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Language, Power, and Identity in the Workplace: Enforcement of 'English-Only' Rules by Employers

Janet Ainsworth*

I. INTRODUCTION

In recent years, the American workplace has mirrored American society in its increasing ethnic diversity. Employers have responded to this diversity in the workforce in various ways, sometimes embracing it as a valuable resource for entrepreneurial success in the modern world, but other times seeking to suppress it in favor of maintaining a homogeneous workplace. While no one doubts that employers need to adopt workplace policies that help make the workplace efficient and safe, certain workplace rules and practices designed to achieve those goals may well have the effect of burdening some groups of workers in ways that are tantamount to employer discrimination. When the burden of workplace rules falls disproportionately on workers based on their race or national origin, the entitlement of the employer to impose such workplace regulations is limited by the existence of employee civil-rights protections. This article critically examines so-called 'English-only' regulations imposed by employers on their workers—rules requiring them to speak only English in the workplace on pain of being disciplined or even discharged for speaking in any language other than English.

The starting point for any discussion of employee rights in the workplace begins with civil rights law enacted to protect workers from discriminatory treatment. Workers are protected under Title VII of the Civil Rights Act of 1964 from employer discrimination based on their race or national origin. Thus, workers cannot be discriminated against in hiring or in the terms of employment on the basis of those legally protected characteristics or

identities. However, the Civil Rights Act contains no express prohibition against discrimination in employment based on the language that a worker speaks. Even though an individual's language use may be strongly correlated with membership in a racial or ethnic group that is protected under the Civil Rights Act, the Act does not by its own terms provide legal protection from discrimination on the basis of language usage. This article will argue that courts should construe the application of 'English-only' rules as impermissible discrimination under the Act, and that their general failure to do so arises from ideological beliefs about language in society that fly in the face of what psycholinguistics tells us about bilingual language use and what sociolinguistics tells us about the relationship between language and social identity.

II. 'ENGLISH-ONLY' RULES AND CIVIL RIGHTS

By 'English-only' rules, I am referring to employer-imposed rules on language use in the workplace that mandate exclusive use of English and impose sanctions, including being fired, on workers who fail to comply.[1] In some cases, even minor violations of the rule have resulted in workers losing their jobs. For example, in one case, an employee who uttered the three words in Spanish "¿Dónde lo quieres?" ["where do you want it?"], responding to a request that he move something, was fired for using that phrase.[2] In another case, a worker's use of the Spanish phrase "no hay más" ["there's no more"] led to his dismissal for violating an 'English-only' policy.[3] Workers have been fired in some instances for using their native languages even on breaks or at lunch as long as they were on the premises of the worksite.[4] In short, 'English-only' workplace rules constitute an ever-present danger for the worker whose native language is not English, where a single slip can cost a job.

'English-only' rules that restrict a workers' language use in the workplace appear to be of relatively recent origin, but the past three decades have seen increasing utilization of such rules with resulting litigation

challenging their legality.[5] Some of the legal challenges to 'English-only' rules have come from fired or disciplined workers, and some from workers seeking preemptively to enjoin the prospective enforcement of the policy. The early federal judicial opinions regarding the legality of 'English-only' rules accepted the argument that policies penalizing workers for speaking foreign languages when those languages were associated with racial and ethnic identity was no different from direct discrimination based on race and national origin. One of the earliest federal cases considering the legality of 'English-only' rules related not to employment but rather to public accommodations. In *Hernandez v. Erlenbusch*, a Spanish-speaking patron filed suit to invalidate a tavern's policy of denying admission to patrons unless they spoke English.[6] The court in that case had no difficulty seeing that the rule amounted to unlawful discrimination against Hispanic customers. In recent decades, however, federal courts have rejected those early precedents and have increasingly held that 'English-only' workplace rules do not violate employees' civil rights.[7]

'English-only' policies have also been imposed in contexts other than the workplace. For example, prisons have begun to impose restrictions on prisoners' use of languages other than English, and courts have routinely upheld prison requirements that all mail sent or received by inmates be exclusively in English,[8] that all telephone calls between inmates and their families and friends be conducted in English,[9] and that all conversations between prisoners during their work assignments be in English.[10] Such bans are not confined only to prisons either. Some public school districts have started to impose 'English-only' rules on their students. In one such case, a school district forbade students from speaking any language other than English, even in their playground and lunchroom conversations, on pain of being suspended from school.[11] The federal district court upheld the school's right to punish children for failing to observe the ban on languages other than English.[12]

Such cases in other contexts parallel the growing trend by employers to impose language restrictions on their employees, often in situations in which such restrictions appear counterproductive to sound workplace management. For example, in a Florida case, a child-welfare caseworker was disciplined for speaking Spanish while interacting with a Spanish-speaking client.[13] In another case, a doctor hired a bilingual office manager specifically for her ability to communicate with the doctor's Spanish-speaking patients.[14] The office manager was fired for what her English-speaking supervisor apparently felt was an excessive use of Spanish with their mainly Spanish-speaking clientele.[15] In yet a third case, a taxi service imposed an 'English-only' rule on its drivers across the board, notwithstanding the fact that one of its subsidiary units was called Taxi Latino, marketed to the local Spanish-speaking community.[16] In all of these situations, it is clear that 'English-only' rules actually undercut the efficient provision of services by the employees in question. Nevertheless, the appeal of these rules has been so irresistible to employers that they are sometimes imposed even when the rules make no business sense at all and, in fact, undercut business productivity.

Employees facing discipline and job loss under 'English-only' rules have challenged these policies in court, arguing that they are covert forms of otherwise impermissible discrimination. Obviously, employers could not lawfully punish or fire workers for being of a particular race or national origin. If 'English-only' rules were intended to allow employers to do indirectly what they could not do directly, then civil-rights protections would forbid employers from imposing them. Proving this kind of unlawful intent, however, is nearly impossible for the workers, since employers seldom couple the announcement of the restrictive language policy with an admission of racial or ethnic bias. Being unable to show overt discriminatory motives leaves the workers in the position of having to argue instead that, as enforced, the rule has a disparate impact on workers based on race or national origin. Since only those workers able to speak languages

other than English will be at risk of violating the 'English-only' rule, the risk of punishment will inevitably fall mainly on racial and ethnic minority workers. If the workers can establish that the rule, regardless of its facial neutrality, has a disproportionate negative impact on workers based on race or national origin—protected categories under civil-rights law—then the legal burden shifts to the employer to justify the policy in question is based on a compelling business necessity.[17]

III. THE COURTS' TREATMENT OF 'ENGLISH-ONLY' RULES AND THE REALITIES OF BILINGUALISM

Despite the common sense appeal of this reasoning, appellate courts have mainly rejected employee claims that 'English-only' rules constitute unlawful racial or ethnic discrimination, some even going so far as to deny that the enforcement of such rules can even be considered to have a disparate impact on workers based on race or national origin. While it is true that not every member of an ethnic group knows or chooses to use the language or languages traditionally associated with that group, and that likewise some persons may know and use languages unassociated with their personal ethnic background, it is beyond dispute that, for many individuals, their mother tongue is a function of their ethnic background. Notwithstanding this obvious close connection between ethnicity and language use, most courts have refused to recognize that discrimination based on language use correlated with ethnic identity constitutes discrimination on the basis of race or national origin. Why courts have been unwilling to draw this conclusion is in part based on a tacit yet deep-seated judicial ideology about the nature of language—an ideology contradicted by research in the fields of cognitive linguistics and sociolinguistics. Susan Gal has defined language ideology as "ideas about language [which] are implicated in the process by which…cultural ideas gave the discursive authority to become dominant."[18] In this case, unexamined beliefs that judges hold about language and bilingualism end up shaping their judicial

reasoning in ways that are fatal to the workers' claims of discrimination. By analyzing judicial opinions in these cases, it is possible to see the outlines of this ideology of language and to observe its incompatibility with linguistically informed understandings of the nature of language and communication.

In their analyses of the impact of 'English-only' rules on workers whose native language is not English, appellate judges often minimize the magnitude of the burdens that attempted compliance with these rules may place on such workers. In these judicial opinions, there is little acknowledgement of the centrality of language and communication to human social interaction. For example, the Ninth Circuit Court of Appeals characterized speaking with one's fellow workers on the job as a mere privilege, one that an employer might choose to magnanimously grant to or withhold from its workers.[19] In the court's view, as with any other privilege, its exercise could apparently be conditioned by the employer on any whim or preference, because the employer was under no obligation at all to permit the privilege of speaking to other workers while at the workplace.[20] In a 1996 case, the Fourth Circuit Court of Appeals agreed, asserting "the ability to converse on the job is a *privilege* of employment."[21] Having apparently determined that employers could properly insist that workers spend their work days in absolute silence, it is the next logical step for these judges to conclude that, therefore, any lesser restriction on worker communication must obviously be permissible.

Not all courts have gone quite this far. But even those courts that recognize that employer power in this regard may not be limitless, nevertheless, appear to seriously underestimate the magnitude of the burden that 'English-only' rules impose on their workers. Judges often trivialize this imposition, calling it a mere "inconvenience" to the workers,[22] because of a misunderstanding of bilingual communication and an ignorance of the realities of bilingual language usage. For instance, since the workers in question are characterized as "bilingual," the courts conceptualize the

impact of the rule as limited, affecting merely a matter of choice of language, which to a bilingual is of little consequence. As one court asserted, "It is axiomatic that the language a person who is multilingual elects to speak at a particular time is a matter of choice."[23] Therefore, in the court's view, since bilingual workers could choose to speak in English or in their native tongue, what might appear to be disparate impact on racial or ethnic minorities is nothing more than the reflection of free choices they made to flout the 'English-only' rule that they could easily have chosen to obey.[24] As a result, any disproportionate impact is seen instead as a voluntary exercise of the ethnic workers' "mere preference" to speak in their native language and, thus, is unprotected by civil-rights law.[25]

This analysis by the courts rests on a series of unspoken and unexamined assumptions about language capacity and communication by bilinguals. As a threshold matter, it presumes that languages are transparent media of referential communication such that everything that can be easily and unproblematically said in one language can also be faithfully rendered in another. The court's analysis also assumes that, by definition, a bilingual person is adept enough in both languages to have satisfactory communicative competence in either, regardless of the context of language use or register of language performance. This assumption flattens distinctions in bilingual competence among bilinguals and ignores variations in an individual's linguistic competence depending on context and domain of language use. A third assumption made in these opinions is that the specific language used by a bilingual individual is always a conscious, deliberate choice, which makes the "choice" to speak in a language other than English an intentional violation of the policy. Finally, these courts presume that rules banning the use of languages other than English cannot be considered the equivalent of direct discrimination based on the ethnicity because language use—being a voluntary choice—is not an immutable characteristic linked to racial and ethnic identity.[26] All of these assumptions taken together mean that appellate courts cannot conceive of

any reason why bilingual individuals would ever need to communicate using any language other than English. In that way, these judges appear to find it fair and reasonable for employers to require workers to limit their communication to English use only and to find that any disparate impact is caused by the acts of the workers, not a function of the employer's policy.

Each of these judicial assumptions is questionable in light of linguistic research. Take, for example, the assumption that languages are transparent media of referential communication, such that every language maps perfectly onto every other language and anything that can be said in one language can be easily and perfectly rendered in any other language. Cognitive linguistic research in bilingualism has demonstrated that there are many aspects of linguistic meaning that do not, in fact, map seamlessly in translation. Communication theorists writing about translation have long appreciated the problems that this poses even for highly fluent translators and interpreters.[27] Lexical tokens in one language have differing ranges of meaning and semantic connotation.[28] Differences in grammar and syntax also make it difficult to render thoughts conceptualized in one language transparently into another.[29] In fact, recent psycholinguistic research strongly suggests that what might appear to be minor syntactic distinctions between languages turn out to have a significant impact on perception, memory, and expressive recounting of events by speakers of those languages.[30] In other words, linguistic research confirms what many multilingual speakers appreciate intuitively—that there are many aspects of meaning "lost" or distorted in translation. To take one example, the Spanish word 'machismo' has no good English language equivalent. 'Masculinity' or 'maleness' really do not convey the same meaning. As a result, English speakers familiar with the cultural concept expressed by the word 'machismo' have to use that word even in their English language conversations in order to accurately convey its full meaning. Even speakers fully fluent in two or more languages are faced with the inevitable gaps and slippages of meaning resulting from the fact that languages, while

substantially commensurable, are not fully transparent and equivalent in their expression of meaning. The 'lost in translation' linguistic equivalency problem becomes much more pronounced when, as is often the case, a bilingual person has less than full fluency in the nonnative language. There, breakdown in cross-linguistic communication is more the rule than the exception.

This brings us to the second assumption made in the legal analysis of 'English-only' policies as applied to what are called 'bilingual' workers. In nearly every appellate opinion, the workers in question are described as 'bilingual,' meaning having some facility in the use of two languages. However, courts seldom inquire about the degree of English language competence possessed by these workers or the extent to which their English competence varies according to the context and domain of language use. Rather, the courts assume that the label 'bilingual' means that these workers are fully fluent in both languages and capable of expressing themselves adeptly in any circumstance. Thus, it seems to these judges quite reasonable to penalize workers for failing to adhere to 'English-only' rules when, by definition, bilinguals could easily choose to do so. In short, this judicial reasoning adopts the popular misconception that bilinguals are equivalent to two fully proficient monolingual native speakers inhabiting the same speaking mind.[31]

Reality in these cases is quite different from the perfectly fluent bilingual workers imagined in the judicial opinions. Instead, bilingual language competence exists on a continuum of proficiency, with relatively few bilinguals fully proficient in both languages and a great many bilinguals with more limited competence in their second language. In most cases, bilinguals have far less expressive fluency, more limited vocabularies, and more context-dependent competence in their second language than in their native tongues.[32] Particularly for individuals who do not begin acquiring a second language in childhood, attaining fluency in a second language as an adult is seldom realized, even with protracted study and effort.[33]

Additionally, it is unreasonable to presume that the workers in these cases need or are likely to have fluency in the English language. In most of the cases involving the imposition of 'English-only' policies, the bilingual workers in question are engaged in manual-labor jobs. They are likely to have received little, if any, formal training in English. Given typical housing patterns, they are also likely to live in communities where they are able to use their native languages for most daily activities. Engaged in jobs that do not require advanced English language skills, these workers are able to perform their jobs effectively despite frequently having little general competency in English. They may well have reasonable competence communicating in English in the limited contextual domain needed for the accomplishment of repetitive manual tasks. Yet, despite that ability, these workers may still have insufficient English language proficiency for other domains of ordinary interpersonal interaction and conversation. In order to communicate beyond limited task-bounded contexts, these workers would have little choice but to resort to their native language when their grasp of English syntax and vocabulary falls short, even if they attempted to communicate in English as 'English-only' rules require. Resorting to a mixture of both English and their native language can often be the source of 'English-only' rules violations.

Linguists have long recognized that bilingual individuals frequently switch from one language into another, sometimes even in the same sentence or phrase. The mixing of two languages within one conversational episode is referred to as code-switching by linguists,[34] and it is a necessary feature of communication for bilinguals who lack fluency in their second language. Even bilinguals with a high degree of proficiency in their second language have a tendency to code-switch, sometimes intentionally and often unwittingly. When code-switching is consciously engaged in, it serves a number of linguistic functions for the speaker: it may be referential (as when the speaker does not know or cannot remember the appropriate English word), expressive (as when the speaker wishes to invoke a

connotation not easily available in English, or when the speaker wishes to index an aspect of social identity connected with the use of the other language), phatic (as when the speaker wishes to change the tone or formality level of the conversation), or metalinguistic (as when the speaker is commenting on the language itself, such as musing on how you might say a particular thing in a second language).[35]

By ignoring the existence and functions of code-switching, courts can easily accept employers' characterizations of bilingual worker violations of 'English-only' rules as a kind of willful insubordination that can legitimately be punished.[36] While some code-switching is intentionally done by speakers,[37] many instances of code-switching are, in fact, not within the conscious control of the speaker.[38] Speakers are frequently unaware that they have code-switched.[39] When their code-switching is pointed out, speakers may apologize for what they see as a lapse of attention and may promise to be more careful and avoid code-switching in the future. Nevertheless, they usually resume code-switching in their conversations despite their best intentions to refrain from it.[40] One reason that refraining from code-switching is so difficult may be the nature of bilingual language processing. Neurolinguistic research has demonstrated that regardless of what language is being spoken at the moment, bilinguals keep both linguistic channels 'open' for processing and cannot completely switch off one language and operate solely in the other.[41]

One factor that has been shown to trigger unconscious code-switching is the identity of the bilingual's conversation partner—a process linguists call accommodation.[42] In other words, bilinguals are most likely to involuntarily code-switch when speaking with another person whom they know shares their first language. Since frequently the workplaces in 'English-only' litigation are staffed with many bilingual workers, it would be expected that conversations among them would be marked with a high degree of this kind of accommodating code-switching—triggered on the part of the speaker by the ethnic identity of the addressee. Other contextual cues, such as the

nature of the topic discussed and the emotional valence of the conversation, can also serve as triggers for unconscious code-switching.[43] Circumstances like these have been described by linguists as characterized by linguistic interference, in which the vocabulary or morpho-syntactic structure of the speaker's dominant language is involuntarily triggered by the context in which the second language is being used.[44] In short, the belief expressed by employers and adopted in judicial reasoning—that bilinguals always have full and conscious control over the language in which they express themselves—is inconsistent with linguistic research on bilingualism. Instead, the reality of bilingual language use is far more complex and far less a matter of intentional choice than courts want to believe.

The judicial emphasis on conscious choice in bilinguals' use of their first language also enables courts to conclude that 'English-only' rules do not constitute impermissible discrimination based on race or national origin, notwithstanding the obvious empirical linkage between language use and ethnic identity. By highlighting native language use as a 'choice' made by bilingual workers, courts draw a distinction between immutable characteristics of race or national origin—which are seen as deserving of civil-rights protections—and mutable characteristics associated with race or ethnic identity, which these courts place outside the protection of Title VII.[45] According to this analysis, only those racial or ethnic attributes that a person is unable to change give rise to an inference of impermissible discrimination.[46] Courts adopting this reasoning conclude that because bilingual individuals can choose to use either English or their native language, the use of their first language is not an immutable characteristic of their race or national origin and, therefore, is not protected under civil-rights law.

Leaving aside the highly debatable matter of whether civil-rights protections ought to be limited only to immutable characteristics of race or national origin, the courts' corollary conclusion that 'English-only' rules do not support even an inference of racial or ethnic discrimination[47] is again

seriously questionable in light of linguistic research on bilingualism and social identity. It is true that language use and ethnicity are not automatically and exclusively linked. Some individuals of a particular national origin will not have command over the language associated with that origin, just as some individuals without ancestry in that ethnic group may have proficiency in the language traditionally associated with that ethnic identity. In that sense, language use is by no means an invariable attribute of membership in a particular racial or ethnic group, being both under- and over-inclusive as an index of group identity.

Nevertheless, language does serve as a key resource in the construction and maintenance of a distinct ethnic and national identity.[48] Ethnic identity represents a core attribute of personal identity in the contemporary world, highly salient to an individual's sense of self and to that individual's sense of connection to the larger social order.[49] Language and ethnic identity are reciprocally linked, in that language use is a key cultural practice that helps to constitute ethnic identity, while ethnic identity gives particularized social meaning to the language choices of speakers.[50]

Failure to recognize this fundamental social fact about bilingualism results from the judicial adoption of a linguistic ideology that language is nothing but a transparent medium of referential communication. This belief, a mechanistically instrumental view of the nature of language, makes it difficult for judges to entertain seriously the idea that language has a social meaning in which the semiotics of language usage is a means of indexing social identity.[51] By asserting that there is no necessary link between language and ethnicity, it is but an easy step for courts to further insist that penalizing workers for violating 'English-only' rules cannot support even an inference of discrimination based on race or national origin.[52] Through the application of these erroneous ideas about the nature of language and in particular the nature of bilingualism, judges come to the conclusion that 'English-only' rules constitute neither direct evidence of unlawful discrimination against workers based on race and national origin nor even

evidence supporting a claim of disparate impact on workers on that basis. Thus, in the view of most courts, workers whose first language is something other than English cannot establish that 'English-only' restrictions entitle them to relief under Title VII of the Civil Rights Act.

IV. THE JUSTIFICATION FOR 'ENGLISH ONLY' RULES

Having concluded that 'English-only' rules by employers are not prima facie evidence of discrimination, courts usually find it legally unnecessary to go further in their analysis and ask whether employers have a compelling business necessity justifying actions that might impose a disproportionate burden on racial and ethnic minorities in their workforce. Nevertheless, some courts have proceeded to render an opinion as to whether 'English-only' restrictions on workers might be legitimate due to compelling business needs of the employer. Courts that have taken this next analytic step have almost always been exceedingly deferential to employer claims, finding that their language restrictions on employees are justified based on overriding business needs.[53] In fact, any recitation at all of a business-necessity basis for 'English-only' policies—even a conclusory assertion that the policy was needed so that the business would run "smoothly and efficiently"—has been accepted at face value by courts on this issue.[54]

When pressed for more specific justifications based on business necessity, employers have made two more specific claims about their need to restrict workers' abilities to speak in their native languages at the workplace. First, these policies are presumably justified in order to assure a safe and efficient workplace.[55] Second, employers assert that a monolingual workplace is necessary in order to promote racial and ethnic harmony on the job.[56] However, an examination of the evidence in these situations undermines both of these claimed rationales. If employers had the burden of justifying these restrictions based on business necessity, they would probably be unable to do so.

The idea that a monolingual work environment would enhance safety and efficiency has superficial appeal. Common sense would suggest that a monolingual workplace would promote more efficient worker communication than would a multilingual job site. Perhaps in a hypothetical, monolingual world this would be true. But we do not live in a monolingual world. In the real world—a world populated by workers of widely varying degrees of English language competency—workers may find it difficult, even impossible, to perform their work safely and efficiently if all communication must be exclusively in English. Cooperation with fellow workers may be stymied when workers cannot discuss the tasks at hand in the shared language in which they have the greatest facility. They may fail to understand safety warnings in English and be unable to adequately inform other workers or supervisors of dangerous conditions they see on the job simply because they cannot communicate fluently in English. In many of the litigated cases in which workers were punished for violating 'English-only' rules, the offending non-English language was spoken between two workers who shared the fluent use of the language in question.[57] Ironically, in such cases, requiring workers with limited command of English to use that language alone would actually result in a less efficient and less safe working environment than if the workers were permitted to communicate in their shared native language.

If appeals to workplace efficiency and safety as justification for 'English-only' rules in linguistically diverse workplaces turn out to be of dubious validity, then employer justifications based on a desire to promote racial and ethnic harmony in the workplace are even less plausible. One of the frequently asserted reasons for banning languages other than English in the workplace is the suspicion by monolingual English-speaking workers that their fellow workers are making derogatory comments about them when they speak in their native languages.[58] In none of the reported appellate cases was there any evidence introduced whatsoever that bilingual workers were in fact making insulting or mocking comments about their English-

speaking co-workers. Yet, employers responded to these groundless worries by imposing 'English-only' policies anyway. While this kind of paranoid suspicion could certainly contribute to an ethnically divided workplace, it could surely be better addressed by implementing policies forbidding employees to insult or harass one another regardless of the language used to do so. Restricting communication by bilinguals is hardly calculated to result in the asserted goal of achieving an ethnically harmonious workplace.

In fact, if promotion of an ethnically harmonious workplace is indeed the goal of the imposition of 'English-only' rules, the evidence from appellate cases suggests that imposition of these policies backfires badly. When employers adopt these restrictive policies, the evidence shows that workplaces tend to become more ethnically polarized and tense as a direct result.[59] Bilingual workers who are subject to the 'English-only' restrictions complain that they are mocked by English-speaking co-workers and bosses for their accented and nonstandard use of English.[60] They report being singled out by supervisors and threatened with discipline if they slip up and use their native language, creating a tense atmosphere in which the possibility of being fired looms constantly.[61] Bilinguals' fear of losing their jobs for violating the language restrictions—a worry their English-speaking monolingual co-workers do not experience—can only result in an increased ethnic polarization of the workplace as bilingual workers are fired and replaced with monolingual English speakers.[62] Unable to express themselves adequately in a language in which they have limited competence,[63] bilingual workers testify that they feel humiliation because of their inability to communicate effectively. Deprived of the ability to have ordinary social interaction with their fellow workers, they resent being placed at a distinct disadvantage compared with their monolingual English-speaking co-workers who are permitted to converse freely with one another.[64] Yet, despite this evidence proffered by the affected workers, courts have consistently rejected the workers' assertions that the enforcement of restrictive 'English-only' policies creates a hostile

workplace environment that is tantamount to direct racial or ethnic discrimination.[65]

Unsurprisingly, many bilingual workers come to feel that it is their ethnic identity itself that is the target of 'English-only' policies. Not infrequently, supervisors and co-workers directly attack that identity in the course of imposing these policies. For example, in one case, a worker reported that her employer "screamed" at her to "go back to your own country" when she was overheard speaking Spanish to a fellow employee.[66] In another case, a worker testified that while being fired for violating the 'English-only' restrictions at work, his supervisor told him to "go home and sit on his Puerto Rican bum."[67] Still another worker, told by his boss, "We don't tolerate any 'Mesican' (sic) talk" on the job, concluded that his ethnic heritage was being singled out for disrespect and that it was his employer's hostility to his ethnicity that explained his being fired.[68]

In some cases, there is no need to speculate about whether the policy is a product of ethnic hostility since the employers' use of ethnic slurs betrays that fact. In one such case, a manager came upon two employees speaking Spanish at lunch and swore at them, saying, "Wetbacks, I wish you would speak where I can understand you." In fact, the newly-imposed 'English-only' rule in that business was announced with a sign stating, "Absolutely No Guns, Knives, or Weapons of any kind are allowed on these Premises at any time! English is the official language of Premier Operator Services Inc. All conversations on these premises are to be in English."[69] It is easy to see why a policy lumping together the possession of deadly weapons with the speaking of foreign languages might seem to the affected bilingual workers as a sign that they themselves were being demonized as dangerous. Alienated by these restrictive policies from their employers and monolingual fellow workers, bilingual workers testify that 'English-only' rules create an "atmosphere of inferiority, isolation, and intimidation" on the job.[70] Far from promoting ethnic harmony in the workplace, these polices appear instead to be a recipe for creating a tense workplace

environment where not only do racial and ethnic divisions between workers become amplified and sharpened, but inter-ethnic resentment and hostility are also fueled.

V. CONCLUSION

As I have argued above, the imposition and legal justification of employers' 'English-only' restrictions on bilingual workers are facilitated by certain ideological beliefs about language and communication that courts unreflectively deploy. Because that ideology is seldom consciously recognized or overtly articulated, however, it is largely impervious to challenge. Even when plaintiffs challenging these policies proffer expert witnesses with linguistic and anthropological expertise to testify as to the impact of these language restrictions on affected workers, courts appear not to seriously consider that evidence. Sadly, when research-based expert knowledge contradicts judicial 'common sense' ideological beliefs, ideology beats science. This critical analysis of 'English-only' rules in the workplace exposes one aspect of linguistic ideology in the law and its hegemonic nature.[71] The law's resulting unwillingness to take seriously the burden that 'English-only' restrictions impose on bilingual workers puts those workers at a serious disadvantage in an already difficult job market. Unfortunately, that disadvantage is likely to become more pervasive as more employers adopt language restrictions in the workplace. As Judge Reinhardt noted in his dissent to the Ninth Circuit Court of Appeal's denial of the petition for rehearing in *Garcia v. Spun Steak*, the "present mood of anti-immigration backlash means that English Only rules are likely to become more prevalent."[72] Since that 1993 case, anti-immigrant sentiment has certainly not declined, and arguably has even intensified. In the absence of explicit protection in law for linguistic minorities, civil-rights law as currently interpreted is unlikely to provide legal redress when bilingual workers find themselves marginalized, disciplined, and fired for their inability to comply with 'English-only' rules.

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* John D. Eshelman Professor of Law, Seattle University. This article is an adaptation and expansion of the address I gave at my installation as John D. Eshelman Professor. I am deeply honored to be the namesake of Dr. John Eshelman, who has long been an inspirational model of the engaged, deeply thoughtful, and committed teacher-scholar-administrator. Seattle University has been truly blessed by his many years of service in all of those capacities.

[1] The rules I am discussing are distinct from employer requirements of English language competence as a precondition of being hired or assigned a particular job. Without question, many jobs cannot be appropriately performed without adequate English language competence, and in those cases, threshold English language proficiency requirements are reasonable and legally unobjectionable as a condition of being hired as long as the requirement is a bona fide requirement of the job and not a pretext for discrimination. In contrast, the 'English-only' rules addressed in this article are imposed on already-hired workers, often performing manual-labor jobs for which English language competency was, unsurprisingly, neither tested for nor required in the hiring process.

[2] Saucedo v. Brothers' Well Servs., 464 F. Supp. 919, 921 (S.D. Tex. 1979).

[3] Garcia v. Gloor, 618 F.2d 264, 266 (5th Cir. 1980).

[4] *See, e.g.*, Gonzalez v. Salvation Army, No. 89-1679-CIV-T-17, 1991 WL 11009376 (M.D. Fla. 1991); Kania v. Archdiocese of Phila., 14 F. Supp. 2d 730 (E.D. Pa. 1998); EEOC v. Premier Operator Services, 113 F. Supp. 2d 1066 (N.D. Tex. 2000).

[5] *See, e.g.*, Cristina M. Rodriguez, *Language Diversity in the Workplace*, 100 NW. U. L. REV. 1689, 1700 (2006).

[6] 368 F. Supp. 752 (D. Or. 1973).

[7] For example, *Gloor*, 618 F.2d 264 and *Garcia v. Spun Steak*, 998 F.2d 1480 (9th Cir. 1993), are two frequently cited appellate opinions rejecting worker claims that punishing them for violating 'English-only' rules constituted discrimination on the basis of their race and national origin.

[8] *See, e.g.*, Ortiz v. Fort Dodge Corr. Ctr., 368 F.3d 1024 (8th Cir. 2004).

[9] Boriboune v. Litscher, 91 F. App'x. 498, 499 (7th Cir. 2003).

[10] Allah v. Poole, 506 F. Supp. 2d 174, 184 (W.D. N.Y. 2009).

[11] Rubio *ex rel*. Z.R. v. Turner Unified Sch. Dist. No 202, 523 F. Supp. 2d 1242, 1246 (D. Kan. 2007).

[12] *Id.* at 1252 ("Directing a student to go to the school office for speaking Spanish and even commenting on the incident to fellow students does not appear to rise to harassment so severe, pervasive and objectively offensive that it deprived plaintiff of access to educational benefits or opportunities provided by the school.").

[13] Goitia v. Florida, No. 6:06-cv-6-Orl-31KRS, 2007 U.S. Dist. LEXIS 37837 (M.D. Fla. May 24, 2007).

[14] Rosario v. Cacace, 767 A.2d 1023 (N.J. Super. Ct. App. Div. 2001).

[15] *Id.*

[16] Gonzalo v. All Island Transp., No. CV-04-3452 (BMC) (LB), 2007 U.S. Dist. LEXIS 13069 (E.D. N.Y. Feb. 20, 2007).
[17] *See, e.g.*, Griggs v. Duke Power Co., 401 U.S. 424 (1971); Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975).
[18] Susan Gal, *Multiplicity and Contention among Language Ideologies*, *in* LANGUAGE IDEOLOGIES: PRACTICE AND THEORY 317, 321–22 (Bambi B. Schieffelin et al. eds., 1998).
[19] Garcia v. Spun Steak, 998 F.2d 1480, 1487 (9th Cir. 1993).
[20] In the words of the Ninth Circuit opinion in *Spun Steak,* regarding employee speech as a privilege: "A privilege, however, is by definition given at the employer's discretion; an employer has the right to define its contours." *Id*. at 1487.
[21] Long v. First Union Corp. of Va., 86 F.3d 1151 (4th Cir. 1996) (emphasis in original).
[22] *See, e.g.*, *Spun Steak*, 998 F.2d at 1488.
[23] *Id.* at 1487.
[24] *Id.*; Garcia v. Gloor, 618 F.2d 264, 269–70 (5th Cir. 1980).
[25] *See* Cosme v. Salvation Army, 284 F. Supp. 2d 229, 231 (D. Mass. 2003).
[26] *Gloor*, 618 F.2d at 270, is frequently approvingly quoted by courts on this issue.
[27] George Steiner's influential writing on the philosophical and practical problems in translating between languages established the modern foundation of the field of linguistically-grounded translations studies. GEORGE STEINER, AFTER BABEL: ASPECTS OF LANGUAGE AND TRANSLATION (1975). Recent interdisciplinary work in translation studies dealing with matters including the equivalency problem includes JEREMY MUNDAY, INTRODUCING TRANSLATION STUDIES: THEORIES AND APPLICATIONS (2008); ALESSANDRA RICCARDI, TRANSLATION STUDIES: PERSPECTIVES ON AN EMERGING DISCIPLINE (2008); MONA BAKER, ed., CRITICAL READINGS IN TRANSLATION STUDIES (2009).
[28] *See, e.g.*, Jeannette Altarriba, *Does Cariño Equal 'Liking'?: A Theoretical Approach to Nonequivalence Between Languages,* 7 INT'L J. OF BILINGUALISM 305 (2003). For research exploring the influence that varying lexical choices of a language have on thought, see, for example, Jonathan Winawer et. al., *Russian Blues Reveal Effects of Language on Color Discrimination*, 104 PROC. OF NAT'L. ACAD. OF SCIENCE 7780 (2007) (differing mapping of color terms in Russian and English affects perception and recall by speakers of those languages); Guillaume Thierry et al., *Unconscious Effects of Language-Specific Terminology on Preattentive Color Perception*, 106 PROC. OF NAT'L ACAD. OF SCIENCE 4567 (2009) (perception effects due to color terminology differences between Greek and English.).
[29] Research examining the impact that different grammatical and syntactic attributes of languages have on the thought processes of their speakers includes Lera Boroditsky, *Does Language Shape Thought?: English and Mandarin Speakers' Conceptions of Time,* 43 COGNITIVE PSYCH. 1 (2001) (demonstrating that syntactic difference in expressing temporal attributes of actions affects judgments made by Chinese speakers compared to English speakers) and Lera Boroditsky, Lauren A. Schmidt, & Webb Phillips, *Sex, Syntax, and Semantics*, *in* LANGUAGE IN MIND: ADVANCES IN THE STUDY OF LANGUAGE AND COGNITION 61 (Dedre Gentner & Susan Goldin-Meadow eds., 2003) (showing that

the grammatical gender of inanimate nouns caused speakers of languages that feature grammatical gender to attribute stereotypically masculine or feminine characteristics to objects consistent with their grammatically assigned gender).

[30] *See* Caitlin Fausey & Lera Boroditsky, *Subtle Linguistic Cues Influence Perceived Blame and Financial Liability*, PSYCHONOMIC BULLETIN & REV. 2010 (forthcoming), available at, http://www-psych.stanford.edu/~lera/papers/wardrobe-malfunction.pdf (Nov. 14, 2010) (users of languages marked by agentless syntactic structures have different perceptions and assessments of responsibility and moral culpability as compared with users of languages with fewer such syntactic features).

[31] François Grosjean, *Neurolinguists Beware! The Bilingual is Not Two Monolinguals in One Person*, 36 BRAIN & LANGUAGE 3 (1989). Relatively recent neurolinguistic research shows that bilingual speakers process language in ways that differ from that of monolinguals, even when the context in which they are speaking is exclusively monolingual. Brain scans of bilingual language users reveal a number of key distinctions between bilingual language processing and monolingual language processing. *See* François Grosjean, Ping Li, Thomas F. Münte, & Antoni Rodriguez-Fornells, *Imaging Bilinguals: When the Neurosciences Meet the Language Sciences*, 6 BILINGUALISM: LANGUAGE AND COGNITION 159 (2003). For additional discussion of neurolinguistic research on bilingual language production, see generally FRANCO FABBRO, NEUROLINGUISTICS OF BILINGUALISM (1999) and ROBERTO R. HEREDIA & JEANNETTE ALTARRIBA EDS., BILINGUAL SENTENCE PROCESSING (2002). Work by psycholinguists has contributed to our understanding of the differences in the linguistically constructed experience of the self between bilinguals and monolinguals. ANNA PAVLENKO, BILINGUAL MINDS: EMOTIONAL EXPERIENCE, EXPRESSION, AND REPRESENTATION (2006). Additional psycholinguistic research on bilinguals is discussed in JANET L. NICOL, ED., ONE MIND, TWO LANGUAGES: BILINGUAL LANGUAGE PROCESSING (2001) and FRANÇOIS GROSJEAN, STUDYING BILINGUALS (Oxford Univ. 2008). What this research by neurolinguists and psycholinguists demonstrates is that bilingual speakers—even those with an exceptional degree of fluency in their second language—process and use language in ways that monolinguals cannot and do not.

[32] Yuko G. Butler & Kenji Hakuta, *Bilingualism and Second-Language Acquisition, in* THE HANDBOOK OF BILINGUALISM 114, 118–25 (Tej K. Bhatia & William C. Ritchie, eds. 2006).

[33] *See* CAROL MYERS-SCOTTON, MULTIPLE VOICES: AN INTRODUCTION TO BILINGUALISM, 344–55 (2006) (discussing reasons why second language acquisition is so difficult for adult language learners).

[34] There is a vast literature in linguistics on code-switching by bilinguals—addressing the syntactic constraints on its production, the circumstances in which it occurs, and the social and pragmatic functions that it serves. Two early influential analyses of this linguistic phenomenon are Shana Poplack, *Sometimes I'll Start a Sentence in English and Termino en Español: Toward a Typology of Code-Switching,* 18 LINGUISTICS 581 (1980) and John J. Gumperz, *Conversational Code Switching, in* DISCOURSE STRATEGIES 55 (John J. Gumperz ed. 1982). Interdisciplinary collected works on code-switching include MONICA HELLER, ED., CODESWITCHING: ANTHROPOLOGICAL AND SOCIOLINGUISTIC

PERSPECTIVES (1988) and LESLEY MILROY & PIETER MUYSKEN, EDS., ONE SPEAKER, TWO LANGUAGES: CROSS-DISCIPLINARY PERSPECTIVES ON CODE-SWITCHING (1995). For two competing theoretical frameworks analyzing code-switching, compare CAROL MYERS-SCOTTON *supra* note 33, at 239–78 (using Matrix Language Frame theory) and Jeff MacSwan, *Code Switching and Grammatical Theory*, in THE HANDBOOK OF BILINGUALISM 283 (Tej. K. Bhatia & William C. Ritchie eds. 2004) (using Chomskyan Minimalist Theory).

[35] RENÉ APPEL AND PIETER MUYSKEN, LANGUAGE CONTACT AND BILINGUALISM 118–20 (1987).

[36] *See, e.g.*, Cosme v. Salvation Army, 284 F. Supp. 2d 229 (D. Mass. 2003).

[37] For a discussion of code-switching as a conscious discursive strategy by speakers, see Gumperz, *supra* note 34 and Carol Myers-Scotton & Agnes Bolonyai, *Calculating Speakers: Codeswitching in a Rational Choice Model*, 30 LANGUAGE IN SOCIETY 1 (2001).

[38] *See* Nanda Poulisse & Theo Bongaerts, *First Language Use in Second Language Production*, 15 APPLIED LINGUISTICS 36 (1994) (documenting the frequency of unintentional code-switching by bilinguals in interactions); William C. Ritchie & Tej K. Bhatia, *Social and Psychological Factors in Language Mixing*, *in* THE HANDBOOK OF BILINGUALISM 336, 350 (Tej K. Bhatia & William C. Ritchie eds., 2006).

[39] Poplack, *supra* note 34, at 601; Susan Gal, *The Political Economy of Code Choice, in* CODESWITCHING: ANTHROPOLOGICAL AND SOCIOLINGUISTIC PERSPECTIVES 245, 245–46 (Monica Heller ed. 1988).

[40] Ritchie & Bhatia, *supra* note 38, at 350–51; *see also* Itesh Sachdev & Howard Giles, *Bilingual Accommodation, in* THE HANDBOOK OF BILINGUALISM 352, 359–60 (Tej K. Bhatia & William C. Ritchie eds. 2006) (noting that even bilinguals who have a negative attitude towards code-switching nevertheless frequently engage in the practice).

[41] François Grosjean, *Studying Bilinguals: Methodological and Conceptual Issues*, *in* THE HANDBOOK OF BILINGUALISM 32, 54–55 (Tej K. Bhatia & William C. Ritchie eds., 2006).

[42] Myers-Scotton, *supra* note 33, at 154–58; Sachdev & Giles *supra* note 40, at 352.

[43] GROSJEAN, *supra* note 31, at 37–66; Sachdev & Giles, *supra* note 40, at 354–55; Ritchie & Bhatia, *supra* note 38, at 339–45.

[44] Functional interference of this type is explored in Pieter Muysken, *Two Linguistic Systems in Contact: Grammar, Phonology, and Lexicon, in* THE HANDBOOK OF BILINGUALISM 147 (Tej K. Bhatia & William C. Ritchie eds. 2006) and in GROSJEAN, *supra* note 31, at 54–55.

[45] *See, e.g.*, Garcia v. Gloor, 618 F.2d 264 (5th Cir. 1980); Garcia v. Spun Steak, 998 F.2d 1480 (9th Cir. 1993).

[46] *C.f.. See, e.g.,* Velasquez v. Goldwater Mem'l. Hosp., 88 F. Supp. 2d 257, 262 (S.D.N.Y. 2000). The distinction between mutable and immutable characteristics as a basis for the presence or absence of civil rights protections is a deeply troubling one. Such reasoning, if stringently and consistently applied, would appear to permit discrimination based on religion, since the adoption or rejection of religious belief is without question a voluntary choice rather than an immutable characteristic. Surely courts

would not countenance such an interpretation of civil rights protections in the religious context.

[47] *See, e.g.*, *id.* at 263; Magsanoc v. Coast Hotels and Casinos, 293 F. App'x. 454, 456 (9th Cir. 2008); Pacheco v. New York Presbyterian Hosp., 593 F. Supp. 2d 599, 612 (S.D.N.Y. 2009).

[48] Poplack, *supra* note 34, at 593–95. *See also* sources cited at note 49 for a fuller examination of the link between language and ethnic and national identity.

[49] On the significance of ethnic identity in modern society from a variety of disciplinary perspectives, see, for example, EDWIN N. WILMSEN & PATRICK MCALLISTER eds., THE POLITICS OF DIFFERENCE: ETHNIC PREMISES IN A WORLD OF POWER, 5–6 (1996); KATHRYN WOODWARD, ed., IDENTITY AND DIFFERENCE (1997); WILLIAM PETERSEN, ETHNICITY COUNTS, 32–36 (1997); RICHARD JENKINS, RETHINKING ETHNICITY (1997); Stuart Hall, *Cultural Identity and Diaspora, in* IDENTITY, COMMUNITY, CULTURE, DIFFERENCE, 222 (Jonathan Rutherford ed. 1990); Susan E. Keefe, *Ethnic Identity: The Domain of Perceptions of and Attachment to Ethnic Groups and Cultures*, 51 HUM. ORGANIZATION, 35 (1992); and Barbara B. Lal, *Symbolic Interaction Theories of Ethnicity*, 38 AMER. BEH. SCIENTIST 421 (1995).

[50] The intertwined relationship between language use and ethnic identity has been explored by anthropologists, sociologists, and sociolinguists. For research on this relationship that is grounded in these disciplines, see, for example, JOSHUA FISHMAN, IN PRAISE OF THE BELOVED LANGUAGE: A COMPARATIVE VIEW OF POSITIVE ETHNOLINGUISTIC CONSCIOUSNESS (1997); JOSHUA A. FISHMAN ed., HANDBOOK OF LANGUAGE AND ETHNIC IDENTITY, 119–22 (1999); and WILLIAM B. GUDYKUNST & KAREN L. SCHMIDT, eds., LANGUAGE AND ETHNIC IDENTITY, 1 (1988). On the connection of language use to social identity more generally, see JOHN GUMPERZ & JENNY COOK-GUMPERZ eds., LANGUAGE AND SOCIAL IDENTITY (1982).

[51] Joshua A. Fishman, *Concluding Remarks, in* JOSHUA A. FISHMAN ed., HANDBOOK OF LANGUAGE AND ETHNIC IDENTITY 444, 448–53 (Joshua A. Fishman ed. 1999).

[52] Garcia v. Spun Steak, 998 F.2d 1480 (9th Cir. 1993); Velasquez v. Goldwater Mem'l Hosp., 88 F. Supp.2d at 263.257, 262 (S.D.N.Y. 2000).

[53] Generally, employer assertions of business necessity are accepted without any analysis at all on the part of the courts. *See, e.g.,* Prado v. Luria and Sons, 975 F. Supp. 1349, 1354 (S.D. Fla. 1997) (reciting employer's business necessity justifications and characterizing them as "legitimate" without judicial discussion).

[54] *See, e.g.,* Long v. First Union Corp. of Va., 894 F. Supp. 933, 939 (E.D. Va. 1995), *aff'd*, 83 F.3d 1151 (4th Cir. 1996).

[55] *See, e.g.*, *Spun Steak*, 998 F.2d at 1483; Maldonado v. City of Altus, 433 F.3d 1294, 1299 (10th Cir. 2006); Gutierrez v. Mun. Ct., 838 F.2d 1031, 1042 (9th Cir. 1988).

[56] *See, e.g., id.*; Kania v. Archdiocese of Phila., 14 F. Supp. 2d 730, 736 (E.D. Pa. 1998).

[57] *See, e.g.*, Saucedo v. Brothers' Well Servs., 464 F. Supp. 919 (S.D. Tex. 1979); Garcia v. Gloor*,* 618 F.2d 265 (5th Cir. 1980).

[58] This suspicion on the part of monolinguals is surprisingly common even though there is seldom any evidence to support it. There are several cases in which employers used this apparently groundless concern to justify 'English-only' restrictions. *See, e.g.,*

Hernandez v. Erlenbusch, 368 F. Supp. 752, 754 (D. Or. 1973); Gonzalez v. Salvation Army, No. 89-1679-CIV-T-17, 1991 WL 11009376, at *2 (M.D. Fla. 1991); *Spun Steak*, 998 F.2d at 1483; *Kania*, 14 F. Supp. 2d at 731; Roman v. Cornell Univ., 53 F. Supp. 2d 223, 229 (N.D. N.Y. 1999); Barber v. Lovelace Sandia Health Sys., 409 F. Supp. 2d 1313, 1317 (D. N.M. 2005); EEOC v. Sephora, 419 F. Supp. 2d 408, 414 (S.D.N.Y. 2005). The depth of this kind of paranoia cannot be overestimated. In one reported case, a Spanish speaking employee asked a fellow worker in Spanish to get her a cup of coffee. Overhearing this innocent exchange, her supervisor hurled a cup, shattering it, saying, "I am sick and tired of you people speaking Spanish here. Why don't you tell me to my face what you're saying about me." Cosme v. Salvation Army, 284 F. Supp. 2d 229, 234 (D. Mass. 2003).

[59] *See, e.g.*, Hernandez v. Erlenbusch, 368 F. Supp. 752, 754 (D. Or. 1973); Gutierrez v. Mun. Ct., 838 F.2d 103, 1042–43 (9th Cir. 1988) reh'g denied 861 F.2d 1187, cert. granted and judgment vacated as moot, 490 U.S. 1016 (1989); EEOC v. Premier Operator Servs., 113 F. Supp. 2d 1066, 1070 (N.D. Tex. 2000).

[60] The plaintiff in *Prado v. Luria and Sons*, 975 F. Supp. 1349, 1352 (S.D. Fla. 1997) testified that two supervisors "made fun of her accent at least once a day." *Id.* at 1322–23. *See also Gutierrez*, 838 F.2d at 1042–43.

[61] *See, e.g.*, *Spun Steak*, 998 F.2d at 1486–87 (worker testimony about tense and humiliating atmosphere on the job); Goitia v. Florida, No. 6:06-cv-6-Orl-31 KRS, 2007 U.S. Dist. LEXIS 37837, at *4 (M.D. Fla. 2007) (same).

[62] For example, in the first three months after the imposition of an 'English-only' rule at Premier Operating Services, thirteen Spanish speaking workers were fired for violating the policy and fourteen Anglos hired to replace them. That can hardly have contributed to an atmosphere on ethnic harmony for the remaining Hispanic workforce. *EEOC*, 113 F. Supp. 2d at 1069.

[63] Anthropologist Alton Becker once compared having to speak a foreign language to being temporarily insane because of the gap between what you want to say and what you are able to say. Celia Roberts & Pete Sayers, *Keeping the Gate: How Judgments are Made in Interethnic Interviews, in* ANALYZING INTERCULTURAL COMMUNICATION 111, 113 (Karlfried Knapp, Werner Enninger & Annelie Knapp-Potthoff eds., 1987) (quoting Alton Becker, *Text-building, Epistemology, and Aesthetics in Javanese Shadow Theater*, *in* THE IMAGINATION OF REALITY 133 (Alton Becker & Aram A. Yengoyan eds., 1979)).

[64] *Spun Steak*, 998 F.2d at 1487. In that case, however, the appellate court gave no credence to the employees' consistent, uncontradicted testimony.

[65] *See, e.g.*, Tran v. Standard Motor Prods., 10 F. Supp. 2d 1199, 1211 (D. Kan. 1998); Montes v. Vail Clinic, 497 F.3d 1160 (10th Cir. 2007).

[66] Edward M. Chen, *Garcia v. Spun Steak: Speak-English-Only Rules and the Demise of Workplace Pluralism*, 1 ASIAN L. J. 155, 162–63 (1994).

[67] Lopez v. Flight Servs., No. 07-CV-6186 CJS, 2008 WL 203028, at *1 (W.D.N.Y. Jan. 23, 2008).

[68] Saucedo v. Brothers' Well Serv., 464 F. Supp. 919, 920 (S.D. Tex. 1979).

[69] EEOC v. Premier Operating Servs., 113 F. Supp. 2d. 1066, 1069–70 (N.D. Tex. 2000).

[70] Garcia v. Spun Steak, 998 F.2d 1480, 1487 (9th Cir. 1993).

[71] For a look at the hegemonic power of judicial language ideology in a different legal context—the legal treatment of attempts by arrestees to invoke their Miranda rights—see Janet Ainsworth, *'You Have the Right to Remain Silent . . . 'But Only if You Ask for it Just So: The Role of Linguistic Ideology in American Police Interrogation Law,* 15 INT'L J. OF SPEECH, LANGUAGE, & LAW 1 (2008).

[72] Garcia v. Spun Steak, petition for rehearing denied, 13 F.3d 296 (9th Cir. 1993) (Reinhardt, J., dissenting).