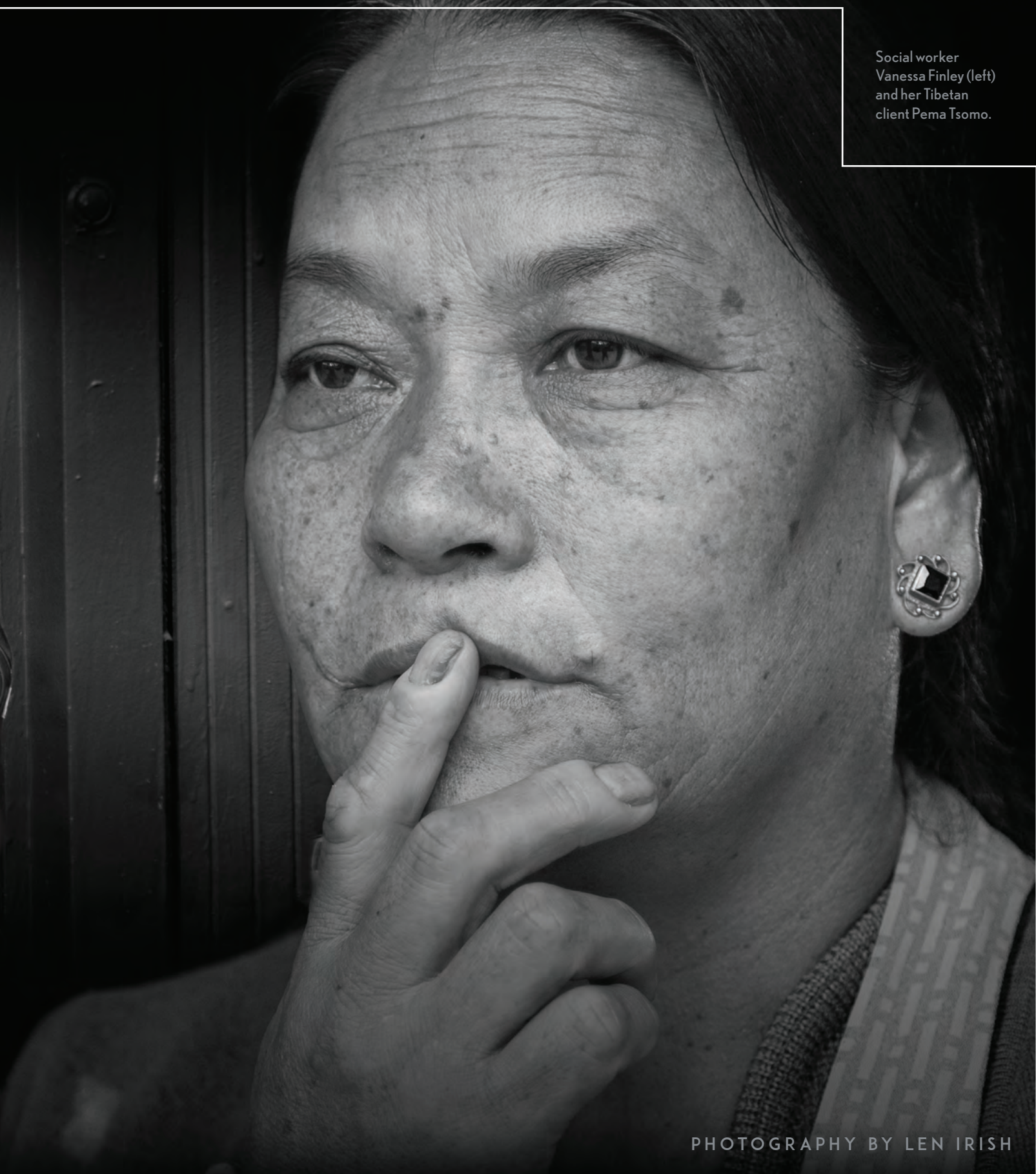


Adhikaar  
DIVERGENT VOICES  
असुहिक आवाज  
1177 www.adhikaar.org



Social worker  
Vanessa Finley (left)  
and her Tibetan  
client Pema Tsomo.

# LANGUAGE

JUSTICE MOVES SLOWLY FOR THOSE WHO NEED INTERPRETERS

# BARRIERS

BY WENDY N. DAVIS

**ON A WINTER MORNING IN NEW YORK CITY LAST YEAR,** a mother had to leave her 10-year-old son home alone so she could go to work. The bus that normally takes her child to a school for students with special needs failed to appear. Tashi Norbu (a pseudonym to protect her identity), a 52-year-old single mother who came to New York from Nepal in 2002, didn't want to lose her job as a dumpling cook. While she was at work, Norbu's son wandered out of the house and was picked up by the police. The authorities took him to a nearby hospital and then placed him in foster care.

Later that day, the police came to Norbu's home and arrested her for leaving her son alone.

PHOTOGRAPHY BY LEN IRISH





"HISTORICALLY, STATES DID NOT PRIORITIZE THIS WORK."

—DAVID UDELL

Tsomo speaks fluent Tibetan and Nepali, but she doesn't speak enough English to be able to understand a court proceeding without an interpreter. New York City employs 357 interpreters, who speak a collective 14 languages. However, the city doesn't have a Tibetan interpreter on staff.

Instead, the court system had to hire an interpreter on a per diem basis. It took three days for a Tibetan interpreter to appear in court for Tsomo's arraignment, according to Vanessa Finley, Tsomo's social worker and the program coordinator at Adhikaar, a nonprofit in the Jackson Heights section of Queens.

During that time, Tsomo was held at the police precinct in the Elmhurst section of Queens and then transported several miles to Central Booking, in the basement of the criminal courthouse in the Kew Gardens neighborhood, where she spent the night in jail awaiting an interpreter.

Speaking through an interpreter provided by Adhikaar, Tsomo says she remembers being hungry and eating nothing but cold cereal and milk while awaiting arraignment. "There were a lot of other women around me,"

she says. "They were crying."

She was released, and the criminal case was adjourned in contemplation of dismissal. Her son also was returned home after several months, though a family court case remains pending, according to Finley.

Tsomo believes her ordeal, and her son's, could have ended sooner if she had been able to communicate with the authorities. "I would have been better able to explain my situation and what had happened," she says. "Maybe there would have been a solution."

#### SPEAKING IN MANY TONGUES

Advocates around the country say that people like Tsomo, who need interpreters for less commonly spoken languages in the U.S., often face significant hurdles in court, including being detained longer than others while awaiting someone who can interpret for them.

Nationwide, almost 21 percent of the country's residents speak a language other than English at home, according to an October 2015 report by the U.S. Census Bureau. That figure has been rising steadily since 1980, when only 11 percent of residents spoke a language other than English at home.

In states with large immigrant populations, that proportion is even higher. In California, more than 40 percent of residents speak a language other than English at home, while in New York that figure is around 30 percent.

But courts have not yet caught up to the shifting demographics. As of 2014, 10 states—Alaska, California, Illinois, Nevada, New Hampshire, North Carolina, Oklahoma, South Dakota, Vermont and Wyoming—don't require interpreters in all criminal and civil cases, according to the National Center for Access to Justice at the Benjamin N. Cardozo School of Law at Yeshiva University.

Even where states require interpreters, actually obtaining them

can be problematic. Many states simply don't have people on staff who can interpret in less-common languages. In New York City, for instance, staff interpreters speak Spanish and 13 other languages, including Arabic, Cantonese, Mandarin and Polish.

But a host of other languages are spoken in the city. In Bronx County alone, the court system has had to arrange for interpreters in 74 languages, including Albanian, Yoruba (Nigeria), Mixtec (Mexico) and Garifuna (Central America).

Cases involving criminal defendants who require interpreters are a priority, according to Ann Ryan, the statewide coordinator for the New York state courts' Office of Language Access. She says that the state arranges for interpreters as quickly as possible. A court representative says whether delays occur depends on "a variety of factors," including how much advance notice was provided to the court, and the availability of interpreters.

But despite the court's efforts, advocates say their clients often experience delays and other hurdles when awaiting interpreters.

Amy Taylor, director of legal services for Make the Road New York, a nonprofit advocacy group for Latinos, says it isn't uncommon for some cases to be delayed for up to a year because interpreters aren't available on the court dates.

Lina Lee, an attorney with the nonprofit MinKwon Center for Community Action in New York, adds that many of her Korean- and Mandarin-speaking clients face adjournments because the interpreters are busy with other cases. "I've waited with clients the whole day," she says, "from 10 a.m. to 4 p.m."

Lee adds that even though the Queens housing court has an office with pamphlets and other material in a variety of languages, people who don't speak English often don't make their way to that office. "Nobody goes to that room," she says,

"because nobody knows it exists."

A court representative says the court conducts quarterly reviews of language usage "to determine if signage or other tools" should be updated or expanded.

#### WHO'S RESPONSIBLE?

"Historically, states did not prioritize this work," says David Udell, executive director of the National Center for Access to Justice at Cardozo law school. He says that in the past, some state courts would simply post signs telling people to bring their own interpreters.

One reason for that approach is that it wasn't always clear in the past that courts had an obligation to provide

interpreters, Udell says.

In California, for instance, the state's highest court ruled in 1978 that litigants were not entitled to free interpreters in civil cases.

The court said that people who don't speak English have "access to a variety of sources for language assistance," including family members, friends, neighbors and private immigrant-assistance organizations.

Even in criminal cases, not all states provided interpreters for defendants who struggled with English. In Georgia, for instance, it wasn't until 2010 that the state supreme court ruled that people who spoke limited English had a right

It took three days for a Tibetan interpreter to appear in court for Tsomo's arraignment, according to Finley.



"I WOULD HAVE BEEN BETTER ABLE TO EXPLAIN MY SITUATION AND WHAT HAD HAPPENED. MAYBE THERE WOULD HAVE BEEN A SOLUTION."

—PEMA TSOMO

PHOTOGRAPH COURTESY OF NATIONAL CENTER FOR ACCESS TO JUSTICE





"I'VE WAITED WITH CLIENTS THE WHOLE DAY, FROM 10 A.M. TO 4 P.M."

-LINA LEE

PHOTOGRAPH BY AP PHOTO

**"BUDGETING ADEQUATE FUNDS TO ENSURE LANGUAGE ACCESS IS FUNDAMENTAL TO THE BUSINESS OF THE COURTS." -THOMAS PEREZ**



Thomas Perez

to an interpreter.

The court said in that case that people who can't "communicate effectively in English may be effectively incompetent to proceed in a criminal matter and rendered effectively absent at trial if no interpreter is provided."

The case involved Mandarin speaker Annie Ling, who was convicted of one count of cruelty to a child. Ling argued that her trial lawyer was ineffective for failing to arrange for an interpreter for trial, and for using Ling's husband to convey the prosecutor's offer of a plea bargain.

The Georgia Supreme Court remanded the matter to the trial judge, with instructions to decide whether Ling could communicate in English well enough to understand the nature of the proceedings and assist in preparing her defense.

#### JUSTICE STEPS IN

Nationwide, the attitude toward interpreters started changing about six years ago, when the U.S. Department of Justice took a more aggressive approach in enforcing a Clinton-era executive order stating that federal agencies and recipients of federal funds must make sure their programs are accessible to people who don't speak English.

In 2010, then-Assistant Attorney General Thomas Perez spelled out in a letter to courts that failing to provide interpreters in all cases was a form of national origin discrimination. Title VI prohibits state agencies

that accept federal funds from discriminating based on national origin.

"Language services expenses should be treated as a basic and essential operating expense, not as an ancillary cost," Perez wrote.

He added that courts throughout the country have recently seen a substantial increase in the number of people with limited English skills, as well as the "diversity of languages they speak."

"Budgeting adequate funds to ensure language access is fundamental to the business of the courts," Perez wrote.

Since then, the DOJ forged agreements with officials in states such as Colorado, New Jersey and Rhode Island, which agreed to provide comprehensive language assistance in court to people with limited proficiency in English.

The DOJ also said in a 2012 letter to the North Carolina Administrative Office of the Courts that the state is failing to provide non-English speakers with "meaningful access" to court.

"Among the harms we identified in the course of our investigation are longer incarceration as a result of continuances caused by the failure to locate an interpreter; serious conflicts of interest caused by allowing state prosecutors to interpret for defendants in criminal proceedings; requiring pro se and indigent litigants to proceed with domestic violence, child custody, housing eviction, wage dispute and other



important proceedings without an interpreter; and other barriers to accessing court proceedings and other court operations,” the letter states.

State officials subsequently developed a plan to make interpreters available in a wide range of cases.

#### UNEQUAL ACCESS

Steven Brown, executive director of the American Civil Liberties Union of Rhode Island, says that before the state’s agreement with the DOJ, the interpretation situation was capricious, at best. Often, he says, judges would simply enlist people in the court gallery to serve as interpreters. “It was completely makeshift and not an appropriate or fair system of justice,” Brown says.

Attorney Laura Abel, who began studying the issue when she served as deputy director of the Justice Program at the Brennan Center for Justice at New York University School of Law, says she frequently came across situations where judges asked abusers in domestic violence cases to interpret for the victims.

In other situations, including domestic abuse cases, judges would ask young children to interpret for their parents. That’s problematic for many reasons, including that parents often don’t want their children to know about the activity that brought them to court.

“There are many things a parent won’t say in front of a child, like ‘He hit me,’” Abel says.

Abel’s work on interpreters grew from her research into whether people were receiving adequate legal assistance in court. As she delved into the topic, she realized that an even more fundamental problem than the lack of qualified counsel was a lack of trained interpreters.

“Here we had been focused on lawyers, but there were people without lawyers who couldn’t even communicate with anybody in the court system,” Abel says.

Without that basic ability, people with legitimate grievances have no

way of getting their day in court.

“Our whole system of justice depends on the adjudication of facts, and you want that to be accurate,” says District of Columbia Court of Appeals Judge Vanessa Ruiz, herself a native Spanish speaker.

Ruiz, who chaired the ABA’s Standing Committee on Legal Aid and Indigent Defendants, which created the Standards for Language Access in Courts, says she became acutely aware of problems obtaining interpreters when she was first appointed to the bench.

She says that Spanish-speaking cleaning staff in the courthouse used to bring her notices from their children’s schools, or from other courts, and ask her to translate.

“It was an eye-opener for me—and heartbreaking,” she says.

“Could anybody think that it’s fair for a parent to fight for custody of a child,” she asked, “in a proceeding where the parent doesn’t understand what’s going on?”

#### CALIFORNIA’S CHALLENGE

California, which has the highest proportion of non-English speakers in the country, also has some of the biggest challenges.



Amy Taylor

An estimated 220 languages are spoken in Los Angeles County alone; the most common ones are Spanish, Mandarin, Tagalog (Philippines), Korean and Armenian, but Angelenos also speak others, such as Urdu (spoken on the Indian subcontinent), Gujarati (India) and Laotian.

As an attorney representing indigent people in Los Angeles, Joann Lee has worked with numerous clients who struggled to make themselves understood when they came to court seeking orders of protection, battling for custody of their children or fighting eviction proceedings.

“We would request interpreters for civil cases, and sometimes we would get them and sometimes not,” says Lee, a lawyer with the Legal Aid Foundation of Los Angeles.

In the latter situation, judges sometimes would adjourn cases and instruct litigants to bring their own interpreters—who often ended up being friends or family. On other occasions, judges would proceed without an interpreter, leaving the parties to “stumble through” in broken English, Lee says.

In late 2010, Lee made a formal complaint to the DOJ on behalf of two Korean speakers who were denied interpreters in court. One, a grandmother, had gone to court for a restraining order after she had been sexually assaulted by a maintenance worker. The other was fighting the father of her children for custody and child support payments.

After the DOJ began investigating, the judicial system in California promised to revise its approach.

In January 2015, the California Judicial Council approved a plan calling for interpreters in civil cases by 2017. (California has long required interpreters in criminal cases.)

Also that January, California Evidence Code § 756 took effect. That provision authorizes judges to provide interpreters in civil matters and gives priority to



Criminal defendants requiring interpreters are a priority, says Ann Ryan of New York’s Office of Language Access.

indigent people. The law also says that if there isn’t enough money to provide interpreters in 100 percent of the cases, judges should prioritize certain types of matters, including cases involving domestic violence, termination of parental rights, and custody and visitation.

The plan also calls for language assistance (though not necessarily interpreters) at all “points of contact”—such as the clerk’s office or cashier—by 2020. Among other types of assistance, the plan contemplates translated information brochures and instructions, multilingual signage, and kiosks with touch-screen computers that can offer information in various languages.

Implementing the plan won’t be easy, considering the vast number of languages spoken in the state. Also—with 58 counties spread out over nearly 164,000 square miles—arranging for, say, a Vietnamese interpreter to travel as needed from the southern portion of the state to the northern can present logistical problems.

“We have some terrific certified interpreters, but we need more interpreters and more language access without sacrificing quality,” says Justice Mariano-Florentino

Cuéllar of the California Supreme Court, who chairs the Language Access Plan Implementation Task Force of the Judicial Council of California.

Not everyone who speaks a language is qualified to interpret in court, says Esther Navarro-Hall, chair of the National Association of Judiciary Interpreters & Translators. That’s because interpretation involves a lot more than mere translation: It requires people to listen in one language and contemporaneously translate into another. “That’s a different skill than speaking normally in conversation,” Navarro-Hall says.

#### MEANING MATTERS

Each state has its own system of vetting court interpreters. In New York, for instance, interpreters who pass a multiple-choice test of English proficiency and knowledge of basic legal terms are eligible to take an oral interpretation exam, which currently is given in 21 languages, including Albanian, Bengali, Greek and Urdu.

Navarro-Hall adds that interpreters are supposed to always interpret in the first person and are supposed to convey everything that’s said. For instance, she says,

if an interpreter is translating for a Spanish speaker, and a witness says, “Well, you know, I’m not sure,” the interpreter must make clear that the witness is hedging.

“You’re not going to imitate the person, but you have to include some of the doubt that the person is expressing,” she says. “You must sound like you’re embodying the person.”

Interpreters, unlike translators, also need to be able to convey meaning without doing literal translations, Navarro-Hall says. For example, the phrase “It’s raining cats and dogs” would sound awkward in Spanish, so an interpreter would probably say “It’s raining by the bucketful,” she says.

Despite the hurdles, Cuéllar says he believes the court system will be able to meet the plan’s goals of providing interpreters in all cases by 2017. “We have to turn our ingenuity and our human resources—and our interpreters and our judges—into [assets], so that language access is not a bottleneck,” he says.

“This is about rights,” Cuéllar adds. “We can’t simply say it’s optional.” ■

*Lawyer and journalist Wendy N. Davis lives in New York City.*