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ABSTRACT OF THESIS

THE LAW V. THE STRANGER LANGUAGE INTERPRETATION AND LEGAL SPACE IN LEXINGTON, KY

This thesis examines the role of interpretation in legal encounter in Lexington, Kentucky. Through an analysis of legal and interpretation practices, this study seeks to ascertain how these practices may affect non-native or low-proficiency English speakers' (LLPs) experiences with both federal and local laws and legal spaces. This place-based study involves in-depth qualitative research. Using the methodological framework of feminist geo-jurisprudence, this research contributes to our understanding of 1) the limits of the publicity of legal space and, more specifically, the ways in which language barriers can prevent legal inclusion; 2) local strategies and tactics for dealing with the challenges to meaningful access before the law in terms of language as outlined by Title IV of the 1964 U.S. Civil Rights Act; 3) the broader implications of language access for immigrants and non-citizens at the intersection of legal discourse and society (discursive legal space). Furthermore, this research addresses the absence and presence of hospitality (Derrida, 2005) from this site of citizenship negotiation, and it addresses the ethics of hospitality behind the work that attempts to resist legal closure and to enforce laws that protect, rather than persecute, those facing language barriers.

KEYWORDS: interpretation, language minority, legal geographies, feminist geo-jurisprudence, Title VI of the 1964 Civil Rights Act

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28 May 2008

THE LAW V. THE STRANGER
LANGUAGE INTERPRETATION AND LEGAL SPACE IN LEXINGTON, KY

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THESIS

Karen S. Kinslow

The Graduate School
University of Kentucky

2009

THE LAW V. THE STRANGER:
LANGUAGE INTERPRETATION AND LEGAL SPACE IN LEXINGTON, KY

THESIS

A thesis submitted in partial fulfillment of the
requirements for the degree of Master of Arts in the
College of Arts and Sciences
at the University of Kentucky

By

Karen S. Kinslow

Lexington, Kentucky

Director: Dr. Patricia Ehrkamp

Lexington, Kentucky

2009

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The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become. We must alternatively consult history and existing theories of legislation. But the most difficult labor will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past.

-Justice Holmes, *The Common Law*

I. INTRODUCTION

LEXINGTON, KENTUCKY: IMMIGRATION AND ENGLISH LANGUAGE PROFICIENCY, 2000-2007

Lexington (Fayette County) is located in the Bluegrass Region of northern Kentucky. In 2007, the city's population was documented by the U.S. Census Bureau to be 279,044 persons. Within the last decade, Lexington and the greater Kentucky have experienced a recent and rapid expansion in immigration. As reported by the Migration Policy Institute, the foreign-born population in the state changed by 34.3 percent between 2000 and 2007, with Mexican-born individuals (26.5 percent) comprising the majority, in 2007. These changes can be attributed, in part, to the movement away from the traditional gateway immigrant communities to places like Lexington, the "New South" (Winders, 2006), where jobs in construction and light manufacturing are available and the cost of living is lower compared to other parts of the country. As families begin to establish themselves in "non-traditional settlement areas" (Migration Policy Institute) like Kentucky, these connections and word-of-mouth draw others to the region. Kentucky, like other states in the U.S. South, then, has witnessed transformations in its ethnic and racial composition, including the growth of its Latino/a population.

In an increasingly globalizing world, the movement of bodies also entails the movement and relocation of embodied languages. Between 2000 and 2007, the limited English proficient (LEP) population age 5 and older in Kentucky increased by 41 percent from 33,311 to 46,969 persons ("KY Fact Sheet"). In Kentucky, and elsewhere in the U.S., non-English speakers or low-level English proficiency (LEP) individuals are mostly foreign-born. In 2007, 44.3 percent of the state's total foreign-born 5+ population were LEP (*ibid.*); which is to say that these individuals were relying on a language other than English in the practice of their everyday lives and affairs. According to the Migration Policy Institute, rates of English proficiency varied depending on immigrant mother tongues: "71.4 percent of those who spoke Spanish at home were LEP compared to 33.8 percent of those who spoke other Indo-European languages, 58.8 percent of those who spoke Asian and Pacific Island languages, and 64.2 percent of those who spoke other languages." Additionally, rates of English proficiency were reported higher for naturalized citizens than noncitizens. This information is conveyed in the below table:

Table 1:
“Limited English Proficient (LEP) Populations by Citizenship Status, 2006”,
The Migration Policy Institute

Total Household Population of Kentucky, Age 5 and Older	3,929,110
Speak only English	95.9
Speak language other than English	4.1
Speak English “very well”	2.3
Speak English less than “very well” (LEP)	1.8
Native Born	3,819,304
Speak only English	98.0
Speak language other than English	2.0
Speak English “very well”	1.3
Speak English less than “very well” (LEP)	0.7
Foreign Born	109,806
Speak only English	24.5
Speak language other than English	75.5
Speak English “very well”	34.9
Speak English less than “very well” (LEP)	40.6
Noncitizen	70,012
Speak only English	17.7
Speak language other than English	82.3
Speak English “very well”	33.5
Speak English less than “very well” (LEP)	48.8
Naturalized Citizen	39,794
Speak only English	36.5
Speak language other than English	63.5
Speak English “very well”	37.2
Speak English less than “very well” (LEP)	26.3

Source: <http://www.migrationinformation.org/datahub/state2.cfm?ID=KY>

If these state trends reflect transformations in Lexington, the state’s second largest city, then, not only is the ‘face’ of Lexington experiencing changes, then, but so too is the ‘voice’ of the city. In this way, language is a direct implication of new migration flows (Valentine, et al., 2008). As “New Americans” populate “New South” cities (Winders, 2006), new types of encounter arise. These encounters may catalyze in new or emerging immigrant politics and discourses and lead to the formation of new identities, all of which necessitate new ways of communicating. What are the relationships between language and immigrant encounters? How are these newer residents in the Lexington area

accessing the city's resources and services, including legal services? Are they experiencing discrimination? How, then, do language and immigration shape legal encounter? In order to approach these questions, I consider the 1964 Civil Rights Act, particularly Title VI of the Act, which involves access to federally-funded agencies and services.

MEANINGFUL ACCESS:

TITLE VI OF THE 1964 CIVIL RIGHTS ACT & 2001 EXECUTIVE ORDER 13166

“It ought to be possible, in short, for every American to enjoy the privileges of being American without regard to his race or his color. In short, every American ought to have the right to be treated as he would wish to be treated, as one would wish his children to be treated. But this is not the case.”

-President John F. Kennedy, 11 June 1963

The 1964 Civil Rights Act resulted from a bill first brought before the United States Congress by President John F. Kennedy in 1963. It was ratified the following year during the presidency of Lyndon Johnson as the “Civil Rights Act”, after the end of a Democratic filibuster. This piece of legislation, which was conceived to address African American voting rights in the Deep South, was a monumental moment amidst the Civil Rights Movement (approximately 1955-1968) in the U.S. In essence, the Civil Rights Act provides the federal government with the legal leverage to enforce desegregation and anti-discrimination policy. It prohibits discrimination based on race, color, religion, sex, or national origin and makes racial discrimination in public places illegal. It also requires employers to provide equality in employment and resulted in the creation of the Equal Employment Opportunity Commission. As a “prohibition against exclusion” Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1 and its implementing regulations provide that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance” (“Title VI”).

The U.S. Government has termed those who lack English language skills as individuals with “Limited Language Proficiency” (LLP), recognizing that, while most individuals in the United States read, write, and speak English, there are many living and

working in this country for whom English is not their primary language. In the document entitled, “Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency” (referred to from here on as "LLP Guidance") the government reports that, based on the 2000 Census, “over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home”. “LLP Guidance”, from where the LLP designation emerged, was produced in conjunction with the Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” and updated in 2003 to include population information from the 2000 U.S. Census.

The Executive Order, signed in 2001 by then-President Bill Clinton, legally recognizes language discrimination as part of “national origin discrimination” under Title VI of the 1964 Civil Rights Act. Because language barriers can preclude access to government programs and activities, “LLP Guidance” provides guidance or guidelines for avoiding language-based discrimination through the adoption and implementation of service provisions. The “LLP Guidance” is agency specific, and the language of the guidelines is adapted slightly for each agency or organization required to follow its guidelines, including Health and Human Services, the Department of Labor, and the Department of Justice. Both Title VI and Executive Order 13116 addendum apply to all agencies and organizations receiving federal funding “by way of grant, loan, or contract other than a contract of insurance or guaranty” (“Transcript”), and this includes the Department of Justice and local and federal courts.

Language becomes a barrier when, for one, service providers have difficulty serving the needs of LLP populations (Peterson, 2001: 1). The designation of LLPs, then, is not only a matter of communication; it is also an acknowledgement that language differences can be an impediment to *access*, such as access before the law, for example. Specifically, Title VI and Executive Order 13166 call for “meaningful” access:

The Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have *meaningful* access to them. It is expected that agency plans will provide for such *meaningful* access consistent with, and without unduly burdening, the fundamental mission of the agency. The Executive Order also requires that the Federal agencies work to ensure that recipients of Federal

financial assistance provide *meaningful* access to their LEP applicants and beneficiaries. (“Overview of Executive Order 13166”, my emphasis)

Beyond simply ‘access’, or being able to walk through the door, ‘meaningful’ access suggests that those seeking federally-funded services will receive treatment at a level necessary to interact effectively with service providers, the majority of whom, in a U.S. context, are English-speaking. This interaction involves both the ability to relay needs and concerns and to understand the options available, and it requires the implementation of interpretation and translation services in these settings including, translated documents and information pamphlets, the use of language lines,¹ and the physically-present, certified interpreters in the courtroom settings.

Are LLPs in and immigrants to Lexington, Kentucky, gaining *meaningful access* to the law?² And, what are the standards for interpretation that might ensure this? Before delving into the former question, which will be explored throughout the course of this thesis, I first look at both federal and Kentucky state interpretation certification policies so as to better understand some of the actors implicated in the compliance of Title VI and Executive Order 13166 and the possibility for access to law and legal language for the Low Level Proficiency subject, who may also be a recent immigrant.

SPOKEN LANGUAGE COURT INTERPRETATION

“Removing barriers to communication helps ensure that
all citizens receive fair and equal access to justice.”
-The Kentucky Court of Justice (KCOJ)

Interpretation is needed during U.S. court proceedings when there are parties who do not speak English proficiently or only speak a language other than English. The role of the court interpreter is to “completely and accurately” (KCOJ) interpret (say) or translate

¹ “Pacific Interpreters” is one example of a language interpretation provider. Over-the-phone language interpretation services include “Language Line” (<http://www.language-line.com>).

² This question is influenced by a 11 July 2008 article in the *New York Times*, “An Interpreter Speaking Up for Migrants”. This article relays the concerns of an interpreter concerned with the “rapid pace” and “pressure” involved in the hearings for migrant workers arrested at a meatpacking raid in May of 2008. Concerns about interpretation have also been brought up locally in the last decade. For example, the May 2001 edition of *El Defensor/The Advocate* is dedicated to the topic.

(write) what is stated or written during the proceedings of the Court. There are three modes of interpreting including, ‘simultaneous’ interpreting, ‘consecutive’ interpreting, and ‘sight’ interpreting/ translating. Simultaneous interpreting, the most common form of interpretation in the courtroom, happens concurrently with the transmission of the source language and is intended for the party receiving the information in the target language. Consecutive interpreting is meant to be heard by the entire court and happens after the source-language speaker has stopped speaking or taken a pause in speech. Interpreting or translating by sight entails reading a document in the source language and then writing or speaking the contents in the target language. There is a code of interpretation practices, and according to the Kentucky Court of Justice, an interpreter must:

- 1.) Remain neutral and unbiased.
- 2.) Never alter, omit, add or summarize while interpreting or translating.
- 3.) Never show or express emotions during a court proceeding.
- 4.) Never provide legal advice or become an advocate for either party in a court proceeding.

In addition, under the “Code of Professional Responsibility for Interpreters”, interpreters are expected to “maintain an impartial attitude” (3), to “conduct themselves in a manner consistent with the dignity of the courts” (5); to “protect and uphold confidentiality” (6); to conduct self-assessments and to continually improve their language skills (7-9). Conflict of interest occurs when: 1) the interpreter is a friend, relative, or associate of the party requiring interpretation services; 2) the interpreter has previously provided services to the party; 3) the interpreter has assisted a law enforcement agency in the preparation of the case at issue; 4) the interpreter or the interpreter’s spouse or child has a financial stake in the outcome of the case; 5) the interpreter has been involved in the choice of counsel or law firm for that case. An interpreter who is also an attorney is prohibited from serving in both capacities in the same matter or case.

In accordance with the Court Interpreters Act of 1978 and the Amendments of 1988 (18 U.S.C. §§ 1827-1828), the Administrative Office of the Courts (AOC) establishes the guidelines and standards for interpreter selection and use in federal court proceedings. Federally, there are three classifications of interpreters: certified, professionally qualified, and language skilled. For U.S. Courts, certification programs and examinations have been developed for Spanish, Navajo, and Haitian-Creole (uscourts.gov). In languages

other than these three, interpreters are designated as either “professionally qualified” or “language skilled”, as detailed in Table 2:

Table 2: “Federal Language Interpretation Classifications and Qualifications”

CLASSIFICATION	LANGUAGES	QUALIFICATIONS
CERTIFIED	Spanish, Navajo, or Haitian-Creole	Passing the Administrative Office certification examination
PROFESSIONALLY QUALIFIED	All other languages	1) Previous employment with U.S. agency, United Nations, or similar entity. Passing certification examination OR 2) Membership in professional interpreter association with: a) 50+ hours of conference interpreting and b) sponsorship from (3) active members of same organization, who have been members for 2 years, who interpret the same language as applicant, and who will attest to applicant’s performance and accuracy
LANGUAGE SKILLED	All other languages	Can demonstrate “to the satisfaction of the court” the ability to effectively interpret from foreign language to English and <i>vice versa</i> during court proceedings

Information source: U.S. Courts, www.uscourts.gov

In the federal courts, the “single greatest operational requirement” is for Spanish-language interpreters (uscourts.gov). Other interpretation needs, as reported by the federal judiciary, include, Chinese (Mandarin, Cantonese, and Foochow), Portuguese, Vietnamese, Korean, Russian, and Arabic. Spanish is also the major language requiring interpretation in Lexington courts, and this is connected to the immigration influx detailed above. In addition to Spanish, the other key languages requiring interpretation/translation in Lexington, KY are Russian and other Slavic languages and French. This need is due to the large number of immigrants in the area from the former-Yugoslavia as well as immigrants and refugees from French-speaking Africa, including the Democratic Republic of Congo (DRC).

The need for specific language interpreters is dictated by local language needs and is determined by the local district courts. Court interpreters can be either federally or state qualified (to work in federal or state courts), but state certification differs depending on the state certification procedures and requirements. Within the past five years, there has been a state-wide interpreter certification program established in Kentucky. Lexington (Fayette County), however, is one of the few counties in the state with certified staff

interpreters in the Spanish language. And, non-Spanish speakers here are often dependent on contract interpreters, or, in some case, community interpreters, for which the standards of proficiency are not equivalent to those in the state or federally certified programs.

Kentucky has its own “Spoken Language Interpreters” Certification policy, effective October, 2004 and amended November, 2006, and interpreters are also administrated by the AOC. As required by the Kentucky Court of Justice, spoken language court interpreters must successful complete the state certification process, which, like the federal exam entails both a written and oral examination. Kentucky has two levels of spoken language court interpreters:

Table 3: “Kentucky Language Interpretation Classifications and Qualifications”

CLASSIFICATION	QUALIFICATIONS
QUALIFIED LEVEL 1 INTERPRETER	Pass a criminal history check; pass the Kentucky English Written Test; read the Code of Professional Responsibility; take the Interpreter Oath; complete a two-day orientation
CERTIFIED INTERPRETER	Complete qualifications for “Qualified Level 1 Interpreter” AND successfully pass the Kentucky Oral Test, or an AOC approved

Information Source: “Kentucky Certification Policy, Spoken Language Interpreters”

With the understanding that interpretation is central to the practice and formation of law, this thesis focuses on language interpretation- the interpretation and transmission from source language to target language- in a legal context in Lexington, Kentucky. By ‘legal context’, I mean of and pertaining to the law, and this includes interpretation both inside and outside of the courthouse setting and extends to various facets of law. An investigation into the mechanisms and applications of interpretation- to the practices, logics, and politics of interpretation- is foundational to an examination of law and of the roles of the actors/subjects delimited, enforced, and admitted by this institution and its spaces. Interpretation occurs in different modalities, in a variety of legal scales, and within many legal contexts. Because there are overlaps between language interpretation

and hermeneutical interpretation- the interpretation of codified, written law- within a legal context, I treat ‘interpretation’ as a mediated practice, and I find analyses regarding legal interpretation to be applicable to language interpretation in a legal *space*.

THEORETICAL FOUNDATIONS & LAW’S TOUCHSTONES: SOCIETY, SPACE, AND LANGUAGE

“The use and (re)production of law is a central way in which boundaries between groups of people are (re)drawn in everyday life across a variety of different scales. Legal practices and relations can be used in particular ways by people to define themselves (or others), however temporarily, as insiders...or outsiders.”
-Albert White, 2002: 1060

According to Ed Soja (1985: 92), spatiality is “a social product and an integral part of the material constitution and structuration of social life.” Space is understood to be relational; that is, it is given meaning through human endeavors, and it is produced and reproduced by and through socio-spatial relations (see Lefebvre, 2007). Space is not objective; it is experienced and understood differently by different people. This might lead us to ask: How is a space symbolically constructed at the level of the social imaginary, and what are the concrete articulations of this? What are the mechanisms behind the uneven (re)production of a space, and how is differentially manifested and experienced? What social inequalities and political processes of inclusion and exclusion are present, and what are the boundaries of a particular space?

The idea of and questions about space are central to the discussion of law, especially considering the unevenness of rights or access within spatial relations or settings (see Mitchell, 2005a; 2005b) and the spatiality of social life more generally (Soja, 1985). Law is a social phenomenon (see Schwarzenberger, 1943: 94), and, like other social processes, law’s application and structure transform and changes through time in conjunction with changing social interests (Clark, 1990) and with place and scale and historical specificity, or context. As a socio-spatial phenomenon, the space and spatial politics of law exceed what is immediately present and visible so that the force of law (Derrida 2000; Benjamin, 1996) is, in part, tied up in the symbolic power of legal discourse as it relates to the creation and maintenance of difference before and within

legal space. Law's spaces are thus inseparable from the logics of law and its practitioners.

Space and language cannot be easily disentangled, if untangled at all, and this is nowhere more apparent than when the object of study is the law and legal space. Because law -itself a discursive formation- forms a legal or juridical space as it intersects with social, material, and discursive formations of legal subjects (those who have entered into its jurisdiction), then we, following Albert White (2002) above, need to ask through which mechanisms insiders and outsiders are constructed and bounded within or excluded from this space. This is especially important if we take seriously David Sibley's (1995) imperative that social geography, and I would add socio-legal geography, must consider the question of exclusion because power is expressed through domination of space.

Legal discourse is one type of social discourse, which is not only a political resource, but a matter of the politics of interpretation (Delaney, 1993). Interpretation (the act, the *verb*) is central to law in its make-up and law in action. Interpretation happens, *takes place*, not just the explanations and interpretations of the law performed in supreme courts (and legislated and enforced by the other two branches of the system of checks and balances within the U.S. government, for example), but also in federal, state, and local court proceedings, with court interpreters. Judges and law makers interpret the law for meaning and enforcement; legal advocates and lobbyists interpret law for their constituents; attorneys interpret the law (legalese) for their clients; and, in the U.S. context, court interpreters and lawyers interpret the English language for Limited Language Proficiency legal-subjects and for the entire courtroom.

The issues raised by Gordon Clark (2001) in his exegesis of *RICHMOND V. CROSON*, make clear the difficulty- perhaps impossibility- of separating language from the legal, and, in turn, he lays out guidelines for thinking through the complexity of the socio-legal in terms of the politics of the force of legal interpretation at large. In his analysis of the "contested quality" of the ruling, Clark offers three propositions about judicial opinions, judicial reasoning, and judicial decision-making, propositions that provide insight into legal logic as it relates to language and interpretation. Not only does legal/judicial interpretation occur on multiple scales within the U.S. legal system and in multifold

modalities, but there are overlaps in legal spaces between language interpretation –from spoken source language to spoken target language- and hermeneutical interpretation- the interpretation of codified, written law.

Clark’s first proposition, which draws on White’s work, is that judicial opinions are crafted, argumentative texts, whose aim is justification and “strategic effectiveness” (*ibid.*: 107). Secondly, unlike literary texts or reasoning, legal reasoning results in “immediate and authoritative interpretation”:

[J]udicial decision-making is neither as democratic nor as tolerant as literary interpretive practice...The courts have a vital role to play in manufacturing determinate conclusions out of competing claims made about the proper structure of society. (*ibid.*)

Clark’s point is that legal interpretation serves a purpose: to lay down the law, so to speak, without leaving room for interpretation despite conflicting interpretations. The courts, as legal institutions (cf. Delaney, 2001; 2003), have a particular role to play in society; and the interpretations of the courts, which are not outside of society in a particular historic moment (see Holmes, 1944), contributes to the structuration of society. Not simply ‘word’ (for a detailed examination into and theories of law as word, see Cover, 1986; Sarat, 2001³), law does its work in the world through linguistic strategies and tactics, for example transfiguration, reductionism, and exclusion (Clark, 2001: 111-12).

While the first two propositions describe “legal practice in relation to social conflict” (*ibid.*: 108), the third proposition relates to the legitimizing grounds for judicial decision-making. Justification for judicial decisions, he claims, are based on idealizing one of the following: a) the law as an institution; b) legal reasoning as a form of discourse; and/or c) the normative image created by law. Clark posits that the United States, compared with other countries with “similar political and cultural heritages”, is obsessed with law, and this is reflected most obviously in the number of qualified lawyers per capita⁴ (*ibid.*). In addition, he contends, “it is...apparent that many citizens have remarkably high

³ The linkage between word and deed is related to law’s violence.

⁴ As reported by the Avery Index, based on the 2000 census, Kentucky has 7.1 lawyers per every 10,000 residents, ranking 42nd in the country. Still, it is disconcerting that with the number of attorneys, a lack of qualified attorneys is the major resource problem at the Maxwell Street Legal Clinic, as discussed further below.

expectations of the capacity of law to penetrate through to the practice of everyday life” (*ibid.*, my emphasis), as evidenced, perhaps, by the growing number of litigations in this country.

Clark’s suggestions are important because they are skeptical toward the hegemony of law “as the language of social life” (*ibid.*: 111) and consider that judicial interpretation, and the contingent decision-making, involves, “judicial incapacity”, “analytical abstraction”, and “incoherence of principles” (*ibid.*: 110). Rather than a *deus ex machina*, law is not without human error, moral and political theories, and prejudices. Judges make mistakes; connections between theories and rules in an actual case are elided; and there are inconsistencies throughout, including, perhaps, problems with language interpretation and access to law.

Language interpretation and translation are always mediated, so that the result is an “always possible but always imperfect compromise” (Derrida, 1992: 232). This compromise may be materially and spatially consequential to the extent that the conflicts are explicitly *about* social space (Delaney, 1993: 48), and there are also spatial (discursive and material) aspects of the process of interpretation. Both legal interpretation and interpretation in legal space go beyond the abstraction of theory and have real affects on real people and real lives. With this in mind, and accepting that language is “a system of power for those who control it” (Matoesian, 1993: 2), this thesis pays particular attention to language interpretation in relation to law and meaningful access to both law and legal spaces in Lexington, KY. My principal research questions are as follows:

1. What is legal space, and how is it produced the context of immigration and in relation to immigrants in Lexington, KY?

* Is there a spatiality inherent to law? How does one enter this space? What are the relationships between and among law, language, and legal space (the maintenance of legal precedents, the cases being ‘heard’ within the walls of the courthouse)? How does the material *and* discursive space of law structure the experiences and subject-formations of those who encounter this space, whether voluntarily or involuntarily? What are the local manifestations of these relationships?

2. a) What limits exist to access to this space, how is access limited, and what role does language interpretation play in opening/closing access?

* What are the relationships between language, legal space, and immigrant encounters? How are strangers to the law maintained? That is, in what ways does the operation of law make *spaces that differentiate* within itself and at multiple scales or sites? Who are the actors that serve to establish these differentiations? How might language barriers, specifically, limit access to the law, and what could be the outcomes of this? What role do language interpretation services and access to these services play in access to law and law's spaces?

b) What are the effects of limits to access on immigrants and their access to the law in Lexington, KY?

* How do the practices and discourse of and related to law inform or limit some notion of publicity? What are the effects of inclusion and exclusion produced by language, law, and space, possibly with regard to immigrants in the Lexington area? What role do local legal strategies play in contesting these barriers or closures? Are LLPs and immigrants in Lexington, Kentucky, gaining meaningful access to law?

THESIS ROADMAP

Guided by these questions, this thesis examines the role of language interpretation in the production of legal space in Lexington, Kentucky through an analysis of legal interpretation practices and outlooks in order to ascertain how these practices may affect non-native or low-proficiency English speakers' experiences with both federal and local laws. What follows addresses how language interpretation, as mediation, figures into legal subject-formation, arguing that language use is linked to social exclusion in spaces and places of encounter. To situate my thesis, I introduce the relationships between language, law, and space at the intersection of legal geographies literatures, theories of public space, and feminist jurisprudence. Studies in critical legal geographies, I show, are indebted to the history of work in jurisprudence and to the work by scholars in

geography grappling with questions of space and spatiality. The major theoretic lenses of ‘geography in law’ and ‘law in geography’ point to the inextricability of the legal and the social. Insights into law as both a set of discourses and a set of institutions provide building blocks for an analysis of the role of interpretation in juridical space in a particular, local, geographic context such as Lexington, KY.

Like law, public space is the product of competing ideas and ideals about what it is. Attention to public space, I argue, is fundamental to unfolding the problematic of openness and closure in legal spaces, as this literature in particular makes significant contributions to questions of inclusion in, access to, and regulation of space. Feminist jurisprudence, or feminist legal philosophy, can also provide some of the tools needed for approaching law, for documenting and researching law in action, and for struggling with and against law and, thus, for combating law’s closure. Of especial import are feminism’s attention to relationality and intersectionality in terms of socio-spatial production and law.

In Chapter IV, I introduce and explain the methods and methodological approach used to answer my principal research question. As a place-based study, this research involves in-depth qualitative research. Specifically, my methods of data collection for this research project include: 1) participant observation at local legal clinic; 2) participant observation at a Lexington Circuit Courthouse; and 3) semi-structured interviews of seven key informants. The interviewees for this research project are all legal employees of some variety who deal with issues involving law and interpretation in the Lexington area, and each of these interviews was concerned with the question of language and access to law. I analyze the transcripts of my semi-structured interviews and field notes from observations using coding methods, and I treat these documents as primary texts.

Next, I take a look at some of the barriers, gaps, distance, and instances of mediation involved in language interpretation and think about how this affects access to law’s space. I consider interpretation quality and availability, and I explore interpretation as a mediated practice. In Chapter V, I further expand upon language proficiency and language interpretation in legal spaces. Here, I recognize that perceptions influence practices, and I begin to explore local legal strategies and tactics in the face of language barriers and barriers to meaningful legal access. By way of a conclusion, I summarize

my research findings and make some suggestions about the effects of access or lack of access on social membership and belonging. Using the methodological framework of feminist geo-jurisprudence throughout, this research contributes to our understanding of the limits of the publicity of legal space and, more specifically, of the ways in which language barriers can prevent legal inclusion. This thesis also touches on some of the local responses for dealing with the challenges to “meaningful access before the law” (“Title VI”) in Lexington, Kentucky, and it points toward the broader implications of language access for immigrants at the intersection of legal discourse and society.

II. REVIEW OF LITERATURE:

FORCING THEORETICAL OPENINGS WITH FEMINIST GEO-JURISPRUDENCE

“Law sits poised between the present reality of violence
and the promises of a justice not yet realized”
-Austin Sarat, 2001: 8

Socially produced space and discourse are saturated with power relationships, and law is no exception to this. The conjunction of law and geography offers insight into these power relationships in their specificity and questions the boundaries and limits of legal space and legal discourse. Studies in critical legal geographies, which deal with how law and space bear upon each other, provide building blocks for an analysis of the role of interpretation in legal space in a particular U.S. geographic context such as Lexington, Kentucky. These insights, I argue, are further augmented by attention to the how both legally-defined access to space and access to law as a space and discourse have potential implications for public space and publicity. The consideration of the public space literatures in geography together with the perspectives of feminist jurisprudence - and its methods of positionality and intersectionality- further opposes law’s positivism and press against law’s closures toward an agenda for social change.

GEOGRAPHY IN LAW/ LAW IN GEOGRAPHY: CRITICAL LEGAL GEOGRAPHIES, AN OVERVIEW

“Law is a presence, resource, or material force in the world that not only
makes things happen, it makes them happen in particular ways.”
-Nicholas Blomley, 2003: 23

Critical legal geographies are indebted to the intellectual pathways carved by theorists in geography wrestling with questions of space and spatiality and to the history of work in jurisprudence, especially Critical Legal Studies (CLS). CLS seek to demonstrate the indeterminacy of legal doctrine; to consider a historical and socio-economic analysis in order to identify how certain interest groups benefit from legal decisions despite the indeterminacy of legal doctrine; to expose how legal interpretation characterizes outsiders and legitimates juridical effects; and to make new and marginalized social visions part of legal discourse (Kedar, 2003; Minda, 1995; Minow, 1986). CLS question assumptions

about the neutralizing, naturalizing, and universalizing tendencies of law to show how an abstract and professional legal discourse often justifies domination and privilege while simultaneously claiming neutrality in process and outcome (Kedar, 2003; Minda, 1995).

Legal geography research picks up on these themes, while realizing that the legal and the spatial cannot be easily de-linked and are actually, in significant ways, “aspects of each other” (Blomley, et al. 2001). Like Critical Legal Studies, a critical legal geography, as detailed by David Delaney (1993: 62), is marked by a “pronounced skepticism toward the artificial distinction between law and society” (see also Blomley, et al., 2001) because social relations are constituted both legally *and* spatially (*ibid.*: 63). The ‘opening’ of law within the messiness and contingency of social and political relations is central to the *critical* position counter to the assumptions within Western law and legal practice of legal ‘closure’, the characterization of law as an autonomous area and a self-sufficient field (Blomley, 1994: 7; White, 2002:1057).

Geographers began publishing widely on the topic of critical legal geography in the early 1990s. For example, Nicholas Blomley in *Law, Space, and the Geographies of Power* (1994), points to the interconnectedness of law and space and to the critical exposition of oppressive power structures that occurs with their theoretical union. With this publication, Blomley urgently expresses the need for more research at the intersection of law and geography. However, as Alexandre Kadar (2003) notes, the terms ‘legal geography’ and ‘geojurisprudence’ had appeared already in the 1920s in the works of German scholars, including those of Merk and Langhans-Razeburg. The emergence of critical legal geography could also be traced to a number of articles appearing in the 1980s and to the “Legal Geographies Series” in *Urban Geography* in 1993 (Forest, 2000). Still, even with its relative newness in Anglo-academia, geographers have covered a number of topic areas under the auspices of ‘legal geography’, by its spirit ‘critical’, in that this theoretical lens seeks to challenge norms and assumptions with concern to the geographical dimensions of law.

Some of the research topics in geography that link law with both social relations/practices and space include: investigations of legal abandonment (Pratt, 2005); considerations of law and violence (Blomley, 2003; Secor, 2007); examinations of law, geography, and property (Blomley, 2003; 2004a; 2004 b; 2004c; 2005; Mitchell, 2005b);

questions of the legal geographies of responsibility (Atkins, et al., 2006); and the role of law and the construction of race (Delaney, 1993) and nature (Delaney, 2001). Of course, due to the interconnectedness of law and geography, scholars in various sub-fields within the discipline have dealt with questions of the legal without assuming the title of ‘legal geographies’. Migration literatures within geography, for one, have also brought to the table questions of legal spaces, legality, and the contradictory and boundary-forming qualities of law (see for example Coleman, 2008). Within the domain of ‘legal geography’, there are several different theoretical and analytical outlooks. While these ideal types simplify a scrutiny of legal geography’s contributions, the complexity of this work does not conform to an easy binary. In order to provide an overview of the literature and to explore the basic concepts therein, I will nonetheless parse apart the major distinctions between ‘geography in law’ and ‘law in geography’.

The first heuristic strand, ‘geography in law’, or ‘space in law’, focuses on the spatiality of law and legal texts. Attention to ‘geography in law’ reveals geographic influences on the positivism of law- how law is, including “informal social institutions and the practices such as community, custom, and citizenship” (Holder and Harrison, 2003: 3-4). This, in effect, can destabilize the normativity and objectivity of law (Jones, 2003: 186) and the abstract application of legal doctrine and principles. A spatio-legal analysis suggests that law “must make room for local conditions and experience, and recognize the changing of laws to work in local contexts” (Holder and Harrison, 2003: 3-4). Geographers working ‘in law’ stress the centrality of geographical context- its specificity, particularity- to legal discourse and legal space, and, in doing so, seek to upset the monolithic conception and rhetoric of the law.

Legal geography, thus, brings attention to the local legal universes, or “legal localization” (Cotterrell, 2006: 42), forms of regulation and litigation that are less abstract because rooted in particular and the specific historical periods *and* spaces and places. Legal norms and enforcement policies/practices in Lexington, KY, for example, may differ from those in other U.S. cities or at other scales. Because geographical imaginations and experiences play a role in the operation of law and the inscribing of spatial categorization and differentiation, reading law *through* geography, then, penetrates more deeply into legal decision-making and the stakes that come with it.

Contradictory legal *practices*, as White (2002) finds, also create uneven geographies of law, which result in different experiences and daily realities for actors in this particular system of power. Locally specific legal *needs* are also important, especially if place affects law and legal process/practices/relations.

Law, though not an autonomous field, is itself a kind of space, and it has its own geography. Difference and specificity between and amongst gender, race, class, citizenship status, and sexual orientation affect legal interpretation and enforcement, and the “legal terrain is criss-crossed” with uneven relations that marginalize and exclude some individuals and groups (White, 2002: 1057). This, in turn, creates different positionalities in the social milieu and its constituent spaces, including legal space. Pointing to the processes of creating of legal boundaries elucidates the mutuality of law and geography, or the law-space dialectic (see for example Collins, 2007). While legal texts draw upon spatial categorization, law simultaneously shapes the spatiality of the material world; spatial context shapes law and legal relations while law shapes spaces and places.

Inquiries through the perspective of ‘law in geography’ show us that law takes many forms in society and daily life, including a tangible material presence. Not only do spaces, local and otherwise, influence legal interpretations and their effects (spatial context), but law beyond legal doctrines also takes form physically and can have special effects. Law, in legitimating spatiality, can shape material reality and structuration. As Delaney (2001) reminds us, law is not just simply a set of discourses but also a set of institutions. ‘Doing law’ in geography, then, “has the capacity to release law from its (imposed and self-imposed) confinement as ‘word’ (interpretation, meaning discourse) and to show ‘the legal work in the world’, a world dominated by the physical (places, landscapes, spatialities, natures)” (Delaney, 2003: 78). Because many spatial orderings are legal orderings, and the converse is also true (Blomley, 2002), legal and socio-spatial phenomena are inseparable. A legal-geographic analysis emphasizes how law works in the creation of spatial order; there is no clear line of separation between legal and spatial norms and concerns. For example, law in the form of codes and zoning laws plays a role in the (re)production of the city. Social control arguably occurs through the legal control

of space, and the material effects of law are most apparently displayed in analyses of the legal regulation and policing practices in public space.

The rules of behavior in and use of public spaces, most of which begin as social norms, are increasingly articulated in legal terms (Ellickson, 2001). For these reasons, the public space literature in geography, explored in more detail below, converges with and overlaps with legal geographies (see Blomley, 1994; 2004a). Don Mitchell, for one, looks at the interaction of law and public space by focusing in on the ways that law defines this space in order to suggest “the annihilation of space by law” (1997). In his article of the same name, Mitchell contends that by redefining and policing what counts as acceptable behavior in public spaces, the legal regime in the American city has limited the actions of a specific population, the homeless, and has attempted in the process to erase those people who occupy public space (see also Mitchell, 1995). These legal interventions are achieved through direct force, but also through the surveillance and the policing of the ‘streets’- the material places of the city- and through legal definitions and innovations.

What kinds of tensions occur in legal spaces, and how are the boundaries of this space regulated so as to restrict access for certain individuals and groups? In the social sciences, including geography and legal geography, relatively few scholarly articles have dealt with law within the courthouse or courtroom (Atkinson and Drew, 1979). Mitchell (2005b) calls for a more in-depth understanding of legal geographies to include, for one, full legal histories of cases in legal spaces rather than simply examinations of final court decisions. Spatial context matters; however, it is often neglected in the deciding of court cases, and likewise court proceedings and the courthouse as a site of inquiry are often ignored in geographic literatures. Matthew Sparke’s 1998 piece “A Map that Roared...” is one of only a handful of studies that examines the content and textuality of law before and *during* court proceedings- within material legal space. Nicholas Fyfe (2005), too, seeks to analyze geography, the geography of witness vulnerability, by concentrating on the space of the courtroom during the trial period. Witness vulnerability, he contends, is linked to encounters with and within the publicly accessible spaces surrounding and inside the court building. The idea of the courthouse and courtroom as spaces of intimidation is an interesting one that builds upon the work of Ruth Panelli, Jo Little, and

Anna Kraack (2004), who suggest that certain spaces and places are “emotionally charged terrain”.

With the empirical study of the Toronto Women’s bathhouse raid and its aftermath, Alison Bain and Catherine Nash (2007) also contribute to this short-list of literature with their findings that identity can be incoherent with the discourses of the courtroom. Bain and Nash, contending that the state makes pervasive and often intangible interventions into our everyday lives, look at how the state negotiates the boundaries of illegality and immorality through normalizing tendencies and disciplining assimilation with regard to identity recognition. They find that “a closer reading of the decision demonstrates how the state, through its legal discourses and practices, can reinforce hegemonic notions of sexual and gendered subjects while rendering a decision that ostensibly supports the ‘rights’ of gay and lesbian citizens” (2007: 27). Concerned (both analytically and methodologically) with notions of sexual citizenship and the abstract violence (in its erasure) of both *legal and media discourse and practice*, their study suggests that notions of sexual citizenship are “actually carefully disciplined within hegemonic discourse” (2007: 31). Sparke’s work, Fyfe’s, and that of Bain and Nash all point towards the question: To what extent do laws, space, and language reinforce a subordinate social status? And, how does material *and* discursive accessibility contribute to this?

LEGAL/PUBLIC SPACES:

TOWARDS CONCEPTUALIZING THE LIMITS & EFFECTS OF ACCESSING LAW

“If space is a dominant currency in geography, then the boundaries of space are all-important, particularly when created, or reinforced, by the concepts of law”
-Jane Holder and Carolyn Harrison, 2003: 6

Attention to public space is key to unfolding the problematic of openness and closure in legal spaces, as this literature in particular makes significant contributions to questions of inclusion in, access to, and regulation of space. As detailed above, law, contrary to rhetoric about it being ‘rational’ and well ordered, is neither consistent nor monolithic (cf. Blomley, 1994). Public space is as complex and contested a matter as law, and there is also room for interpretation of its form, use, and definition. The boundaries of public space, as well as questions regarding who makes up this public and the extent or limits of

their participation is the subject of much of the public space literature in geography. The coupling of the public space and the legal geographies literatures, especially in terms of property rights, makes clear that rights to access are not absolute (they are geographically contingent and specific) and both rights and restrictions are a matter of legal and spatial categorization as well as legal and public debates. Both public spaces and legal spaces serve as a testing ground for deliberations with regard public responsibility and solidarity, individual rights, national identity, and immigration policy. Public space is most relevant to the topic of interpretation in the moments of theorization where it converges with considerations of the public sphere and of publicity more generally and where questions about public space overlap with legal geographies literatures.

Like law, public space is the product of competing ideas and ideals about what it is. In its broadest sense, public space is “a space to which all citizens are granted some [never absolute] legal rights to access” (Light and Smith, 1998: 3). Public space has been theorized as a space of entertainment and consumption, and also a site of civic duty, political debate, and social education. As conveyed by Mitchell (1995; 2003), there are two contradictory understandings of public space. The first, “implies a notion of inclusiveness that becomes a rallying point for successive waves of political activity” (1995: 117). The ideal, utopian public spaces are “civic spaces” (Light and Smith, 1998); this kind of public space is marked by its openness- its “free interactions and the absence of coercion by powerful institutions” (Mitchell, 1995: 115). The ideal vision of public space, as Susan Ruddick (1996: 133) points to, is founded on two major assumptions about the nature of public space: 1) “that public spaces are universally accessible to a civic public” and 2) that public spaces are equated with the local level, circumscribed by processes at regional, national, and international scales rather than the inverse.

The second understanding of public space is as a restrictive space “in which citizens gather to form themselves into, and represent themselves as, a public” (Light and Smith, 1998: 3). This vision of public space is “subject to an appropriate public that is *allowed* in” to this “controlled and orderly” space (Mitchell, 1995: 115). It is the tension (sometimes violent) between these two understandings- the ideal and the normative- that shape and re-shape public space. Moreover, because of the double bind of the private and the public, those responsible for enforcing and upholding the legal order, including

legal practitioners and enforcers of law, must protect and maintain the boundaries through control of these spaces. Thus, “[m]uch contemporary conflict over public space is in fact conflict over these *grades* of access” (Light and Smith, 1998: 3, my emphasis). Public space is constantly being reworked through defining who has access to these spaces, for how long, and in what capacity.

The question of public space, it follows, is both about the formation of the space itself and the composition of publicity. The “status as ‘public’ is created and maintained” through an ongoing opposition of the visions or understandings of public space (Mitchell, 1995: 115), and thoughts about the make-up of the public, in turn, merge with the spaces with which they have been implicated (Light and Smith 1998: 1). In this regard, public space is “a foundation or place for the struggle for inclusion, for promoting particular visions of how the public should be constituted and promoting rights that members of the public carry” (Staeheli and Mitchell, 2008: xiv). Making claims to and in public, then, is part of making claims *on* the public as *part of* the public.

Public space is marked by its visibility, and public protest in public space is a way for the populous to show themselves, asserting themselves as part of the public, as part of the ‘People’ (Staeheli and Mitchell, 2008). Public spaces, in their visibility, have become what Blomley (2004: 49) calls “flashpoints in the neoliberal city”, where the “politics of public space” play out (Low and Smith, 2006). Not only are public spaces a potential site of struggle, but -perhaps because of this- they are also sites for monitoring control, from the side of enforcement and law-making agencies (Smith, 1997; Mitchell, 1995). Policing, privatization, regulation, *and* the fight for public space can involve and implicate law (Mitchell, 1995, 1997, 2005a; 2005b; Blomley, 2004).

Geographers, most notably Mitchell (2005a: 85), have explored the interaction of law and public space in, particularly the ways that law serves to restrict public space and the people in them by redefining what is ‘public’. Mitchell (2005a) documents some of the ways that law serves to erase public space by constructing “a whole new kind of privacy in public space, a kind of privacy that might have profound effects on the possibilities for political discourse and the public forum” (Mitchell, 2005a: 80). In reading *HILL V. COLORADO* and examining the Court’s logic in its decision, he looks at how law, by an issuing of rights, particularly the “right to be left alone”, can amount to the shrinking or

erasing of public space by the expansion of privacy in public space. He argues that this sets a new standard so that there can be no expectation of publicity in public space (2005a: 81), and he suggests that the expansiveness of this legal innovation establishes a “new legal foundation for a new kind of citizenship (a citizenship based on, and protective of, the fully privatized juridical individual)” (*ibid.*).

The legality of public space and legal definitions of the public serve to constitute public space, and access to public space- both by and *to* the ‘public’- is central to an understanding of public space and the possibility of democratic politics in these spaces. The rules of access to public space determine, not only the make-up of public space and the public, but also the possibilities for association that may take place in them:

[T]he nature of public space in part defines the nature of citizenship. It shapes modes of engagement, the visibility of alternative politics, and the possibility for unscripted (that is involuntary) interactions. It provides a ‘space of engagement’ within which the public (or various publics) come to recognize themselves. (Mitchell, 2005a: 85)

Public spaces occupy both an ideological and a material position in democratic societies (Mitchell, 1995; 1997; 2003; 2005a; 2005b) historically (classical Athens, for example) as well as in the present. The strangers who encounter and engage with each other in these spaces are the ‘public’ because of, and not despite of, their difference. These spaces, then, are important to questions of both democracy and citizenship in the United States (Mitchell, 1995; 2005a). This leads us to ask: what are the democratic iterations of a diminishing ‘public’ where strangers can meet?

Those who lament the loss of public space see its decline as directly linked to a loss of public participation in the non-visible or less readily visible spaces of the ‘public’. To many scholars, especially those drawing on the work of Jürgen Habermas, public space is critical to participatory democracy because it is linked to the rise of the public sphere (see for example Ruddick, 1996; Staeheli and Mitchell, 2008), which involves the domain of social life as it pertains to the creation of public opinion. Public spaces potentially provide a meeting place and space for encounters between individuals and groups who might not otherwise meet, and this is necessary for the expansion of a public sphere where societal problems can be discussed and political action influenced (Ruddick, 1996: 133). While the public sphere occupies the discursive and somewhat elusive political

realm, Mitchell (1995: 116) contends that “public space represents the material location where the social interactions and political activities of all members of the ‘public’ occur.” In this way, public space provides a concrete basis for the public sphere. The borders of the public sphere are contested (Blomley, 2001), and like public space, there are multiple understandings of this kind of space, so that it is debated whether the public sphere is an open site, a democratic site, or an exclusive domain. The redefinitions of publicity by law have recreated the public sphere, the abstract public space, based on exclusivity- a move that Mitchell (2005a) argues is “justified” through both moral and aesthetic discourses and practices. Ideally, however, as with a town commons or a public square, a healthy public sphere (and its spaces) foster a form of public input/debate and, hence, a form of democracy.

Legal space is not just material (the space of the courthouse, the law offices where cases are discussed), but also immaterial, so that legal space could be likened to a discursive public square, a space of legal encounters where cases are deliberated and precedents maintained or transformed. Blomley (2001) argues that public space is material space, but public space, especially where it overlaps with understandings of the public sphere and law, is both “idea and practice” (Staeheli and Mitchell, 2008). Can public space, or at least (public) legal space, be thought in terms of symbolic or discursive space? While it is important not to conflate ‘public space’ with the ‘public sphere’, as Blomley (2001) also reminds us, it is possible to think of language and access to language as the site of certain legal struggles and the question of legal access- to the publicity of legal space. Access to this discursive legal space is, in part, reliant upon, not visibility, but aurality, especially in terms of interpretation practices.⁵ To what extent can language be thought of as a ‘concrete’ site of debate, regulation, political movement in law? That is, must we consider the public square or the ‘streets’ in order to question access to the public domain and, possibly, legal transgression (see Cresswell, 1996)?

Like public space, which provides a window into the public sphere, language, including legal language and language use in a legal context, is also site of encounter or contact zone, especially when it is mediated through interpretation. Because language in its establishment of meaning is “the key to understanding most human interactions”

⁵ This is especially clear in the case of the need for sign-language interpretation in the courts.

(Lofland, et al, 2006: 87) and is “a system of power for those who control it” (Matoesian, 1993: 2), language interpretation practices in a legal setting and throughout the legal apparatus have major implications for inclusion in the national community (see for example Wani, 1989-90) and for the possibility of meaningful access before and within law. For these reasons, considerations of language interpretation and language use in legal settings may provide further insight into ideas about the public, and, similar to theories of public space, could bring more tangibility to the intangible public sphere. How does language differentiate groups or individuals before the law? What role do interpretation services and interpretation practices play in gaining access to or being excluded from the material and discursive spaces of the law? To what effect?

CONTINUING TO CHALLENGE LEGAL AND SPATIAL CLOSURE: FEMINIST GEO-JURISPRUDENCE

“I emphasize the question of relational positioning for it enables us to begin to deconstruct the regimes of power which operate to differentiate one group from another; to represent them as similar or different; to include or exclude them from constructions of the ‘nation’ and the body politic; and which inscribe them as juridical, political, and psychic subjects.”
-Avtar Brah, 1996: 183

Feminist jurisprudence, or feminist legal philosophy, can provide geographers with some of the tools needed for approaching law, for documenting and researching law in action, and for struggling with and against law and, thus, for combating law’s closure. Not simply a juridical philosophy of women, feminist jurisprudence seeks to explore how law is implicated in the perpetuation of unequal social relations. Research at the intersection of law and space is most appropriately conducted through the lens of feminist jurisprudence because this analytical and methodological approach allows for considerations of relationality and intersectionality (Johnson, 2005) in terms of socio-spatial production and law. Feminist theory working with concern to law points out some of the theoretical contentions of both geography and feminism, forcing questions of how difference and specificity serve to create positionalities in the society and its spaces. Just as Blomley (1994) and others call for an entrance of a critical geographical consciousness into legal theory to press on the contours of juridical space and push against positivist

tendencies of closure in order to force openings, so, too, do feminist theories stress the importance of feminism in both theory and practice.

A commitment to feminism is a commitment to a “critical political consciousness” (hooks, 1993: 51), a belief that it is the *ordering principles* and *knowledge producing technologies* that operate throughout society to maintain what hooks calls the “white supremacist, capitalist, patriarchal class structure” (*ibid.*). Because categorizations of sex and gender are inherently flawed and dualistic, this consciousness escapes the essentialization and resists easy logics and binaries in general. Feminism, or, more acutely, a feminist consciousness, critically engages with and attempts to destabilize the institutions and modes of thought that perpetuate these uneven social relations. In a move similar to hooks’, Audrey Kobayashi (1994), calls for “coloring the field”, that is, for an understanding of the intersectionality of gender, race, and research, and the implications for making social change. This requires forms of critical scholarship that “neutralize academic and other social traditions that perpetuate subordinating relations between gender and ‘race’” and “unnaturalize the scripts through which we conduct our research” (*ibid.*, 78). In geography, and in the social sciences more broadly, feminist inquiries into methods and methodology have been the locus of critical questioning as far as how to decolonize methodology in order to decolonize research (Tuhiwai Smith, 1999: 9; cf. Jones, et al., 1997) so as to challenge society’s structures.

In order to question positivist science and the gendering of that science (see for example Cope, 2002), feminist scholars have called for both the reconsideration of methodologies and the inclusion of other forms of knowing as valid knowledge. “Methodologies”, Kim England (2006: 286), explains, are “the epistemological or theoretical stance taken towards a particular research problem”. Methodology has very much to do with sight (Rose, 2001), but it is not so much about what we see as it is about how we see, of how we think we see what we see (Haraway, 1991); this is related to our viewpoint, or positionality. Feminist methodology also involves “relational modes of knowing”, such as nonhierarchical relationships, reciprocal learning, and expressions of empathy (Jones, et al., 1997: xv). Some feminist social scientists have explored alternative, anti-positivist ways of knowing with the collecting of and telling of oral stories (see for example Nagar, 1997; Behar, 2003); by questioning the qualitative/

quantitative binary (Lawson, 1995); through mental mapping; with different types of ethnographic research, including participant observation; and in turning in on themselves (see for example J. Mitchell, 1982). If knowledge production is connected to power, as not only Foucault (1980), but also many feminist theorists contend (see for example Bordo, 1993), then questions of methodology are crucial to the feminist project and any intellectual project concerned with social inequality, especially because practices are legitimated by what is accepted as knowledge. When combined with a geographical understanding of law and space, feminism provides insights for looking at legal knowledge production in order to upset the power and rhetoric of law.

Feminist jurisprudence, understood as a combination of methodologies- feminist methodologies plus legal methodologies (see for example Bartlett, 1990), offers that ideological production is linked to legal protections (Alexander, 2005: 37) and, it follows, to socio-spatial practices and production. Practitioners of feminist jurisprudence have sought to challenge the fundamentalism and normativity of law by looking at the structures that produce and reproduce inequality. Feminist legal theorists might ask: What are the systems of assumptions, practices, and mechanisms that collectively serve to differentiate legal-subjects to the benefit of some but not others? Adding geographical insights into feminist jurisprudence's key questions will allow us to probe: How is legal space implicated in this? Feminist jurisprudence must be considered in order to have truly 'critical' critical legal geographies-to expose the socio-spatial and legal processes that (re)produce inequalities between people before law and in legal spaces.

Some of the theoretical considerations made manifest by feminist jurisprudence and applicable to the study of legal space are as follows: feminism confronts masculine bias within the law and questions the role of power in legal practice (see for example Johnson, 2005); feminism reminds us that law is inscribed upon bodies and at multiple scales; feminism makes suspect legal categorization and the definition of life itself under law; feminist accounts and theories of law draw attention to the violence inherent in the law and insist that law's violence be acknowledged (Robson, 1998). Feminist legal scholars expound that the personal is political and therefore complicate and problematize easy public/private distinctions and divides (see for example Jamieson, 2003). Feminists, like geographers, also conceptualize law as changing and indeterminate rather than fixed,

static, or monolithic. While both feminism and jurisprudence are complex and contested terrains of thought and meaning-making, feminism brings much to jurisprudence, and the collaboration of feminism with jurisprudence gives theoretical insights into feminism, as well as to epistemology. Feminism in action (working) with concern to law points out the theoretical contentions of feminism and pushes on feminism to have theories that better address the concerns of the material world.

Feminism, at its onset both a theoretical *and* political movement, is an attempt to address the difference and sameness of the “second sex” (De Beauvoir, 1949), realizing that ‘woman’ is a social construction but that women figure differently in cultural, social, economic, and political norms than men. As feminist thought has shown us, however, ‘woman’ is not a stable category within itself; it is not just a simple matter of women versus men. Instead, there are differences *between* and *amongst* women, and class, race, and sexual orientation serve to position different women in different ways in the cultural, social, economic, and political milieu. Feminism has brought us to a relational understanding of difference so that feminists can be *both* same *and* different and work together toward specific ends, in solidarity against hegemony (hooks, 1993).

These strands of feminist thought and debate are manifest in feminist legal theory as well. Indeed, as an institution and a discourse, the law “has the potential to substantially influence social relations and...the intersectionality of class, race and gender systems produce uneven social relations that subordinate disadvantaged groups” (Kainer, 2005: 118). The movement from questions of equality under the law (women should have the same rights as men), then, has given way to questions of sameness, difference, and absences (MacDonald, 2005). Critical questioning of the law and of the logics and sensibilities that operationalize law and play out in daily lives are an area of focus. Other questions have also emerged: Does society determine law, or does law determine society? That is, is a law most effective when the social conditions for it have already been met? And, how do we deal with the apparent contradictions of law, its seemingly simultaneous purpose of protection and enforcement?

The debate at hand is well demonstrated in the work of Joan Williams (1989), Catherine MacKinnon, particularly “Reflections of Sex Equality Under the Law” (1991) and the response launched at MacKinnon by Angela Harris in “Race and Essentialism in

Legal Theory” (1990). As Williams and Harris both make clear, thinking law only in terms of the difference between men and women and dominance of women by men is a slippery slope, which has the effect of essentializing Woman, while eliding the concerns of gender, race, and class differences. Nonetheless, even marked anti-racist scholars, like MacKinnon, can fall into this trap when trying to come up with universal aims for feminism and law based on notions of sex difference only. Harris (1990: 585) explains:

Just as law itself, in trying to speak for all persons, ends up silencing those without power, feminist legal theory is in danger of silencing those who have been traditionally kept from speaking, or who have been ignored when they spoke, including black women. The first step toward avoiding this danger is to give up the dream of gender essentialism.

In response, Harris calls for a “jurisprudence of multiple consciousness” (*ibid.*: 590) and notes that to be “fully subversive, the methodology of feminist legal theory should challenge not only law’s content but its tendency to privilege the abstract and unitary voice” (*ibid.*: 585). Furthermore, with the recognition that “even a jurisprudence based on multiple consciousness must categorize” (*ibid.*: 585), Harris suggests moments of strategic essentialism as a means toward political goals, which challenge the enforcement of law and law’s (flawed) definitions of life itself. With the acknowledgement of this messiness, feminist jurisprudence, like a critical legal geography, can disrupt a monolithic understanding of law without ignoring the power of law.

Multiple consciousness works to force apart easy binaries (man/woman, legal/illegal, etc.) and to bring to the forefront the multiple, sometimes contradictory, ways that power operates in our lives depending on our subject positioning (see Brah, 1996). In jurisprudence, positional understanding “requires efforts both to establish good law and to keep it in place” and is, ultimately, about deconstructing and improving law (Bartlett, 1990: 887). Feminist jurisprudence takes into consideration that “[l]inear logic implies a normativeness of experience, which law always attempts to approximate” (MacDonald, 2005: 62). Instead of asking how women and men are treated differently before the law, a feminist response to jurisprudence critiques the entire apparatus of the law, recognizing that “...the overarching message is that the law is neither neutral nor objective and static”

(Kainer, 2005: 134). Theories of intersectionality and positionality, like critical geographies of law and space, recognize law as a socio-legal phenomenon, subject to political and social struggles.

Both epistemologically and as a mode of analysis/practice, feminist jurisprudence works against logics of hierarchy that unevenly differentiate those on the margins of the dominant ideal or norm. Feminism brings critical questions to law, including: Can the law still be a “transformative and emancipatory instrument, flawed and recalcitrant though it may be?” (Menon, 2004: 9). Ruthann Robson (1998) contention that the law itself is violent is both a critical moment in feminist jurisprudence and in jurisprudence in general. But can law be wielded to challenge law? If law governs the sphere of social relations, then where else can we turn to combat the perversity of these relations? With the heuristic tool of ‘fire’, Robson provides us with a useful starting point for looking for openings to challenge the force of law and the juridical effect; hers is a kind of “incendiary logics”. Law, she states, is coercion rather than persuasion. However, like fire, law is both destructive *and* productive. With a stance of non-negotiable politics,⁶ or ‘arson’, perhaps law can fight law, and the violence of law (in its concrete, life-defining capabilities) can be used to establish non-hierarchical relationships where the constellation of race, class, sexual orientation, *and* sex are not ignored. Although ‘justice’ can never be fully materialized due to the nature of ‘law’, as Robson might contend, the *struggle* for justice is the struggle of feminist jurisprudence.

Like legal geographies, feminist jurisprudences reveal that paradox of law: law both enforces and protects. It is implicated as an “instrument of socio-spatial control” (Collins and Kearns, 2001), yet, contradictorily, it can also be used as a mechanism to challenge law (see for example Boyer, 2006). With this in mind, I suggest that the intersection of geography, law, and *feminism* could reveal further openings in the spaces of the law and be the most effective theoretical combination for questioning access to law. Putting ‘legal geographies’ in conversation with feminist jurisprudence, moreover, serves to forward the project of legal geography, which, as Blomley (1994) advises, must consider the contributions of both geographical scholars and legal theorists.

⁶ Although Robson is speaking explicitly in terms of lesbian politics before the law, I think the power of her heuristic tool lies in the fact that it is applicable to feminist jurisprudence and theories of intersectionality.

Feminist jurisprudence, with its critiques of law and legal interpretation and its social change agenda, further breaks down the ‘geography in law’ versus the ‘law in geography’ optic. Beyond calling for a broader and more inclusive understanding of women’s lives (Osborne and Smith, 2005) and women’s role in the construction of knowledge, including legal knowledge, feminist consciousness, especially when in conjunction with geo-jurisprudence, brings theoretical insights and openings into the study of law- legal language and practice and law’s spaces. Indeed, feminist geo-jurisprudence’s relational, intersectional, and multilevel/scalar understanding of society, space, and language can be applied to an interrogation into the role mediated interpretation plays in accessing law in a particular geographic context. I discuss feminist methods and methodologies in more detail in the next chapter.

III. RESEARCH DESIGN AND METHODS OF INVESTIGATION

To answer my principle research questions, I combined multiple, complementary methods. I utilized methodological triangulation (Yin, 2002; Denzin, 1978) in order to approach my questions from several angles, to test the consistency and validity of my research, and to create a broader picture of my field of research: Lexington's legal space, especially the aspect of this space concerned with advocating for the city's immigrant and non-citizen population. This triangulation entailed looking at the same research questions from different methodological perspectives to balance and move beyond strictly formalized interactions- for example, those occurring in interviews- (see Kearns, 2005: 195) and with the aim of developing a geography of everyday relationships and interactions. Specifically, my methods of data collection for this research project include: 1) participant observation (and volunteering) at Maxwell Street Legal Clinic; 2) participant observation at RFS Circuit Courthouse; and 3) in-depth semi-structured interviews of key informants. I conducted my research during the Fall, 2008 school semester, from September through December. This is a local, place-based research project, and I lived and worked in the vicinity of my field, in Lexington, KY, during the entire time of my research.

PARTICIPANT OBSERVATION AT LEGAL CLINIC

Site Selection: Maxwell Street Legal Clinic

There are a variety of aspects to qualitative research, including choice of setting, access, field relations (including talking and listening), the recording of data, and, finally, analysis of the experience (Kearns, 2005). For this research project, Maxwell Street Legal Clinic (MSLC) was the major field site, from where I recruited informants for my semi-structured interviews and where I acted as participant observer beginning in September, 2008 and ongoing even after the end of my field research. The choice of this setting was dictated by the larger goals of the research (see Kearns, 2005: 199) and by the local, place-based scope of this project. My research questions ask about the role of interpretation and translation in both the courtroom and courthouse themselves, but also

within the broader legal apparatus in Lexington, KY. Because these questions inquire into the idea of ‘legal space’, access, and publicity in a local context, it seemed obvious that MSLC was the appropriate site for the project, especially considering the small size of the Immigration Law community in Lexington. Not only is MSLC the only non-profit legal clinic serving immigrant populations in Lexington, it is also one of only two such legal clinics in the entire state of Kentucky, the other being located in Louisville. Drawing on legal geographies and public space literatures, but also concerned with the broader framework of citizenship and migration, my research questions target those having legal experience with and knowledge about low English proficiency and non-English speaking immigrants.

MSLC is a non-profit organization funded by private organizations and individuals and dependent on volunteer services, even volunteer attorneys. Its volunteer pool also includes interpreters and translators; however a majority of its staff is fluent in English and Spanish. Founded in 1999, MSLC serves underrepresented groups, particularly low-income clients in Central Kentucky requiring immigration-related services, including immigration processing, refugee and asylum cases, and, in some cases, wage claims. In the words of one of the clinic’s founders (R1, 10/08/08): “We’re here to serve the underserved people who don’t have the resources to pay a private attorney.”

MSLC provides *family*-based immigration services and does not provide employment-based services. Although they do not accept walk-in clients, they do have open intake for clients every Wednesday from 4:00PM and 7:00PM where attorneys and volunteers “get basic information about the client, him or herself, simple things like name, date of birth, and so on, and then some kind of idea about what their legal problem is” (R1, 10/08/08). These intake sheets are then reviewed later in the week, and a decision is made as to whether MSLC can help that person or if he or she should be “referred out” (R1, 10/08/08). In the period of approximately ten years, the clinic has seen about 3,500 clients over the period and has dealt with about 5,000 matters. MSLC now operates under the Kentucky Equal Justice Center and, funded by the Knight Foundation, it runs the “Citizenship Project”, which focuses on preparation and education towards naturalization. In 2002, the Fayette County Bar Association and the Fayette

Circuit Court awarded MSLC an Award of Achievement for its efforts toward “Assuring Equal Justice for All” (“Maxwell Street Legal Clinic”).

Gaining Access

Gaining access to a research site can be one of the primary obstacles involved with doing field research (see for example Lofland, et al., 2006: 33-53). Fortunately, the size of the legal community in Lexington (as mentioned above) made this process rather easy. Further, connections with MSLC had been previously created with members of the Geography Department at the University of Kentucky; the principal lawyer for the clinic had spoken in a community forum during an Immigration and Public Space conference hosted, in part, by my thesis advisor. When making my initial contact with the clinic through an email query, I was able to introduce myself through common networks, and I believe this aided in the establishment of rapport with clinic employees.

MSLC, relying heavily as it does on volunteers, has a well-organized volunteer program. At the beginning of semester (Fall and Spring), the clinic accepts new volunteers and holds a volunteer orientation. MSLC draws its volunteers from the University of Kentucky, from regional law schools, and from members of the community. In August, 2008, responding to a post on their website, I wrote to the volunteer coordinator expressing my interest in being involved at the clinic as part of my research project in Geography. I filled out both the application and the “Volunteer Contract” (see APPENDIX A), and I was welcomed in the final volunteer slot for Fall, 2008. The Volunteer Orientation took place on September 6, 2008 from 9:00AM until 1:00PM and was held at the Maxwell Street Presbyterian Church next door from the clinic. Volunteers are prepared for various positions at the clinic following this orientation and are placed on appropriate email lists for recruitment; however, the clinic does ask volunteers to give twenty or more hours of service before claiming the position on a resume or Curriculum Vitae. Confidentiality, which is an important component of social science research and data-collection (Lofland, et al., 2006: 51-53), was built in to the volunteer agreement I made with the clinic, due to the legal code of ethics and the sensitivity involved in many of the clients’ information.

Participant Observation

Participant observation is a form of ethnographic research appropriate “investigation of a small number of cases” (Atkinson and Hammersley, 2005: 248). In participant observation, in which the researcher is the primary tool for collecting data (Hoggart, et al., 2000: 275), “going into a social situation and looking is another way of gathering materials about the social world” (Denzin and Lincoln, 2003: 48). I served as a volunteer at the Maxwell Street Legal Clinic, logging in approximately twenty hours in the capacity of “Citizen Workshop Staff”, “Citizenship Class Instructor”, and “Human Rights Researcher”. In addition, I participated in the re-registration for nationals of Honduras and El Salvador who have been granted Temporary Protected Status (TPS). As a prerequisite for becoming a volunteer at the legal clinic, I attended “Immigration Law 101”, a 4-hour crash-course in immigration law and terminology, cultural and language considerations, and issues of confidentiality.

There are several components of MSLC’s “Citizenship Project”, whose aim is to guide potential, qualified citizens through the naturalization process. The full course of the “Citizenship Project”, including the “Citizenship Workshop”, citizenship classes, and the “New Citizens Academy”, takes place twice annually and coincides with the clinic’s volunteer schedule, as well as with the University calendar. As a participant observer, I obtained a peripheral membership (see Angrosino, 2007: 55) in the clinic community, and I was most actively involved in this aspect of MSLC’s services, and I took every chance to participate in the “Citizen Project”, about which I was informed by an email call for volunteers. As a member of the Citizenship Workshop staff, I helped citizenship applicants during a one-day group processing event. Before the event, I attended a training session on September 17, 2008. In the role of the Citizenship Class instructor, I taught U.S. history and government classes to clients preparing for their citizenship exams. The classes were held from 6:30- 7:30 in the evening at the clinic and revolved around themes specific to the “Naturalization Exam” given by the U.S. Citizenship and Immigration Services, a branch of the U.S. Department of Homeland Security. To attain citizenship, applicants are required to read, write, speak, and understand “basic English”- as determined through an interview and an exam, and they are asked 10 out of 96

possible civics questions (see APPENDIX B).⁷ The classes I taught were “The Constitution and the Bill of Rights” and “The Three Branches of Government”, which took place on September 29, 2008 and October 13, 2008, respectively. The Project Coordinator provided me with PowerPoint presentations several days before the class, which I studied and modified. Classes were attended by between five and ten students.

Participant observation is a method that allows social scientists to take part in the world while also seeing and representing it (Kearns, 2005; Crang, 1997). In this way, observations are not merely observational; they become experiences. Even though my observation at the clinic was not daily, but depended on my involvement in particular volunteer roles, I performed what H. Russell Bernard terms “rapid assessment procedures” (2005: 331-332); that is, I acquainted myself with the operations of the organization through limited engagements rather than spending months entrenched in the field. This method was rounded out through the interviews I conducted with the MSLC staff, and, in a short amount of time, I was able to achieve a type of “theoretic saturation”, where “the generic features of new findings consistently replicate earlier ones” (Angrosino, 2007: 58).

Indeed, volunteering at the Maxwell Street Legal Clinic proved worthwhile to my research, and my roles as participant observer provided me with access to participants for my semi-structured interviews, gained understanding of legal complexities, and a feeling of involvement with the legal and immigrant communities in Lexington. Contextualizing is a major part of observation (cf. Kearns, 2005: 1993). Additionally, if “context is everything” (Holder and Harrison, 2003: 3) in terms of legal geographies, then it follows that a study involving legal discourse should necessarily involve a contextualization of these discourses in their *space*. In the course of my research, I found that this space can be described as discursive legal/judicial space. My participant observation at Maxwell Street Legal Clinic was also crucial to understanding the geography of everyday experiences (see for example, Kearns, 2005: 195) at MSLC, as my volunteer activities enabled me to grasp the sense of routine at the clinic. Through participant observation, I was able to have personal contact with MSLC’s clientele, thus

⁷ Effective as of October 1st, 2008, the United States Center for Immigration and Citizenship Services (USCIS) has revised the U.S. Naturalization exam. However, the changes are not very drastic, and the exam follows the same basic format.

bolstering the information provided about immigrant experiences from my informants, as well as getting to see these informants as employees in this particular setting. In the spirit of reciprocal learning and teaching, and in line with feminist methodologies, I gave back my time as a volunteer in exchange for the opportunity to study at MSLC, to interact with the people there, and to interview some of its staff members and volunteers.

PARTICIPANT OBSERVATION AT COURTHOUSE

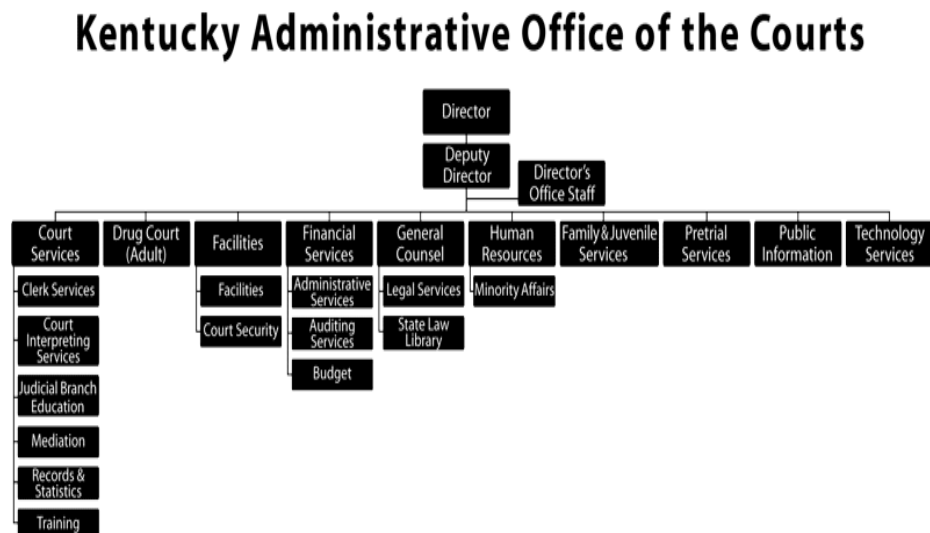
Site Selection: Robert F. Stephen's Circuit Courthouse

The Robert F. Stephen's (RFS) courthouse complex is located in downtown Lexington at 120 N. Limestone, on the corner of Limestone and Main Street, and is comprised of both a Circuit and a District court. The RFS complex opened in 2002 as part of a \$62 million dollar project (*Lexington Herald-Leader*), underwritten by the Triangle Foundation, a quasi-autonomous non-governmental organization (QUANGO), in an entrepreneurial move to privatize government space (per personal conversation with Dr. Rich Schein, 09/05/08). Structurally, the court complex dominates the city center, and its plaza, replete with two fountains, serves as a place for public events and gatherings.

For the purposes of this project, I conducted my research in the Circuit courts. I selected the Robert F. Stephen's Circuit Courthouse as a site for my research for many of the same reasons I chose the Maxwell Street Legal Clinic; namely due to the themes of my research questions and because of the research's local focus. In Kentucky, as with many of the southern states in the United States the circuit courthouse is a state court of 'superior general original jurisdiction'. Here, 'state' refers to the scale of the law's jurisdiction; state laws fall under the sovereignty of the sub-national state rather than the federal, in this case Kentucky. A 'superior' court is a court that hears civil and criminal legal cases and has unlimited jurisdiction with regard to these cases, whereas the jurisdiction of lower courts is limited to civil cases dealing with smaller monetary amounts or cases involving less serious crimes, for example petty misdemeanors. 'General' laws do not fall under a specialized type of law, such as Immigration Law. As

opposed to appellate jurisdiction, ‘original jurisdiction’ denotes a court’s right to hear first instance cases. ‘Original jurisdiction’ signals that the decisions of the cases tried in this court will be recognized as within the precedence of the law at the state scale without federal oversight (per personal conversation with Atty. Diane Kinslow, 10/10/08). Although one is required to pass through metal detectors before entering the building, the courthouse is open to the public, as are a majority of the courtrooms, including those holding arraignment hearings. Case dockets are openly displayed in the courtroom lobby on the ground floor.

In addition to its courtrooms, the RFS Circuit Courthouse houses several administrative offices, including Court Interpreting Services, which falls under ‘Court Services’ on the left hand side of Figure 1 below:



Source: courts.ky.gov

To promote equal access before the law, the Kentucky Court of Justice provides interpreting services for individuals with limited English and for those who are deaf or hard of hearing, or are unable to speak at all (“Kentucky Court of Justice”). The Kentucky Court of Justice has qualified interpreters for several languages and certified interpreters for the Spanish language. The availability of interpreting services is directly related to the Lexington population- Spanish speakers being the largest non-English speaking population in Lexington. The Division of Interpreting Services of the

Administrative Office of the Courts appoints an interpreter to meet the specified needs of judges, circuit court clerks, court administrators and other Court of Justice personnel, and are either requested or assigned. Interpreting services are not, however, available for attorneys.

Participant Observation

As stated by Michael Angrosino (2007: 61), “One of the most characteristic applications of observational research is that which is carried out in public spaces.” The state courthouse is one such public space.⁸ I began my passive observation (see McCall, 1978) at the Robert F. Stephens Courthouse with the idea that “language and law are close bedfellows” (Shuy, 2007). This method combined observation of court proceedings with readings of material culture and its records and was directed toward the questions of this research project related to the *composition* of (public) legal space; the *relationships* between legal space and legal discourse; and the *effects* of these relationships, particularly in terms of *access* to the law through interpretation and interpretation services and how this space of law, as a *public* space, thus enforces or denies belonging. On three occasions during the months of my fieldwork, I attended arraignment hearings at the Robert F. Stephen’s Circuit Courthouse in downtown Lexington. Open to the public, these sessions are held on Tuesdays beginning at 1:00 PM in Courtroom 3. These kinds of proceedings “afford an excellent view of administrative-clinical court organization and the diffusion of judicial responsibility” as well as “lend[ing] themselves particularly well to the observational study of situational or interactional factors in official discretion” (McCall, 1978: 108). These observations in a “constant and controlled setting” (*ibid.*) lead to an understanding of what one informant called “more of the same” (R6, 11/17/08), or what criminologists term, “assembly-line justice” (see for example McCall, 1978).

My participant observation was recorded using filed notes, which included methodological notes, descriptive notes, and some analytic notes (Emerson, et al., 1995; Bernard, 2002) bringing theory and field observation. My observations were not

⁸ “The local court system...represents a substantial public empire”, as George McCall (1978: 105) would have it.

systematic, nor were they systematically recorded. Rather, the descriptive notes were at the heart of the courtroom observation, and here I recorded, through watching and listening, processes, behaviors, and details of the the environment. I approached this method as someone just entering this space, with little guidance, mostly just to get a ‘feel’ for the place. While at the hearings, I observed for information related to interpretation, and I also documented the composition of court subjects and courtroom attendees (the publicity), exchanges between judges, lawyers, translators and/or interpreter, and/or plaintiffs, defendants, and evidence of the courtroom work group (see, for example, Shichor and Sechrest, 1996). Meanwhile, I also paid attention to the relationship between actors and the space itself.

The observation of court proceedings led me, as participant observer, into other spaces of the courthouse within RFS Circuit Courthouse, where I conducted further readings and document the law-in-action. In addition to the court proceedings, I had the opportunity to shadow a staff court interpreter following our interview (11/17/08), and, in this way, gained access to other aspects of the courthouse space and practices involving interpretation/translation therein, including court clerk procedures. For me, this was actually a more rewarding and more telling experience than the hearings. It was interesting to see how this court interpreter *moved* through the spaces of the courthouse with ease and a sense of authority, as opposed to the masses waiting in line in front of the clerks window or to see an attorney to make a deal on their traffic violation.⁹ He was also quick to point out to me my own position ‘on the other side of the law’. For example, while observing the traffic violation procedure, where the legal subject can negotiate his/her ticket directly with a prosecutor *in lieu* of a hearing before a judge, I positioned myself in back of the room with those people waiting in line rather than with the lawyers, the deputy, and the interpreter. During this occasion, I also witnessed another form of interpretation- sign language interpretation for the hearing impaired. I

⁹ McCall (1978: 103) also notes that, in the courthouse, “Dress is relatively important; as one lawyer put it, around the courthouse one can usually tell which people are the lawyers- they are the ones whose coats match their pants. Even wearing a jacket and tie is too informal in that setting for a lawyer.” The differences in standards (of appearance, demeanor, etc.) between the legal culture (likened to those of a “middle-class professional/business community” by McCall (*ibid.*)) and the majority of legal subjects crowding the courthouse corridors were also apparent in my observation.

also followed a woman wanting to cancel a Protective Order, as she was navigated through the courthouse. She needed to ask where in the courthouse to go to take care of this; but, interestingly, I found, she could not question the court interpreter directly (even though he could have easily answered her inquiry). Rather, the interpreter was required to direct her to the clerk, and then interpret the question and answer interaction between the woman and the clerk. Due to his familiarity with the courthouse space, the interpreter was able to draw attention to how the structure of the building and the signage therein served to regulate the behavior of the public. He showed me a water fountain, nestled behind a wall and next to a sign enjoining, “Authorized Personnel Only”. As he tells it, rarely does anyone aside from courthouse employees use this water fountain. These observations complemented both the participant observation at MSLC and the semi-structured interviews with key informants involved in some way in the Lexington/ greater Eastern and Central Kentucky legal scene.

IN-DEPTH SEMI-STRUCTURED INTERVIEWS OF KEY INFORMANTS

In addition to participant observation and informal conversations at MSLC and the courthouse I conducted a total of seven in-depth interviews with key informants. I recruited interviewees using existing networks, centered around my main research sites. Because my research is concerned with the public-ness of law and access to legal spaces, I had proposed to interview several public defenders in Lexington. I was especially interested in exploring their understandings of the ‘public’ they defend. Unfortunately, despite phone calls, emails, and a written letter, I was unable to gain access to the Public Defender’s Office. Public defenders were also outside of the networks I used to recruit interviewees. When I mentioned to the attorneys that I did interview the difficulty I was encountering with gaining access to the Public Defender’s Office, they mentioned that the attorneys there are overburdened with case loads and suffering from recent state budget cuts.

The interviewees for this research project are all legal employees of some variety who deal with issues involving law and interpretation in the Lexington area and include: (2)

certified interpreters, (2) attorneys, (1) legal clinic employee (2) employees of local legal services, as listed in the below table:

Table 4: “Key Informants”

R#	POSITION/TITLE	TYPE OF INTERVIEW	DATE INTERVIEWED
R1	Attorney	In-Person	10/08/08
R2	Interpreter	Phone Interview	10/13/08
R3	Legal Clinic Employee	In-Person	10/17/08
R4	Director	In-Person	10/20/08
R5	Advocate	In-Person	11/11/08
R6	Advocate	In-Person	11/17/08
R7	Attorney	In-Person	12/17/08

Except one, all of my interviewees speak English and Spanish. Each of these interviews was concerned with the question of language and access to the law, and I used a similar interview guide for the interviews, adapting it based on the subject position of the interviewee (see APPENDIX C). I used probes to remind me to cover topics related to my research questions and to pursue items that may not be mentioned (see Lofland, et al., 2006). In doing so, I was cognizant of what was *not* mentioned in the interviews. Before conducting my first interview, I went over the interview guide, and I performed a mock interview with my thesis advisor in order to get an idea of what might be brought up during the interviews and to hone the questions and probes in the guide.

The interviews were held at the field research sites, in the place of the interviewees employment (in many cases, either of the two research sites), or in public places of the interviewees’ choice. In one instance, however, I conducted an interview over the phone. Telephone interviews are more limited than face-to-face interviews because there is an absence of visual cues, and, thus, as an interviewer, I had fewer tools for communication

(see de Leeuw, 2008). Still, as this was mainly an information-based interview with an interpreter, and because I was unable to schedule a personal meeting with her, a phone interview sufficed for the purposes of this project. Aside from this phone interview, I recorded the data using a tape recorder and was able to secure signatures on the consent forms. Although I asked for a half hour of time from each informant, these interviews lasted from 45 minutes to two hours in length. My interview style involved letting the informant lead and probing following silences. Among other issues, these interviews allow me to understand:

- * The motivation and reasoning behind the interviewees' choice of career.
- * The certification, education, or requirements necessary to their line of work.
- * The structure of the legal system, including laws, statutes, and protocols, and the availability of resources.
- * The types of cases that require interpretation and/or translation services, and the kinds of clients that seek these services.
- * Perceptions of challenges/difficulties for legal subjects in terms of access to the law, focusing on language access, as related to their job experience and the experiences of their clientele, as well as to their own subject-position.
- * Insights into the legal experiences of immigrants or non-citizens in the greater Lexington area and relationships between citizenship status and criminality.
- * Changes in the Lexington legal space over the last decade in terms of language availability and accessibility.
- * Positioned opinions of the legal system's ability to meet the needs of the greater-Lexington community.
- * Ideas or strategies for improvements in the legal system to best meet the needs of the community.

As Valerie Gilchrist (1992: 71) explains, "Key informants differ from other informants by the nature of their position in a culture and by their relationship with the researcher". Historically, 'key informants' were members providing anthropologists access to a tribe, but the term can also refer to those who "possess special knowledge, status, or communication skills" (*ibid.*: 75). The attorneys, interpreters/translators, and legal advocates who were interviewed for the purposes of my research project were 'key

informants' in that they provided me with access to the legal field and its language and logics, a discursive space that I would otherwise become lost in. Although one of my informants, a legal advocate, admitted his feelings of incompetence in legalese due to his non-lawyer positionality, he nevertheless had spent decades in the field and was able to self-educate and learn through the experience inherent in his employment position.

While I recognize that each of my interviewees occupies a service- *provider* and not receiver positionality, the informants selected for these interviews nonetheless gave me an insiders' view of the Lexington (and greater-Kentucky) legal system.¹⁰ Due to their everyday dealings with or on behalf of the specified population, and in some cases based on their own experiences, they were also able to relay information regarding the experiences of their clients and client-populations- the service receivers. Because I approached my interviewees from the outside-in, I was also able to glean some of the obstacles and difficulties in attempting to encounter these professionals and learn about their services. The perspectives and observations provided by the informants/ interviewees for this project, added valuable insight into my own observations of the Lexington legal space. Not only did these informants point out to me things that I may not have noticed without the influence of their viewpoints, they also enabled me to 'read' the spaces I was encountering in light of their experiences, occupations, and training backgrounds.

The relationships between me, the researcher, and the informants for my study were contingent upon my positionality as *participant* observer and my expressed desires to combine sometimes seemingly abstract research with tangible social change. Because I became acquainted with all of my informants through my association as active volunteer at Maxwell Street Legal Clinic, my informants were willing to share their knowledge with me, to grant me access to important documents and secondary resources, and to provide me with contacts for additional interviewees. From my experience, I would agree with Gil Valentine (1997: 113) that "[s]haring the same background or a similar identity to your informant can have a positive effect, facilitating the development of a rapport between interviewer and interviewee and thus producing a rich, detailed

¹⁰ The "border guard's question" (Honig, 2001: 52) is the question *of* the foreigner (Derrida, 2000).

conversation based on empathy and mutual respect and understanding” (see also Doucet and Mauthner, 2008). As volunteer with peripheral membership at MSLC, I was further able to develop and maintain relationships with those participating in my research; thus, follow-ups for clarification on certain points or questions regarding legal documents and procedures were facilitated by the very nature of the researcher-informant relationships.

Attorneys, especially, act as gatekeepers (see Burgess, 1984) of the law,¹¹ but my field relations with them, or my ability to relate to those in the field, were ameliorated by my interests and also by my own level of education. Just as know knowing the language (Bernard, 2005: 338-342) is essential when in a far and distant land, so, too, is an educated English lexicon helpful when speaking with professionals.¹² Interviewing key informants in the legal field, however, was a balancing act between knowledge and naïveté. Because legalese would be considered a language of its own to some, I did not have to cultivate “deliberate conscious naïveté” (Kvale, 1996: 199; see also Angrosino, 2007: 57). Still, my naïveté added to the richness of my interviews and allowed me to question what I took for granted. Moreover, rather than assuming that I knew what they were talking about, my informants were willing to go into long detours to describe legal terms and applications. With each interview (and coupled with my participant observation), as I began to understand how the U.S. and Kentucky legal systems work, I sought out alternative explanations from my informants (see Bernard, 2005: 430). Not only did this enhance my own knowledge of law, but it also gave me insight into the logics behind my interviewees’ thinking. Fortunately, I was also able to contact my sister, an attorney, for clarification when I found myself confused following an interview with a legal professional. My experiences during these interviews demonstrated some of the difficulties involved with social scientists researching the law.

¹¹ This was, perhaps, my experience with the Public Defender’s Office.

¹² Speaking in terms of hermeneutics, or interpretive analysis, Bernard (2002: 451) says, “You can’t see the connections among symbols if you don’t know what the symbols are and what they are supposed to mean”. This kind of analysis involves “deep involvement with the culture, including an intimate familiarity with the language” (*ibid.*).

ANALYSIS, EPISTEMOLOGY, AND LIMITATIONS

“[A]nalysis is ultimately quantitative. It starts before you collect the data- you have to have some ideas about what you are going to study- and it continues throughout any research effort. As you develop ideas, you test them against your observations; your observations may then modify your ideas, which then need to be tested again, and so on.”

-H. Russell Bernard, 2002: 429

Data Analysis: Coding

Following Megan Cope’s suggestions for coding (2003; 2005), I analyzed the transcripts of my semi-structured interviews and field notes from observations, what she terms “self-generated documents” (*ibid.*: 448), in order to identify recurrent categories and patterns and the intersection of multiple themes across interviews (Gibbs, 2007; Cope, 2003; 2005; Jackson, 2001) and to move through different forms of analysis to interpretation for meaning (Kvale, 1996). I treated my interviews as a type of narration (Kvale, 1996: 199), and, because of the importance of legal discourse to the research, I honed in on and used what Bernard (2005: 471-76) calls “exemplar quotes”. I attempted to note and consider the silences, gaps, and to read in-between the lines. Upon more in-depth analysis, I was also able to identify strategies and tactics (Strauss, 1987) in relation to the major themes, especially as my interview questions were geared toward the problematic of access and inclusion in the Lexington legal system. When naming a difficulty, a majority of my informants quickly *qualified* their responses with: 1) an improvement they had witnessed in the time they had been employed in their particular position, whether something they had themselves initiated or which their job was benefiting from; 2) a proposal for change that they themselves or colleagues were in the process of enacting on a variety of scales; or 3) a possibility for improvement that they could envision taking place in the future barring the necessary resources and work. In labeling these types of responses as ‘strategies’ and simultaneously naming particular strategies or sets of tactics, I was able to connect various codes in a web of themes (Cope, 2003; Straus and Corbin, 1990; Strauss, 1987). I found that this web of interconnection only became richer when coupled with the issues mentioned as barriers to meaningful access in the legal system, and this process enabled me to link my interview questions and respondents’ answers directly to the research questions governing the project and,

thus, to the literature and theory informing the initial inquiry (Cope, 2003, 455; Kvale, 1996: 194).

Being in the world, manifested in the participant observation component of the research, aided in the coding of the world (see Cope, 2005) and the word. The primary text materials of the interview transcripts did prove valuable in filling in knowledge gaps from the field and *vice versa* (cf. Cope, 2003: 446). Then, my coding strategies allowed me to assess the qualitative data, complementing the triangulation of methods (see Kearns, 2005). Because I had targeted key legal informants, my choice had limited my scope; but, rather than a downfall of the research, I saw it as a means for focus in my research analysis.

Feminist Epistemology in Geography and Knowledge Production

My “coding practices” (Crang, 2005: 225), or what I automatically looked for- what stood out to me, did help to clarify the epistemologies guiding my research and subsequent analysis and write-up- that is, in every stage of the research. The epistemology helped shape the research questions, the choice of methods, and it played a role when collecting and analyzing data. “A feminist epistemology,” proposes Megan Cope (2002: 50), “does not require the use of specific methods, *but it does require critical reflection on the use of all methods of analysis and interpretation*” (my emphasis). This reflexivity in research (Al-Hindi and Kawabata, 2002; Cope, 2002; England, 1994) enabled me to reflect on my research and to recognize that some parts of the research- for example, the water fountain incident- were in fact ‘data’, and could contribute to the overall aims of the project. Likewise, a feminist epistemology led me to consider my own body and subject position in relation to my research (Al-Hindi and Kawabata, 2002; Bain and Nash, 2005). A feminist approach to both the field and the collected ‘data’ involves considerations, not just of sex and gender, but notices all forms of oppression and hierarchy (Anderson, 1995; hooks, 1993). *Extending* my views and perspectives in this way allowed me to see the intersectionality between and among different forms of oppression in society, and in the law more specifically, and it forced me as researchers to gather and to analyze research data in manners sensitive to these interconnections. In

short, a feminist approach demands serious and critical reevaluation regarding knowledge production and the way we ‘do’ research and geography (Cope, 2002).

Note on Feminist Legal Methods

Because of the centrality of feminist jurisprudence, even feminist geo-jurisprudence, to this research project, it is necessary to note the distinctions between ‘methods’ from a social science point of view and feminist legal ‘methods’. In order to do so, I perform a close-reading of Katharine Bartlett’s (1990) essay, “Feminist Legal Methods”, which appeared in the *Harvard Law Review*. As ‘doing law’ involves primarily interpretation and analysis of legal discourse, legal methods are more can be understood more as epistemologies with methodological implications,¹³ rather than methods of data collection like interviews, focus groups, or participant observation. In fact, as Bartlett (*ibid.*: 843) explains, feminist legal methods have been critiqued as a politics, not a method, and this is connected to the American legal system’s assumption that “method and substance have different functions”.¹⁴ She argues that method and substance are “somewhat” distinct, but that all legal methods, including feminist legal methods, shape substance (*ibid.*: 843-47).

In Bartlett’s opinion, feminist legal methods include many of the same modes of thinking and reasoning as feminist epistemologies more generally, including “asking the woman question”; “practical reasoning”; “consciousness raising”; and positionality. At the foundation of Bartlett’s feminist method is the “woman question”, which “asks about exclusion” (*ibid.*: 847) of both women and “excluded groups” (*ibid.*: 831), and provokes legal practitioners to confront their assumptions and to adopt new perspectives receptive to forms of oppression within law and legal practice taking into account experiences and needs. In law, asking the woman question involves asking how existing legal standards

¹³ “A theory of knowledge that assumes the existence of objective truth accessible through rational or empirical inquiry, for example, has different methodological implications than a theory that treats knowledge as a question of special privilege, or one that denies its existence altogether” (Bartlett, 1990: 832).

¹⁴ “Rules of legal method, like rules of legal procedure, are supposed to insulate substantive rules from arbitrary application. Substantive rules define the rights and obligations of individuals and legal entities (what law is); rules of method and procedure define the steps taken in order to ascertain and apply that substance (how to invoke the law and to make it work)” (Bartlett, 1990: 843-44).

and concepts marginalize and identifying and challenging existing elements of legal doctrine, and I would add, practice. Above all, these methods are intended to “shape one’s view of the possibilities for legal practice and reform” (*ibid.*: 830) as well as “to expose those features and how they operate, and to suggest how they might be corrected” (*ibid.*: 837).

With that being said, there are some common methods used by feminist legal theorists in order to approach and explore law. These include:

- * **Discourse analysis/ deconstruction:** moving from questions of equality to critiques of the law itself (see for example Butler, 1990).
- * **Case studies:** examining law in action (for a classic example, see analysis of the *Sears* trial in Williams, 1989, to which I refer in the previous chapter).
- * **Ethnography:** If the law is “everywhere” but also changing and specific in its effects on individual lives, then how do women (and others) ‘experience’ law in the everyday? (see Ewick and Sibley, 1998)

Both during data-collection and the resulting analysis, I kept in mind the ways in which feminist and feminist theorists approach law as a topic and a site of research. While I did not perform specific case studies, I did treat this project as a kind of ethnography of legal discourse (see Conley and O’Barr, 1990), and I sought to understand law as it is experienced by the legal practitioners interviewed for this study. As key informants, the interview respondents were also able to provide me with some insight into the experiences of their clientele. I introduced Title VI of the 1964 Civil Rights Act and Executive Order 13166 in order to push against this legislation and to interrogate its effectiveness (and the possibility of meaningful legal access) through the insertion of everyday voices and experiences with law.

Possible Limitations of Research Methods

The major limitation to this research, as mentioned above, can be put very simply: I am a “lay person” (Conley and O’Barr, 1990), not a lawyer (see Moore, 1993). This positionality not only meant a steep learning curve during every stage of the research process, but it also may have affected my ability to gain access to potential informants and information. However, what on one hand could be characterized as a drawback in the research could, on the other hand, be seen as an asset. My un-familiarity with legal

language, rules of conduct and procedures, statutes, etc. forced the informants in this research project to explain in detail the concepts they mentioned during interviews. This provided for richer and longer interviews, and it allowed me to see how the law and law's history was interpreted differently across my interviews. Also, my lack of legal experience and the newness of the legal spaces involved in this research gave me 'fresh eyes' in my observations and may have diminished some of the observational bias (see Angrosino, 2007: 61) in the project. Like any research project, some listening and reading biases (see for example Cope, 2003) are inevitable.

My analysis draws heavily on my interviews, and especially in the section entitled, "Language Space: Interpretation, Mediation, and Legal-Subject Formation", the research could benefit from additional time spent observing in the RFS courthouse field site and, even, a more systematic approach to the site and the data therein. Yet, in order to collect richer data specific to interpretation practices, I would perhaps need to have better contacts and attempt to sit in on a different kinds of courtroom (for example, a trial of some sort), or follow a specific legal-subject through the entire court process. These were beyond the scope of this research. Another option would have been to focus on a particular judge and document the atmosphere of his or her courtroom over a much longer period of time. One way to have accomplished something like that would have been through participation in 'court watch' with the Kentucky Domestic Violence Association. Although the possibility for doing this emerged following one of my interviews, the project, as far as I know, has yet to come to fruition. Still, because of the kinds in-depth interview conducted, I was able to begin to understand this space through a combination of interview testimony and my own observations.

IV. BARRIERS, GAPS, DISTANCE, MEDIATION: LANGUAGE INTERPRETATION & ACCESS TO LAW'S SPACE

Language becomes a barrier when, for one, service providers have difficulty serving the needs of “Limited Language Proficiency” (LLP) populations (Peterson, 2001: 1). As many of the studies involving individuals with LLP and their access to services show (Peterson, 2001; Monroe and Shirazian, 2004; Chen, et al., 2007; Snowden, et al., 2007), these individuals frequently experience disparities in access to government services- whether delayed service or differences in service and service quality- which could be characterized as ‘uneven’ as compared to those with English proficiency. With my research, I have found that, among other ‘inconveniences’, LLPs in legal spaces have been asked to have their friends or family members interpret for them at the clerk’s desk, or have been provided the same interpreter for both parties in the adversarial legal system. Attorneys and other legal service providers, even interpreters, may not be proficient in the language the LLP might need, and they may be insensitive to the language needs of an LLP legal-subject or possible language/cultural nuances. Moreover, language interpreters are not provided in every step of the legal process, or in every legal possibility, for that matter. Disparities to language access also exist, in part, due to often unseen, but nevertheless irretrievable, differences involved in language interpretation, especially as manifested in a legal context. These differences are best understood and conveyed through a spatial conception (distance and proximity) of interpretation within the framework of legal encounter and relational *and* mediated identity-formation.

LLPS, NON-SPANISH SPEAKERS AND GAPS IN INTERPRETATION QUALITY AND ACCESSIBILITY

“Such is the power of language: that which is woven of spaces elicits spaces, gives itself space through an originary opening and removes space to take it back into language.”
-Michel Foucault, 2007: 166

Not only has the role of language in identity formation been relatively neglected by geographers (see Valentine, Sporton, et al., 2008), but also, a majority of the studies involving language access and services (all outside the discipline of geography) are

concerned with the Health Industry and medical services.¹⁵ This is particularly so, it seems, because a lack of access to health services can prove life threatening. When, for instance, a patient cannot communicate their medical problem, the connections between language barriers and barriers to access become quite apparent and can have fatal results. The legal implications of language-related access are different, yet, arguably, no less severe. There are life-threatening and life-altering consequences to legal actions. These are not confined to the fatal outcomes of certain criminal cases, but can also result from, for example, the failure to retrieve an Emergency Protective Order (EPO) in a domestic violence occurrence, the loss of parental rights and the subsequent removal of children from the home, etc.

Those whose do not speak, write, or read English proficiently may be similar in that their primary language is one other than English, which is the language in which U.S. law is written and practiced. However, there is a danger in lumping all non-English speakers into one category as ‘other’ because it elides the differences in experiences between different non-English native tongues. While the policy language discussed above essentializes the non-English or low-proficiency English speaker as the ‘LLP’, there are disparities in access to interpretation and interpretation *quality* amongst LLP individuals. When asked to describe disparities in interpretation services in Lexington, one interviewee (R7, 12/17/08) responded:

For Spanish-speakers, my impression is that they are getting *decent* interpretation...in the courts. Non-Spanish speakers, because they don’t have staff interpreters, they’re relying on certified and lower levels of interpreters outside of that [certified interpreter] system. And *that’s*, I think, where the huge gaps are.

The availability of these services in Lexington points out that all LLPs are not the same, not just because all languages are not the same, but also because there are a limited number of languages with certification programs for interpreters; contract or community interpreters may not be of the same caliber as more highly qualified staff interpreters. Because of differences in levels of certification and in the availability of interpreters,

¹⁵ In this study, I found that language access to medical services is also an issue in Lexington, KY. Kentucky Equal Justice Center has as one of its responsibilities the translating of medical service pamphlets and educational materials in an attempt to mitigate the troubles caused by interpretation/translation in this arena.

there are “gaps” in quality of interpretation provided. The possibilities for meaningful access to law and legal services, then, vary depending on the individual’s primary language. If the individual speaks, writes, and reads English proficiently, then he or she does require language services in order to communicate in the English-language-based court system. In Lexington, where the Kentucky Court of Justice employs Spanish staff interpreters, if the individual is a Spanish-speaking LLP, then the interpretation quality might be better than a non-Spanish, non-English speaker.

For the legal system, interpreters are a resource. In order to be able to provide interpreters, there must be people available who speak the language required for the LLP individual/ legal subject. The interviewee above continued:

...And I worry about...for instance, we had a human trafficking case last year, where we had four victims who were Chinese-speaking, Mandarin. And it was very difficult for us to find interpreters, Mandarin-speaking interpreters. And, when speaking to one of the interpreters through a corporate interpretation program, he talked about being called down to Lexington and other areas to interpret.

The problematic of interpretation involves not only local needs (cf. White, 2002), but also local resources. If an interpreter cannot be found locally for the source language required, one will be brought in, or “called down” (to the “New” Lexington and other southern places) because federal law mandates that interpreters be provided. Like the Mandarin interpreter mentioned here, one the Spanish interpreter I interviewed for this study described how she travels constantly because of the lack of federally-certified interpreters at both the state and national scales. Bringing in interpreters from out of state is not without expense, and perhaps this contributes to the stigmas about the cost of language accessibility discussed below. Indeed, there is a geography to interpretation in that it an encounter of people and places in a specific locality.

As interview continues, it reveals that the “gaps” in both interpretation, and access, and the possibility for meaningful access grow when the language required by the LLP legal subject gets further outside of the certified interpretation system and its list of qualified interpreters. Mandarin is more widely spoken than some indigenous languages, and it was “very difficult” to get a Mandarin interpreter:

...Cause Mandarin’s pretty common. Once you get outside of those languages, I think you’re gonna have some pretty crappy interpreting. For instance, we have a

lot of Guatemalan clients, who...Spanish is not their primary language; they speak an indigenous language, and it's extremely hard to find interpretation *at all* for those clients. I mean, we [MSLC] have a hard time. And so, the court will use Spanish, because...I think that's what we all have to do, or what we rely on, but you can tell there's misunderstandings going on.

When the local language need cannot be met, not because interpretation services are denied, but because there is a lack of interpreters able to perform the job, then not only attorneys, but even the courts have to make compromises. These compromises widen even further the “gaps” discussed above. The repercussions of this are of the legal variety and can have serious life-altering consequences for, say those involved in human trafficking, or, in another example given by this interviewee, a father at risk of losing his parental rights, in part due to the confusion of language gaps and barriers. The use of Spanish as a middle-ground between the interchange of an indigenous language and English, beyond interpretation, speaks to the geography of languages in a post-colonial world (see Said, 1990). The indigenous legal subjects mentioned in this interview are thrice-removed from the language of U.S. law and its practitioners. Interpretation in this case occurs from the source language to an intermediary language (Spanish) to English (the target language) and from English, back to Spanish, to the target language of the non-Spanish speaking LLP. The more languages involved, the greater the degree of error, miscommunication, misunderstanding, and loss of meaning. The more meaning lost in interpretation, the greater the barriers and the less meaningful the legal access.

NAVIGATIONS IN LAW: LANGUAGE, PROXIMITY, AND ACCESS

“If he was already speaking our language, with all that that implies, if we already shared all that is shared with a language, would the foreigner still be a foreigner?”

-Jacques Derrida, 2000: 17

In a legal context, specifically in a U.S. legal context, the term “language minority”, a term adopted by Susan Berk-Selingson (2002) in her anthropological study of the bilingual courtroom and the role of court interpreters in the judicial process, captures the subject and *spatial* positioning of the LLP individual in discursive, legal space and law's material spaces (that is, in legal offices and in the courthouse/courtroom). For, the legal subject with low-level English-proficiency or lacking English language knowledge

completely, is not just limited, but is in the minority in these spaces. ‘Minority’, though it has fallen out of use among politically-correct circles in its designation of ethnic and racial categorization,¹⁶ speaks to aural, if not ethnic or racial, isolation and exclusion¹⁷ of the low-level or non-English speaker amidst an English language-based law and English-speaking practitioners of that law. ‘Language minority’ holds currency in a legal *geography* because it emphasizes the barriers and difficulties posed by language in the Department of Justice and other federal and local agencies more than the dry, codified terminology of policy documents.

It is my contention that the heuristics of distance and proximity (cf. Atkins, et al., 2006; Manderson, 2006) are also useful devices for talking about the ways in which language barriers and the practice of interpretation force a divide between insiders and outsiders to the law. Language and law’s language create gaps and erect a boundary for the language minority, or LLP individual, and prevent the attainment of equal and meaningful access before the law despite agency regulations and Civil Rights code. As law and space are actually aspects of one another (Blomley, et al., 2001), the way that law affects language is, in part, a spatial effect resulting from distance, or lack of language proximity. What role does language, including legal language play in gaining or barring access to the law? When asked about the possibility difficulties faced by the language minority as legal subject, a lawyer-respondent (R1, 10/08/08) had this to say:

If you’re talking specifically about Immigration Law, it’s a foreign animal. I could explain stuff to you that you may not understand the first time around. If you came to me and said, “I just married a guy from Mexico, and we want to sponsor him for residency status” and I explained to you the procedures... in a few minutes, your head would explode, and you would say, “This is too much detail”, and it *is*. But, I give people the big picture, and, as we proceed through the various steps that you have to take, you know, they become more comfortable with it, and they begin to understand it a little more.

Law has its own language, and it is itself alien, a “foreign animal”, even for those at

¹⁶ And I agree with this, especially because ‘minority’ when it signals ‘non-white’ is not always the proper designation. Non-whites, when classified together in this categorization, are not always in the minority, and it is contextually differentiated. In the case of U.S. law- before the law- English prevails both in legal codification and practice; thus, non-English languages are *always* in the minority. When discussing and thinking about ethnicity and race, minority designation can remove agency from individuals and groups. Here, I adopt the term ‘minority’ in order to draw attention to power relations within the operating logics and mechanisms of law.

¹⁷ Perhaps exclusion in aural space or soundscapes (cf. Ehrkamp, 2006), even.

‘home’ within the law. For the native English-speaker, U.S. law, written and practiced in English, is broadly speaking, “strange and familiar at the same time” (Honig, 2001: 31) because law uses a technical language, or legalese. In the U.S., then, it is doubly, or even triply (in the case of indigenous language speakers discussed above), removed from those who do not speak English or speak limited English or English as a second language. There is room for further distance and difference (gaps and barriers) in the quality of access with the addition of another modality of interpretation before law. In the case of LLP legal subjects, not only do attorneys interpret the law (legalese), but also court interpreters, and perhaps attorneys, interpret the English language.

Moreover, different areas of law, for example Civil, Criminal, or Immigration Law, require their own set of understandings; and law, particularly Immigration Law, is always changing. Not even attorneys are knowledgeable about every aspect of law, not even in Kentucky where there are no mandatory specialization requirements, or specialty areas of the law, which differs on a state-to-state basis. It can create even further confusion and problems for the legal subject when an attorney takes on a case or an area of law in which he or she is not qualified. Especially with Immigration Law, “if you don’t do it regularly, you can really mess people up” (R7, 12/17/08). In this way, Immigration Law might be equated to “*Alice in Wonderland*”, “a whole other world” whose rules and systems of logic do not apply to other areas of law (R7, 12/17/08):

Because there’s so few people who do it [Immigration Law], there’s not this kind of foundation of knowledge. You know, we all have families, we all know people who have gone through divorce; we have that common history of knowing about Family Law even though we may not be a lawyer who does that.

Due to the specialization and professionalization of law, attorneys and legal practitioners act as gatekeepers to understanding, and their assistance aids in a legal subject’s possibility of gaining more familiarity with law’s territory. This is especially so because it is not always clear how, where, or when to access law- “It’s not that it’s [information about the law] hidden; it’s just not obvious where to find it” (R1, 10/08/08). Law is contradictory and paradoxical no matter the subject position of the non-expert who is approaching the law and attempting to enter its spaces.

Law is not only an impositional (Honig, 2001) space laid *onto*, or imposed upon, the spaces within the jurisdiction; law is a discursive space, stitched into the operations of

everyday life, and the borders of this space are words- written and spoken. Access to law, then, is admitted or barred by language. When thinking about the law in this way, attention to the geographical dimensions of law *and* language shows how socio-legal relations are mutually constituted spatially and legally. The above interview continues:

...But, it is difficult, and it is complex... and, if you get outside of Immigration Law, like criminal defense, um, if somebody's in trouble or accused of some crime- misdemeanor or felony, or whatever- uh, they've got a real problem because the system is, is very...**different** from what they're used to, um, it's very procedure-oriented and...and very evidence-oriented, and in their cases, uh in their countries where they come from, a lot of times that's not the way it works. The way it works is that, a lot of times, is you pay somebody and you get off or you get a favor done, or whatever, so it's different, a different situation, and they look at authority in a very much, in a different way than we do. Their expectations are much different because of what they've come from and what they've experienced.

From the point-of-view of the LLP (the question *of* the stranger), language as a barrier to meaningful access to the law is also multi-layered and multi-scalar in its complexity. As the "Policy Guidelines" mentioned above espouse, these barriers to understanding involve not only the exercising of rights and the accessibility to benefits and services, but an understanding of 'wrongs', that is, compliance with enforced laws.

When it comes to immigration and naturalization, for example, the extent of civics and historical integration goes as far as the one hundred or so questions required for the U.S. Naturalization Exam and the efforts of such programs as the "Citizenship Project". The rest is left to self-education and experience. Still, there is much talk in law and society along the lines that "The law is pretty much common sense" (R1, 10/08/08). But, this begs the question: *Whose* common sense? To whom does the law appear open in this way? In addition to the complexity of a legal understanding are *cultural* and historical dimensions of law, especially with the scholarship forged by cultural theorists like Edward Said (1979; 1993), which presses that we cannot consider language without culture and *vice versa*. This is of notable importance with concern to the language minority as legal subject because the linkages between language and culture are often a matter of cultural competence. This cultural space, or the need for additional cultural interpretation/translation, pertains to negotiations, not only of language, but also to law and law's language and logic. Yet, as Supreme Court Justice and legal philosopher

Oliver Holmes (1944:1) stated, “The life of the law has not been logic; it has been experience.”

Thinking about law from the angle of spatiality and language barriers sheds light on one of a number of Catch-22s in the law. While “ignorance of the law is not an excuse” (R1, 10/08/08), for LLP individuals in the U.S., education of the law- at least to a compatible level of English-speaking legal subjects- requires knowledge of English and/or the know-how to find an adequate attorney in addition to a degree of ‘cultural competency’ and, possibly, the funds to hire a private interpreter:

...So, for a lot of folks, any contact with the legal system is gonna be difficult, especially if you don’t have any money.... If you can afford to hire an attorney *and* an interpreter, if you don’t speak English, then, you know, you can, can make your way through. But, if you lack money, especially if you lack money, uh, and if you lack the language skills, it’s gonna be... well, it’s as if I went to China, and got into trouble over there, I’m *lost*; I’ve got no idea what the system is like except what I’ve seen in movies, so... It’s a completely different world.

Law is less indebted to logic than to history and to societal norms; hence, there is another remove for the language minority before the law as discussed previously. This adds additional weight to Blomley’s (1994) assertion that the law is neither well-ordered nor rational. Law, instead, is messy and complex with a logic all its own. The difficulty and complexity of encounters with the law could be exacerbated (how greater gap or barriers or distance) by a difference in language and socio-economic status.

Just as critical legal geographers have maintained that there is an irreducible union of the social and the legal (the socio-legal) (see for example White, 2002) and of the spatial and the legal (see for example Blomley, et al. 2001; Holder and Harrison, 2003), so too, are language and the legal bound, forming a kind of language space as argued throughout this paper. The legal matrix is formed by the social, the spatial, *and* the discursive; thus, “[t]he legal and the spatial, the discursive and the material are inextricable” (Delaney, 2003: 71). Both language and the law are contact zones, spaces of social and legal encounter. Thinking about outsiders to the law and the ‘Other’ more generally in terms of language and language minorities sheds light on legal scholarship and the law in action *and* conceptualizations of the ‘Other’. The consideration of proximity and distance in terms of language and legal encounter/belonging corroborates with Georg Simmel’s insight that the stranger’s proximity is “near and far *at the same time*” (Simmel, 1950: 3).

When in the language minority and a legal subject, the stranger is near in that he is physically present and far in that his language- though present in utterance in sound- is absent in meaning. If spatial relations are the *only* the condition and the symbol of human relations as Simmel (1950: 1) also contends, then the spatial relations inherent to the imperfect compromise of language interpretation are no exception.

The above interview segment says much about the possible spatial difficulties, including gaps, barriers, and distance, encountered by the language minority in the legal system, as a “foreign animal” (R1, 10/08/08). Seen in this way, the law can be imagined as a city grid, and language is the tool by which legal subjects “*navigate*” that grid.¹⁸ However, in the case of the U.S. legal system, those with low English proficiency are attempting to navigate a foreign city without a map; they are “lost” (R1, 10/08/08). This is not the cosmopolitan wayfaring often celebrated in mobilities research; but, instead, this kind of “lost” could have legal, life-altering or life-threatening consequences. Instead, the “lost” language minority/legal subject could find him or herself confused, and almost spatially disoriented, in the midst of misinterpretation, misunderstanding, miscommunication. This disorientation is multi-fold because, not only is U.S. law written and practiced in English, but it is a very specific, technical, and historical legalese, which has been theorized as a language of its own requiring expertise in knowledge and professional guidance. Thus, the legal language and the use of official English acts as “a sort of passport that opens and closes doors, and its power is always differential” (Rosello, 2001: 105). This statement applies, not only to the global scale and international border-crossing (and Rosello’s French case study), but it also holds weight at the local scale of Lexington, Kentucky, as emphasized here.

The interview passage above also illustrates the intersectionality of language barriers with economic concerns and, possibly, citizenship status. For those whose legal encounter is a legal predicament, it can be their lack of language skills that have gotten them there in the first place, and this aural profiling- the language equivalent of visual profiling, I suggest- can continue throughout their time in legal space.¹⁹ For those attempting to enter into the legal space through immigration procedures, navigating the

¹⁸ This *in vivo* code that comes out across my interviews (R1, R3, R5, R6, R7), points to the spatial imaginary that legal professionals have about law, implied if not explicitly expressed.

¹⁹ This is discussed further in the following chapter.

law and its language is no less foreign or alien. Lack of language proficiency also intersects with income status; for those that cannot afford to hire a lawyer or an interpreter, navigation proves even more difficult. As the first interviewee (R1, 10/08/08) concludes the question regarding possibility difficulties faced by the language minority from his own experience as an attorney working with this clientele:

Yeah, you come back to the two basics. *Basic number one is having the money to be able to hire a good attorney*, and, by the way, you don't just hire an attorney when you're in trouble, you hire an attorney before you get in trouble in order to avoid getting in trouble, and a good example would be real estate. If you're not familiar with various aspects of real estate law, then you really need an attorney. A lot of people don't really understand that. So, that's true. And that's one. *And the other is knowing the language*. Same thing, yeah. It's not just criminal defense or immigration, it's everything... The Law expects that you're going to behave in accordance with the Law. (my emphasis).

Even if law is a resource or a tool, it is not available without a cost (see S. Sibley, 2001). The services provided by Maxwell Street Legal Clinic recognize the intersection of low-English proficiency, income-status, and citizenship-status, and this non-profit legal clinic has been established to address those very needs.

Later in the interview, the same respondent returns to explanations of how access to the law differs for those in different economic situations, this time when I was probing about the possibility 'justice' and "fairer treatment before the law". He uses the example of the first O.J. Simpson trial, and although this is an extreme example, it is, nonetheless, provocative:

Well, compare OJ Simpson, who had a lot of money and the *best* of legal teams, right? And, he got off[f].. he got.. *at least* he got a very fair hearing, whether you agree with the outcome or not is...doesn't matter, but he had the money to pay a top-notch legal team... Compare that with somebody who is not an immigrant, and who speaks English, but doesn't have any money, and he's a US citizen...He's in a *completely* different situation. So, it's not just the immigrants and those that don't speak English, it's just those that have *more* money can afford better representation than those that don't *have* as much, just the way that they buy bigger and better houses, and have better vacations, and the rest of it.

When navigating or attempting to navigate the legal terrain, it seems as if a lack of language skills and low-income status can be a point of vulnerability, and subjects finding themselves adrift have been misled. A clear example of this is the situation in Lexington and elsewhere involving *notarios*, that is, unqualified persons offering legal

services.²⁰ As one respondent (R1, 10/08/08) put it (see APPENDIX D for a longer excerpt from the interview transcript):

...[T]here are people...who will offer themselves, both Spanish-speaking and English-speaking people, who will offer immigration services without being qualified to provide those services. They end up taking peoples' money and really sc... messing up their situation in a lot of cases by either filing forms that they shouldn't be filing because people are not eligible and they don't know what they're doing, and what they really want to do is collect the money.

According to this respondent, in Latin America a 'notary' is frequently an attorney, though that is not the case in the United States. Regardless of this, '*notarios*' create business and offer legal services they are not qualified to provide. This is problematic not just because of the monetary burden on low-income people, but also because the mis-filing of paperwork in Immigration Law can lead to delays in or denials of legal positions at the time of filing or upon subsequent filings later on in the immigration process. In Immigration Law, this is of particular concern because in this area of law "the rules are very specific and very separate, and, if you don't follow them, there's not a lot of leeway for mistakes" (R7, 12/17/08).

Because of the importance given to language in law, the mis-interpretation of a single word (whether spoken by an interpreter or as interpreted heuristically by a judge or other legal entity) can completely change someone's life. As one court interpreter interview for this study admitted, there are "irreconcilable cultural differences" (R2, 10/13/08) involved in interpretation/ translation, and these differences can serve as yet another barrier to navigation in legal encounter. The cultural space of language and law discussed above is further evidenced by the cultural implications and *context* of words and word-use. Certain words needing qualification, and this, in turn, can have the effect of greater distance in remove for the language minority/ legal subject.

The nuances between source and target language and the cultural understanding couched in those nuances emerged in two other interviews in this research study, both regarding transmission from Spanish to English. The next example is the adjective '*secundaria/o*' (R2, date). In some Spanish-speaking countries, this word can mean

²⁰ That the *notarios* are completely unqualified to help with legal matters is, of course, a positioned perspective of a legal professional. This research neither attempts to interview *notarios* or subjects utilizing their services, which would be necessary for a fuller understanding of this situation.

either ‘up to middle school’ or ‘up to 12th grade’. This is important because, as Clark (2001: 111) suggests, “to the extent that language is both representative and a constituent part of how people understand their lives, the hegemony of the language of law may deny the legitimacy of their personal experience”. While the difference might seem slight, what risks being lost in interpretation/translation is an accurate account of the life history of the legal subject. Such “readings” and the drawing of a less-than-complete picture of a legal subject could, for one, have numerous legal implications and repercussions (cf. Coutin, 2002).

Another word needing qualification is ‘*el aborto*’ (R5, 11/11/08). While the direct translation is ‘abortion’, *el aborto* means both ‘a medical abortion’ and ‘a biological miscarriage’. To demonstrate the significance of *el aborto* and how a legal outcome can hinge on the proper interpretation of one word, the respondent (R5, 11/11/08) relayed a situation she witnessed with a legal subject for whom she was advocating in a legal setting. When asked how many children she had, the woman (in Spanish) responded that she had X number of children and one abortion. The interpreter, rather than probing further or contextualizing the Spanish noun, interpreted directly that she had had an abortion:

[I]magine if that question [about abortion] had been asked in front of a very conservative judge... There’s no spirit to that [in the spirit of the word]. Cause you don’t know what she meant, you just made a decision for her.

From a domestic violence and advocacy perspective, the consequences resulting from a lack of qualification or an ill-informed interpretation/translation could be severe, especially in the U.S. and Kentucky context where abortion is hotly contested and might have particular connotations for certain judges. Here we see how language and law intersect on the axis of gender, an example of how judicial interpretation goes beyond the abstraction of theory and has real affects on real people and real lives. Indeed, interpretation of the law and language as depends as much on the listener and the socio-cultural context as it does the speaker and the interpreter, and there is an inescapable politics of interpretation/translation (cf. Delaney, 1993). As membership and belonging is linked to recognition (Benhabib, 2004), so is access intimately bound to understanding in every sense of the word.

**LANGUAGE SPACE:
INTERPRETATION, MEDIATION, LEGAL-SUBJECT FORMATION**

“For judges, attorneys, defendants, litigants, and witnesses alike, the presence of a foreign language interpreter transforms normal courtroom proceedings into bilingual events.”
-Susan Berk-Selingson, 2001: 1

Interpretation is iteration, that is, it is a repetition of something already said and also a repeated performance (the act of speaking, or utterance). In this way, interpretation is always mediated. The role of the court interpreter is so mediated, in fact, that a court-appointed and/or employed interpreter cannot even be approached outside of the courtroom. If, for example (an example taken from my participant observation field notes), a non-English speaking person asked an interpreter directions to the bathroom, the interpreter could not answer the question directly, even if he or she could understand and knew the answer. Instead, an interpreter might motion the non-English speaking person to another court employee, such as a deputy of the court. The non-English speaking person would then be instructed to ask the question again, this time addressing the third party. If the third party does not understand the language but knows where the restrooms are located, the interpreter acts as the mediator between the two parties, thus retaining his/her professionalism and impartiality.

The mediation of interpretation creates distance and spatiality in the act of interpretation, and this distance contributes to the irreconcilable shades of exclusion of language minorities in judicial space, which includes but is not limited to the highly performative courtroom setting. The word ‘*decalage*’,²¹ which emerged from my interviews in Lexington, emphasizes not only the spatial, but also the temporal gap, angle of difference, or displacement that exists in the practice of spoken language interpretation. An aeronautical term, it signifies “the difference in the angle of incidence between any two distinct aerofoils on an aeroplane; e.g., the main plane and the tail; or more usually between the chords of the upper and lower planes of a biplane” (*OED*). Nonetheless, ‘*decalage*’ is also used to designate the spaces between the utterance of the source language and the re-utterance into the target language. As one of the informants

²¹ “Fr. *décalage* displacement, f. *décaler* to displace” (*OED*).

(R6, 11/17/08) for this study put it, “[interpretation is] like a relay race, where English is just a step behind”.

It could be said that interpretation is *translocation* and suggests a degree of translocation, moving across or changing space in the process of iteration and re-iteration. Because speech *is* presence (see, for example Levinas, 2007), the space occupied by the language minority during the practice and process of interpretation is interstitial, and, in this case, to think of the language minority (the stranger, the foreigner) is not to think of an object, but to think *distance* (see Levinas, 2007: 49). In the relay race of interpretation, the interpreter, too, plays an active role in the subject formation and the spatiality of the legal subject/ linguistic minority, especially considering that identity is constructed discursively and in relation to other identities as well as to the space itself. Since language and identity *and* space are mutually constituted (see for example Valentine, et al., 2008), the insertion of a language mediator and of aural space, disrupts proximity and, therefore, belonging. The more people involved, and the less direct the communication from one person to another, the more room there is for error and misinterpretation, misunderstanding, and miscommunication. A language minority could miss a court date by no fault of his/her own, for instance, if the court relays the information properly but the interpreter/translator misspeaks or writes down the wrong numbers.

Language interpretation in any context aims to be a “totally impartial” (R2, 10/13/08) practice accomplished through “faithful” (R2, 10/13/08) interpretation. To some extent, however, the faithful rendering of language is more akin to a leap of faith. Like judicial interpretation language interpretation is not without human error and bias. In other words, “You can’t take the person out of the interpreter” (R5; 11/11/08); and, even the most “finely tuned violin” (R2, 10/13/08) could break a string. For the legal subject who is in the language minority, the interpreter can possibly create “another area of problems” (R1, 10/08/08), or pose further difficulties to accessing the law. Take, for example, an interview respondent’s (R1, 10/08/08) assessment of the situation of interpreters in court:

And, of course, that’s a whole ‘nother area of problems, and has been in the past, uh, because, if you have an interpreter, who is not qualified or is not doing his or her job properly, you’re Defense, if it’s a Criminal case, for example, you may not be able to, you as a the defendant may not be able to assist the attorney in the

defense of your own case because you don't know what is going on. So you may hear a question and give an answer that is incorrect because the way you heard it, from that interpreter, was incorrect. And that *has* happened, and that has resulted in cases being overturned because of ineffective Defense.

Similar to attorneys and *notarios* (business people offering legal services, as mentioned above), interpreters can provide services that they are not necessarily qualified to handle, despite certification and ethical regulations. An ineffectual interpreter can be life-threatening or life-altering when a defendant is unable to properly and thoroughly assist his/her attorney in the defense of his/her own case.

Whether with regard to social services, medical services or legal services, etc., language interpretation entails not just proficiency in- an *intimacy* with- the source *and* target language (to the extent that not just words, but nuanced meaning, vital qualifications, and cultural shadings can be conveyed), but also familiarity with technical terms, procedures, and ideas. Even a well-trained and certified interpreter is not able to assume each and every subject-position of an individual in the language minority, and this can have consequences. For instance, as one respondent (R5, 11/11/08) posed, "How can an interpreter that doesn't know what domestic violence can look like contribute to ensuring that this person doesn't get what she needs?" The ideal legal interpreter not only understands the shades of meaning in a word (and recognizing the necessity to *convey* and contextualize those meanings), but is also familiar with the specific sub-field of law (which might differ in different local contexts) and could be able to empathize with the language minority's positionality and needs.

In a legal setting- whether at the clerk's window, in court proceeding, or in an attorney's office- the interpreter is prohibited from giving clarifying explanations. It is not the function of the interpreter to interpret/translate legalese or legal meaning to the language minority. As one interpreter-respondent explained, "Our role is not to explain, our role is not to clarify. Our role is simply to put a non-English speaker or a limited English speaker into the same role that an English speaker would be" (R6, 11/17/08). In the U.S., the role of the courtroom interpreter is to put the non-English speaker at the same "*level*" (R2, date; R6, 11/17/08) as the English speaker with the goal of rendering the target language as it was originally said in the source language. This is achieved through, for one, consistency in "the register of the language" (R6, 11/17/08), or the level

of education that language reflects. So, if a clerk, or a litigant, or judge, or a witness speaks in legal or other jargon, what they say is interpreted as jargon. Conversely, if the speaker is colloquial, uses slang or idiom, or curses,²² the English interpretation attempts to mirror that register.

It is explicitly in the hands of the attorney to explain the rule and word of law to his or her client, and herein lies another ‘problem’ in regard to language interpretation in legal space, and this is a complication even for “cause lawyers” (see Sarat and Scheingold, 2006). Although bilingual attorneys (especially those with social change agendas) can prove indispensable guides who do open doors for their clients and offer a change for more *meaningful* access to the law, simultaneously interpreting the law, legalese, the action of legal proceedings, *and* the English language is like trying to juggle a few too many things at once. Bilingualism on the part of an attorney can result in the bridging of gaps for a language minority client external to the courthouse or in instances not requiring a courthouse encounter (for example, the navigation of Immigration Law at MSLC and the filing paperwork). However, explaining the law during proceedings is difficult and outside of accepted practice, especially in an adversarial system like the U.S. legal system, where an attorney speaks on *behalf* of his or her client and is in constant conversation with the rest of the courtroom work group. For these reasons, if the legal subject is a language minority, the individual might receive a “*fairer*” (from interview with R1, 10/08/08) hearing before the law if he or she can afford to hire a personal interpreter. To have more meaningful and more equal treatment before the law (as compared to the native English-speaker), or equal treatment at all for that matter, the low-proficiency or non-English speaker- the language minority in the U.S.- must carry the burden of an additional expense. And, with this, we again see the intersectionality of questions of language and the economic status of legal subjects.

Despite misconceptions, the court interpreter does not interpret for the legal subject alone, either; in fact, more than anyone in the courtroom, the interpreter is working for the judge, who presides over the court of law. In this way, court interpretation provides *the Court* access to the legal subject speaking a language not its own, rather than the

²² One of the only occasions when a court employee can openly swear in a courtroom is when an interpreter is mirroring the register of the language.

inverse. Yet, as Berk-Selingson's (2001: 1) research finds, "the presence of a foreign language interpreter transforms...courtroom proceedings". Both my own observations and the observations of my research respondents attest that there is a spatiality (aural, visual, and socio-spatial) to this kind of bilingual language event, and the subject-forming position the language interpreter plays in the courtroom affects how the foreigner "figures" (see Honig, 2001) into that legal space. In some respects, the interpreter stands between the law and the language minority, even if that interpreter, impartial, is confined to the corner of a room. One usually looks in the direction of the speaking party, and so the attendance of the interpreter alone signals difference, as do the soundscapes, and this is not to mention predominately visual signifiers of difference including race, class (for, example clothing and demeanor as discussed earlier by McCall, 1978), and gender. Moreover, there are necessary pauses in speech that must occur for interpretation to be rendered in a courtroom setting. When coupled with the decalage, these gaps or distances in speech shape and influence not just the transmission of language, but also, perhaps more significantly, the reception.

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To what extent do laws, language, and space reinforce a subordinate social status? Considerations of interpretation in a legal setting, I contend, allow us to penetrate into this very question and to work towards a material and discursive understanding of the law, perhaps the most insufficiently materialized of the discursive and material aspects of the social (Delaney, 2003: 71). In the above analysis, I have examined how law is a set of discourses and practices, and I have looked at some of the ways in which legal space is both a language space and a material space. One practice occurring within law and legal space is interpretation. As (re)iteration in a legal context, interpretation occurs in many modalities and involves the transference and conveyance of meaning.

While recognizing overlaps in scales of interpretation, I focused on language interpretation, and I sought to open up language as a site and an entrance-point into an exploration of accessibility and law. I found language interpretation in a legal space

entails language transmission as well as place-based understandings of law's logic, history, and culture. Even though law's web is everywhere and access into courthouses spaces are not barred, meaningful engagement in *and* with legal language space in the United States requires the English language, legal language, and cultural knowledge. From my research, I have found that the complexity of language interpretation and law can be best understood in terms of spatiality. Barriers, gaps, distance- including cultural difference, and mediation are all implicated in the translocation from a source to a target language, both inside *and outside* the context of the courthouse. The effects of these spatialities can risk legal consequences, which may be life-altering or threatening. Thinking of the low English-proficiency legal subject in the U.S. in terms of the "language minority" (Berk-Selingson, 2001), perhaps, stresses the possible exclusion experienced by an LLP individual lost in the penumbras²³ of law while drawing attention to the importance of language in legal-subject formation.

If the marking of bodies as different can be associated with visual difference and places as well as with language, which is not separate from place and "national origin" ("Title VI Statute") and linked to race, ethnicity, and, possibly, citizenship status, then spatial differentiation may also be tied to perceptions of similarity and difference. In the next chapter, I address some local legal strategies and tactics in the greater-Lexington's legal apparatus, in light of perceptions and practices in the changing metropolitan area, particularly as they relate to the language minority.

²³ Another aspect of judicial interpretation not mentioned above is the spirit of the law, or 'penumbra'. 'Penumbra' in the context of U.S. law, especially in constitutional jurisprudence, refers to "the scope of a legal provision, *esp.* the range of its application extending beyond the rights, privileges, or immunities it enumerates explicitly" (*OED*). For example, the 'right to privacy' upon which *ROE v. WADE* was ultimately decided was found in the *penumbras* of the Third Amendment (part of the *Bill of Rights*), which pertains to the right not to quarter soldiers in one's home during peace-time. Although there is no mention to privacy in the Amendment, the interpretation found that the *spirit* of one's 'own house' signals the right to privacy. Another meaning of 'penumbra' is "a faint intimation of something undesirable; a peripheral region of uncertain extent; a group of things only partially belonging to some central thing" (*OED*). Is it possible to think of the language minority, distanced and perhaps even lost, to be occupying this shaded, peripheral region of nebulous discursive legal space?

V. BETWEEN RECOGNITION AND RECEPTION: THE ‘OTHER’ AS LANGUAGE MINORITY IN LEXINGTON’S LEGAL SPACE

“...[T]he issue of language cannot be dissociated from the most basic level of hospitality, and one who rejects the other’s language is already rejecting him or her.”
- Mireille Rosello, 2001: 105

If notions of proximity and distance signal “feelings about difference” (D. Sibley, 1995), then, in what ways do these feelings serve as a foundation for exclusion, rather than inclusion? This is of particular significance when we consider that the *meaning* attached to difference and status is central to understanding the immigrant experience (Calavita, 2005: 164; see also Honig, 2001), and that this is enforced, even if by symbolic force (Derrida 1992: 6), both inside and outside legal settings. How do language factors and barriers contribute, not only to the creation of space between people in place as discussed in the previous chapter, but, by extension, to everyday exclusionary practices and regulations (D. Sibley, 1995), especially considering that law is a set of discourses and institutions with its own geography? If social belonging and socio-legal belonging are related to reception and recognition, then what are the implications of the “figure” of the language minority in meaningful legal inclusiveness or equal access, as part of the publicity, before the law, and in Lexington, KY? These are some of the questions that provoke the analysis that follows.

Because of the inseparability of the legal apparatus, interpretation *outside* of the courthouse is just as vital to the fulfillment of meaningful access as is interpretation inside of this space, and in both orientations (outside or inside) there are tensions between what kinds of access *should* be provided versus the access that is, in fact, provided. In this chapter, I further expand upon language proficiency and language interpretation in legal spaces, recognizing that perceptions influence practices. Enforcement, which is about upholding rights *and* punishing ‘wrongs’, is often marked by *de facto* and not just *de jure* local protocols and local enforcement policies. These local practices may be further complicated by biases and presumptions on the part of service providers. Because ideology play an important role in the way law is carried out (Wani, 1989-90), recent improvements in availability and access to interpretation in Lexington do not nullify the

need for legal advocacy and activism on the part of and on behalf of the language minority. Maxwell Street Legal Clinic (MSLC), I find, plays an important role in Lexington's local legal universe in this regard. Founded in response to local legal needs, this institution within the legal institution serves as another site of language encounter, and it fosters the implementation of hospitable strategies and tactics in the face and within earshot of local legal barriers.

“NOT YET”: LANGUAGE ACQUISITION & INTERPRETATION SERVICES IN LEXINGTON’S LEGAL APPARATUS

“...Migrants are often defined as ‘out of place’ (cf. Cresswell, 1996) in their new environment despite being multi-lingual because their particular individual linguistic competencies do not always fit the norms or expectations of the particular spaces which they inhabit and so their identities are inscribed by others as not belonging.”
Gil Valentine, et al., 2008: 377

In Lexington, language barriers in legal settings have persisted despite the LLP-related Executive Order and the “LLP Guidance”, in part due to the time for education, training, etc. needed to implement these guidelines and to adapt to the changing voices in and of the city. Time and timing play a part in both the transmission of language (decalage and pauses), but also in the availability of and access to meaningful, effective language interpretation services in a legal context. In Lexington and perhaps in other cities in the “New South”, the growth of the immigrant community has been rapid and recent enough (R7, 12/17/08) that many attorneys and other legal service providers in the area have not yet gained the proper experience of working with non-native English speakers in legal settings. This can be thought of as the language equivalent of Y2K, and the Lexington legal community needs to “catch up” (R7, 12/127/08) to the changing needs of the community and to gain *experience* through working with new, non-English-speaking, kinds of clients.

Similarly, from the language minority perspective, language acquisition itself takes time, and it is not as simple as ‘just learning English’, which is not to deny the agency of the non-English speaker. As one informant (R5, 11/11/08) in this study reports:

It takes about 150 hours of instruction to be able to be considered a beginning language learner, to be able to survive in another language, 500 hours to become an intermediate language learner, be able to *navigate*, I guess, 1500 hours to

become ‘fluent’. The average American- 40 hours a week, 52 weeks a year- works 2080 hours a year. That means it takes 9 months of 40 hours a week, week in, week out *instruction* of another language to get to be at a fluent point where you can interact *effectively* with someone else.

That she had these facts memorized from an article she had read made obvious that, as an immigrant advocate, she often makes this line of argumentation on behalf of the population she is serving. She also admitted she can relate personally to the difficulties of language acquisition among other barriers to institutional access. Like law, English is everywhere, but that does not necessarily mean that access to the English language, or law for that matter, is easy or without time, knowledge, instruction, or guidance.

Furthermore, there is, in terms of access and understanding, a qualitative difference or distance between meaningful and non-meaningful access related to the degree of effective communication and interaction:

...So, I don’t know who has the luxury to be able to do that. So, that doesn’t really make a whole lot of sense to say, ‘Oh, well go learn English’. That’s just unreasonable to expect that. What happens is that people live; people find jobs where they’re the only person who doesn’t speak English. It’s impossible to escape the English language, so, at every point, you are learning it; it’s just not in that consecutive, focused way. It’s more like situation, you know? So people are kind of learning it as they go, but it’s not enough to navigate the systems that they need, like the EPO process, or calling the police, or *going to court*. (R5, 11/11/08)

This language space is significant when there are misunderstandings or further “gaps” between interlocutors as detailed in the previous chapter. But, language is also of concern when official or formal conversations cannot take place at all, either because of the difference/distance itself or due to presumptions about how to overcome this distance. Ignorance on behalf of legal service providers and enforcers with concern to understanding the process and *duration* of language acquisition could further delay the possibility for meaningful access and encounter.

Additionally, the (pejorative) recognition of a language minority as *different* in a legal setting can and has become proxy or code for ethnicity, race, *and* citizenship-status. Incidentally, this advocate-respondent also conveyed that there have been reported instances where judges have suggested that a legal-subject learn English before trying to

make her case before the court.²⁴ In Lexington, attorneys, too, have been concerned that judges would ask about the citizenship status when they entered the court and went before the law as a language minority (R3, 10/17/08). Judges do not always act within the legal boundaries, and these occurrences and concerns persist despite prohibitions against asking about citizenship status when it is not legally admissible²⁵ and provisions for language services to counter discrimination practices. As one respondent suggests, “It’s easier to say you don’t speak English, than to say you’re an immigrant or you’re not white” (R5, 11/11/08). Although the 2001 additions to Title VI acknowledge that language discrimination is linked to discrimination based on national origin, language as a site of discrimination is perhaps less politically suspect than racial discrimination, especially when considering the national history and historical memory that led up to the establishment of the Civil Rights Act. Even if it were feasible to claim ‘colorblindness’, ‘languagedeafness’, or some such claim, seems, to me, less likely.

Because courtroom protocols and legal judgment are governed in part by judges, who are not without human error or bias, a legal strategy like ‘court watch’ could prove effective for monitoring courtroom practices and outcomes. Still, “[t]here are actually lots of things involving language and the courts, though language access inside the courts is actually better” (R5, 11/11/08). Outside of the courthouse setting, but within the legal/juridical context, language and language interpretation figure into other types of legal navigation and encounter, including interactions with police officers, lawyers, legal clerks, or even, *notarios*.²⁶ Aural profiling-listening for and targeting non-English spoken language, especially Spanish, as different and as a signifier of undocumented legal status- is an issue, not only with some Lexington judges (as reported by R3, 10/17/08), but also with other facets of the legal apparatus, most notably, the police (R5,

²⁴ While I cannot validate her account here, I know this type of behavior on the part of judges is not unrealistic. In 2004-05, in another “New South” state, Tennessee, Wilson County Judge Barry Tatum ordered two mothers, both originally from Mexico, to learn English or risk loss of parental rights (Barry, 2005).

²⁵ There are also viable legal loopholes to ‘illegal’ status, in the case of the Violence Against Women’s Act (VAWA).

²⁶ Outside of the legal context, in the U.S., non-English speakers might also deal with daily language barriers due to the prominence of written and spoken language in the social fabric.

11/11/08).²⁷ In the case of aural profiling and in certain legal settings, *language* itself is almost criminalized for being ‘Other’; and this revelation begins to get at some of the relationships between language, immigration, and criminality. Thus, “identity checks” appear to precede the “granting” of meaningful inclusion (Rosello, 2001: 37) regardless of recognition, and this, in turn, affects meaningful legal access and engagement. This suggests that, in the Lexington legal context, criminalizing an individual in the language minority is easier when gaps in understanding legalese and legal culture are compounded by limited mastery English, the national and legal language. This also further complicates the legal subject- as- language minority position, as it suggests an experience interlaced with fear.

There is a geography and a spatiality to language interpretation, and those requiring these services occupy in the entire legal apparatus so that “[f]orward, we have this issue of immigration and backward we have the court clerk’s office, or clerks, who may not be providing access to the actual courtroom, but then behind that we still have the police.” (R5, 11/11/08). Considerations of the multiple levels and layers of law and its intersection with language and access prove crucial here, as do understandings of the complex geographies of everyday life. Although the situation with language minorities inside the *courthouse* has improved to a certain extent, language services throughout the legal process, especially those not federally or locally mandated, have not necessarily changed. This is additionally exacerbated by possible anti-immigrant and anti-immigration sentiments, which several respondents report have actually gotten *worse* within the past few years (R3, 10/17/08; R5, 11/11/08; R7, 12/17/08). If legal actions can result in life-altering or life-threatening outcomes, and, if effectual communication is linked to more meaningful legal access, then we might wonder: What are the social

²⁷ Beyond the scope of this paper and research project- but also an important piece of the larger puzzle- there are more contradictions within the law and overlaps between law and language with regard to undocumented immigrants, aural profiling, and legal entanglement. This is related to local enforcement practices and the enforcement of Immigration Law, which is federal, on the local and state levels as well as legal practices within the prison system. It is possible that someone who does not look or *sound* like he or she ‘belongs’ could be charged with a petty crime or traffic violation, which could deliver him or her into the hands of Immigration and Customs Enforcement (ICE), perhaps leading to deportation (as per interviews with R5, 11/11/08 and R3 10/17/08).

implications when the necessary survival skills are a luxury items?

While Title VI now says agencies that receive federal funding will provide meaningful access to their services, "...that's not a reality quite yet" (R5, 11/11/08). As feminist legal scholarship has emphasized, law is contradictory in that its purpose is twofold; on one hand the law protects, and on the other it enforces. Yet, when we think about language access as a civil right, law becomes even messier and complex, because a kind of enforcement, or upholding of the laws, is also essential to law-as-protector (of rights). That is, the rights are also legal doctrine. The upholding of the Title VI provisions, for example, is dependent upon local law makers and keepers, and on those advocates and attorneys who press upon law and its practitioners toward more socially equitable agendas. As stated by one informant, "there has to be someone [in the position of power to do so] willing to enforce... to *act* on it [the laws]" (R5, 11/11/08), and this includes Civil Rights Laws. She continues:

...if people aren't a) understanding, b) choosing to enforce or act upon what's available to them, then it doesn't matter how many by-laws we have, it doesn't matter how many Title VI's we have, it doesn't matter how many Civil Rights Acts we have. If *the people are able to make those choices to enforce*, then it doesn't really matter.

By "people", here, she is referring to practitioners and maintainers of law and legal 'order'. This interview segment arises out of a larger discussion about language interpretation and the legal apparatus, issues of financing the use of language lines and interpreters, and local legal practices and prejudices. This interviewee often returns to the topic of police and the prison industrial complex, which is understandable considering her advocate positionality and the fears and concerns of her clientele, with whom she apparently empathizes. That interpretation factors into law beyond traditionally thought of legal spaces, such as the courthouse, to the entire legal apparatus -as- legal space, including police jurisdictions, seems crucial to the problematic of interpretation and language barriers in Lexington, similar connections were also made by other respondents in this research (R3, 10/17/08).

Although these interviewees express reservations about law-as-regulator and punisher throughout their interviews, they want, and even expect, that rights-based laws will be enforced in every facet of legal space. Due to the inherent paradox of law, however,

sometimes the law that seeks to protect the publicity is itself a perpetrator of ‘abuses’ on that very publicity, and it often *under-enforcement*- in the case of Title VI- that acts as a barrier to meaningful inclusion. When probed why she thought language services were not always provided in legal spaces, the interviewee quoted above answered, “I think [...] it’s a tendency... to see these services as *extra*, as *special*, special rights, kind of ideology” (R5, 11/11/08). Yet, as my research has begun to show, language interpretation services in legal spaces are neither superficial nor inconsequential. In fact, as of 2001, Title VI federally mandates that all institutions receiving federal funding take measures to provide meaningful access for individuals in the language minority. Language is not peripheral, but *central*, to the practice and formation of law in any legal or juridical setting, and this is particularly so because law *and* the social milieu are always changing and are mutually constitutive. Still, *de facto* legal practices in Lexington exist despite *de jure* regulations, even though federal laws always trump state and local laws in the hierarchy of legal scale.

“Seeing” language services as “extra” and “special” is linked to the real and perceived financial costs of providing these services, and this is of concern in an economically-strapped city like Lexington.²⁸ The un-availability of language services, or the denial of rights to individuals in the language minority, may also be connected to ignorance, personal biases and prejudices, and anti-immigrant/immigration feelings on the end of legal enforcers and practitioners. These “feelings of difference” are related to the spatiality inherent to interpretation and language difference and to the inter-relationship between alterity and distance. The possibility of meaningful access in Lexington, then, might involve changes in local perceptions and values, which could also take time. When asked how she could see this change of minds happening, the above respondent (R5, 11/11/08) continues, as if speaking directly to these enforcers and practitioners:

...[By] deciding that language accessibility is going to be a good thing for your entire community. Your ruling in court may not be as much in question if you do have good language accessibility.... Making it a priority or policy for your agency, just making it...**stop** thinking of it as something extra. You need lights to

²⁸ Lexington’s financial problems are evidenced in my research by the budget cuts made to the Public Defender’s Office, for example.

operate, to do your job. You need pencils to do your job. You need an interpreter to do your job with someone who doesn't speak English. That's just the way it is.

Aside from being part of the “job” of practicing and upholding law and the “cost of doing business” (R5, 11/11/08), provisions for language interpretation services are a necessary element of legal adaptation corresponding to the proliferation of new types of journeys (Rosello, 2001) and migration flows. Changes of this kind could benefit, not just to individuals in the language minority, but the entire community of Lexington and the potential for democratic practices therein, especially if the Lexington ‘public’, and all ‘publics’, are formed because of and not in spite of difference (see Young, 1990; Honig, 2001). Investment in language interpretation services, then, goes beyond even “an investment in diversity” (R5, 11/11/08), as offered up by this interviewee.

Within a U.S. legal space, those with limited English proficiency are affected at the both “symbolic and practical level” (Rosello, 2001: 40), and the way those in the language minority are ‘viewed’ can affect their treatment amidst local legal practices, and this, ultimately, limits access. Due to the centrality of language and language interpretation to law, however, the possibility of *meaningful* access before and within law requires meaningful *engagement*. This calls for the prioritization of language interpretation services in the legal spaces of a changing city. With this in mind, I now look briefly at the ways Maxwell Street Legal Clinic (MSLC) acts as legal meeting place for immigrants, often also in the language minority, in Lexington, Kentucky.

MAXWELL STREET LEGAL CLINIC: IN THE NAME OF HOSPITALITY?

“[G]eographers have contributed to moral and ethical theory, by calling attention to the spatial implications of our moral and ethical commitments.”

-Jeff Popke, 2003: 300

Maxwell Street Legal Clinic, a not-for-profit legal firm, is one facet of a local legal network comprised of immigrant advocates, legal lobbyists (The Kentucky Equal Justice Center), and cause-oriented attorneys (paid and *pro bono*), and other volunteers interested in immigration issues and legal equity for immigrants in Kentucky. Local legal networking and resource-sharing are a major legal strategy in Lexington, which has grown in response to the growing needs of the community, both within the city and in the

greater Central and Eastern Kentucky region. These local needs, as discussed above, are a reflection of the recent and rapid increase in immigration to the Lexington area, which has been concentrated in the past five years (R7, 12/17/08). But, even in 1999, when the clinic had its start “Immigration [Law] was in great demand, immigration services were in great demand” (R1, 10/08/08).

MSLC, now in its tenth year of operation, serves underrepresented groups, particularly low-income clients in Kentucky requiring family-based immigration-related services, including immigration processing, refugee and asylum cases, and, in some cases, wage claims. In offering these services at little cost, the clinic and its staff and volunteers help fill several gaps in the Kentucky legal apparatus. Without the MSLC, these gaps might otherwise go unfilled; outside of Louisville, Kentucky, it is the only non-profit legal clinic serving immigrant populations in the entire state. When asked to describe the clinic’s clientele, one of my interviewees (R1, 10/08/08) responded:

...It’s the immigrant that comes in and has no place else to go... There are *pro bono* legal services that are available to people if they are local [LEGAL] permanent residents or U.S. citizens, but some of these folks are not, so they have no place else to go, and some of them don’t speak the language, so we can sometimes help them here...

MSLC was came about as the result of a brainstorming session with members of the Catholic Charities of Louisville at a local church, and is made possible due to in-kind donations from the Maxwell Street Presbyterian Church on whose property it sits (R1, 10/08/08). In this interview segment, there is a sense of the moral or ethical premises serving as the clinic’s foundation. It is as if the clinic makes space within the legal space for those for whom there is ‘no room in the inn’. In a local legal universe replete with gaps and barriers and anti-immigrant presumptions, MSLC is a place of hospitality in Lexington. As a place of ‘hospitality’, MSLC focuses on the negotiations that take place in the contested legal spaces where people ‘meet’ and attempts to provide legal services that recognize and are receptive to immigrant and language minority needs. Rather than monetary gain, the attorneys, advocates, and volunteers associated with MSLC are driven by a kind of ethics of possibility and a sense of what meaningful access to law ought be.

MSLC is able to address needs based on the experience of working with a specific community and a very specific area of law, Immigration Law. Because the majority of

its staff and volunteers are bilingual in English and Spanish, they are able to assist in bridging some of the distances between the language minority client and law. When the primary language of the legal subject or would-be legal subject is one other than English or Spanish, MSLC turns to its volunteer pool for interpreters and translators, and, in some instances, they utilize language lines and paid interpretation. Moreover, because MSCL is a non-profit organization and does not receive federal funding, its attorneys are able to work with and represent undocumented persons, who might have nowhere else to go for legal assistance. The fact that the clinic avoids accepting federally allocated monies in order to serve these kinds of clients (R3, 10/17/08) attests to the progressive and hospitable mission of this legal clinic.

The clinic plays an important role in the Central and Eastern Kentucky region as a touchstone for low-income clients and clients in the language minority seeking legal services. MSLC fosters a spirit of openness in both its principles and practices, and holds weekly open-intake hours. When asked if he thought the clinic was a place where immigrants and those in the language minority might come to first before searching for other legal help, an interviewee (R1, 10/08/08) replied:

A lot of them do come here first. We never advertise, don't have to advertise... They have found us from day one. Uh, so, when I say we refer people out, I mean if there's a clear case where we can't handle it, obviously that person needs to be referred, so... But, if they're Immigration matters, and a person doesn't have much money, we try our best to provide the services they need.

Especially if anti-immigrant sentiments exist in Lexington, even in the legal community, as several respondents in this research relayed²⁹ (R3, 10/17/08; R5, 11/11/08; R7 11/17/08), MSLC might stand for some clients lost in legal space as both a safe space and a place they know they can go and talk to people in Spanish or in other languages about legal matters. And this is not limited to Immigration matters. In approximately ten years, the clinic has seen about 3,500 clients and has dealt with about 5,000 matters. However, as they are overwhelmed with the number of cases they already have, MSLC will refer-out as many people as they can to other attorneys or agencies; in this way, they also serve as a community legal referral system.

²⁹ This perception influences their advocacy work on behalf of immigrant legal subjects.

Thanks to a grant from the Knight Foundation, MSLC is also able to coordinate and host the “Citizenship Project” (R3, 10/17/08), thus assisting some of its clients inside and outside of law. Acting as a site for education in U.S. history, which is imperative to understanding U.S. law, as well as civil and legal rights, this project prepares its participants for U.S. life and civic engagement before and *after* naturalization. Additionally, MSLC provides some English as a Second Language (ESL) instruction. Not only are ESL classes a key component of the LLP plan (“Poly Guidance”), but also this and other forms of education may relieve *to a degree* future language barriers that can preclude meaningful access in law and in other settings.

The mission of Maxwell Street Legal Clinic attends to issues of income disparities, perceptions of the ‘Other’, and the problematic of language proficiency and law. With its legal services, the clinic attempts to fill some of the gaps and bridge some of the distances in Lexington’s legal space formed at the intersection of immigration, language, and law. I suggest that there is an ethics of hospitality involved with the granting of these services, understanding ‘hospitality’ as another kind of legal resistance that goes against the norm of what are perceived as inhospitable practices or scenarios, such as the barriers to engagement, inclusion, and meaningful legal access discussed in this chapter. In Lexington, these barriers involve feelings of difference and distance, which might include: ignorance, personal biases and prejudices, and anti-immigrant/immigration sentiments on the end of legal enforcers and practitioners.

Fighting law with law (Robson, 1998) is one possible way to force meaningful access in light of legal closure, and this tactic could entail court watch and other methods of legal advocacy and policy work, including lobbying. Additionally, legal advocates and activists can push for language appropriate services a matter of civil rights and not just cultural competence (cf. Suleiman, 2003). Above all, making those in the language minority in a U.S. legal context heard requires *listening* to these voices, which though often missed, are not, in fact, “missing” (cf. Conley and O’Barr, 1990); and this, beyond mere recognition, is a matter of reception. An ethics of hospitality on the part of cause lawyers and advocates, then, is a response. Counter to legal closure, this legal response is about the reception of immigrants and the welcoming of the possibility for meaningful access to and before law for the legal subject in the language minority.

VI. CONCLUDING REMARKS:

LANGUAGE AND SHADES OF BELONGING

“Law sits poised between the present reality of violence and
the promises of a justice not yet realized.
-Austin Sarat, 2001: 8

In this thesis, I maintain that legal space is formed at the intersection of law and language, and I argue that an investigation into the practices of language interpretation is foundational to an examination of law and legal access. Meaningful access to and engagement with law, I find, involves English language proficiency as it intersects with other social, cultural, and economic barriers. Focusing on language interpretation in relation to law and access to both law and legal spaces, my research shows that there are multiple interpretations and multiple interpretation *spaces* within law. In terms of language, limits to access to the law can be understood as spatial differentiation in legal language space pertaining to the practice and process of interpretation, including gaps, barriers, distance, and mediation. These differences/distances can impede meaningful access to and within legal space.

In a U.S. legal context such as Lexington's legal universe, “language minority”, a term adopted by Susan Berk-Selingson (2002), points to the spatial positioning of the “Low Level Proficiency” (LLP) legal subject. In legal space, in particular, in a U.S. context, the limited or non-English speaker is in the language minority amongst English speaking enforcers and practitioners of law and the English-based text of the law itself. Additionally, law has its own technical language, or legalese, and access to law involves legal know-how and some understanding of law’s culture, history, and logic. Because of this, law can be a “foreign animal”, even for the native English-speaker, and it is further removed from those who do not speak English or speak limited English.

Meaningful access to legal language space, I find, requires the English language, legal language, and cultural knowledge. “Fairer” access to the law requires, not just knowledge, but also an ‘admission fee’; as, ideally, the legal subject -as- language minority would hire a personal interpreter for contemporaneous court interpretation; that is, to relay the court occurrences *as they are taking place*. The possibility of language-

based equity before and access to law is not without monetary cost for the language minority, then, and navigating the legal system and the law might prove more difficult for those with low or fixed incomes. As this thesis shows, both language skills and low income status can be a point of vulnerability for individuals in the language minority inside the legal system; to highlight this, I provided the example of *notarios*, or, unqualified business people offering legal services. As language space, law can be related to a city grid with language as the tool by which legal subjects “navigate” that grid; those who do not yet know how or cannot afford to navigate that space with its ‘logic’ may find themselves lost in interpretation.

The problematic of interpretation involves both local needs and local resources. Because law is specialized and professionalized, attorneys and legal practitioners act as gatekeepers to legal understanding, and their guidance can help in a legal subject’s possibility of gaining more familiarity with law’s terrain. For the legal system, interpreters are also a resource, and there are disparities in access to interpretation and interpretation quality *amongst* individuals in the language minority due to differences in levels of certification and in the availability of interpreters. In Lexington, if the individual is Spanish-speaking, then the interpretation might be better than for a non-Spanish, non- English speaker. The more languages involved, the greater the degree of error, miscommunication, misunderstanding, and loss of meaning...and the less meaningful the legal access. The possibilities for meaningful access to law and legal services, then, vary depending on the legal subject’s primary language as a result of “gaps” in interpretation. In addition to the availability of resources, disparities to language access both inside and outside the courthouse in Lexington also involve local perceptions and prejudices as well as the extent of enforcement and compliance of measures meant to provide meaningful access for those in the language minority.

The existence of Title VI of the 1964 Civil Rights Act, the more recent implementation of the 2001 Executive Order 13166, and the creation of the “LLP Guidelines”, I suggest, recognize barriers to access to federally funded institutions, including the judicial institution, and seek to overcome them in terms of leveling the playing field for legal subjects. This legislation, it seems, has contributed to improvements in court interpretation services in Lexington (Fayette County) in

approximately the last five years. Changes in interpretation services are connected to changes in immigration in the city and its surroundings, and they have to a certain extent resulted in better accessibility, particularly for Spanish-speaking legal subjects. If laws reflect the changing social conceptions on citizenship (cf. Mitchell, 2001), then the recent addition to Title VI of the Civil Rights Act may demonstrate a possible evolution in the perception regarding a growing language minority population within the U.S. borders, and this might even foreshadow expected/projected changes in and adaptation to migration patterns and future citizenship composition. This change might be seen as a reflection of inclusion, rather than exclusion.

However, as my research and the above analysis has begun to reveal, we cannot be too optimistic about language inclusion in terms of legal services and within legal spaces, as there are as many obstacles as there are openings, including the spatio-lingual effects of the practice of interpretation. Despite improvements in availability and access to interpretation in Lexington and cause lawyers such as those at Maxwell Street Legal Clinic, there are still many limitations related to language interpretation and law both in the local legal apparatus and more broadly. While Title VI now mandates agencies receiving federal funding to provide LLPs *meaningful* access to their services, this is not quite a reality in Lexington yet. The spaces arising in the practice of interpretation are spaces of encounter replete with their own set of politics and complications.

While the role of language in relation to identity has been under-theorized in geography, considerations of language and language use are important to socio-spatial relations in an era of intensifying globalization and cultural contact (Valentine, et al., 2008). Language use is an implication of “new migration flows”, which has “profound implications for identity and belonging” (*ibid.*: 376). For, as Cecelia Menjivar (2006: 999-1000) finds, the immigrants’ relationship to the *juris corpus* “governs their lives as it impinges on...their existence...[and] shapes who they are , how they relate to others, their participation in local communities, and their continued relationship with their homelands”. But, the relationship between immigrant and law is also always governed by and mediated through language, and sometimes through language interpretation; and, so, the situation and its challenges may be exacerbated for those in the language minority. It is necessary, then, to think about “legal liminality” (Menjivar, 2006) and “legal non-

existence” (Coutin, 2000) and the gray, shaded, in-between areas of social belonging and membership, *not* just in terms of the effects of legal status on the lives of immigrants, but also with regard to *language* as it interfaces with immigrant lives in the U.S., including but not limited to legal status. Indeed, just as people can be physically present but not ‘officially’ admitted into the national community or symbolically accepted by the doctrines of that community (cf. Wani, 1989-90) or can occupy a position simultaneously inside and outside (Cresswell, 1996), so too can those in the language minority be physically present in legal spaces without being fully received into that space and that jurisdiction.

MAXWELL STREET LEGAL CLINIC

Volunteer Contract

- All volunteers are required to attend a volunteer orientation before beginning specific volunteer positions.
- Volunteers must provide at least twenty hours of service before they can list their experience on a resume or receive a recommendation for services performed.
- Volunteers must hold as absolutely confidential all information that may be obtained directly or indirectly concerning clients and staff and not seek to obtain confidential information from the client unless otherwise approved by MSLC supervising staff and directly related to and required for the client's case.
- Volunteers must promote the mission, work and activities of MSLC in a positive manner with all staff, clients, and the general public at all times.
- Volunteers must contact the Volunteer Coordinator if unable to follow through with their commitment.
- Volunteers agree to have their pictures taken and used for promotional purposes for Maxwell Street Legal Clinic.
- Volunteers must not have in their possession illegal substances, firearms or open alcohol during their volunteer time.
- Worker's Compensation is not provided for volunteers.
- Volunteers are responsible for the safety of their own personal property. We recommend that all valuables be left at home.
- Volunteers must be punctual and conscientious, conduct themselves with dignity, courtesy, and consideration of others.

Volunteer Signature

Date

Volunteer Coordinator Signature

Date

APPENDIX B

“Questions and Answers for the (Old) Naturalization Exam”

1. **What are the colors of our flag?**
Red, White, and Blue.
2. **How many stars are there in our flag?**
50
3. **What color are the stars on our flag?**
White.
4. **What do the stars on the flag mean?**
One for each state in the Union.
5. **How many stripes are there in the flag?**
13
6. **What color are the stripes?**
Red and White.
7. **What do the stripes on the flag mean?**
They represent the original 13 states.
8. **How many states are there in the Union?**
50
9. **What is the 4th of July?**
Independence Day.
10. **What is the date of Independence Day?**
July 4th
11. **Independence from whom?**
England
12. **What country did we fight during the Revolutionary War?**
England
13. **Who was the first President of the United States?**
George Washington
14. **Who is the President of the United States today?**
Currently George W. Bush
15. **Who is the vice-president of the United States today?**
Currently Richard B. (“Dick”) Cheney
16. **Who elects the President of the United States?**
The electoral college
17. **Who becomes President of the United States if the President should die?**
Vice - President
18. **For how long do we elect the President?**
Four years
19. **What is the Constitution?**
The supreme law of the land
20. **Can the Constitution be changed?**
Yes
21. **What do we call a change to the Constitution?**
An Amendment
22. **How many changes or amendments are there to the Constitution?**
27
23. **How many branches are there in our government?**
3
24. **What are the three branches of our government?**
Legislative, Executive, and Judiciary
25. **What is the legislative branch of our government?**
Congress
26. **Who makes the laws in the United States?**
Congress
27. **What is the Congress?**
The Senate and the House of Representatives
28. **What are the duties of Congress?**
To make laws
29. **Who elects the Congress?**
The people
30. **How many senators are there in Congress?**
100
31. **Can you name the two senators from your state?**
(insert local information)
32. **For how long do we elect each senator?**
6 years
33. **How many representatives are there in Congress?**
435
34. **For how long do we elect the representatives?**
2 years
35. **What is the executive branch of our government?**
The President, vice president, cabinet, and departments under the cabinet members
36. **What is the judiciary branch of our government?**
The Supreme Court
37. **What are the duties of the Supreme Court?**
To interpret laws
38. **What is the supreme court law of the United States?**
The Constitution
39. **What is the Bill of Rights?**
The first 10 amendments of the Constitution
40. **What is the capital of your state?**
(insert local information)
41. **Who is the current governor of your state?**
(insert local information)
42. **Who becomes President of the United States if the President and the vice-president should die?**
Speaker of the House of Representative
43. **Who is the Chief Justice of the Supreme Court?**
William Rehnquist (or whoever is next)
44. **Can you name thirteen original states?**
Connecticut, New Hampshire, New York, New Jersey, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, Rhode Island, and Maryland.
45. **Who said, “Give me liberty or give me death.”?**
Patrick Henry
46. **Which countries were our enemies during World War II?**
Germany, Italy, and Japan
47. **What are the 49th and 50th states of the Union?**
Alaska and Hawaii
48. **How many terms can the President serve?**
2
49. **Who was Martin Luther King, Jr.?**
A civil rights leader
50. **Who is the head of your local government?**
(insert local information)
51. **According to the Constitution, a person must meet certain requirements in order to be eligible to become President. Name one of these requirements.**
Must be a natural born citizen of the United States; must be at least 35 years old by the time he/she will serve; must have lived in the United States for at least 14 years.
52. **Why are there 100 Senators in the Senate?**
Two (2) from each state
53. **Who selects the Supreme Court justice?**
Appointed by the President
54. **How many Supreme Court justice are there?**
Nine (9)
55. **Why did the Pilgrims come to America?**
For religious freedom
56. **What is the head executive of a state government called?**
Governor
57. **What is the head executive of a city government called?**
Mayor

APPENDIX B CONTINUED

58. **What holiday was celebrated for the first time by the Americans colonists?**

Thanksgiving

59. **Who was the main writer of the Declaration of Independence?**

Thomas Jefferson

60. **When was the Declaration of Independence adopted?**

July 4, 1776

61. **What is the basic belief of the Declaration of Independence?**

That all men are created equal

62. **What is the national anthem of the United States?**

The Star-Spangled Banner

63. **Who wrote the Star-Spangled Banner?**

Francis Scott Key

64. **Where does freedom of speech come from?**

The Bill of Rights

65. **What is a minimum voting age in the United States?**

Eighteen (18)

66. **Who signs bills into law?**

The President

67. **What is the highest court in the United States?**

The Supreme Court

68. **Who was the President during the Civil War?**

Abraham Lincoln

69. **What did the Emancipation Declaration do?**

Freed many slaves

70. **What special group advises the President?**

The Cabinet

71. **Which President is called the “Father of our country”?**

George Washington

72. **What Immigration and Naturalization Service form is used to apply to become a naturalized citizen?**

Form N-400, Application to File Petition for Naturalization

73. **Who helped the Pilgrims in America?**

The American-Indians (Native Americans)

74. **What is the name of the ship that brought the Pilgrims to America?**

The Mayflower

75. **What are the 13 original states of the U.S. called?**

Colonies

76. **Name 3 rights of freedom guaranteed by the Bill of Rights.**

The right of freedom of speech, press, religion, peaceable assembly, and requesting change of government.

The right to bear arms (the right to have weapons or own a gun, though subject to certain regulations).

The government may not quarter, or house, soldiers in the people’s homes during peacetime without the people’s consent.

The government may not search or take a person’s property without a warrant.

A person may not be tried twice for the same crime and does not have to testify against him/herself.

A person charged with a crime still has some rights, such as the right to a trial and to have a lawyer. The right to trial by jury in most cases.

Protects people against excessive or unreasonable fines or cruel and unusual punishment.

The people have rights other than those mentioned in the Constitution.

Any power not given to the federal government by the Constitution is a power of either the state or the people.

77. **Who has the power to declare the war?**

The Congress

78. **What kind of government does the United States have?**

Democracy

79. **Which President freed the slaves?**

Abraham Lincoln

80. **In what year was the Constitution written?**

1787

81. **What are the first 10 amendments to the Constitution called?**

The Bill of Rights

82. **Name one purpose of the United Nations?**

For countries to discuss and try to resolve world problems, to provide economic aid to many countries.

83. **Where does Congress meet?**

In the Capitol in Washington, D.C.

84. **Whose rights are guaranteed by the Constitution and the Bill of Rights?**

Everyone (citizens and non-citizens) living in U.S.

85. **What is the introduction to the Constitution called?**

The Preamble

86. **Name one benefit of being citizen of the United States.**

Obtain federal government jobs, travel with U.S. passport, petition for close relatives to come to the U.S. to live.

87. **What is the most important right granted to U.S. citizens?**

The right to vote

88. **What is the United States Capitol?**

The place where Congress meets

89. **What is the White House?**

The President’s official home

90. **Where is the White House located?**

Washington, D.C. (1600 Pennsylvania Avenue, N.W.)

91. **What is the name of the President’s official home?**

The White House

92. **Name the right guaranteed by the first amendment.**

Freedom of: speech, press, religion, peaceable assembly, and requesting change of the government.

93. **Who is the Commander in Chief of the U.S. military?**

The President

94. **Which President was the first Commander in Chief of the U.S. military?**

George Washington

95. **In what month do we vote for the President?**

November

96. **In what month is the new President inaugurated?**

January

97. **How many times may a Senator be re-elected?**

There is no limit

98. **How many times may a Congressman be re-elected?**

There is no limit

99. **What are the 2 major political parties in the U.S. today?**

Democratic and Republican

100. **How many states are there in the United States today?**

Fifty (50)

APPENDIX C

“Semi-structured Interview Questions for Court Interpreters, Attorneys, Legal Advocates”

1. How would you describe your role as _____?
2. Why do you volunteer/work here?
3. Do you ever work specifically with ESL or low English proficiency clients here?
-If approached by a client with such a need, how would you advise them to go forward...?
4. Do you know how clients with language needs go about receiving translation and interpretation services in the court system?
5. Generally, what kinds of cases require translation and interpretation?
6. Have you had any experiences with people expressing difficulties or concerns with respect to accessing translation/interpretation services? Please describe some of the concerns you have heard...
7. What are some other difficulties you see in terms of access to the law?
8. Please discuss your own views on access to these services.
-Basically, does the system meet the needs? Why or why not?
-Access to legal knowledge?
9. In your experience, how does this figure into the actual court proceedings?
10. In your view, what role do translation and interpretation (and difficulties of access) play in the Lexington judicial system?
-Does this create different outcomes?
-Does this advantage or disadvantage certain people?
-Does this system create ‘justice’... what does this mean?
11. Have you seen an increase in the types of cases, or in clientele requiring these types of services? Why do you think that is?
12. Is translation/interpretation of the law a matter only of language barriers? What about ‘cultural translation’?
13. Do your experiences give you any insight into what it means to be an immigrant in Lexington? What are the linkages, if any, between immigration and criminality?

APPENDIX D

“Excerpt from Interview Transcript”

K: Do you have any knowledge of how, outside of MSLC, those with either language issues or status issues go about ‘navigating’ the legal system? That is, have you heard any stories about people expressing frustrations?

R1: Yeah, well, that’s a good question. Um, there are people in the past, and probably still doing it now, who will offer themselves- both Spanish-speaking and English-speaking people, who will offer immigration services without being qualified to provide those services. They end up taking peoples’ money and really sc... messing up their situation in a lot of cases by either filing forms that they shouldn’t be filing because people are not eligible and they don’t know what they’re doing, and what they really want to do is collect the money, that’s what they’re interested in, and we’ve had a number of examples of those, and people have really gotten messed up by what... what somebody- they call themselves “notaries”, and in Latin America “notary” is frequently an **attorney**. And, of course, here, that’s not the case. They call themselves “*notarios*”, and they offer these services, and people- not knowing any better- will pay these folks a lot of money, in some cases a few thousand dollars, to provide a service that they are not qualified to provide, and, eventually these people disappear, but in the meantime, they’ve left in their wake, a lot of... problems... for those clients. Yeah, so that’s one way they do it; it’s just unfortunate.

And, even in some... I hate to say it... I’ve seen one or two cases of attorneys who provide services that they shouldn’t be providing. It’s like us trying to do criminal defense work; we’re not qualified to do it. And, in Kentucky, under Kentucky law, we don’t specialize- lawyers do not specialize- they don’t recognize areas of law that are specialties, which is the case in some other places. So, with a few exceptions like Admiralty Law, which is some... weird kind of law. In other words, you can’t say that you are certified in criminal law in Kentucky because, eh, they don’t certify, but it happens, just as a matter of necessity, people focus on one area or two, or however many they feel comfortable with, but Immigration Law is a really complex area of the Law, and, if you’re not well-grounded in it, you can lose your way real quickly... But, there’s an ethics. The real problem is these *notarios*; they are a serious problem, and, even if they don’t call themselves “notaries”, there are some American-born people...

K: Are you aware how one goes about finding one of these “*notarios*”?

R1: It’s just word of mouth... And, by the way, this is not a problem that is unique to Lexington or Kentucky; *it’s* nation-wide. And, if you go out West in the heavily Latin areas like California and so on, the problem’s really severe in those areas. And probably not very many people offering services of the type we’re offering... Now this is pure speculation: I’m guessing that that fact that we’ve been open for so long and people have gotten to know us that there is less of that... opportunity for *notarios* and other people who don’t know what they’re doing who, uh, take advantage of folks. But, in other places, where there’s large numbers of immigrants, it’s likely not to be the case; they still operate.

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Ladies’ Education Society Scholarship, Grinnell College	2001-2002
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