's behavior. The Confucians believed that criminal punishment could not bring people to awareness of high morals in human society; educating the offenders and the general public in moral principles, on the other hand, could assure knowledge of the correct way to behave. Therefore, only the most serious offenses would be left for the formal justice authority to deal with by punishment. The vast majority of civil disputes and less serious criminal offenses were disposed of locally, most of them through mediation that was regarded as a form of moral education.
> (Situ and Liu, 1996: 132-133)

This moral education was part of a policeman's responsibility. A local policeman in China is considered a community leader and organizer, as much as having a purely police function. In fact, police stations are called Public Safety Bureaus, and they usually employ social workers, as well as police, to deal with matters such as this. When intervening in a civil matter or a minor criminal matter, the focus is on gathering all the relevant information, self-criticism (what we might call a confession) and correction by a police officer. That officer has complete discretion in terms of punishment, which might range from a warning, a $50 fine, or a short detention at the police station (Wang, 1996: 162–163).

With this concept of law enforcement in mind, the two Chinese students went to the campus police and the male student told them, "I want to, to warn and make sure this thing will not happen again". He was asking them for a warning. When I later asked him what he expected would happen when he contacted the campus police, the defendant told me that he expected to be given a lecture. In China such a scolding might last several hours.

The police were very surprised by his appearance before them and by his voluntary admission to a felony. They did not merely give him a warning, but questioned him and then passed the matter to the district attorney, who indicted him for rape. He was dismissed from the university, and found that he could not apply to any other university. I testified at a hearing held to request the suppression of his statement. I said in court that I did not think he understood the Miranda Warning and did not understand that making this confession to the police could have serious consequences. I explained the very different way that this matter would be handled in China. The judge thought this over, and said that although it was a difficult decision, in the end he would allow the

student's statement, his confession, to be used as evidence. Later the student went to trial and was fortunately found not guilty. This case may not have gone to trial if the female student had not gone back to her other boyfriend and decided to maintain the fiction that she had been raped. This is a very good example of a case with important cultural aspects.

Appendix B

I will excerpt several pages from my report which summarize 30 minutes of this very interesting interview, in the hope that the way in which the confession came out can be better appreciated. In the report several of the most important sections are in italics. I have removed the names of the speakers from this excerpt.

The "confession" of a suspected pedophile

> Beginning at 28:03 – After continued questioning, the suspect admits, by saying the word *sí*, that he possibly "kissed" the child by accident. However, the suspect never uses the word "kiss". He says this happened due to her moving her head as he held her.
>
> 28:09 – So you did kiss her on the lips?
>
> 28:17 – It was like an accident. Poorly translated into English.
>
> 28:36 – It was not intentional.
>
> This is followed by several questions seeking to establish that he did kiss her on the lips, accidently or on purpose.
>
> 29:36 – The suspect describes an accidental brushing of her mouth when she turned her head. Not translated into English.
>
> 29:59 – He did not stick his tongue out, accidently or otherwise.
>
> 30:14 – The detective announces that they are making progress, and starting to get to the truth.
>
> 30:01 – The detective spends several minutes establishing that the suspect now feels better, having admitted that he kissed the child. This does not make him a child molester. He just likes kids, especially the kids at the Days Inn. The suspect says yes at several points.
>
> 31:39 – A series of questions now begins about the hotel stay and whether he feels lonely.
>
> 35:02 – What does the suspect think should happen to people who kiss little girls? This question is not understood.
>
> 35:52 – The suspect answers that he does not know, after first clarifying that he has not molested any child.
>
> 36:30 – When asked, he also says he does not know why someone would do this.
>
> 36:49 – Denies having thoughts (or been tempted) to kiss a child with his tongue.

37:03 – Asked why he would not kiss a child in this manner, the suspect answers that to do so intentionally is wrong.

37:06 – *The police interpreter makes a serious translation error while interpreting the last answer, saying, "if I had done it intentionally, it is not right". The suspect had merely said that if it was done intentionally, then it would be wrong.*

37:21 – The suspect is then asked, even if he does not know what the punishment should be, would a person who did this deserve a second chance? Because the police interpreter uses the Spanglish word "chance", this question is not immediately understood.

37:56 – The suspect says that if it is done intentionally, then the person does not deserve a second chance.

38:17 – The suspect says that if it happens accidently, then the person does deserve a second chance.

38:26 – The suspect adds that everyone makes mistakes. No one is perfect.

38:44 – The detective announces that the reason this happened is because of "his feelings for the girl". This is translated into Spanish awkwardly. The English: "And, and, and I believe that his feelings for the girl is the reason why he kissed her on the lips". The Spanish: "*Dice que el piensa que el motivo fue, eh, la manera que Usted aprecia a esa nena fue la razón que Usted la besó en los labios*". (He says that he thinks that the motive was, uh, the way that you like that little girl was the reason that you kissed her on the lips.)

39:13 – The suspect tries to place the event within the context of simple friendliness and affection.

39:27 – The suspect says that he likes kids. He likes kids a lot. This is mistranslated into English as "he wants children". (The error is hard to understand: the verb *querer*, which can mean to want and to love, was not used. The suspect said, "Aprecio a los niños. Los aprecio mucho.")

40:14 – The suspect returns to a description of the underlying event, explaining again that the child was about to fall and that he may have brushed her lips when he picked her up and she turned her head.

41:24 – *The police interpreter commits another major translation error. Instead of saying that the suspect brushed against her lips when she turned, he says "in the process of her moving from cheek to cheek was probably when I kissed her."*

42:00 – Focusing on the side-to-side movement, the detective asks if his original intention was merely to hug the child. "So, it was initially going to be a hug?" In the questions that follow, the detective attempts to establish that this is a major contradiction, since he had originally said that he picked up the child and intentionally kissed her on the cheek.

43:24 – Although the suspect speaks unguardedly at this point about both kissing and hugging the child, the detective announces "his story's changed at least two or three times."

44:35 – Unable to make the suspect see or acknowledge any contradiction, the detective switches topics and asks what his feelings are towards the mother, and whether he is attracted to her. He establishes that the suspect has kissed the mother in the past.

46:14 – The detective now begins a monologue about the fact that the way that the suspect has kissed both mother and daughter is the same, his wanting to know why he wanted to kiss the child like that, and his belief that he is not a molester, and that God knows, as the detective knows, what really happened.

48:06 – The detective says that this was not an accidental kiss.

49:12 – The suspect says his only motivation was his fondness for children.

50:43 – The detective returns to his conviction that he knows this happened because he tried to kiss the mother in the same way.

51:55 – *The suspect finally says, if this was a mistake, if what I did is wrong, then I would like to apologize with all my heart.*

51:59 – *The police interpreter commits another major translation error, eliminating all the qualifiers, but not the apology: "Says with all my heart, I would, I would, uh, ask for forgiveness."*

52:02 – The detective offers the suspect his forgiveness.

52:22 – The suspect reiterates his love for children.

52:37 – *The suspect says I know it's not right. At least I know it now.*

52:39 – *The police interpreter commits another major translation error, eliminating the qualifier. "He knows it's not right."*

53:20 – The suspect continues to focus on the innocent nature of his actions, which was just eating with the kids and enjoying their company.

53:27 – The detective characterizes what happened as something unusual for the suspect, because he doesn't normally try to kiss children on the mouth with his tongue. It was a mistake, and people make mistakes.

54:08 – Told that he made a mistake, the suspect agrees.

54:13 – The detective tells the suspect that he is basically a good person, but that he has made a mistake. However, he must feel better having confessed his mistake. He does not prey on children. Again, he must feel better.

55:21 – The suspect agrees.

55:28 – The detective announces that he has violated the law and will be arrested.

58:54 – Some 3.5 minutes later the suspect finally realizes that he is about to be arrested and asks "for what?" He asks, *¿Cómo?* This word could be translated more fully, as "how did we get to this point?"

After many denials and plausible explanations, at 51:55 we arrive at the suspect's "confession." However, what he says is hedged with qualifiers: *if* this was a mistake, *if* what I did is wrong, then I would like to apologize with all my heart. However, these qualifiers are absent from the English translation. In the English translation he merely asks for forgiveness. The same thing happens moments later, when he says that he knows it's not right, at least he knows it now. This is perhaps the most incriminating thing that he has said in the entire interrogation, but again he qualifies what he is saying, "At least I know it now." The police interpreter leaves out the last phrase, so the suspect appears here to make another unqualified confession.

Appendix C

These problems are compounded when a policeman tries to deliver a Miranda Warning in a language that is not his parent's language, but a related language. For example, let us look at a Miranda Warning given in Spanish by someone who was raised in a Portuguese-speaking household: This Warning was part of the case, *Commonwealth v. Ramirez*, BRCR2014-0175.

In this excerpt from my affidavit the standard English Miranda Warning is given in Bold type, followed by the officer's Spanish version, and then my translation. If the officer mispronounced a word, I deliberately misspelled the corresponding word in the translation, so an English speaker can see that the word was not clearly pronounced. Words in Portuguese are marked with a [P]. In my translation, if I thought a word would be incomprehensible to a Spanish speaker, I left that word in Portuguese. The numbers correspond to the comments that follow each section, or "prong."

1. Introduction

Le vol, le vol…la bena…voy a ler para usted. Antes que usted a fala alguna pregunta, usted tiene que entender que le vo' decir para usted.

I goan, I goan[1]—the gooda[2] I am going to [P]red[3] for you. Before you to [P](*fala*)][4] any question, you have to understand what I am going to say for[5] you.

Comment:

1. ***Le vol* for *Le voy.*** I have misspelled *going*, because the word *voy* was mispronounced.

2. ***La bena***. This word does not exist in Spanish or Portuguese. I represent it with "the gooda" since *bem* is Portuguese for "good" and the equivalent word in Spanish is *bien*.

3. ***Ler* for *leer.*** "to read" Here a Portuguese word is substituted for a Spanish word.

4. ***Fala.*** "speak" A Spanish speaker would have little notion what *fala* means, unless that person also spoke some Portuguese. The Spanish is an unrelated word, *hable*.

5. ***Para* for *a.*** "for" This error is due to Portuguese interference. The meaning is changed from "read to you" to "read for you."

2. First Prong: YOU HAVE THE RIGHT TO REMAIN SILENT.

Usted tene el direito de parmanicer en silencio.

You habe[1] the [P]ret[2] to ramen[3] silent.

Comment:

1. ***Tene* for *tiene.*** This verb is mispronounced.

2. ***Direito* for *derecho.*** The Spanish word is replaced by the Portuguese equivalent. Because of pronunciation differences this word would probably not be understood by a Spanish speaker.

3. ***Parmanicer* for *permanecer.*** The key word, "remain," is also mispronounced.

3. Second Prong: ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.

Qualquer coisa que usted dizer pode ser usada contra usted en la corte.

[P]Eeny [P]thang[1] that you [P]sea[2] [P]kin[3] be used against you in the court.

Comment:

1. ***Qualquer coisa* for *cualquier cosa.*** "anything" Portuguese is substituted for Spanish, but both sound fairly similar.

2. ***Dizer* for *diga.*** "say" Here the infinitive in Portuguese is substituted for the present subjunctive—employing both bad grammar and the wrong language.

3. ***Pode* for *puede.*** "can" Portuguese word substituted for Spanish.

4. Third Prong: YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.

Usted tiene el dereito de hablar con un abogado para, para conselhos antes de hacer nós alguna pregunta.

You have the [P]ret[1] to speak to an attorney for, for [P](conselhos)][2] before asking us[3] any question.

Comment:

1. ***Dereito* for *derecho.*** "right" Here a mispronounced Portuguese word is substituted for a Spanish word.

2. ***Conselhos* for *consejo.*** "advice" A very different-sounding Portuguese word here is substituted for the Spanish. This would likely not be understood by a Spanish speaker.

3. ***Nós* or *nos*?** "We" or "us" *Nós* is the Portuguese pronoun used for the first person plural (= we). The equivalent in Spanish is "nosotros." However, no Spanish speaker would understand "hacernos" as "we ask." It could only be understood as "ask us." Here the one about to ask the questions, therefore, is the suspect.

4. The idea of the attorney being present during the interrogation is not communicated.

5. Fourth Prong: IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONS IF YOU WISH.

Si usted no tem un abogado, un abogado estará apuntado para usted.

[1] If you do not [P]habe[2] an attorney, an attorney will[3] be aimed[4] at you.

Repetition:

Ah, ¿dónde estaba? Espera, eh…pero un abogado será pre—si usted querer contratar un abogado, un abogado será presentado para usted. Ah, estará pronto hacer, ah, si usted tevera una pregunta. ¿Usted entende sus dereches?

Where was I? Hold on, um, but an attorney will be int–, if you want[5] to hire[6] an attorney, an attorney will be introduced for you. Uh, it will be [P] soon to do[7] ah, if you hive[8] a question. Do you [P]anderstan[9] your rets?[10]

Comment:

1. Apart from issues of pronunciation and the substitution of Portuguese for Spanish, there is a fundamental flaw in the fourth prong: The suspect is not told that consultation with a lawyer is free. Instead he is told that a lawyer will be pointed at him if he wants to *hire* one.

2. ***Tem* for *tiene.*** "have" Here a Portuguese verb is substituted for a Spanish one.

3. ***Estará* for *será.*** "will be" Here the wrong Spanish verb is used. This error would not prevent comprehension.
4. ***Apuntado.*** "pointed" Here the officer is apparently attempting to find a Spanish equivalent for the English word, "appointed." However, the word "apuntado" is a false cognate, meaning that it has a similar form, but a different meaning. Note this explanation in the *NTC Dictionary of Spanish False Cognates*:

   > **Apuntar** does not mean "to appoint": it means to note, write down, aim at, point, score (in sports) dawn, sprout, prompt (in theater)…**Apuntó** al corazón y lo mató. He **aimed** at its heart and killed it.
   > (Prado, 1993: 14–15)

5. ***Si usted querer* for *Si usted quiere.*** "if you want" This is a grammatical mistake in Spanish, substituting the infinitive for the present indicative. This error is due to interference from Portuguese, compare: "se você quiser."

6. ***Contratar.*** "hire" Again, the fourth prong has been delivered incorrectly by removing the notion of a free attorney, and replacing it with references to a paid attorney.

7. ***Estará pronto hacer.*** This phrase does not make sense. Although "pronto" can mean "ready" in Portuguese, it does not have this meaning in Spanish, only "soon" or "promptly."

8. ***Tevera.*** "would have" (?) This verb is either a mispronounced form of the Portuguese pluperfect indicative, "tivera," or a mispronounced form of the Spanish imperfect subjunctive, "tuviera." A Spanish speaker would struggle to understand this mispronounced verb.

9. ***Entende* for *Entiende.*** "understand" Here a Portuguese verb is substituted for a Spanish one.

10. ***Dereches* for *derechos.*** "rights" Here the Spanish word is badly mispronounced.

5. So-Called Fifth Prong: YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

Not given.

Conclusion as to the Miranda Warning

Most of the errors on the part of the officer are mispronounced words in Spanish or the substitution of Portuguese words and syntax for Spanish. These mispronunciations and substitutions are so frequent in the four prongs given that I believe the Miranda is not understandable, on this basis alone. However, there are also two problems of erroneous information: 1) The suspect is told as part of Prong Three that *he* will be questioning the police officers, not that they will be questioning him and it is implied that he can only talk to the lawyer before the questions, not that the lawyer can be present for the whole interview, and 2) in the Fourth Prong the suspect is not told that he can have a free attorney, rather that if he wants to *hire* one, one will be "pointed" at him in court.

This statement was suppressed because of the faulty Miranda Warning, as are many statements in the cases that I examine. The Miranda Warning is often handled incorrectly in cases with LEP defendants.

Appendix D

To illustrate the nature of the work on this case, I will excerpt here a conversation between two of the drug dealers. This was the first call that the police included in their affidavits, and they note that the conversation was held in Spanish, so that the police would be less able to understand it. They also claimed that this call was proof that one of the dealers, Héctor P., had a higher rank in the organization than previously supposed. They surmised this because of the use of certain terms, such as "mijo" (a contraction of "mi hijo"), which literally means "my son" but in Colombian usage is closer to the sense of the British "old son." "Mijo" is an interjection that is used by virtually everyone to address virtually everyone. I chose to translate "mijo" as "old son" because in English the term "my son" sounds stilted and is very seldom used in everyday speech. "Old son" is used in several countries, and expresses nothing more than affection. In my report I made a list of all such terms of endearment and what their meaning is to *paisa* Colombians. This is found below. In this case the police had not interpreted the term correctly.

Here is an excerpt from the police affidavit, then their translation call—which has several of these terms—followed by my FTT and my comments, which are preceded by the sign "»". [UI] in my FTT means "unintelligible".

> **Police Affidavit:**
> On Wednesday, May 25, 2011 at approximately 1:33 PM Darney G. received an incoming telephone call from Hector P. utilizing telephone numbered (774) 641-3543. During the conversation the two parties conducted their conversation exclusively in Spanish. It should be noted from my training and experience I know individuals engaged in illegal activities will often use languages other than English if at all possible as a means to shield their activities from police scrutiny. During the conversation Darney G. referred to Hector P. as "Papito". Additionally, Hector P. called Darney G. "My Son" and "My Brother". It is my opinion that Darney G. and Hector P. were arranging a meeting, confirmed through surveillance the following day (as described below). The conversation was translated and transcribed by Trooper N. Trooper N.'s undercover activities as they relate to the Areiza Cocaine Distribution Organization are detailed at length in the affidavit dated May 24, 2011. Trooper N. has predominantly used Spanish in speaking directly with Darney G. Based on the context of the conversation it is Trooper N.'s opinion that Darney G. is accommodating and deferential to the elder Hispanic male. It is the opinion of this officer, Trooper N. as well as my direct supervisor Sergeant S. that Hector P. now occupies a higher position within the Areiza Cocaine Distribution Organization than Darney G. Hector P.'s involvement in the Areiza Cocaine Distribution Organization is detailed in the May 24, 2001 affidavit and it should be noted that according to the Registry of Motor Vehicles, he is approximately sixteen years older than Darney G. Furthermore, this conversation is an indication that Hector P. has advanced to a higher position within the organization then he was previously thought to hold. The following is a translation of this conversation.

HECTOR P.	My son.
DARNEY G.	My old man.
HECTOR P.	How are you doing?
DARNEY G.	Good and You Papa.
HECTOR P.	Good. Are you resting?

DARNEY G.	Yes my son. What else is there to do?
HECTOR P.	Aah that's good my brother.
DARNEY G.	Are we going to eat later on or will we go out to breakfast tomorrow Papito?
HECTOR P.	Will you have enough time?
DARNEY G.	Papito we will communicate tomorrow. Will tomorrow be easier?
HECTOR P.	Perfect my son, perfect.
DARNEY G.	Well then Papito we will meet at ten-thirty or eleven. Will you be ready?
HECTOR P.	I will be ready. Call me when you get out of work so I will be sure.
DARNEY G.	Ah Papito everything is good.
HECTOR P.	(Inaudible)
DARNEY G.	God Bless. Ciao.
HECTOR P.	Ciao.

My FTT of the same conversation:

5-25-11 at 1:33 PM

Speaker	**Transcript**	**English Translation**
Héctor P.	[UI], mijo.	[UI], old son.
Darney G.	¿Qué va, mi viejo, cómo está?	What's happening, my old man, how you doing?
Héctor P.	Bien, ¿Y tú, Papá?	Fine, and you, Pops?
Darney G.	Bien, descansándolo, ¿o qué?	Fine, taking it slow, you know?
Héctor P.	Sí, mijo, ¿qué más se hace pa'aquí?	Right, old son, how else would you do things around here?
Darney G.	Ah, está bien, hermano.	Ah, fine then, bro.
Héctor P.	¿Qué más pasa, hijo?	What else is happening, son?
Darney G.	Allí, mijo. ¿Qué te iba a decir? Eh, allí que nos vamos a comer ahorita más tarde, o desayunamos mañana?	There [you have it,] old son. What was I going to say? Oh, so, are we getting together over there to eat later on, or shall we have breakfast tomorrow?
Héctor P.	Papito…	Handsome…
Darney G.	¿Cómo está de tiempo, mijo?	How are you doing for time, old son?
Héctor P.	Papito, nos comunicamos que mañana a la mañana le queda fácil, ¿o qué?	Handsome, let's be in touch about tomorrow morning, if that works for you, or?
Darney G.	Perfecto, mijo, perfecto.	That's perfect, old son, that's perfect.
Héctor P.	Hágale, pues, Papito. Mañana nos vemos por allá a las 10:30-11:00, ¿listo?	Good enough, then, Handsome. We'll see each other over there at 10:30-11:00, okay?
Darney G.	Listo, mijo. ¿Me pega la llamadita, pues, apenas, apenas, apenas salga, este, o ya cuando llegue del trabajo, para que estemos seguros que si…?	Okay, old son. Can you give me a jingle, then, as soon, or as soon, as soon as you get there after work, so that we can be sure if we're…?
Héctor P.	Hágale, pues, Papito. Todo bien.	Good enough, then, Handsome. Everything's good.
Darney G.	Bueno, pues, la Virgen te acompañe.	Well, then, may the Virgin go with you.
Héctor P.	Que Dios te bendiga. Chau.	God bless you. Bye.
Darney G.	Chau.	Bye.

[1:00]

Analysis of Call 1 on 5-25-11 between Héctor P. and Darney G.

Detective L. makes the following claims relative to this phone call:

1. Spanish (and other languages) are used by criminals instead of English to shield activities from police surveillance.

   »While law enforcement personnel might think this may be true generally, Héctor P. and Darney G. are both Colombians, and they would naturally speak to each other in Spanish, not in English. Indeed, it would be highly unusual for them to speak to each other in English.

2. Darney G. refers to Héctor P. as "Papito." Hector P. calls Darney G., "My Son," or "My Brother."

   »As mentioned above, these terms do not tell us much in terms of the relative subordination or hierarchy of the two speakers. They are terms of endearment, and indicate a certain level of intimacy or trust. However, there is a basic problem of attribution in this call: the police transcriber switched the names and voices for this dialog. [The audio of this conversation is attached.] He does this the first time when Darney G. speaks. He believes that when Darney G. says, "How are you doing?" on the third line of his translation, that this is Héctor P. taking a turn and speaking, but it is not. [Determining this does not require any sophisticated analysis of voice patterns. It is simply a matter of careful listening.] Therefore, the entire dialog in the affidavit has the wrong names before the turns. It is Héctor P. who refers to Darney G. as Papito, which means Handsome, and Darney G. who refers to Héctor P. as "my/old son" or "brother."

3. A meeting is being planned for the next day.

   »Apparently true.

4. Darney G. is being "accommodating and deferential" in his dealings with Héctor P., who, according to the Registry of Motor Vehicles records, is 16 years older than he is. Apparently Héctor P. now occupies a more senior position in the cocaine distribution organization. "[T]his conversation is an indication that Héctor P. has advanced to a higher position within the organization than he was previously thought to hold."

   » The word, "*mijo*," literally "my son," among Colombians is not a marker for subordination, as the police transcriber seems to suppose. In any case, the word "son" is used a total of seven times in the dialog and is used by both figures. There are few signs of any subordination, and the tone overall is simply familiar and affectionate. It appears to be a very mutual relationship. The only sign of possible subordination or deference is when Darney G. *asks* Héctor P. if he wants to meet for a meal that day or the next morning. There is nothing in this dialog to indicate that Héctor P. has advanced to a higher position in any organization.

An independent analyst

My analysis of this call was very helpful to the attorney representing Héctor P., who was in fact *not* a leader in the organization, and therefore received a lesser sentence.

Once the content and meaning of the most important of months of conversations was laid out in the FTT, I then moved to an analysis indicating which conversations were most incriminating and why. Before the FTT was created, everyone was relying on translations made by police officers, which were inaccurate, speculative and incomplete. Once my report was made available, the case moved quickly to resolution. There was no need for a trial once the linguistic evidence was clear.

I played an unusually central role in this case because, although the police knew they had broken up a large-scale cocaine distribution ring, they admittedly could not understand the strange Spanish used in the telephone calls which were their primary evidence. I *could* understand the calls (after some serious study), and I was able to take the position that I was acting as a neutral, independent agent who could be trusted by both sides. To establish this, I supplied a missing piece, which was a scholarly description of the Parlache dialect (found below), and I also made much of the fact that I never interviewed, or even met any of the defendants. In the end, the police and all the attorneys did indeed use my assessment of the evidence as the basis of a negotiated resolution of the case.

In this and in many similar cases, the first step for me as an expert is to determine what exactly was said, and translate that into English. The only way to do this properly in most cases is to create an FTT. An FTT can be a difficult undertaking, and I happily engage an assistant, as well as consultants who are from the countries in question. Such voice recordings can be very indistinct and highly colloquial, and many heads are better than one when trying to determine their meaning.

An Excerpt from my Report Identifying and Explaining the Parlache Dialect

Trooper L. addresses the dialectical issue in his second affidavit:

> A significant amount of the conversations occurring over telephones numbered (508) 287-4912 and (508) 232-9140 involve parties of Hispanic descent. As a result the conversations are, in most cases, in Spanish language. The difficulties associated with the foreign language intercepts are exacerbated by the use of Colombian specific dialect used between Jorge A., Darney G., Alejandra G. and others. Although the root language is still Spanish, there are numerous terms and meanings that are specific to not only Colombians but Colombians involved in the narcotics trade.

Trooper L. then goes on to list the five members of the translation team and makes some observations about the language being used, such as the fact that references to money in the conversations can be camouflaged as statements about time. He says that this is noticeable especially if the time reference does not fit the rest of the conversation. He also notes the meaning of certain unusual terms, such as "pelado" for "youth," or "boleticas" for "dollars."

In fact, the language being spoken in these intercepts is one specific to a particular city and a social class: it is, or was originally, a social dialect spoken by marginalized and

drug- or crime-involved young people in Medellín, Colombia. I base this identification on the accent, as well as the presence of the following 25 terms, and the distinctive way that they are used. These terms have all been identified by scholars as typical of this dialect:

> abrirse, billete, camellar, carechimba, cerdo, chacho, a la fija (*or* a la f), guaro, güevón, harina, hermano, man, marica, nieve, nos vidrios, ome, papá, parcero, pelado, peludo, primo, sisas, socio, trabajar, viejo.

The speakers in the intercepts also employ many terms that are common to Colombian speech in general, but the way that they use the 25 terms listed above is typical specifically of the social dialect in question. This dialect is referred to by scholars and many others as "*Parlache*" (PAR-LA-CHAY). (References omitted.) In its original form the *Parlache* dialect was not generally understood by other Colombians, so that when a seminal book about the Medellín slum dwellers was published in Colombia in 1990, it needed to include a glossary of their *Parlache* vocabulary.
(Salazar, 1990)

The identification of the dialect used in these phone calls makes it possible to properly translate many obscure passages. For example, when Jorge A. says to Darney G., "mañana nos vidrios," this is translated by the police as "tomorrow to the mirrors," which makes little sense. In fact, it means, "I'll see you tomorrow." As to the question of whether the defendants are using this dialect to further camouflage their operation, or whether this is the exclusive argot of drug dealers, meaning that the fact that they speak in Parlache is thus prejudicial, let me say that the use of any dialect such as this is a social statement: Someone who speaks the language of the *comunas*, the slums of Medellín, is communicating to others what city he or she is from, and what strata of society he or she belongs to. This is an argot that is not intended to be understood by outsiders. *Parlache* is a social statement that manages to combine and overlap poverty, criminality and cool, just as we see in the United States with regard to hip-hop or a gangsta rap-inspired vocabulary. While *Parlache* is the language of the Medellín *traquetos* (the drug traffickers), speaking Parlache does not make someone a *traqueto*. Indeed, the latest summary statements regarding Parlache, such as that on Wikipaisa, portray *Parlache* as now becoming a more neutral cultural expression that certainly began among the disenfranchised or the criminal element of Medellín, but which then was taken up by Colombian youth culture and now is used as a mark of protest by young people of all classes of society and in other parts of the country.

Terms of Endearment

One distinctive aspect of these conversations that is also typical of *Parlache* is the constant use of terms of endearment. These intercepted calls are studded with terms such as "pops, old son, buddy, esteemed sir," etc. Since one of the most important issues in this case is to determine the hierarchy of the drug operation, and whether anyone is being addressed in a deferential manner, the terms require investigation and explanation. I put the terms into tables showing frequency of use, and then I explained the terms in order of prominence, with the most-used terms coming first. The first table below concerns Jorge A.'s conversations with Darney G.:

Term	Speakers		
	Jorge A.	**< >**	**Darney G.**
Güevón	12		13
Hermano (or Mano)	27		15
Mijo	4		13
Hombre (or Ome)	6		2
Licenciado	10		0
Papá	20		22
Papi	2		6
Papito	1		29
Parcero	2		28
Socio	1		0
Tío	1		0
Mi viejo	1		15

Jorge A. and Darney G.

16, or half, of the 32 Spanish-language calls are calls between Jorge A. and Darney G. In these calls, the terms most used are ***hermano***, ***parcero*** and papito. *Hermano* is Jorge A.'s favorite term for Darney G., and *parcero* and *papito* are Darney G.'s favorite terms when addressing Jorge A. *Parcero* is used 28 times by Darney G., and *papito* 29 times. *Hermano* is used 27 times by Jorge A.. In addition, Darney G. calls Jorge A. *hermano* 15 times, and both *parcero* and *papito* are also used by Jorge A.

Meaning of the Terms:

Hermano (brother) is a common term of address in *Parlache*, and means buddy. I have translated it throughout as "bro."

Parcero (cell mate) is a prison term that crossed over into general usage. In *Parlache* it also means buddy.

Papito is a term of endearment used in many countries to address men. It means "handsome" or "dear," especially when used by women. *Papito* is sometimes used as a nickname, and can be used by adults to address male children in an affectionate manner (Asociación de Academias de la Lengua Española, 2010: 1595). When one is addressing one's own father, it can also function as the diminutive of papá, and means "dear father." I have translated it throughout as "handsome," as this clearly fits the context. Darney G. uses this term 29 times when addressing Jorge A, as noted above.

Papá (father) is used 40 (19 +21) times by both speakers. In *Parlache papá* is used to address friends and acquaintances, and simply means buddy or dude. I have translated it throughout as "pops." *Papi* is a shortened form of *Papá*.

Güevón is an obscenity which can be used as a term of address in a more intimate friendship. It is derived from *huevos* (eggs) and refers to the testicles. It is used in these conversations 11 times by Jorge A. and 12 times by Darney G. In the third person *güevón* means "idiot" or "dumb fucker." This word was translated by the police as "Big Balls," which I believe is too literal. I have translated it throughout as "man," because equivalent English terms with a vulgar undertone, such as "you bastard," are too strong.

Licenciado is a favorite term of endearment of Jorge A. He uses it with Darney G. 10 times. This term is used throughout Latin America to respectfully address a person holding a university degree, such as an engineer, or especially an attorney. In Colombia it is used differently. There it is used as a term of respect, but the exaggerated title is also used jokingly. This means that the term can be used in an inflated manner to elevate the social status of the person addressed. (This is the way it is being used here.) In British English the equivalent would be "guv'nor," or in American English, "sir." I have translated it throughout as "esteemed sir."

Mi Viejo (my old man) in *Parlache* means friend, without regard to age. This is a favorite term of Darney G., who addresses Jorge A. 15 times as *mi viejo*.
I have translated it almost always throughout as "old man."

Mijo (my son) is a Colombianism with little specific meaning, and is often added as a filler. Darney G. uses the term 13 times with Jorge A. I have translated it throughout as "old son."

Socio (partner) is used once by Jorge A. In *Parlache* this term means buddy.

Hombre (man) is used throughout Spain and Latin America to mean man, just as in English.

Tío (uncle) is a term of affection which Jorge A. uses once.

Jorge A. and Alejandra G.

The next largest group of calls is the four calls between Jorge A. and Alejandra G. These are the terms found there:

Term	**Speakers**		
	Jorge A.	**< >**	**Alejandra G.**
Doctor	0		5
Licenciada	3		0
Mi Amor	2		0
Mijo	0		2
Niño	0		2
Señorita	3		0

The exchanges between Jorge A. and Alejandra Gómez are more respectful than those with Darney G. Jorge A. is also more gallant with her because she is a woman.

Meaning of the Terms:

Doctor is a term of respect like *licenciado*, but indicates a slightly higher rank. Like *licenciado*, it is also used jokingly in Colombian speech.

Licenciada, see above.

Mi Amor (my love) is a gallantry.

Señorita (miss) is a very common term of respect throughout the Spanish-speaking world.

Jorge A. and the Unknown Hispanic Male

The next largest group of calls take place between Jorge A. and an "unknown Hispanic male:" These are Calls 10 and 13. The Unknown Hispanic Male's phone number was (857) 389-0568.

Term	**Speakers**		
	Jorge A.	**< >**	**The Unknown Hispanic Male**
Caballero	0		1
Güevón	7		4
Hermano	17		5
Hombre	1		1
Licenciado	1		2
Papá	2		0
Parce	1		0
Mi viejo	1		0

This list of words used in these three calls is strikingly similar to that for the Jorge A.-Darney G. conversations. *Hermano* is the term used most frequently – 22 times in all, and six other words of the eleven terms found in the Jorge A.-G. conversations are also employed here, even the vulgar *güevón*.

Meaning of the Terms:

Caballero (gentleman) is a term of respect equivalent to our "sir."

Doctor, see above.

Güevón, see above.

Hermano, see above.

Hombre, see above.

Licenciado, see above.

Papá, see above.

Parce, short for *Parcero*, see above.

Mi Viejo, see above.

Jorge A. and Wbeimar G.

There are two calls that take place between Jorge A. and Wbeimar G., the brother of Alejandra G.. Here are the terms they use:

Term	**Speakers**		
	Jorge A.	**< >**	**Wbeimar G.**
Güevón	1		4
Hombre	0		1
Papá	2		0
Parcero	0		3
Mi viejo	1		1

These terms are quite similar to those used when Jorge A. speaks with Darney G. or the Unknown Hispanic Male. I will not discuss their meaning, as all the terms have already been considered.

Jorge A. and Héctor P.

There is one call between Jorge A. and Héctor Puerta. Here are the terms they used:

Term	**Speakers**		
	Jorge A.	**< >**	**Héctor Puerta**
Man	0		1
Mijo	0		1
Mister	0		1
Papá	1		1

One call is a very small sample, and all that is apparent here is that "papá" is employed by both speakers. Two of the other words used, "man" and "mister," are both English. *Parlache* contains a number of English loan words.

Jorge A. and the Revere Dealer

There was one call between Jorge A. and a person that is referred to as the "Revere Dealer." Here are the words they used:

Term	Speakers		
	Jorge A.	< >	The Revere Dealer
Hermano	1		1
Hombre	1		0
Licenciado	1		0
Papá	1		0
Mi viejo	1		0

As noted regarding the previous calls, the vocabulary is quite similar.

Darney G. and Héctor P.

Finally, there is a call between Darney G. and Héctor P, the only call that does not involve Jorge A. Here are the words they used:

Term	Speakers		
	Darney G.	< >	Héctor Puerta
Hermano	1		0
Mijo	4		3
Papá	0		1
Papito	0		3

In this call Darney G. uses *mijo* four times, a term that he had used with Jorge A. 13 times. Héctor P. uses the term *papito* for Darney G. three times.

Conclusion Regarding Terms of Endearment

When one counts up and compares the terms that are used in these conversations, it would appear that Jorge A. uses roughly the same terms with all four men. He favors a few terms, such as "*hermano*," used 45 times, "*papá*," used 26 times, "*güevón*," used 20 times, and "*licenciado*," used 15 times. He addresses Alejandra G. somewhat differently because she is a woman. In general, the same terms are used by those speaking to Jorge A. as he uses with them. Alejandra G. calls Jorge A. "*doctor*," and even asks how his patients are doing, but otherwise the vocabulary appears to be uniform and shows little sign of distinction or hierarchy.

The largest speech sample after that of Jorge A. is that of Darney G. When one considers his choice of terms, most of which were directed at Jorge A., we see that his favorite term was *Papito*, which he used 29 times. This was closely followed by *parcero*, used 28 times. *Papá* follows, used 22 times, and then *mi viejo* and *hermano*, both used 15 times. These are all part of the standard egalitarian vocabulary of *Parlache*. There is

nothing in these terms of respect or endearment that give me a sense of a clear hierarchy or rank. What emerges is a surprisingly informal, very familiar tone, and not one that someone would normally use to address a boss or a superior.

Appendix E

Click here to listen to the call:
http://llld.linguisticaforense.pt/Files/Appendix_E-Call.wav