"What words did the defendant say in your presence?"

Mixtecs, Migrants, Multilingualism, and Murder

John B. Haviland
Reed College

Language, politics, and (folk) metapragmatics

The theme of this Workshop[1] is, apparently, the role of language in the (genesis and exercise) of power: a topic of some antiquity, and one whose very framing in these terms--imagining "language" as something separable enough from other realms of human activity to be assigned its own "role," or the nominalization of yet other realms or aspects of human activity under the rubric of what in Romance linguistics is called (with certain metaphysical confidence) a *substantive*, that is, a *noun*, 'power'--is an example of its own referent: the power of language to cast phenomena into a certain shape and nature. This is a matter that linguists spend lamentably little time thinking about, and that anthropologists perhaps find hard even to understand. I come to you today as both linguist and anthropologist.

When David Laitin assembled a group of us to mull over these matters, we spent a lot of time talking about the nature of language "choices," given various calculi of possibilities (i.e., different "languages" or "linguistic [or communicative] varieties," depending on one's theoretical tastes) and goals (of a non-linguistic, "social" or "political" sort). There are serious conceptual issues raised by this metaphor (as I take it to be) of "choice." An awareness of "options" requires a native *theory* of language, which will, in turn, minimally involve what has been called "folk metapragmatics"--an explicit native understanding of how language can be *used*, what it's good for, and when it is *appropriately* usable. Demonstrating the nature of such a theory is no mean task, and it involves lots of ethnographic drudgery.

My contribution in that earlier discussion came from my experiences with the seemingly exotic situation in Aboriginal Australia wherein a "speech community" consists of a conglomerate of people whose linguistic repertoires are remarkably complex, and where people's allegiances and claims *to* language(s), not to mention their knowledge *of* languages, are multifold, manifestly governed by social considerations, and, thereby, inherently political matters.[2] The situation in Northeastern Australia provides a useful corrective to the familiar (if idealized) scenario of crises in Western language policy in

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[1] This paper was prepared for the Language and Politics Workshop, University of Chicago, May 23, 1988, to whose participants I am indebted for suggestions. I am grateful to David Laitin for his invitation and encouragement, and to Paul Friedrich and Michael Moerman for critical comment, always appreciated although not always acted upon. The research reported herein is part of joint ongoing work with the Mixtec community of Oregon (and its counterparts in Oaxaca) by Lourdes de León and the author. We gratefully acknowledge the help and support of our Mixtec friends and neighbors, and other members of the *Santiago V. M. Freedom Committee*, especially Donna Slepack, and Margaret and Bob Dresbach, who procured a working copy of the trial transcript cited here.

[2] See %Haviland(1982). The occasion for these earlier discussions was the conference on "Ethnographies of speaking and game theory: developing a new approach to language conflict," organized by David Laitin, Aaron Cicourel, Carol Padden, and Joel Sobel at UCSD in June, 1987.

which exactly two monolithic, "standardized" languages square off for the hearts, minds, and tongues of the citizenry of a modern state. In the Australian case, there is nothing standard or monolithic about the varieties; there are no (easily recognizable) state institutions involved; and the tongues are not limited to binary choices, since polyglot skills are rampant.[3]

My empirical focus here is considerably closer to home. In fact, it is about thirty minutes from my home in Southeast Portland (Oregon). The facts are no less complex, though they involve only three "languages": English, Spanish, and Mixtec, an Oto-Manguean language of Mexico, in this case dialects of Mixtec from the state of Oaxaca.[4] There are language choices involved here, too, whose terms are set by what we might call the "entry-level" institution of the state political order: the county courtroom. I will describe certain details of a murder trial, conducted in Clackamas County in late 1986, in which a young Mixtec was convicted of the murder of another Mixtec--like the defendant, an undocumented migrant strawberry picker from Oaxaca--and sentenced to life in prison. This man, Santiago V.[5], has now passed his 18th, 19th, and 20th birthdays in the Oregon State Correctional Institution, and, even if he manages parole, he can still expect to celebrate another ten birthdays on the inside--all for a crime he very probably did not commit.

But before I get to the story, let me air some of my theoretical laundry.

Language and social theory

There has been a recent resurgence, fuelled by burgeoning semiotic studies, in interest in the interrelationships between language and other social phenomena. Developing an adequate social theory, not pre-immunized to language, requires first a perspicacious view of what language *is*. One such a view is that of Silverstein, who writes

"The total linguistic fact, the datum for a science of language, is irreducibly dialectic in nature. It is an unstable mutual interaction of meaningful sign forms contextualized to situations of interested human use, mediated by the fact of cultural ideology."[6]

Silverstein goes on to articulate three interacting (though analytically distinct) "perspectives" on language that figure in his characterization: a structural perspective (roughly, a grammar of form, abstracted from an assumed primary or underlying propositional, referential, or truth-functional value for linguistic communication--more or less what mainstream linguistics includes under the rubrics of syntax and semantics); a pragmatic perspective (on the "appropriate" and "effective" uses of linguistic forms); and an ideological perspective (which considers explicit formulations of "language use as a means to an end in interaction . . . implicitly reconstructed as rationalization in the paradigm of interested human social action" [1985:222]).[7]

Second, an adequate social theory of language will require us to consider what should, by now, be standard questions in the political economy of language or speech, (as in what Bourdieu calls "the economics of linguistic exchanges" [%1974]). Here there are the familiar varieties of relations of (in this case, linguistic) production.

All particular linguistic transactions depend on the structure of the linguistic field, which

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[3] See %Haviland(1985), for a discussion of the details.

[4] For references to Mixtec, see %de Leon(1988).

[5] Because Mr. V.'s case is awaiting further legal action I will abbreviate his name here.

[6] %Silverstein (1985b:220).

[7] See also %Silverstein (1987b).

is itself a particular expression of the structure of power relations between the groups possessing the corresponding competences (*e.g.*, "genteel" language and the vernacular, or, in a situation of multilingualism, the dominant language and the dominated language).[8]

If we forgive Bourdieu a certain binary short-sightedness, we can pursue his notion of "linguistic field" as an eminently sociological concept: a complex network of relations, institutions, and dispositions, which particular linguistic *practices* inhabit.

A much discussed issue, where such ideas have been usefully brought to bear, is the question of "Standard Language"--incarnated in America (and legislated in such states as California and Florida) in the "English only" movement. Such a movement can only flourish as part of a (political) process whose progeny include a privileged notion of referential function (valorized as "clear" speech) for language, an idea of social, expressive, and logical transparency (neutrality) attached to, e.g., "Standard English," and a political ideology in which linguistic tools, like hammers or pliers, can be picked up, without undue effort[9], by all responsible citizens.[10] Here all three perspectives on language are brought into line with a single, over-arching, though drastically limited, view of what language is, and how it works.

The same view--or a close cousin, I believe--informs the practices of the criminal courtroom, a particularly dramatic arena for our society's exercise of power.

Language and the law

I will not dwell on the extensive literature on language in the judicial process.[11] It ranges from ethnomethodological studies of the conversational organization of courtroom talk (%Atkinson and Drew (1979)), which in turn are seen to contribute to a typology of sequentially-defined "contexts" (%Schegloff (n.d.)) to practical guides in courtroom rhetoric by seasoned trial lawyers.[12] Furthermore, it includes detailed studies of everything from the inferential processes in disputatious language[13] in general, to accounts of Western judicial decision-making, based on textual[14], and experimental studies.[15] These studies relate courtroom outcomes to conceptual, semiotic, and rhetorical constraints on courtroom language: limited to certain key words or terms of (legal) art, with heavily monitored access to the floor (or to silence[16]), and with a legally prescribed range of permissible inference.

My treatment of Santiago's case derives from my understanding of this line of research. In particular, I want to demonstrate the nature and consequences of a particularly potent "native theory" of language: the implicit "folk metapragmatics" of an Oregon courtroom.

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[8] %Bourdieu (1974:647).

[9] But perhaps through the institution of schooling, see for example %Collins (1988).

[10] See %Silverstein(1987c), for a detailed articulation.

[11] See the recent review article by %Brenneis(1988) for a summary discussion.

[12] %O'Barr (1982:Ch. 3) provides an eye-opening survey of such trial-lawyer "how-to" books.

[13] See the forthcoming %Grimshaw(n.d.), or cross-cultural studies as those in %Brenneis and Myers (1984), and %Haviland(1988).

[14] For example, %Mertz(1987).

[15] Notably in the work of O'Barr and his colleagues. See, for example, O'Barr and Conley(1985).

[16] See %O'Barr(1982:98-111).

My interest in this case, however, transcends these theoretical concerns; for here a bankrupt or (at least partially) flawed *theory of language* has not merely offended our intellectual sensibilities, but has landed a seventeen-year-old Oaxacan in jail potentially for the rest of his life.

"A considerable amount of Spanish going on back and forth..."[17]--the trial of Santiago V. Let me give a rough sketch of what the lawyers call "the facts of the case." Note that, if I am going to be consistent and apply my analytic lens to my own practices, I must acknowledge that a particular discursive theory binds any such textual account. Insisting on "unvarnished facts" neatly paints over the *techniques* which extract such putative facts from the background jumble, and which privilege a certain sort of narrative. In fact, for our purposes there are *three* such privileged narratives:

1) the legislated "facts" which emerge from the "events" as they were investigated by duly constituted authorities (the police, the defense investigators, and, latterly, the anthropologists);

2) the "theory of the case" as expounded by both prosecution and defense (and, latterly, by Santiago himself and others close to the events); and

3) the "transcript"--i.e., the trial "itself" as recorded in the official court records (themselves the precipitate of an extraordinarily interesting theoretical filter, embodied in the stenographer, but complicated in ways I shall touch on briefly below by such other intermediaries as judge and translator). Note that the "record" becomes, for certain legal purposes (notably the pending appeal), its own legislated account of the "facts," inasmuch as nothing external to the record, governed by rather strict rules of legally admissible "evidence," is relevant to an appellate decision.[18]

In any case, what's this all about? What "happened" that night? I quote from the DA's opening statement:

On July 13, 1986, Ramiro Fidel was murdered. He died sometime after 2 o'clock [AM], sometime before probably 2:45 or 3 o'clock. . . . [T]he medical examiner, examined the body of Ramiro Lopez Fidel and would find a wound to the heart; may have gone in as much as four inches. [757-8]

The scene here is a migrant labor camp near Portland, where over a hundred undocumented Mexicans had lived during most of the previous two months, picking strawberries on the adjacent farm. Picking strawberries is hard work, and virtually only illegal migrants are willing to do it for the going rate (at that time) of less than 10 cents per pound. As a result, the multimillion dollar crop depends on a guaranteed supply of cheap and willing Mexican hands, inconveniently but necessarily attached to thousands of Mexican bodies which are housed, fed, and entertained in minimal fashion in back road camps like this one every summer.

In this case, the bulk of the camp residents, including Ramiro and Santiago, were Mixtec-speaking Indians from the state of Oaxaca. They came from one of the poorest regions of Mexico, a state whose population is so desperate that they have for decades migrated to other parts of Mexico, as well as to the United States, for work that will support them.

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[17] [187]. Citations to pages of the trial transcript appear enclosed in square brackets, as in this quotation from the testimony of Detective Meharry, during Santiago V.'s trial in October, 1986.

[18] In late 1988, a first level appeal to the Oregon Court of Appeals, on Santiago V.'s behalf, limited exclusively to this transcript "record," was summarily denied.

They have cut cane in Veracruz, picked cotton in Chiapas and tomatoes in Sonora, Sinaloa, and Baja California; and they harvest grapes, strawberries, apples, and pears on the West Coast of the USA. They squat in enormous numbers in Mexico City, Tijuana, Oceanside, Madera; and they can be found planting pine trees in National Forests in Oregon and Washington, or harvesting vegetables in New Jersey, Idaho, or Florida. Oregon growers like to employ Mixtecs. They are known to be hardworking, and they don't cause trouble: they are called by some "the little people"--a reference to short stature, coupled with a reputation for endurance and humility, a gloss for the fact that most have only rudimentary Spanish, and no English. Though the *contratista*--the labor recruiter and straw boss--on this farm was from northern Mexico, almost his entire work force came from just two villages in the Oaxaca mountains.

Earlier that night, in July 1986, there was a birthday party for a young girl, and many of the camp residents attended. There was drinking, and, ultimately, brawling. In one fight, a Mixtec man from one village picked a fight with a Mixtec from another village, ending up with a bloody nose, and finally fleeing the camp in the company of a friend, Ramiro, who had helped him escape the blows of the other man and his village mates. Cars sped from the camp into the strawberry fields (since the main camp gate was locked--standard practice to prevent workers from departing during the night). Later that night, neighbors heard shots, and reported a car on fire in the strawberry field--it was one of the cars that had sped into the night. Local police, who occasionally had been called to quiet disturbances in the camp, appeared to put out the fire and to take down the names of suspected miscreants. (It is, notably, from the reconstruction of the police, and from their perspective, that we create this scenario--this text--of the events.) The police stopped and searched a vehicle that entered the camp after they arrived, finding a pistol and a few knives on the inebriated occupants, who were released to go to their respective cabins to sleep it off.

As dawn neared, relatives of the disputant who had been involved in the fight the night before went to look for him. They found him hiding in the strawberry field, having run from his car before it was torched. Not far away they found Ramiro's body, stabbed and cold.

The police were summoned again, this time with a more serious crime on their hands. Their first task, while the forensic investigators looked for evidence--expended .22 calibre shells, beer bottles, a discarded matchstick, a battery rifled from the burned out car, bloodstained bits of clothing--was to detain possible suspects, including the occupants of the car that had been searched earlier in the pre-dawn visit. With the help of a camp foreman they rounded up these suspects, and trundled them off in handcuffs to the Sheriff's Office for questioning, by a couple of quickly summoned Spanish-speaking police officers. By the end of a day of interrogation, the police had their suspects, all of whom--not coincidentally, since these were the people whose names the police knew--had been passengers in the car that had been stopped and searched the night before.

Let me turn now to the second text of "facts"--the prosecution's theory of the crime. This theory is contained, in a cagy but explicit way, in the prosecutor's opening and summation; and it is implicit in the internal structure of the State's case as it emerges through carefully engineered testimony. It is a theory that was never proved, but to which the defense offered no alternative.[19]

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[19] I am informed that under the doctrine of presumed innocence and the rubric of "beyond

The victim, Ramiro, was friend and ally of one Margarito, the man who had caused trouble and who had ended up with a bloody nose at the birthday party. The man with whom Margarito had fought, one Alfonso Luna, was one of several people in the camp from a certain town in the Mixteca Baja, called San Miguel. After the fight, when Ramiro and Margarito jumped in their car and drove off into the strawberry fields, several other cars also left camp. One of them, a pickup truck, was driven by the aggrieved Alfonso Luna's brother, Miguel, along with a collection of other youths from San Miguel. Among these was Santiago V. They were evidently chasing Margarito's car.

They shortly found it, abandoned in the strawberry field. They crashed into the car several times with the pickup, then decided to savage it, first firing shots into the car to break open the windows--Miguel, the driver, used his pistol--then removing the beer they found inside, slashing the tires with a knife, next stealing the car's battery (which was later found in the back of the pickup), and finally setting fire to the unfortunate vehicle by lighting some carburetor hoses. Then, as the flames leapt up, they drove off in the direction of a neighboring camp where Miguel and the pickup truck's owner, riding shotgun, lived. This scenario was independently attested by virtually all the pickup's occupants, under interrogation.

It was here, however, that discrepancies appeared. While most of the riders said that they went straight back to the other camp, changed vehicles, and then returned to the original camp, where they were stopped by police and searched, two claimed that there was a further stop: after burning the car, but before leaving the strawberry field. One witness, also a rider on the pickup truck, also from San Miguel, ultimately testified that they stopped the truck, and while Miguel held his gun on Ramiro, standing in the field, Santiago walked up to him and stabbed him twice, leaving him in a heap; whereupon, the truck went on to the other camp, as the others had described . Two other witnesses on the truck stated that it had made a stop after the car-burning, and that Santiago had gone into the field; one of these witnesses, who was given immunity by the state for his admitted slashing of the tires, also testified that later, in the camp, Santiago had passed him a knife and threatened him if he said anything.

The State's theory was simple: that the group of people from San Miguel, led by Santiago and angered by the fight with Margarito, had followed the latter's car into the field, trashed the car, and stabbed hapless Ramiro, Margarito's defender. Then they had callously returned to camp, gone to their cabins (after having been frisked by the police), and gone calmly to sleep, where they were discovered by the police who returned at dawn after the cadaver was found.

The defense lawyers, on the other hand, claimed that there was evidence of several cars in the strawberry field that night; and that the lack of bloodstains indicated that Santiago could not have delivered the death blow with a knife. Moreover, they hinted that the "eyewitness" testimony was dubious: elicited by pressure and intimidation of a confused and frightened participant in the burning of the car, after heavy pressure from the district attorney and the police interrogators.

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a reasonable doubt," the defense in a murder case *need not* offer an alternative to, but need only cast doubt on, the prosecution's theory. This legal nicety may not always rule juries' deliberations, of course, and it is a clear example in itself of the discursive fictions perpetrated by our system of "justice."

The State charged Santiago with murder (as well as with threatening a witness, in the matter of the knife); and they charged Miguel with having burned the car. Both men were convicted. Miguel served six months and then was deported to Mexico[20]. The other occupants of the pickup continued picking fruit, or left for California. Santiago went to prison, where he is today.[21]

(Although Santiago's lost his first level of appeal in the Fall of 1988, he staunchly maintains his innocence, and a committee of people who support him is in the midst of raising funds to fight for his release, perhaps by subsequent legal manoeuvres, including various writs attacking the competence of his defense and the fairness of the proceedings. Ohave been partly aimed at securing his release, although our anthropological attention was drawn to the case well after the trial and sentencing were concluded.)

In the present essay, I present a partial analysis of one aspect of Santiago's trial, based on the official court transcript. There are many competing theories and "factual" accounts of the events of that night in July 1986, which are of considerable interest to Santiago's future, but which will not enter into what I shall have to say here about theories of language and the exercise of power. Such revelations must be left to another time and forum.[22]

It should be obvious, however, that whatever theoretical juice can be squeezed from the nearly three thousand pages of the official trial transcript, upon which I base my remarks, amounts to a few mere drops, when balanced against the torrent of anguish and injustice represented by Santiago's current predicament. It is also clear that there is a connection: I argue not that Santiago is in jail because of faulty linguistic theory, but that a certain *theory of language* **does** contribute to the outcome of the trial--that it predetermines this conviction in a way that transcends all issues of "fact" and culpability in the "events" I have sketched. By extension, I argue, we can discover a somewhat unexpected relation between language and politics, both writ small: a (*legislated* and *enforced*) understanding of what language is influences decisively the court's application of micro-power. The result, as elsewhere, is a certain sort of silence--for Bourdieu, "censorship"--in this case through Santiago V.'s incarceration.

Silence (and noise) in the court

Let me back up again to more putative "raw facts," this time of the ethnographer's

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[20] Although he has since returned, several times, to the Oregon strawberry harvest, as have virtually all of the witnesses.

[21] Although Santiago's lost his first level of appeal in the Fall of 1988, he staunchly maintains his innocence, and a committee of people who support him is in the midst of raising funds to fight for his release, perhaps by subsequent legal manoeuvres, including various writs attacking the competence of his defense and the fairness of the proceedings. Our researches into the case have been partly aimed at helping to secure his release, although our anthropological attention was drawn to the case well after the trial and sentencing were concluded. I feel it important to record Paul Friedrich's suggestion, in a letter dated June 22, 1988, that "a national information and advisory network" in a field he dubs "forensic linguistics" might "conceivably help lots of folks."

[22] The process known in Oregon as suing for post-conviction relief allows a convicted person to sue his own defense for incompetence. In this procedure, new evidence can be introduced, and reinterpretations of such details as the forensic findings can be offered, in the effort to secure a new trial.

variety. The protagonists in this case were Mixtec Indians from Oaxaca. Their native language is highly differentiated into dialects, so that people from neighboring villages in Oaxaca frequently claim that they cannot understand one another[23] and *always* note at least that people from the next village speak *differently*. Competence in Spanish also varies widely from one village to another--in some places people no longer speak Mixtec, whereas in others, only a few, mostly younger men, speak Spanish. (And, despite many Oregonians doubts, there is, of course, *no* relation between Spanish and Mixtec; indeed, Spanish is considerably closer to English than it is to Mixtec, with which it shares no more kinship than it does with Chinese or Swahili.[24]) The *lingua franca* of the migrant camps is rudimentary Spanish, the shared communicative variety that unites Mexican migrants; but among Oaxacans, the language is Mixtec, the language of the village. With the exception of a couple of labor foremen (and the police), none of the protagonists in the events of that July night spoke English. All spoke Mixtec (again, with the same exceptions); but their competence in Spanish, in every case a second language, varied considerably.

It is easy to appreciate that this linguistic profile presented a dilemma for the Oregon police, in its investigations, as well as for the court, during the trial. One family of issues which I will explore in the trial transcript surrounds the theory implicit in the authoritative resolution (or, less charitably, treatment) of this dilemma. Let me turn first to the concept of language in the trial process. I should make it clear that not all of the problems with the view of language I describe derive from the peculiar multilingual nature of this case; much of the skewed linguistic theory inheres in the practices of the American courtroom, enforced by specific rules of evidence and demeanor common to all criminal cases. The polyglot background of defendant and witnesses simply underscores problems of understanding and interpretation that otherwise might be harder to see, though they are no less present, in the monoglot cases of every day..

"Facts" and referential prejudices: translation

I have found it useful to think about the court's theory of language in the context of a much *wider* view of language, neatly encapsulated in much of the talk about "English only" in America. Silverstein isolates three common factors--all of which embody what he calls "metaphors of hegemony"--in the common view or the "culture" of Standard(ized) language. These are:

[T]he displacement of the problem [of standardization] onto the plane of word reference-and-predication, the rationalized treatment of the social processes of influence of the Standard, and the unfortunate but necessary presence of institutions of hegemonic control of codification . . .(%Silverstein(1986b:3-4)

To paraphrase: (1) the only thing taken to matter, in contrasting one "language" with another, is logico-referential "meaning," often reduced to what "words mean"--i.e., refer to. (2) The uses of language that are held to matter are rationalized: related to the

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[23] As always, it is hard to separate fact from fiction (or ideology), even in such matters as mutual intelligibility. Mixtecs from different villages, *while in Oaxaca*, very often claim not to understand one another's Mixtec. In Oregon, Mixtecs mysteriously find they *can* understand even distant dialects--a shift in linguistic self-perception long familiar from classic studies. See %Wolff(1964).

[24] Except, that is, for a few loanwords borrowed into Mixtec during the four centuries since the Conquest.

"rational" accomplishment of discrete "ends." (Thus, for example, you need to know the standard language in order to be able to "communicate clearly" in your job, or, perhaps, even to "think straight" in the first place.) Finally, (3) various institutional forms in life are held to be necessary, if somewhat unpalatable, to regiment word-meaning and to guarantee rational communication: just as schools teach "the correct way to speak," certified "expert" court interpreters must be provided to give "literal" or "word-for-word" translations of witnesses' testimony.

One can discern all three factors in this limited realm of the "standardized"--in this case "legalized"--language of the courtroom. In this essay I shall concentrate on the first: what Silverstein calls referential displacement. What is meant by reference, here, and what is being displaced?

Much is made, by both sides in Santiago's case and by the Court itself, of issues of "translation": of the testimony of witnesses, of the results of interrogation, of documents introduced into evidence, and of the proceedings themselves rendered back into words which the defendant could understand. When translation was involved in other phases of the investigation of the crime, which in turn enter into evidence (as in the ritual of "reading" the accused and other witnesses "their rights"), it also becomes the object of explicit scrutiny, subject to the testimony of both eyewitnesses and experts. Translation is, ultimately, subject to the rule of law itself. Statutes stipulate what constitutes authoritative translation, when it is to be provided, to whom, and so forth. In the last instance, however, when there is a dispute between parties about an "authoritative translation," the *jury* may simply be asked to exercise its judgement about which "expert" to believe.[25]

Let me first outline the institutional arrangements. As I mentioned, three distinct languages are floating around in this case; yet only one, English, has any status in the courtroom. Obviously, judge and lawyers are themselves English speakers; less obviously (since at least in theory the defendant is to be tried by his *peers*) the jury also consists of English-speaking Oregonians. But in important ways this English monoglotism is legislated and reinforced. Consider, for example, the following instructions issued by the judge to prospective jurors, prior to beginning the selection process. First the judge notes that certain officially designated interpreters will "assist" those participants in the trial who do not "speak the English language."

[T]his particular case . . . will involve the use of interpreters as the defendant in this case is unable to speak the English language and will be, throughout the course of trial, assisted by his interpreter . . . In addition there will be a court interpreter that will be present whenever anyone testifies who is not fluent in the English language . . . And we anticipate that there will be several witnesses called throughout the course of trial who are in the same language situation as the defendant who do not speak English and they will be assisted by the court interpreter . . . [692]

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[25] Although a 1978 Federal statute calls for certification for court interpreters, such statutes do not necessarily bleed down to lower courts at the State or County level. Moreover, my own observation shows that the practices even of Federal courts are rather haphazard, with Federal enforcement agencies often relying on *defense* attorneys to provide certified translators, and then only at the time of trial. I have benefitted from conversations on this topic with Steve Wax, of the Portland, Oregon, Office of the Federal Public Defender.

The exclusion of languages other than English is enforced directly on the transcript, which appears *only in English translation.* No tape recordings of the original testimony were made, and the official record of non-English testimony consists exclusively of the stenographer's rendering of the *interpreter's* words.

Notice that *no mention* is made of the fact that the defendant and most of the witnesses are also not fully competent--or at least have not been demonstrated to be competent--in the language of the interpreter, Spanish; or that their native language is the unrelated Mixtec.[26] Indeed, rather little is said throughout the trial about the nature of what appears in the record as the "Mestica" language. When the labor camp foreman--a Spanish-speaking Mexican, born in Texas but normally resident near Monterrey in the north--is called to testify (in English), the following dialogue ensues (designed, it appears, to demonstrate his linguistic competence--here, his ability to give "accurate translations").

Q. What state do you live in?
A. Nuevo Leon.
Q. Nuevo Leon means what?
A. New Lion.
Q. What does Oaxaca mean?
A. I don't know. That is--
Q. Do you speak the language of the people that live in Oaxaca?[27]
A. I do, but not the Mestica, no.
[1517-1518]

For the purposes of this trial, the Court simply ignores the existence of Mixtec, and makes allowances only for Spanish.

Returning to the jury selection procedure, the judge goes on to explain one of the criteria to be used.

One of the questions in the questionnaire that the lawyers are interested in, those of you who are fluent in the Spanish language and you're able to understand Spanish sufficiently to understand the English translation of the words spoken from Spanish in the courtroom, keep in mind . . . the translation of the Spanish language that you must rely on in the course of this case is that translation that is made by the court interpreter that will be translating the language as it's spoken from the witness stand. And that is the translation that you rely on for your evidence. I don't know whether any of you, as I say, understand Spanish, but we don't want to get into a situation where we have some juror in the jury room saying, "Well, that's not what the witness really said, you know." We can't do that. You're bound to accept the testimony as translated by the official court translator, and that is one of the reasons the question is in the questionnaire about your ability to understand the Spanish language. [693]

As far as I know[28], none of the jurors selected *was* able to understand Spanish, but the

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[26] A feature of Monoglot Standard, not often commented upon by implicit in its underlying ideology, is an indifference to variations in non-Standard: for practical purposes in this courtroom, *any* language other than English is simply non-English.

[27] The *Anuario Estadístico de Oaxaca, 1985* points out that 16 different Indian languages are traditionally recognized in the state, of which the *six* principal ones are: Zapotec, Mixtec, Mazatec, Mixe, Chinantec, and Chatino.

[28] Unfortunately, as I note above, we became involved in the case only after the trial had been completed. One of the striking features of Santiago's conviction was the almost

judge's admonition nonetheless displays, in the official theory of language in the courtroom, precisely the referential displacement Silverstein identifies. The testimony "as it's spoken from the witness stand" can be rendered, for legal purposes, without loss and exactly, into equivalent (and officially sanctioned) English words. This is the job of the interpreter, taken now as a transparent filter through which referential meanings pass from a source language into a target language; by fiat, the filter's output must be taken as, for the purposes at hand, *propositionally identical* to its input, which is, by definition, uninterpretable, or perhaps better, *encrypted*, as far as the trial process is concerned. The theory is displayed more plainly in the judge's instructions to the interpreter herself, as he asks her to swear to "make a true translation of all statements in Spanish to English" [1036].

We're going to have a series of witnesses who do not speak English, obviously, and I'm asking [the translator] to translate the questions that are asked these people verbatim . . . word for word. And then translate the responses of the witnesses verbatim, word for word. In other words, I don't want you to say, "Well, the witness says," forget that part. Just translate it verbatim, word for word. [1036-7]

The notion of "word for word" translation, and the related notion of "literal" translation, reappear at various crucial points in the course of the trial, but are rarely brought into question as in any way problematic. We shall see examples in what follows.

Notice, moreover, that the judge's instructions implicitly address a problem of *voicing* that shows how the underlying theory of language here interpenetrates with a broader notion of personal identity, self-presentation, and truth. The judge instructs the interpreter not to *frame* her translations *as* translations: neither as paraphrases as what a witness says, nor even as emitting from another mouth, but rather directly, word for word. The jury members, presumably, are to use their own judgement by overlaying the translator's (neutral) words onto the original speaker's voice (and demeanor) to arrive at their conclusions.

Qualifications and handicaps

The presence of an interpreter is, in fact, stipulated by statute, although in this case the two sides and the judge engaged in some discussion about exactly how to construe the interpreter's role as transparent filter. In an early motion to suppress some of the defendant's statements, defense counsel cites Oregon Statute ORS 133.515, as follows:

The terms of that statute are mandatory. They are not permissive. The terms direct that when a person is a handicapped person, any handicapped person, and a person who doesn't speak English and cannot communicate in English, is defined in that statute as a handicapped person, and an interpreter shall be appointed to assist that individual. [628]

Note the implicit presence of the second of Silverstein's factors, to wit "the rationalized treatment of the social processes of influence of the Standard." As Silverstein comments, under the sway of this hegemonic metaphor "social differentiation of language can be put into the symbolic paradigm of a gradiently possessible commodity, access to which should be the 'natural,' 'rational' choice of every consumer equal-under-the-law (God's and the country's), and lack of which should be seen as a deficit, much like vitamin

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immediate attempt, by three members of the jury, to change their minds after voting for the guilty verdict. Their efforts have been instrumental in mounting a campaign for Santiago's release or re-trial, and their recollections of the jury's deliberations in themselves paint a chilling picture of the discursive mechanisms of American justice.

deficiency . . ." (%Silverstein(1986b:9).

The prosecutor, in his opening remarks, indeed, anticipates that the jury may find the defendant's lack of English--much like his youthful age--grounds for *sympathy*; he tries to nip this possibility in the bud:

The idea of the defendant being on trial for murder as a young man has been discussed with all of you. I have talked with all of you about your notions of this young man. That idea that he is a young man and can't understand English, has a translator, and we talked about sympathy playing no part in your deliberations. [760]

The defense attorney argued that the interpreters available to the defendant and witnesses, during interrogation prior to trial, were assisting the police, not the "handicapped persons" themselves. (The interpreters during interrogation were, in fact, Spanish-speaking police officers; later, in the trial itself, defense counsel objects to the DA's apparent use of the supposedly neutral court translator in his out-of-court interrogation of witnesses[29].) Defense counsel makes the following argument about the cited statute about "handicapped persons":

I believe that that statute is tailor-made to guarantee that the person arrested is capable of making, not only voluntary and intelligent decisions, but has somebody who will assist them so that they have a clear understanding of what is happening. [629]

There is here a miniature insurrection against the notion of transparent "verbatim" rendering of the words of one language into the words of another: for what is at stake is not mere translation, however "accurate," but something more: "clear understanding"--and not only of "what is being said" but also of "what is happening."

The prosecution counters this argument by introducing a further appeal to standards and procedures:

It says here that the handicapped person, if he makes a verified statement and provides other information in writing about his inability to obtain a qualified interpreter, then the handicapped person, if arrested, should have an interpreter appointed. [631]

The judge, in ruling on the matter, retreats to the letter of the law. At issue is whether the defendant was properly advised of his rights when initially detained[30]. The police officer who administered the rights had a Spanish surname and had studied some Spanish in school, but was demonstrably far from fluent, as the testimony of an expert witness for the defense showed. Nonetheless, she read the Miranda rights from a card containing Oregon's standard translation of the standard admonition. The judge draws the following conclusion:

[The defendant] was advised of his constitutional rights immediately by Officer Fernandez and regardless of how we might characterize Officer Fernandez's grasp of the

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[29] See [1793]: Defense counsel: "Throughout the course of this trial, the court interpreter has been assisting counsel for the State in communicating with Spanish-speaking witnesses outside the presence of the jury . . . It appears during the recent recess that she was, in fact, questioning one of the witnesses . . . on her own and conducting also an investigation. . . . That causes me serious concerns about the problem of this proceeding." A post-trial motion based on this sort of irregularity was denied by the trial judge.

[30] A quibble still more technical arises: did the original interrogation take place while the defendant was officially "under arrest," or had he merely been detained for questioning, in which case, according to the prosecutor's logic, the "handicap" statute was not yet relevant. The judge is sceptical about the DA's argument, in this case.

Spanish language, although she has a Spanish ancestry and obviously speaks Spanish and understands it, I would gather, fundamentally, the critical thing I think about her position in this case is that the rights that were given to the defendant by this particular individual were read verbatim from a card prepared for that purpose. And even the defendant's own expert acknowledged that the rights themselves, as they were stated to the defendant, were substantially accurate and understandable . . . [654]

A more delicate measure for "obviously speaking Spanish"[31] is clearly unnecessary for the judge, and the issue of understanding reduces, once again, to "verbatim accuracy." The judge also puts into slightly more explicit form the ideological de-coupling of words (and their attendant meanings) from their mere bearers, mere transmitters on the official, referentially oriented, view. What is required in a translator, in his judgement, is simply a neutral transmitter of meanings, whose characteristics as person[32] (or, for example, as arm of such institutions as police or court) are not relevant to the statutory issues. A translator clearly need have no personal loyalty to the person for whom s/he translates.

I don't read 133.515 to require some personal friend of the defendant to be appointed [as interpreter] or anything of that nature. I think the idea is to have a qualified language interpreter available for the use of the defendant before he's questioned, and that is exactly what occurred here, in my view. [656-7]

"Reading the rights"

Evaluating the administration of the provisions of the *Miranda* decision occupies a considerable portion of the pre-trial hearing, which decided the admissibility of certain statements made by the defendant under interrogation. There are important and obvious constitutional issues involved here--about how much a suspected miscreant must understand of the legal institutions, the police, his own rights, and so forth--but they are

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[31] Some testimony in the trial relates to the qualifications of various interpreters, as their degrees and years of formal Spanish study are recited into the record--a standard litany for all witnesses whose qualifications earn them the title "expert.". Officer Fernandez's "ancestry" is also clearly seen as relevant in the passage quoted. The DA introduces his principal translator as a police officer who "grew up in Honduras, as the son of missionaries and spoke Spanish as his primary language until he was a teenager when he had to learn English. English is his second language" [772]. During the trial, incredible as it seems in hindsight, no one raises any doubts about this interpreter's competence in understanding, e.g., Mexican slang (cf. the word *güero*, which he spells into the record as "g-u-e-r-r-o" [472], and which he claims never to have heard before [473]), or Indian Spanish, let alone Mixtec.

By contrast, the judge decides, on the basis of the defense witness's "expert testimony" (cf. pp [300-410]) that the defendant, Santiago, was "probably the best linguist in the group. In other words, he was very fluent in the Spanish language and wouldn't have had any difficulty properly interpreting the various syntax or inflections that may have been critically used by Officer Fernandez" [655]. The judge says to the defense witness: "But he understood the Spanish language much better than she [the police Deputy] did, I think you've already testified to that, is that right?" [410] The defense witness responds, "Yes, sir."

[32] By contrast, Michael Moerman, in comments on a draft of this essay, points out the essential inseparability of "language" from its bearer, a person, whether simple, corporate, or institutional.

largely glossed behind by a routinized, codified *procedure* whose correct *performance* becomes the only relevant issue. The role of language, again reduced to a series of intertranslatable words, is taken as instrumental, but non-problematic. It is in the ritual of "reading the rights," that Silverstein's third factor, "the unfortunate but necessary presence of institutions of hegemonic control of codification," appears most plainly. Most of us will know, perhaps from watching police shows on television, about this business of "reading rights," and we might even be able to interpret the words themselves, were we challenged to do so. Exactly what we should make of them "verbatim" without our special civic/cultural training is, I think, unclear. But observe the sorts of opinion that emerge about the reading of rights in this case. First, from the testimony of the Detective in charge, we can infer that we are dealing with a fixed category of event, identifiable on formal rather than substantive grounds.

Q. At approximately 8.58 a.m., were you working with Deputy Rebecca Fernandez?
A. Yes.
Q. Was she advising certain individuals of their legal rights pursuant to Miranda vs. Arizona?
A. Yes.
Q. Was she doing that in English or Spanish?
A. She was doing that in Spanish.
Q. Do you speak Spanish?
A. No, sir, I do not.
Q. What were the identities of the persons...
[16]

To know that "rights" were being "read," it was, for this witness, apparently not necessary to understand the language involved.

Moreover, from Deputy Fernandez's testimony we learn that the component parts of the process of reading rights can also be punctually timed. In particular, "reading the rights" and the defendant's "indicating that he understood" (which he does by signing a form) are both events whose time of occurrence can and should be precisely recorded.

Q. Where were you when you advised of his constitutional rights?
A. He was in the back seat of one of the patrol cars.[33]
Q. And did you read him everything that's on that form, the front page?
A. Yes.
Q. In Spanish and in English?
A. Yes.
Q. Did you make any threats or promises to him?
A. No, I did not.
Q. Did he indicate he understood his constitutional rights?
A. Yes.
Q. At what time did he tell you he understood his constitutional rights?
A. He signed it at approximately 1.12.
[35]

The equation *"signed the form" == "indicated that he understood"* seems a classic instance of "what I tell you three times is true" or "saying it makes it so."

The more competent Spanish speaker of the police interrogators, Officer Skipper--the son

[33] As later testimony shows, the defendant was in handcuffs at this point.

of missionaries in Honduras--also read the defendant his rights, from a standard "rights card" used in such circumstances with Spanish speakers, later in the process of interrogation. His summary testimony of how he conducted interviews again treats "reading the rights" as a single monolithic act:

First I began the interview without any questions by reading him rights from the Miranda card, and he said he understood them, signed them. [457-8]

Skipper also responded to defense questions about whether he had elaborated on what the rights "really meant."

Q. Is that an exact duplicate of the card which you used?
A. Yes, sir.
Q. Did you read those rights verbatim?
A. Yes, sir.
Q. Did you add anything to those?
A. No, sir.
Q. Is there any indication on those, on that card, that if an indigent person cannot afford to retain an attorney that one will be appointed from them at public expense?
A. Number . . . 4 directs that issue.
Q. And what does it translate as?
A. It says, "in the case that you have no money, you have the right to solicit the Court for an attorney."
Q; Okay. Did you explain to Santiago V. M. that might not mean absolutely no money?
A. No, I didn't get into that.
Q. Did you indicate that it really meant that if you did not have adequate funds to retain an attorney?
A. No, I didn't.
. . .
Q. Did you indicate to him that in that case that if you had some money but you could not afford an attorney that one would be appointed for him at public expense?
A. No, I didn't.
[458-8]

The defense also produced an expert witness who testified to some doubt about whether concepts comparable to "the right to remain silent" or "court-appointed lawyer" existed in "the judicial system in Latin America generally" [397]. The defense used this line of questioning to advance the argument that "[t]here is a burden on the State to demonstrate not just that the rights were given or an advice of rights was given, but that these rights were understood" [625].

In cross-examining the defense linguistic expert, the prosecution returns to the implicit theory of referential transparency, precisely to duck the question of "understanding" in favor of a less problematic question of "correct meaning."

Q. So, as I understand your testimony [based on hearing a tape recording of the "reading rights" incident--JBH] then, she [Deputy Fernandez] did advise the defendant verbatim, correctly, in Spanish from the waiver form that, "Having been informed of your rights do you have any questions?" Is that correct?
A. Yes, she did.
Q. Did the defendant indicate in the tape that he understood his rights by saying 'Si" or otherwise indicating his --

A. He said, "Si."
Q. That means he understood his rights?
A. He answered, "Si," I can't say what he said [sic].
Q. What does "si" mean?
A. It means yes.
[383-4]
The prosecution's chief translator, Skipper, also defends what seems a patent mistranslation, by my own understanding of Spanish at any rate, of the standard Miranda question: "Do you have any questions about your constitutional rights?" On the Spanish rights card this is given as: *"¿Tiene usted que hacer alguna pregunta respecto a sus derechos civiles?"* My reading of this sentence finds two faults with it: (1) it is anomalous as a question, because (2) it suggests--through the construction *tener que* 'have to, need to, ought to'--a gloss like "Must you ask any question about your civil rights?"
Consider the underlying theory of translation implied by the following testimony between the defense lawyer and Skipper:
Q. Are you translating what I take it to be a verb, hacer, as "do you have to"?
A. Hacer is to have to, yes, hacer.
Q. Is that a correct translation of its meaning?
A. Hacer is to -- to do, that's correct.
In my book[34], *hacer* means 'to do, to make.' The defense attorney is, of course, concentrating on the wrong word in the rights card question; but both question and answer play along with the prevailing notion of "verbatim translation."
Q. Does it have a connotation of necessity?
A. It refers to basically, "Do you have any questions?"
Q. What verb means to have in Spanish?
A. Hacer.
To me, *hacer* still means 'do,' by contrast with, e.g., *tener* 'have, possess,' or *haber* 'have.'
Q. Are there any verbs other than that which mean to have in Spanish?
A. Hago means have, also.
Q. Hago?
A. Hago.
First year Spanish students will recognize this as the first person singular present indicative form of *hacer*.
Q. How do you spell that?
A. H-a-g-o.
Q. H-a-g-o?
A. That means I do something, I have done something, referring to that.
The blind leading the blind--an exchange that would be almost comical, were it not for the context, which is deadly serious. To continue,
Q. Okay. Does the verb hacer indicate anything about the desires of an individual? For instance, would it be correct to translate this as, "Do you wish to ask any questions"?
A. Yes, it could be translated that way.
Q. Is that as accurate a translation as, "Do you have to ask any questions"?
A. That would be similar. I'm not -- you can't translate Spanish and do it literally.

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[34] *Simon and Schuster's International Dictionary* Spanish/English, 1973, p. 1256.

Q. I'm trying to get a sense of the words as was given by your initial translation.
A. The first part of it, tiene usted que hacer alguna pregunta, to make any question in regard to your rights or your civil rights, excuse me. Literally translated would be rights civil, but --
[463-4]
We can see here an inner contradiction, repeated throughout the trial transcript, between a strict notion of the complete referential intertranslatability of words, and an uncritical acceptance of the expert's judgement--even bracketed, as is Skipper's here, with explicit doubt--of what a given utterance can or *should* mean in given circumstances.
Ultimately, the judge rules in favor of the police, the Miranda ritual, and the transparency of words, as against the defendant and his counsel's arguments about meaning, understanding, and concepts.
I'm of the opinion that the defendant was advised of his rights on two occasions prior to speaking to the police regarding the facts of this case. That this advice individually and taken as a whole was sufficient to comply with the requisites of Miranda in its progeny.
Again, it is going through the motions that counts, whatever ripples the motions may have caused (or failed to cause). Similarly, we meet what I have called the "exact words" doctrine--probably a relative of the "whole truth" dogma--coupled with a hegemonic assertion of what words "realistically should" be understandable.
Each right was explained in the Spanish language in words that the defendant realistically should have understood, and I find that he did understand. The defendant was well versed, as I said, in the Spanish language and that was emphasized by his own witness.
The Court's conclusion, prior to disallowing a challenge to the admissibility of the defendant's statements under police interrogation, finds no problem with the reading of rights.
The defendant, in my view, indicated by words and actions that he understood the rights that were repeatedly read to him. He was not threatened or coerced in any way. He was offered no promises or inducements or hopes of reward. In my opinion he knowingly waived his right to remain silent and freely and voluntarily spoke with police. [657]
With this precedent for adequate translation thus established by judicial fiat, the trial could proceed. The matter of "exact words" was to reappear, however. The prosecution, in the course of mounting its case, produced an eyewitness, one of the Mixtecs on the pickup truck, who testified to seeing Santiago stab Ramiro. Unfortunately for the State's case, this witness displayed considerable confusion about the events of that night; moreover, his Spanish was extremely limited. Questions were raised about what, exactly, the witness saw, and how he could *describe* what he saw. His original testimony[35] appears in the transcript as follows:
Q. I'm going to show you Exhibit 79. What is that a picture of?
A. It's of a person.
Q. Did you see that dead person? [Note the added qualifier--JBH]
A. Yes.
Q. When did you see him?

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[35] In fact, during his first period on the witness stand, this man claimed to have seen no murder whatsoever; it was only after a recess during which he was subjected to further interrogation (partly by the court interpreter) that this sequence was elicited by the prosecutor.

A. (Pause) When he was stabbed.
Q. Who stabbed him?
A. Santiago. Well, Santiago.
[1076]
When questions are raised about the reliability of this testimony, and whether the witness understands what he's saying, the prosecution tries to bolster its case, with the following tragi-comic result. (The prosecutor is HAUB, the court interpreter ROCHE.)
Q. Do you understand Spanish well?
A. No.
Q. What is the word you know in Spanish for stabbing?
MS. ROCHE: May I ask how I can ask him without giving the word?
MR. HAUB: Okay. Let me rephrase the question.
Q. (by Mr. Haub continuing) What word do you use to say how the knife went into the man's body?
MS. ROCHE: In what language?
MR. HAUB: In Spanish.
A. I call it knife.
Q. (By Mr. Haub continuing) How do you describe a knife being stabbed into someone hard?
MS. ROCHE: I don't know if you want it in Spanish or English?
MR. HAUB: In Spanish.
A. I don't know.
Q. (By Mr. Haub continuing) You don't know the word to describe that in Spanish?
A. I don't understand much.
Q. What language do you usually speak?
A. In my village, only Mestica [sic.].
Q. Is it different very much from Spanish?
A. Yes.
[1110-1111]
The DA persists in this line of questioning, later trying to induce the witness to say "a word in your language, Mestica, which describes the manner in which the man was hit with the knife" [1153] and then asking him to "[s]pell it in Spanish, if you can."
Q. Can you tell us how to write the word so we can see it?
A. In Mestica?
Q. Yes, can you?
A. No. No, I do not know how to write.
Q. If I gave you a piece of paper, could you write it?
A. Yes.
[1154]
Needless to say, this insistent line of interrogation produces no orthographic results, since the witness does turn out to be unable to write. (Notice, also, that his final "Yes" [presumably *sí*] in this exchange casts some retrospective doubt on the nature of the accused's putative "yes" that was given in answer to the "reading of the rights" above).
Winding up: truth, accuracy, and prejudice
I have here only begun to sketch the implications of Santiago's case for the study of language, power, and the judicial process. I have said nothing about the manipulation of

linguistic skills (and their lack) beyond the *spoken* word; documents, diagrams, and spelling, for example, are all taken for granted by the Court as part of linguistic normalcy, even in the face of witnesses' candid admissions of illiteracy or confusion. Nor have I described all the consequences of referential displacement: not simply the bleaching of linguistic function onto the unidimensional plane of reference, but the parallel reduction of linguistic *action*--narrating, planning, threatening, questioning, even swearing (and swearing in)--onto the single (often fictional) paradigmatic act of predication, in which the only relevant question is: is it the truth? Finally I have not located in these materials an idea well developed in the literature on language and the law: that institutions produce and enforce a certain authoritative discourse. The institutions of the law set the parameters of language. On the one hand, they legislate available or appropriate concepts (*consent*, *voluntary*) and introducing keywords (*excited utterance*, or *hearsay*). On the other, they enable certain rhetorical techniques (badgering witnesses, or "priming" them with leading questions and loaded phrases, for example), and silence others (free repartee and interchange, or, at the other end of the spectrum, the open insurrection of the "hostile witness"). All of these aspects of the *linguistic* wheels of justice, obvious in the details of this one hapless Mixtec's murder conviction, give sobering substance to the powerful, political manipulation of our *ideas* about language.

In closing, let me turn, briefly, to a rather different aspect of the politics of language on this occasion. Several people present at the trial commented in its aftermath that they had learned a lot about racism during the proceedings. It is notable that institutionalized racism, a particularly obscene abuse of power, has a *linguistic* face, among its others. Racist language need not have an unpleasant tone, and it may even wear the (twisted) face of an (objectionable) joke. I have mentioned that the Court ruled that the police *always* had prima facia legal grounds for detaining people suspected of being illegally in this country[36]. The language of the trial makes routine references to linguistically marked categories of people. The two most frequent terms are *Hispanic* and *Mexican national*. Several generalizations about such people are implicitly advanced through the authorized words of police interpreter, defense witnesses, the District Attorney, and even the presiding judge himself. There are first physical stereotypes.

POLICEMAN [re the word *güero*]: ". . . in Spanish means a lighter-complected person, being a lighter-complected -- most of them are fairly dark complected" [472-3].

Or, here is what the prosecutor has to say, in his opening statement to the jury.

...you'll find that E.B. as well as many other people who worked at the farms have ancestors which go back, if any of you have studied them, the Aztecs or the Mayans, and the like. The Aztecs are rather short compared to some of the other people with more Spanish, and the like. [766]

It is on these grounds--being clearly recognizable as illegal aliens--that the various suspects in the case could be summarily detained and hustled to the police station for interrogation (manacled but not, technically, "under arrest").

Moreover, the prosecutor, while trying to head off jury sympathy for the defendant because he was young and displaced from familiar surroundings, at the same time takes

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[36] From p. [649]: "[w]e cannot make too light of the fact that all of these individuals were apparently illegal aliens, Mexican nationals with no standing or right to be in this country . . . It is against the law to be an illegal alien and he, the defendant, could have been taken into custody for that fact alone."

pains to enter into the record certain impressions of migrant life. Here is an extract from the testimony elicited from an Anglo witness who had regular dealings with the migrants.
Q. How many Chevies do you suppose there are at that camp?
A. It's like everything else. One time they have one car and tomorrow they may have a different one. There's lots of Chevies and Fords.
Q. Is Chevy the most popular brand at the [...] labor camp?
A. I'd -- no, I'd say Ford was. Between Chevy and Ford. It's basically they like bigger cars.
[2171]
These remarks, seemingly casual and innocent, obviously embody stereotypes based on a racist principle, which comes offensively to the fore, though in a jocular way which masks the chilling legislative effect of these attitudes on the deliberations of the jury, in the following exchange between judge and prosecutor:
THE COURT: What witness do you have next in mind?
MR. HAUB: Do you wish a short one?
THE COURT: Well, I'm wondering if you have a short witness, if not we'll recess.
MR. HAUB: Yes, I have a short one, Your Honor.
THE COURT: About five foot one?
MR. HAUB: Less than that. Salvador Morales, Your Honor.
[1438-9]
In the main body of this essay, I suggested that the underlying theory of language in this courtroom (if not in most) effectively obliterates from consideration certain facts about language use. It does so by legislating an official metapragmatics. Language has an insidious metasemantic power, when captured by the voice of authority, to co-opt all other voices. In the last examples, and throughout this transcript of the trial of Santiago V., we have seen that official language can control with hidden violence, with whispers and laughs, more than with shrieks and curses. In our current work we are continuing to look at the details of language and speech--not only in the courtroom or the police station, but throughout the world of migrant workers, both undocumented and newly "legalized"--to try, if not to break, at least to *penetrate* this linguistic "direction without domination."[37] Perhaps, sooner or later, such burrowing can help get Santiago V. out of jail.[38]

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[37] See %Collins(1988:4): "In short, such literacy contributes to that 'direction without domination', or domination without coercion, that %Gramsci(1971) calls 'hegemony' and %Bourdieu (1977) 'symbolic domination'." Note that the very *existence* of Mixtec, in the strawberry fields of Oregon, and its persistent use in the social lives of these particular undocumented workers, represents a kind of passive, potential, counter-hegemony.
[38] More information about the defense efforts in this case can be obtained from The Santiago Freedom Committee, Post Office Box 301, Marylhurst, OR 97068, telephone (503)657-3811 or 655-3162.