

**ENGLISH ONLY COURT CASES INVOLVING THE U.S.
WORKPLACE: THE MYTHS OF LANGUAGE USE AND THE
HOMOGENIZATION OF BILINGUAL WORKERS'
IDENTITIES**

KARI GIBSON

University of Hawai'i

Title VII of the 1964 Civil Rights Act protects against discrimination in employment on the basis of race, color, sex, religion and national origin. However when the judicial system has examined English Only workplace policies in light of Title VII, it has generally determined that such policies are not discriminatory if an employee is able to speak English. Although plaintiffs have argued that language is inextricably linked to national origin and cultural identity, the courts have stated that the use of a language other than English is detrimental to the morale of monolingual English speakers and a single language is necessary to ensure workplace harmony and proper management. This paper examines the court cases where English Only workplace policies have been challenged, and identifies the prevalent myths and ideologies held by businesses and the courts about language use, identity, and bilingual speakers. Through the process of homogeneity, linguistic diversity is rejected as monolingual English speakers are able to create and enforce rules that favor themselves as they construct the identity of "American" in their own image.

Language is a central feature of human identity. When we hear someone speak, we immediately make guesses about gender, education level, age, profession, and place of origin. Beyond this individual matter, a language is a powerful symbol of national and ethnic identity. (Spolsky, 1999, p. 181)

INTRODUCTION

Language—both code and content—is a complicated dance between internal and external interpretations of our identity. Within each *community of practice*, defined by Eckert and McConnell-Ginet (1999, p. 185) as groups "whose joint engagement in some activity of enterprise is sufficiently intensive to give rise over time to a repertoire of shared practices," certain linguistic (among other) practices are understood by the members to be more appropriate than others. While monolingual speakers are restricted to altering the content and register of their speech, bilingual speakers are able to alter the

code, as well as content and register, of their language dependent upon the situation. Speakers who embrace the identity of a particular community will engage in *positive identity practices*, while those who reject the identity will use *negative identity practices* to distance themselves from it (Bucholtz, 1999). However, this framework only takes into account the intentions of the speaker, and neglects the role of the hearer. As Spolsky implies above, language is not only a means for us to present our own notion of “who we are,” but it is also a way for others to project onto us their own suppositions of the way “we must be.” Conflict arises when the hearer has a different understanding of the speaker’s identity than the one the speaker desires. The tension is further compounded when the hearer is in a position of power and can not only misinterpret the desires of the speaker, but can actively thwart this expression, forcing the speaker into an entirely different, perhaps unwanted, identity. This plays out daily in the workplaces of America, where English Only policies are enforced to maintain the powerful hearers’ view that good workers speak English among themselves and refrain from other, inappropriate, languages.

The use of language to construct identity has been explored in education (Adger, 1998; Bucholtz, 1999; Fordham, 1998; Toohey, 2000), specifically among bilingual Spanish-English speaking students (Garcia, 2001; Zavala, 2000) and in bilingual Spanish-English society as a whole (Johnson, 2000; Morales, 2002; Stepick & Stepick, 2002; Valdés, 2000; Zentella, 2002), but little research has focused on bilinguals in the workplace (Goldstein, 1997; Martinovic-Zic, 1998). Court cases provide us the most revealing records of the struggle between bilingual workers and their monolingual employers and illustrate that, while other language groups have been affected by English Only policies, the policies have predominantly affected Spanish speaking communities. Court cases show that the linguistic practices of the workplace community of practice have been dictated successfully by the employers, not the members themselves. This disempowerment has been upheld by the judicial system, which believes that language is not a component of ethnic identity, especially in instances where the employee has the ability to speak the majority language. As long as the employer makes a statement of business necessity, no matter how weak or spurious the argument, the courts have agreed that English Only policies are not discriminatory. By identifying English as the only

appropriate language between workers, the employer is attempting to mandate a uniform identity (that of English speaking worker) while perpetuating the idea that other languages should be neither seen nor heard. Thus, as arbiters of appropriateness and controllers of the homogenization process, the majority is able to maintain its position of power.

How is it that, even as the courts are looking at the application of Title VII of the Civil Rights Act, which was written to protect minority groups from discrimination, they support these discriminatory workplace practices? Why is it that a country that bills itself as “a nation of immigrants” seeks to deny its residents their cultural heritage? How can a citizenship that proclaims to value independence, individuality, and innovation simultaneously support the homogenization of itself? In this study, I will examine cases of English Only in the workplace to try to answer these questions. Lippi-Green (1997) states that discrimination based on accent is the “last back door to discrimination,” but this in no way implies that it is the *only* form of language discrimination that still occurs. Even a cursory scan of these court cases will show that many forms of language discrimination remain pervasive and are, in fact, sanctioned by the courts. An examination of the reasons given by employers to justify their negative identity practices, as well as judicial reasons for accepting these justifications, will reveal the myths held about language use and the ideologies supporting them.

RELATION BETWEEN IDENTITY AND LANGUAGE

Neither identity nor language use is a fixed notion; both are dynamic, depending upon time and place (Norton, 1995). How we perceive ourselves changes with our community of practice, allowing us multiple identities over the years or even within a day. In discussions of ethnic identity, many have pointed out that language is not a necessary requirement to identify with an ethnicity (e.g., a person may identify themselves as Irish yet not speak Gaelic; see Eastman & Reese, 1981, or Liebkind, 1999). Additionally, an ethnic group or individual ascribing to that group may have a symbolic attachment to an associated language, but may *use* another more utilitarian language instead. More commonly an ethnic group identifies with a specific language:

For the majority of Hispanics, the Spanish language runs deeply into cultural and personal identities. Anzaldúa's (1987) eloquent phrasing of this principle captures the language-identity fusion: "Ethnic identity is twin skin to linguistic identity—I am my language" (p. 59). To relinquish Spanish either literally or symbolically (which many monolingual citizens of the United States seem to think is appropriate for integration into the country) is to relinquish a significant and powerful dimension of personal and social identity. (Johnson, 2000, p. 177)

However, all this presumes the speaker is able to self-select their ethnicity, or more broadly, their identity.

The work of the sociologist Goffman has been influential in showing that the self is constructed entirely through discourse, making our language choices of paramount importance to our identity construction. In fact, he states that personal identity is defined by how others identify us, not how we identify ourselves (1963). The speaker can attempt to influence how others perceive them, but ultimately it is the hearer who creates the speaker's identity. If the speaker is not allowed any influence on their own output, then the hearer is able to construct an identity for the speaker which may be entirely disparate from the speaker's desired identity. This allows the hearer an inordinate amount of power, and diminishes the self-sufficiency and independence of the speaker. This is a frequently used technique to control populations in settings as diverse as schools, prisons, and workplaces. It is also used in national language policies to extinguish the power associated with politically "subversive" and "inappropriate" languages, such as Catalan in Spain or Hokkien in Singapore (see Pennycook, 1994). Being multilingual in the *wrong* languages is seen as an impediment to integration and hegemony, which is equated with harmony, although Phillipson (1999) has pointed out that there is "no straight correlation between a single language such as English and positive ascriptions such as progress, peace, international understanding, or the enjoyment of human rights" (p. 99).

BILINGUAL IDENTITY

Bilingual language use by a minority group is often analyzed as having two components: the “we” versus “they” code (Gumperz, 1982; Lambert, 1972 in Zentella, 1990), or the high versus low language (Valdés, 2000). The minority language “we” code represents in-group speech. It connotes intimacy and is largely confined to the home because it suffers lower prestige than the “they” code or high language, which is the language of the more powerful group and is associated with wealth and status. In an English speaking environment, Spanish speakers may choose to use Spanish to signify themselves as different from the dominant group, while simultaneously creating camaraderie with other Spanish speakers. These choices are made not only within situations, but within conversations. Code switching is another form of language use, which can be at once exclusionary and inclusionary.

It serves to create an important sense of ‘them’ and ‘us’, as outsiders cannot easily share in this linguistic code.... To insiders this is a legitimate form of communication with its own unconscious rules and forms. It serves as an important identity marker for the Spanish-speaking community, and like any linguistic code, is a dynamic, evolving symbol of solidarity. (Mar-Molinero, 2000, p. 185)

While outsiders may view code switching or code mixing as a deficient ability to speak English (Zentella, 2002), those who speak “Spanglish” may see it as representative of their identities as Spanish speaking Americans. “Spanglish is what we speak, but it is also who we Latinos are, and how we act, and how we perceive the world” (Morales, 2002, p. 3).

So much of the discussion of multilingualism assumes that the speakers are equally proficient in all languages. But for many, although they have at least a fundamental proficiency in English, they are not comfortable with the language. Although able to create grammatically correct utterances, they are unable to fully express themselves and create their desired identity. They may rely on their primary language because it is a quicker and more effective communication tool. For many then, language is not a

uniform that can be put on when they arrive at work and removed at the end of the day, but is integral to their being, in the way that religion or political affiliation is to others.

HOMOGENEISM

A nation of immigrants, Americans have always feared the newest arrivals (for historical snapshots of American xenophobia, see Crawford, 1992; Daniels, 1990; Reimers, 1998; Ross, 1994). Increasing numbers translate into increasing power, and new immigrants threaten the status of those who have come before. Allport notes “it is not a person’s present status in society that is important. It is rather the shifting of his/her status upward or downward that regulates prejudice” (1979, in Ochoa, 1995, p. 244). More specifically, Beer (1985) states “when certain subordinate groups break out of a traditionally subservient position and improve their situation relative to others, the likelihood is that there will be conflict” (p. 217). Reacting to this loss of power, the majority establishes laws and policies most favorable to themselves. English Only workplace policies are generally an attempt to dictate the identity of workers in order to exercise hegemony, and to remake the workers in the image of the English speaking employer. Within this is the unspoken assumption that it is both *natural* and *preferable* to be monolingual.

Work-related language attitudes can also be founded in cultural notions about national, class, or ethnic privilege. Even characterizing the United States as “an English speaking country” presumes the privilege of not mentioning that millions of its residents speak languages other than English. A person with this sense of language privilege believes in the right not to be subjected to varieties other than his or her own.” (Johnson, 2000, p. 290)

Irvine and Gal (2000) call this practice *erasure*: “the process in which ideology, in simplifying the sociolinguistic field, renders some person or activities (or sociolinguistic phenomena) invisible” (p. 38). Here, citizens, and their languages, are erased from the landscape by the prevailing ideology.

The importance of understanding ideologies concerning language use has recently been highlighted by the work of several linguistic anthropologists. Irvine (1989) defines

language ideology as “the cultural system of ideas about social and linguistic relationships, together with their loading of moral and political interests (p. 5) and Kroskrity (2000) emphasizes that it is “constructed in the interest of a specific social or cultural group” (p. 8). In the United States, that prevailing interest is the population of monolingual English speakers, and they benefit most from an ideology that believes a single language creates national unity and is vital to establishing a resident’s identity as an American. Blommaert (2004) reminds us that ideology need not reflect reality, and through the process of erasure Americans who subscribe to this ideology can conveniently ignore instances of conflict and confusion conducted in English, as well as their fellow citizens who identify themselves as American yet speak a language other than English. This ideology has many names, but one goal. Called Standard Language Ideology (Lippi-Green, 1997), monoglot ideology (Silverstein, 1996; Blommaert, 2004) or homogeneity (Blommaert & Verschueren, 1998), it assumes monolingualism can and does exist and is a necessary component of nation building, and attempts to return society back to its pure, harmonious roots.

When a single language is prized above all others, there is danger that those others will be silenced, both literally and figuratively. Lippi-Green (1997) states that “a standard language ideology, which proposes that an idealized nation-state has one perfect, homogenous language, becomes the means by which discourse is seized, and provides rationalization for limiting access to discourse” (pp. 64-65). A monoglot ideology, warns Blommaert (2004), will not only deny that linguistic diversity exists within its borders, but will put in place practices that prohibit such diversity. When English is the only language that is allowed to be heard, other languages and their entwined cultures and ideas are effectively silenced. “Through sameness of language is produced sameness of sentiment and thoughts,” declared the Federal Commissioner of Indian Affairs in 1887 (Crawford, 1992, p. 48) as he instituted English Only boarding schools in an effort to eradicate the Navajo language and Native American resistance to the U.S. government. When society ascribes positive values to one language over others, speakers of devalued languages may be shamed into abandoning their native tongue. In the quest for a more positive social identity, they may choose to assimilate linguistically. “If language is a salient marker of group membership, the individual may face linguistic adaptations that

may result in subtractive bilingualism or even language erosion” (Hansen & Liu, 1997, p. 568).

The process of homogeneity is especially troubling, as homogeneity is not only seen as necessary and desirable, but is also viewed as the norm. Blommaert and Verschueren (1998) raise several important points regarding this process. First, simply by stating that monolingualism is the norm, all bilinguals are positioned as abnormal, and consequently take on the role as “the other.” Linguistic diversity is immediately rejected as deviant. Second, when the ideology calls for the integration of the other (as in the American melting pot idea), positions of power are taken up. Not only is the bilingual positioned as the outsider, as “integrate” assumes there is an undesirable outside and a desirable inside, but they must follow a path defined and controlled by those on the inside. Inequality is inscribed in the process. As a result of this inequality, the majority makes demands on the outsiders in exchange for their admission to the inner circle. So, in order to enjoy the privileges of voting, one must read the ballots in English, or to take on the identity of an American one must speak English. Both these demands propel the “need” to test applicants for U.S. citizenship on their English language proficiency. However Piller (2001) has pointed out that the tests are less about establishing the applicant’s true language proficiency than they are a means to exclude undesirable applicants. This gatekeeping function maintains the privileges of the majority, and ensures that only those who can sustain the prevailing ideology (Americans speak English) will be allowed entry. The proprietary hold on American values and identity is seen in Huntington (2004): “There is no *Americano* dream. There is only the American dream created by an Anglo-Protestant society. Mexican Americans will share in that dream and in that society only if they dream in English.” Finally, the disproportionate balance of power even shows up in the notion of identity. Blommaert and Verschueren illustrate this “asymmetrical view of identity.” The majority demands that the outsiders must adapt to values “so fundamental to our identity that we cannot accept their being questioned by people in our midst who would not share them” (p. 121). In this case speaking English is the unquestionably fundamental pillar of American identity. And yet, “outsiders” are expected to easily give up *their* language, which by right should be innate to *their* identity.

Maintaining one's native language is seen as spiteful—the purposeful rejection of American norms and values. Those who use a language other than English in the workplace are characterized as rude and insubordinate (see Haviland, 2003 for analysis of one such workplace). In order to be a good worker, and a good American, one must repudiate one's native tongue and assimilate completely. Only then does monolingual America believe it can be a nation at peace with itself.

HISPANOPHOBIA

Monolingual English speakers, predicting dire consequences for the country, contend that allowing immigrants to continue using their native language allows them to reject American values. Currently, Spanish speakers are the latest wave of immigrants to threaten the security of White America, prompting Zentella (1997) to coin the phrase “Hispanophobia.” (The irony is not lost on Castellanos (1992) who documents the exploration of America by Spanish Europeans long before White Europeans.) Present day migration is seen as an “aberrant form of human behavior” (Blommaert & Verschueren, 1998, p. 118), and confronted with neighbors who do not sound or look like them, these Americans call for their integration, if not their return from whence they came. As Susan Tulley, a southern California resident and President of the Citizen's Committee on Immigration Policy states, “Your heart goes out to people who are just seeking a better way of life. We do have an obligation to help Mexico develop. I'd rather do that than say all you people come here and become my problem. I'm willing to give money to my church to build houses in Mexico. But I'm sick to death of my own children competing in the classroom for a decent education” (in Maharidge, 1996, p. 163). Tulley believes Mexican children are receiving an unfair share of the decent (apparently finite) education earmarked for her children, and that their parents are a burden she must shoulder. It would be much easier to send money through an intermediary and wipe her hands clean, though one has to wonder why she is more comfortable aiding those unknown and far away than her children's classmates. The fear that Spanish speakers are taking away something that rightfully belongs to the English speaking majority is common across the country. This customer's complaint, which resulted in the firing of a New Jersey Rite Aid

clerk, hits a common refrain: “Shouldn’t you be speaking English? Isn’t this an American store?... You are taking an American job and you are working for an American company, so you should speak English.” (Cook, 1994, in Zentella, 1997, p. 77). And yet, oftentimes the Spanish speaker is *not* taking an American job, or to rephrase, is not taking a job that an English speaker would desire. The American economy is balanced on the backs of those immigrants whose limited English dictates they must accept the low paying or dirty jobs that White America disdains. Gardeners, housekeepers, babysitters, factory workers, trash collectors ... there is no doubt that Tulley’s vision of America would radically change if the immigrants who keep her day running smoothly returned to their home countries.

The majority, demanding that immigrants assimilate, encourages them to cast aside (or at least hide at home) any traces of their ethnicity. “Immigrants are not supposed to be heard.... Immigrant culture and language—assumed to have little prestige or usefulness in comparison with the dominant American culture and the English language—are supposed to fade away quickly as assimilation runs its course” (Castro, 1992, p. 180). Huntington (2004) warns that the migration of Latinos will ultimately cause America to divide along language and culture lines because Latinos refuse to integrate linguistically. “If the second generation does not reject Spanish outright, the third generation is also likely to be bilingual, and fluency in both languages is likely to become institutionalized in the Mexican-American community.” It is not only speaking Spanish as a primary language that is troubling to him, but the bilingual’s ability to speak Spanish at all. The entire language, and its accompanying culture, must be eradicated within the U.S. borders if America is to remain unified.

The late 1990s saw an explosion of Spanish language advertising as businesses courted Spanish speaking consumers, adding fuel to monolinguals’ fears about a linguistic takeover of the country. Ironically, it was the result of American values—capitalist ones. An untapped market was discovered and everyone scrambled to get their piece, necessitating bilingual workers. Suddenly, being a member of the majority was no longer the privileged position. Dicker (1996) notes this was especially problematic for monolingual English residents in Miami:

This was a telling sign for mainstream Americans that they no longer had the upper hand; for the first time for many of them, being a monolingual, native English-speaker carried no presumption of advantage in the labor market. In addition it defied the proverbial melting-pot fantasy; Hispanics in Miami did not have to give up their native identity in order to make it in America (in Mar-Molinero, 2000, p. 183)

How then to deal with bilingual employees? Financially, employers need them to reach out to non-English speaking customers (or those who *prefer* to use another language, as the customer is always right when they have cash in hand) as well as fill low paying jobs, but at the same time employers still need to maintain control over these workers. Many businesses have initiated English Only policies as a way of managing and monitoring their employees' speech, consequently managing and monitoring their identities. The schizophrenic message to these employees is that their language is valued and appropriate when it means dollars for the business, but otherwise is inappropriate in the workplace.

LANGUAGE AND THE LAW

The desire to designate English as the official language of the United States appears whenever the English speaking population is threatened by an increasing number of immigrants. The need to "protect" English (from dying out or being sullied?) has led groups such as English First and US English to call for a constitutional amendment, and individuals like Ron Unz to lobby for the elimination of bilingual education and support English Only at the state level. Although recently initiatives in Arizona, Alaska, and Oklahoma were declared unconstitutional, English Only legislation remains on the books in 24 other states. What the states mean when they say English is the official language has caused confusion because the legislation is different in every state. Several states simply say that "English is the official language" with no further discussion of how that status should be enacted (Arkansas, Colorado). Some note English should be "preserved and enhanced" (Alabama, California), while others state that English is the language of public record (Georgia, Iowa). Utah's policy is the strictest, restricting state agencies

from using languages other than English with the exceptions of law enforcement, public health and safety needs, educational institutions, judicial proceedings, and libraries. (See Crawford, n.d., for each state's legislation.)

While the judicial system has noted that the laws are largely symbolic and non-prohibitive, citizens often interpret them to mean English is now the mandatory language of daily life. In one instance, an elementary school bus driver prohibited students from speaking Spanish on their way to school after Colorado passed its legislation (Zentella, 1997). Businesses have enforced English Only policies at the workplace, mistakenly thinking it is mandated by the state. Although the mandatory use of English in government is legal in states where such legislation has been passed, the private workplace is under no such mandate. California took action in 2002 to clear up the confusion. Though the state passed an Official English constitutional amendment in 1986, this recent law prohibits English Only policies in the workplace “in recognition of the fact that ‘speak English-only’ rules can be discriminatory because of the close connection between a person’s language and their ethnicity” (ACLU, 2002). Though it does not impose penalties, this law will strengthen the case of workers who file suits. This, coupled with the existing federal law, should make clear to California businesses that workers are entitled to language rights in the workplace. A similar amendment to Illinois’ Human Rights Act went into effect in January of 2004.

Title VII of the 1964 Civil Rights Act protects against discrimination in employment on the basis of race, color, sex, religion, and national origin (42 U.S.C. §2000e-2). As a result of *Garcia v. Gloor*, the Equal Employment Opportunity Commission (EEOC) created Guidelines in 1980 to aid businesses in the application of Title VII legislation. According to the Guidelines, language is “often an essential national origin characteristic” and English Only rules are discriminatory if applied at all times, including breaks and lunch. However businesses may have such a rule if they can show business justification for it (29 C.F.R. §1606.7). There are two ways to challenge such policies. The first is *disparate treatment*, which states that the policy intentionally discriminates on the basis of national origin. The second, more commonly cited, is *disparate impact*. Here, a seemingly neutral policy disproportionately discriminates against a minority group.

Many courts have disregarded the EEOC Guidelines entirely, and even those that have recognized them have sided favorably with the justifications given by the defendant businesses. The two justifications most commonly cited—to promote harmony in the workplace and the need for supervisors to monitor employees—privilege the desires and abilities of English monolinguals over those of their bilingual counterparts. Language use (that is the ability to speak *at all*, let alone in a chosen language) has been viewed as an employee privilege, not right, that can be granted and rescinded by the employer. On the whole, the courts have ruled that language is not a characteristic of national origin, and that employees that *can* speak English *must* speak English when such policies are in place. The “inconvenience” of speaking English is not grounds for a lawsuit. However, no tests have been introduced to measure the extent of that inconvenience or how much English an employee *must* know so that they *can* speak it.

Workers who believe they have suffered as a result of workplace language policies first file a complaint with the EEOC. The EEOC investigates the claim in a two-step process. First, the employee must prove the company had an English Only policy. If the policy applied to only parts of the workday, the company is made to illustrate why such a policy was necessary for the operation of the business. If the EEOC believes the reasons of business necessity provided are insufficient, or if the policy covered the entirety of the workday (including breaks and lunch), it will file a lawsuit on behalf of the complainant in state district court. Many times, companies will *settle* before the case goes to court and will agree to make policy changes and/or pay damages to the affected worker. If the case is heard by a judge at the state district court, the party that is ruled against in the *opinion*, or decision, has the option of *appealing* the case, that is, asking the courts to reconsider. If that option is taken, the case goes up to the federal circuit court, which handles the appeals of several district courts. Circuit court cases are usually heard by a panel of three judges, and those in agreement (the *majority*) write the opinion of the court, while the disagreeing judge is allowed to write a *dissent* presenting the reasons for disagreement. It is rare, but a rehearing with the same three judges or with all active judges of the specific circuit court (*en banc*) can occur. If a party is still unhappy with the outcome, they can ask the US Supreme Court to hear the case. This however is entirely at the Supreme Court's discretion, and it is not obligated to explain why it denies a hearing. (See del

Valle, 2003, for a thorough explanation of the legal processes, and the courts' interpretations of language rights in all facets of society, including the workplace.)

MYTHS OF THE ENGLISH ONLY WORKPLACE

The prevailing linguistic ideology promoting homogenization embodies several myths. As the court cases below illustrate, these myths are held both by the employers and the judicial system. They state that English is the language of the United States, yet deny language is a component of national origin. They believe a single language will lead to more effective communication and will create racial harmony. Those who speak a language other than English are characterized variously as insubordinate, disruptive and distracting, rude and vulgar, selfish and discourteous, lazy and untrustworthy, violent, willingly engaging in dangerous and unhealthy habits, and in need of authority to determine what is best for them.

In the majority of court cases, workers have been forced to speak English for reasons of safety, morale, and/or ease of management. Uniformity of language is equated with a positive, harmonious, and safe working environment. In each instance, monolingual speakers, usually coworkers, complained about not being able to understand what was being said. Haviland (2003) refers to this as "linguistic paranoia," which is defined as the assumption that when those around you speak another language it can only be because they don't want you to understand the bad things they are saying about you. In each instance, the *communicative burden*, or the responsibility a participant takes on in order to successfully complete the communicative process, is placed on the bilingual speaker; the monolingual English speaker need only say "I don't understand you," and then must be accommodated (Lippi-Green, 1997). When pressed for the business justification of the policy each business stated that an English Only policy would increase the (monolingual) employees' morale as well as allow management to supervise the (rude, discourteous, lazy, and untrustworthy) bilingual workers properly.

With convoluted logic, companies hire workers with limited English, then require them to speak English on the job. These employees are told that knowing English will broaden their horizons and increase their employment potential. So what about those

English speakers who are actually hired for their ability to speak another language? They fare as poorly, and there have been several cases where employees who were hired for their bilingual abilities were instructed that English was the mandatory language of the workplace when they were not interacting directly with a customer.

METHODOLOGY

Using Lexis-Nexis, all published judicial opinions at the state and federal levels involving English Only were searched, and I considered only those cases in which the plaintiff charged their employer had a formal or informal English Only policy. Cases where non-English speakers were precluded from positions where the English language was a job requirement were not included (*Vasquez v. McAllen*) nor were cases involving English language testing of employees (*Rivera v. Nibco*) or conversely, testing employees in Spanish (*Smothers v. Benitez*). Additionally, cases based on accent discrimination (*Fragante v. City and County of Honolulu, Carino v. University of Oklahoma Board of Regents*) were not included, nor were cases in which the courts dismissed claims of an English Only policy with so little discussion as to provide no benefit to this paper (*Aguilar v. St. Anthony Hospital, Olivarez v. Centura Health, Marquez v. Baker Process*). I also reviewed law review articles and legal and human resource bulletins for cases that may not have come up during the direct search of the opinions, while national and local newspaper reports provided additional background on the cases. Several articles indicated that suits had been filed at the district court level, but since they were settled before an opinion was issued, little information was available on them and they were not included in this study. Published opinions and dissents from both district and circuit courts ranged in length from two to 18 pages, with an average of length of eight pages. After the bulk of the research had been done, del Valle (2003) was published, providing a comprehensive analysis of language rights and the law. Written by a civil rights lawyer, *Language rights and the law in the United States: Finding our voices* provides important analysis of many language issues, including citizenship, bilingual education, litigation, and commerce. In addition, del Valle has a chapter on language rights in the workplace, which includes analysis of the EEOC Guidelines and the legal precedents established in key cases. While

areas of her chapter and my paper may overlap, her work is primarily a legal analysis, while this paper utilizes an applied linguistics approach, and as such is able to address the language ideologies and myths revealed through court cases involving English Only workplace policies.

Although all attempts were made to be exhaustive, not all cases involving English Only workplace policies may be included. Further, the actual trial transcripts were not available, and therefore the judges writing the opinions and dissents played a large gatekeeping role in what evidence was available. Only the parts of the depositions and admitted evidence that the courts felt were important enough to include in their opinions were made available. This informational bias is certainly limiting. Additionally, some circuits do not publish all opinions, as in the case of *Synchro-Start*, where 29 F. Supp. 2d 911 is published, but 914 is not, though it is cited in the *Premier Operator* decision. Further studies using the court transcripts directly would broaden the spectrum of information and perhaps provide new insight into the myths held about language use in the workplace.

The next section presents analytical summaries of all the cases in which the legality of English Only workplace policies were disputed by employees. These summaries will highlight the court-sanctioned language discrimination occurring in U.S. workplaces, as well as the ideologies both the businesses and judicial system rely on to determine their “non” discriminatory impact. Following the case summaries, I will discuss underlying myths about language use, and explore how a society, which claims to value individuality and independence, can simultaneously denigrate its members because of their chosen language.

ENGLISH ONLY WORKPLACE CASES

Saucedo v. Brothers Well Service, Inc. 464 F. Supp. 919 (S.D. Tex. 1979)

John Saucedo was hired by Brothers Well Service to work as a “floor man” on one of its oil rigs. On the first day, Saucedo’s immediate supervisor picked him up from his house to take him to work and informally told him that the rig’s overall supervisor “Doc” Holliday didn’t allow any “Mesican” [sic] talk, though he did not state what the

repercussions might be. A month and a half later, Saucedo was working with another Mexican-American in the Brothers' shop repairing their rig. When the man requested a heavy part, Saucedo brought it to him and asked, using two Spanish words, where the item should be placed. He was directed in English and the item was placed accordingly. Upon hearing this interchange, Holliday informed Saucedo that he had just resigned. The other man interceded, stating that a person couldn't be fired for speaking Spanish on the job, and consequently was assaulted by Holliday. Holliday then took Saucedo back home and was never penalized for assaulting the other employee.

The court stated that an English Only rule would obviously have a disparate impact on Mexican-American employees, as Anglo-Americans would have no interest in speaking a different language. Such a rule would need to be proven by the employer to be a business necessity. Brothers Well argued that the rule was necessary for safety reasons while operating the drilling rig, and the court agreed that an official, clearly communicated rule that prohibited other languages while drilling or reworking a well would be reasonable. However, Brothers Well did not show that it applied the rule uniformly or that there was a clear need for automatic termination if a language other than English was used in the situation described above. Rather the court found that Holliday's actions in assaulting the worker were far more dangerous than Saucedo's and that the company implied approval of Holliday's discrimination by neither reprimanding nor firing him. Although an early victory, this case is largely ignored in rulings that followed. While the court leaves room for official, consistently enforced English Only policies when safety is an issue, it is clear in its assertion that language policies innately have a disparate impact on those whose primary language is not English.

Garcia v. Gloor 618 F.2d 264 (5th Cir. 1980)

Hector Garcia, a U.S.-born bilingual speaker, was employed by Gloor Lumber and Supply as a salesperson. Although Spanish was allowed during breaks and between the employees working in the outside lumberyard, its use was prohibited on the sales floor unless the staff was talking with a Spanish speaking customer. An employee had asked Garcia about the availability of an item, and Garcia replied, in Spanish, that it wasn't available. Garcia claimed that after this incident he had been dismissed. The court

affirmed that Gloor demonstrated a business necessity for their English Only policy. The reasons included:

1. English speaking customers didn't like to hear Spanish;
2. Sales literature was in English so it was necessary for sales employees to be fluent in English;
3. It would improve employees' English to use it during the entire workday, rather than only with English speaking customers;
4. Non-Spanish speaking supervisors could better manage employees if everyone spoke English.

Although the court determined that Garcia had been an unsatisfactory employee prior to this event in ways completely unrelated to language use, and that the English Only policy was a business necessity, it investigated whether the policy was discriminatory. It stated that the EEOC had not adopted any guidelines prohibiting English Only policies, nor had it created any standards to test the legality of language rules, and therefore the court could only use the statute itself. In interpreting the statute, the court determined that national origin was not equitable with the "language that one chooses to speak" and, in a very strict interpretation of origin, noted that Garcia was born in the United States. Despite testimony that Spanish is "the most important aspect of ethnic identification for Mexican-Americans, and is to them what skin color is to others," the court confirmed that the EEOC Act protects, with the exception of religion, attributes that cannot be altered—race, color, sex, and place of birth. As a bilingual, Garcia was capable of following the English Only rule, and therefore it did not constitute a discriminatory policy. They reasoned that the rule was similar to a non-smoking policy, which, although it may be against an employee's preference, is easily observable. An English Only rule as presented here is non-discriminatory when applied "to a person who is fully capable of speaking English and chooses not to do so in deliberate disregard of his employer's rule." Further, since "English, spoken well or badly, is the language of our Constitution, statutes, Congress, courts and the vast majority of our nation's people" the court holds that English is the unmarked language of the American workplace.

Gloor's reasons of business necessity are suspect. Reason two embodies the spurious notion that speaking Spanish will force a sum loss of English fluency, as if there exists a

finite capacity for language, and Spanish will “hog up” essential English space. Fluency in English means not speaking Spanish. Point three illustrates the paternalistic view businesses have towards their employees. Not only do the employers know what is best for employees (to learn English) but they also know how best to go about it (force them to speak it all day long).

Most interestingly, the case illustrates the paradox that although Garcia was hired by the store to assist Spanish speaking customers, the store took the position of the few English speaking customers who did not like to hear Spanish. This is especially odd since the Court of Appeals notes that “of the eight salesmen employed by Gloor in 1975, seven were Hispanic, a matter perhaps of business necessity because 75% of the population in that area is of Hispanic background, and many of Gloor’s customers wish to be waited on by a salesman who speaks Spanish.” It is clear that the company had a language policy that was entirely for the comfort of a monolingual minority, ignoring the wishes of its customers and staff. Although the EEOC subsequently created the test standards called for by this court, the Guidelines have been largely ignored. This case, though only based on the Title VII statute, has been widely cited, establishing the precedent that those who *can* speak English are *obligated* to do so when mandated by their employer, giving employers control over their employees’ speech.

***Jurado v. Eleven-Fifty Corporation* 813 F.2d 1406 (9th Cir. 1987)**

Valentine Jurado was a disc jockey of Mexican- and Native-American heritage at the Los Angeles radio station KIIS-FM. After several years of broadcasting in English, Jurado began introducing some “street” Spanish words and phrases at the request of his program director. A consultant later recommended dropping this approach, noting that this had not led to an increase in Latino listeners and was causing others to become confused about the station’s format. The program director, upon his own investigation, concluded the same thing, and told Jurado to stop using Spanish on the air. Jurado claimed he was fired the next day because he refused to desist; KIIS claimed he quit over the issue.

Under retaliation claims, the court found that Jurado had never opposed an English Only rule and therefore couldn’t be dismissed as retaliation for such a position. It states

that Jurado's interest was only maintaining the viability of his radio character "Val Valentine." As for disparate impact, Jurado would have to have proved such a rule existed and affected a protected minority. However, there was no English Only rule, and in fact other disc jockeys were allowed to use Spanish. The court states it wasn't a bias against Jurado as a minority that allowed a White disc jockey to continue Spanish use. "KIIS permitted [Rick] Dees to use some Spanish because his program is popular, not to place Jurado at some disadvantage." Further, even if an English Only rule existed, the court determined Jurado would not be disparately impacted because he was bilingual and could comply, following *Garcia v. Gloor*.

Ultimately, the most important finding of the court was that KIIS-FM had sound business necessity for requesting that Jurado cease using Spanish. It was entirely a programming decision, and a broadcaster has a right to control its programming under the First Amendment and the Communications Act. Even opponents of English Only rules have had difficulty arguing with the general merits of this case. The company had a right to make programming decisions, and it determined that the bilingual Val Valentine character wasn't a product that was good for business. Were the characters of Rick Dees more valuable? Yes, according to the Arbitron ratings. In *Gutierrez v. Municipal Court* (see below) the 9th circuit noted that "the *Jurado* order pertained solely to on-the-air broadcasting—the product the employer was offering to the public.... It sought only to control the essential nature of its product." This case is not about an English only rule in the workplace but about a corporation's decision to control its own product. As one commentator noted, Romeo can't read his lines in any language he chooses, when the play is to be spoken in English.

***Gutierrez v. Municipal Court* 838 F.2d 1031 (9th Cir. 1988)**

Alva Gutierrez was a bilingual deputy court clerk, hired in part to translate for the Spanish speaking public served by the Southeast Judicial District of the Los Angeles Municipal Court. In March of 1984, as a result of an African-American employee complaining that Spanish speakers were making fun of her in Spanish, a rule was enacted that English must be spoken at all times, except while translating for the public. In December of the same year the rule was amended to exclude breaks and lunchtime.

Gutierrez argued that most of the bilinguals in the Municipal Court were Latinos, therefore disproportionately affecting those of this particular ethnicity, and that ethnic identity was linked to language.

The court agreed that the use of another language is an identifying characteristic that could be used to discriminate against bilinguals on the basis of national origin. Further, it noted that:

The cultural identity of certain minority groups is tied to the use of their primary tongue. The mere fact that an employee is bilingual does not eliminate the relationship between his primary language and the culture that is derived from his national origin. Although an individual may learn English and become assimilated into American society, his primary language remains an important link to his ethnic culture and identity. The primary language not only conveys certain concepts, but is itself an affirmation of that culture.

(reference omitted)

The employer offered five justifications for business necessity, none of which the circuit court found compelling:

1. The United States and California are English speaking;
2. It is disruptive and creates a “Tower of Babel” to allow Spanish to be spoken;
3. An English Only rule creates racial harmony;
4. Supervisors can't be sure employees are working properly or efficiently unless English is spoken;
5. The rule is required by the California Constitution. (The 1986 initiative that amended the California Constitution was found to be largely symbolic. Even if it were required, it would not affect private inter-employee communication, but it *would* prevent the translation the clerks were undertaking for the public.)

In their dissent (861 F. 2d 1187; 1988), three judges stated that, following *Garcia v. Gloor*, national origin does not equate with language. It criticized the majority for ignoring *Gloor's* position that an English Only rule is not unfair to bilinguals who can speak English. Further, they claimed that this particular policy had widespread employee support and, by allowing languages other than English to be spoken, ethnic tensions would be heightened. The dissent went on to state “when employees bring their private

language into a public work-place, this creates a difficult and sensitive problem for those around them who do not speak the language” and this case was really about “common courtesy.” Again, we see the idea that ethnicity, like sexual habits, is a private affair to be left at home. Of course, those who use English as their private language aren’t deviant when they trot it out in the public arena.

Although this ruling supported the right of bilingual speakers to use the language of their choice in the workplace, it has no precedential value. It was vacated as moot by the Supreme Court in 1989 because Gutierrez had already quit her job before her employer’s appeal reached the Supreme Court. It is interesting that while *Gloor’s* reasons of business necessity were supported by that court, similar reasons presented in *Gutierrez* were rejected. The court in *Gutierrez* noted that most of the reasons presented were senseless, especially when considering that Spanish (and other languages) *had* to be spoken by the clerks as part of their job description. Further, English monolinguals could not affirm or deny that the Spanish being used between employees was discriminatory since they do not understand the language. Finally, using the logic that in order to manage employees supervisors need to understand what they are saying, the court suggested monolingual supervisors should never have been in charge of the clerks, since foreign languages are a necessary part of executing their jobs. The court contended that monolingual speakers feel threatened simply because they cannot understand what is being said.

Interestingly, the dissenting opinion stated “by deciding to speak another language during working hours, employees can limit who may qualify for supervisorial [sic] positions.” In fact, it should be the monolingual Spanish-speaking public that limits who qualifies for supervisor in the same way they have already determined who is qualified to be a clerk—in this case, being *bilingual* is a business necessity. The dissenters warned that the ruling runs counter to the spirit of Title VII, and prevents those who aren’t bilingual (including other protected classes) from moving up the corporate ladder. I would posit that this argument is most effectively used by White monolingual English speakers as a means of maintaining their hold on the upper levels of power. A more appropriate rule, if in fact Spanish was being used to harass monolingual employees, would be a rule mandating “common courtesy”—in any language.

Gonzalez v. Salvation Army 89-1679-CIV-T-17 (11th Cir. 1991)

Ivette Gonzalez was a probation counselor with the Salvation Army, hired for her bilingual ability. Because the office was small, the lunch area was located in the open-air conference room, where workers accessed files and held staff meetings. Conversations held in this area could be heard by the typing pool as well as by those waiting in the reception area. Non-Spanish speakers complained that hearing people speak Spanish made them uncomfortable because “they felt certain conversation were about them, but were unsure what the actual content was.” In another instance, a client waiting at reception heard a group of employees (including Gonzalez) speaking in Spanish about condoms, a topic the client deemed unprofessional. As a result, the director requested the bilingual supervisor convey to the employees that only English was to be used in the conference area in order to:

1. Bolster the morale problem of non-Spanish speakers;
2. Allow the director to supervise conversations that both clients and staff could hear.

Spanish continued to be spoken and a letter to the Spanish speaking employees notified them of a formal request to refrain from speaking Spanish in the area. Gonzalez told the director that she disagreed with the policy and would not obey it, and was informed that further action would be taken if she didn't adhere to the rule. As a result, Gonzalez resigned.

The court found that allowing both supervisors and non-Spanish speaking employees within earshot to understand what was being said was a legitimate business decision, and that the rule was not enacted in order to discriminate against Spanish speakers. Although the plaintiff's immediate supervisor was bilingual and would be able to monitor the “appropriateness” of conversations, the monolingual director could not. This is important, as it shows the discussion *could* be monitored, but not by everyone in a position of power and therefore was unacceptable. And again, there is the assumption that English is the magic wand that will boost morale and bring about peace. Citing *Gloor*, the court said that if customers and coworkers could overhear conversations, and the Spanish speakers were bilingual and could comply, it was not a violation of Title VII.

Dimaranan v. Pomona Valley Hospital 775 F. Supp. 338 (C.D. Ca. 1991)

Adelaida Dimaranan was a Filipina assistant head nurse in charge of the nightshift in the mother/baby unit at Pomona Valley Hospital. Although she received excellent reviews the first year in this position as well as in previous years, nurses on her shift began to complain that the use of Tagalog was “rude and disruptive” and made them feel left out. Her supervisors relayed these concerns to her, but the complaints continued and it was determined that the staff was becoming divided along language lines—those who spoke Tagalog were getting better assignments and treatment from Dimaranan. “Rather than working to harmonize the ethnically diverse nurses, [she] was instead fostering the unit’s disunity by continuing to use Tagalog herself and by encouraging the other Filipina nurses to use it also.” At a unit meeting, Dimaranan’s supervisors requested the use of Tagalog be stopped and when it did not, the language was prohibited on the unit.

The court found that the hospital did not have an English Only rule, but a “No Tagalog” rule that was applied only to the evening shift of the mother/baby unit. The rule was not imposed as a result of discrimination but in an attempt to mend a rift the language had created in the unit. Tagalog had been spoken for many years previously, and the court noted that the rule would never have been created had the mismanagement of the unit not occurred. Because it was ruled non-discriminatory, the court did not consider whether language fell under national origin in Title VII. The court further noted that Dimaranan could comply with such a policy since she was bilingual, and therefore was not adversely affected by it.

This case did not address English Only, since Spanish was allowed to be spoken on the unit, but focused on the discriminatory effects of a “No Tagalog” policy. Since it was applied only to a particular situation within the hospital, it was found to be nondiscriminatory. It appears that Dimaranan was purposefully using her language to create boundaries between those who could understand and those who could not. Many other businesses have used this justification, though those have generally been based on suspicions by monolinguals. Though not addressed by the court, Dimaranan seems to have run the unit in a racist fashion, giving priority and favoritism to Filipinas at the expense of non-Tagalog speaking nurses.

Garcia v. Spun Steak 998 F.2d 1480 (9th Cir. 1993)

Priscilla Garcia and Maricela Buitrago were bilingual production line workers at Spun Steak Company who were given written warnings and then separated for their use of Spanish while on the line. Management received complaints that some Spanish speakers were making racist comments about an African-American and a Chinese-American employee. A rule was issued:

It is hereafter the policy of this Company that only English will be spoken in connection with work. During lunch, breaks, and employees' own time, they are obviously free to speak Spanish if they wish. However, we urge all of you not use your fluency in Spanish in a fashion which may lead other employees to suffer humiliation.

A policy exception was written for the clean-up crew, its foreman, and certain other workers to speak to the foreman in Spanish at his discretion. Two of Spun Steak's employees were monolingual Spanish speakers. However, one was a member of the clean-up crew and the other said she had no objection to the rule since she doesn't like to talk on the job. Management enacted the English Only rule for the following reasons:

1. Promote racial harmony;
2. Enhance safety because non-Spanish speakers claimed that the use of Spanish distracted them while they operated machinery;
3. Increase quality because the plant's U.S.D.A. inspector only spoke English and wouldn't be able to address issues raised in Spanish.

These reasons were merely noted in the court's decision; since the plaintiffs did not make a *prima facie* case (that is, they did not claim that an English Only rule existed), the court did not consider the justifications of business necessity. (Dissenting judge Boochever stated that the Spanish speaking employees had proven that an English Only rule existed, and therefore the burden should have shifted to the employer to prove there was a business necessity for such a rule.) The court did address the three reasons why the Spanish speaking employees felt they suffered disparate impact:

1. They are denied ability to express their cultural heritage;
2. They are denied a privilege of employment offered to monolingual English speakers;
3. They are placed in an environment of intimidation, isolation, and inferiority.

Citing *Garcia v. Gloor*, the court said that Title VII does not protect the ability to express cultural heritage at work. Just as an employer can limit other forms of personal expression, they have control over the language spoken. Secondly, the ability to converse with co-workers on the job is a privilege and as such, the language of any communication can be controlled by the employer. Since workers were bilingual, this posed no burden to them. Although the workers argued that bilingual speakers had difficulty refraining from code-switching, the court stated that Title VII wasn't meant to shelter protected classes from rules that are "merely inconvenient." Further, there was no evidence that Spun Steak was punishing anyone for unconsciously using a Spanish word. (This illustrates the underlying assumption that code-switching is an accidental sully of English.) Finally, there was no evidence that enacting this policy created a negative atmosphere. To the contrary, it was initiated to prevent Spanish speakers from creating just such an environment for non-Spanish speakers.

Of great concern to Circuit Judge Reinhardt in his dissent from denial of rehearing *en banc* (13 F.3d 296; 1993), was that the majority had overridden the EEOC Guidelines (stating "we are not bound by the Guidelines") and had not considered the business justification for the English Only rule. Further, he criticized the court's misuse of *Gloor* (*Gloor*'s court didn't follow EEOC Guidelines because they weren't written until after the decision) and that it ignored *Gutierrez* entirely. Perhaps the *Gutierrez* oversight was because the author of this decision, Judge O'Scannlain, was one of the *en banc* dissenters in that case. Additionally, Reinhardt notes that

Language is intimately tied to national origin and cultural identity; its discriminatory suppression cannot be dismissed as an 'inconvenience' to the affected employee, as *Spun Steak* asserts.... Even when an individual learns English and becomes assimilated into American society, his native language remains an important manifestation of his ethnic identity and a means of affirming links to his original culture. English only rules not only symbolize a rejection of the excluded language and the culture it embodies, but also a denial of that side of an individual's personality. (references omitted)

Although not considered by the court, the business reasons presented by management appear insufficient. Racial animosity seems to strengthen after English Only policies are

enacted, not disappear. Secondly, if the use of Spanish was distracting to those operating machinery, surely chitchat in English would be equally so. Finally, since many of the Spanish speakers have a strong command of English, they would be able to relate quality concerns to the U.S.D.A. inspector in English, and therefore it is not necessary he understand all communication on the production line.

The Supreme Court was asked to hear the case, but refused to do so.

***Long v. First Union Bank* 894 F. Supp. 933 (E.D. Va. 1995)**

Four bilingual Latinos were tellers at a branch of First Union Bank. Informally, three of the plaintiffs were notified by the assistant vice president and the branch manager that they were not to speak Spanish unless it was to help a Spanish speaking customer. A memo was further released to all employees notifying them of the policy, saying “This all boils down to common courtesy. How would you feel if everyone around you were speaking and laughing aloud in a language you could not understand?” When three of the plaintiffs were assisting a Spanish speaking client, they claimed the branch manager told them they could only interact among themselves in English. After the EEOC found that the full-time English Only policy was discriminatory, the bank issued an apology and stated that language restrictions had been lifted prior to the EEOC ruling (simultaneous with replacing the branch manager with a Latina).

Citing *Gloor*, *Garcia v. Spun Steak*, and *Gonzalez*, the court found that there was no discrimination when bilingual employees could obey the rules and therefore were not disadvantaged. Conversing on the job is a privilege of employment and “the employer has a right to define the parameters of the privilege of employment.” The court accepted the bank’s justification that it was a business necessity to enact the policy in order to stop the tension created by some of the Latinos (admittedly) making fun of other employees in Spanish, and that it needed to be a full-time policy since these tensions would continue to exist during breaks and lunchtime, something explicitly forbidden by the EEOC.

Unfortunately, here is another case where the court decided it need not follow the EEOC Guidelines, which were created after *Gloor* had called for them. So while it cites *Gloor* as precedent, this court ignores the regulations that state a full-time policy is forbidden. Further, while some of the plaintiffs admitted that they spoke in Spanish about

other employees so those employees couldn't understand, the English Only rule seemed a draconian attempt to control some unruly employees. When plaintiff Baeza stated in her deposition testimony that she received "cold treatment" from her supervisors because she lodged an EEOC complaint, the court noted "Title VII does not protect employees from uncomfortable working environments... Bad manners or personal differences do not constitute harassment." However, the court felt strongly enough that discomfort by non-Spanish speakers (and bad manners on the part of a few Spanish speakers) was worthy of instituting the English Only policy to curtail harassment.

***Prado v. L. Luria & Son* 975 F. Supp. 1349 (S.D. Fla. 1997)**

Mercy Prado was a Cuban immigrant working at Luria's, a department store in Florida. She claimed she was forced to leave because of their English Only policy and because her supervisors made fun of her accent and speaking ability. She further stated she was discriminated against because she preferred to speak Spanish since she wasn't fully bilingual. Luria defended its English Only policy with two reasons the court found satisfactory, in addition to customer complaints:

1. Speaking English among themselves was good practice to approach customers in English;
2. It allowed managers to evaluate employees.

The rule appeared to only apply during work hours, and not during breaks or lunchtime.

The court stated that although *Gloor* predated the EEOC Guidelines, other decisions in the 11th circuit (*Gonzalez*) had upheld it subsequently. Even assuming the Guidelines were valid, the business rationale presented by Luria was sufficient. Further, when the plaintiff suggested that bilingual managers should be hired in order to monitor Spanish speaking employees, the court stated such a policy would be discriminatory against monolingual English speakers, since its purpose wasn't to accommodate customers, but rather employees. The court went on to quote the Supreme Court in *Hernandez v. New York* (a case involving the dismissal of Spanish speaking potential jurors because they may not rely on the translator as the final arbiter of meaning, but rather would interpret the Spanish spoken in the courtroom on their own): "Just as shared language can serve to

foster community, language differences can be a source of division. Language elicits a response from others, ranging from admiration and respect to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility.”¹ An insistence that employees speak English in the workplace serves the added business purpose of minimizing the sense of alienation and resulting hostility felt by employees and customers who do not speak or understand the “foreign” language.

The court has an interesting interpretation of this quote. By taking the position of the monolingual majority, it assumes that distance and alienation are created by hearing languages other than English, which are used explicitly for the purpose of ridiculing and scorning those coworkers who cannot understand it. However, from the opposite approach, not being allowed to use your own language arguably creates distance and alienation from the company and coworkers, who, rather than admiring and respecting your multiple talents, instead ridicule and scorn them as a result of racial hostility. In its decision the court is quick to protect the rights of monolingual English speakers to have access to supervisory positions at the expense of employees who would use Spanish. Once again it appears that the rights of minorities to use their home language are secondary to the right of monolingual English speakers.

***Kania v. Archdiocese of Philadelphia* 14 F. Supp. 2d 730 (E.D. Pa. 1998)**

Jessie Kania was a Polish-American housekeeper at the Sacred Heart Church who was fired shortly after she voiced her opposition to an English Only policy imposed because the church deemed it was “offensive and derisive to speak a language which others do not understand.” She sued for discrimination based on national origin and retaliatory termination.

Citing *Gloor* and *Spun Steak* particularly, the court noted that there has been no evidence that, especially for bilingual speakers, an English Only policy has disparate impact based on national origin. Additionally, like *Spun Steak* and *Long*, the court disregarded the EEOC Guidelines as overstepping their authority in interpreting the statute.

¹ *Hernandez v. New York* 500 U.S. 352, 371, 111 S. Ct. 1859, 114 L. Ed. 2d 395 (1991).

Tran v. Standard Motor Products 10 F. Supp. 2d 1199 (DC Kansas 1998)

Dung Tran was a Vietnamese production employee at Champ Service Line in Kansas. After being terminated due to multiple sexual harassment complaints, he sued, alleging discrimination on the basis of national origin. Although an unofficial English Only rule had been enacted by his work group leader in 1993, there was no indication that Tran had ever officially complained to any of his supervisors prior to filing a claim with the EEOC, where he stated “There is not [sic] safety reason for this rule. Vietnamese employees have been told that other employees got upset because they thought they were being talked about.” Unlike *Kania*, the court acknowledged the EEOC Guidelines². It noted that the rule did not apply to breaks or lunchtime, and following *Spun Steak, Prado*, and *Long*, that Standard had presented reasonable business justification:

1. Ensure effective communication during cell meetings;
2. Prevent injury on the production floor;
3. Prevent non-Vietnamese speakers from feeling that they were being talked about.

Further, if the supervisor was uncertain if a Vietnamese speaker understood the English direction, he made sure it was translated for the worker. Finally, the court found that an English Only rule would not constitute a hostile work environment.

Although not meant as an English Only case, it helped to establish that the 10th Circuit would follow EEOC Guidelines in matters of Title VII. There is no indication that it was a rule that extended outside Tran’s cell or if other minority groups worked within the plant and would have been affected. Again, employee morale is determined to be a significant business reason to prohibit the use of a native language.

Rivera v. Baccarat, Inc. 2000 US App., 10 F. Supp. 2d 318 (S.D. NY. 1998)

Irma Rivera charged that Baccarat terminated her as a salesclerk on the basis of age and national origin. She held that, although her supervisor called her “one of the best sales people I have encountered,” the new president of the company did not like her attitude or her accent, and told her not to speak Spanish on the job. However, all the witnesses testified there was no English Only policy, and that the admonishment was in

² *Sutton v. United Air Lines, Inc.* 130 F.3d 893, 899 n.3 (10th Cir. 1997); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837, 844, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984)

reaction to a customer complaint over an incident where a coworker began speaking to Rivera in Spanish and Rivera replied in English that they should talk later.

The information on the case is limited, since in the available documentation the court was only being asked to overturn the jury award to Rivera or consider a retrial and it was not a full hearing on the evidence. The court stated that there was no English Only policy but that the jury had found other instances that showed Rivera was fired for being Hispanic. The court reduced the amount of the award but denied a retrial. The matter was heard by the US Supreme Court, which vacated the ruling and *remanded*, or returned, the case back to the district court to reconsider whether it had jurisdiction to order a new trial. For purposes of this paper, what is important is that the business, court, and the plaintiff were all in agreement that Spanish should not be used between employees in front of their customers “as a matter of courtesy,” which the court described as a “common sense rule against offending customers.” Implicit is the assumption that customers must understand everything going on around them, with the façade of monolingualism maintained.

Martinez v. Labelmaster No. 96 C 4189 (N.D. Ill. 1998)

Although largely a case involving the legality of terminating a pregnant employee, issues of English Only policies were raised. Mabel Martinez was pregnant when she interviewed for, and got, a job as a mailroom clerk. The company required her doctor to sign a letter stating Martinez could perform all the tasks of the position, which the doctor declined to do because one component listed was lifting 25-40 pounds. However the doctor did not state that Martinez could otherwise not perform the job. Martinez was immediately fired, and she sued under both the Americans with Disabilities Act (for being pregnant) and Title VII (for being Hispanic). The main evidence for the Title VII discrimination was an English Only policy. The court agreed that a full-time English Only policy would be discriminatory, but that was not the case. In fact, the policy was in compliance with EEOC Guidelines since it was only applied at certain times (while employees were at their work stations), for business necessity, and notice of the rule had been given when Martinez was hired. The court approved Labelmaster’s reason for implementing the policy, stating that the “purpose of the rule was to promote *esprit de*

corps in that co-workers would not understand what their non-English speaking co-workers were saying.” The court chose interesting wording. Instead of using “Spanish speaking,” it used “non-English speaking.” If the employees were truly non-English speaking surely they would have had a hard time complying with an English Only policy. This further illustrates the belief that there are those who speak English and those who speak Spanish; employees would only choose to use Spanish because they do not speak English.

Gotfryd v. Book Covers No. 97 C 7696 (N.D. Ill. 1999)

Renata Gotfryd and Adam Kruszewski were Polish employees engaged in production work at Book Covers, Inc. After observing Gotfryd engaged in a conversation with a Polish coworker, the assistant plant manager, Calderon, told Gotfryd and Kruszewski that they were not to speak Polish on the job any longer, with the reasoning that it 1) was an American plant and 2) a pallet had been returned by a customer. A few days later, Gotfryd and Kruszewski asked Calderon to show them what was wrong with the defective pallet. They were told that “the pallets had been returned because plaintiffs spoke Polish on the job. Calderon told plaintiffs he did not like them speaking Polish and offered plaintiffs an alternative—if they wanted to speak Polish they could have a date together out of town. Calderon then reminded plaintiffs that Calderon had the power to do whatever he wanted to, including firing plaintiffs.” After some time, the breaks for production workers were staggered, and Kruszewski was told it was to in order to keep him from speaking Polish. After several other reminders not to speak Polish, the plaintiffs filed with the EEOC.

Unfortunately, their EEOC complaint did not include a mention of the staggered breaks, and occurred after the 300 day window of limitation between discriminatory event and complaint. As a result, only the final two reprimands could be considered by the court. As such, there was not enough interaction between the plaintiffs and supervisors asking them not to speak Polish to be considered a hostile work environment.

Here was an opportunity for the court to rule against an English Only, or rather, “No Polish” policy, but due to technicalities of the law, not all incidents could be considered. The court indicated that the policy was discriminatory when it wrote, “Plaintiffs clearly

knew or should have known from the first incident (in the October/November 1995 period) that the 'No Polish' policy was discriminatory by the manner in which the policy was introduced to them.”

Roman v. Cornell University 53 F. Supp. 2d 223 (N.D. NY. 1999)

Doris Roman was hired in August of 1994 as the Assistant Director of Cornell's Engineering Minority Programs Office, in part she claimed because of her ability to speak Spanish with students. Her relation with others in the department began deteriorating almost immediately amid complaints that she used obscenities, had inappropriate conversations, threatened her staff, and disobeyed department rules. By mid-December she was terminated. She alleged she had been fired on the basis of nation origin discrimination, a claim based largely on the fact she had been told not to speak Spanish. This warning came about because a bilingual student asked the departmental receptionist if he could use the fax and was told it was against policy. The student then complained to Roman, in Spanish, and Roman then told the receptionist in English that the student could send the fax. The receptionist and another present staff member complained to Roman's supervisor that she was using Spanish for the purpose of excluding them from understanding conversations. Ten days after the incident, Roman met with her supervisor to discuss several problem issues including that one. She was reminded that “having extended conversations in Spanish in the presence of individuals who do not understand Spanish is inappropriate and inconsiderate and will cease immediately.”

The court noted that “speak English only” laws may be the basis for national origin discrimination, but that such rules are not discriminatory when applied to bilingual employees when there is a legitimate business necessity for such rules. The department claimed such a rule was necessary to relieve the tension in the workplace. The court agreed, stating that “defendant's purported goals of avoiding or lessening interpersonal conflicts, preventing non-foreign language speaking individuals from feeling left out of conversations, and preventing non-foreign language speaking individuals from feeling that they are being talked about in a language they do not understand are legitimate business reasons justifying its English-only rule” and cited *Kania*, *Tran*, and *Long*.

While the evidence “overwhelmingly” showed that Roman was terminated for reasons such as personality conflicts, insubordination, and lack of professionalism (none of which was in reference to her use of Spanish), Cornell’s business necessity is suspect. There is well-documented evidence that members of her staff did not like Roman from the beginning of her employment, and Roman claimed “I was concerned about the issue of the staff not talking to me. . . . And the gossip had gotten so bad that I would walk into the office and silence would break.” While the court pointed out there is no law against firing someone for personality conflicts, the claim that using only English would allay tensions there is ridiculous. Obviously, the staff created tension by talking about Roman in English; *not* talking at all created tension as well. The request that Roman not speak Spanish was for the benefit of the other departmental staff, but there is no mention of requests not to speak about others in English. Unfortunately, this is a case where the use of Spanish may have been to leave others out of the conversation. But, we also see how the English language gets a pass in matters of courtesy, whereas Spanish gets restricted.

Velasquez v. Goldwater Memorial Hospital 88 F. Supp. 2d 257 (S.D. NY. 2000)

Iris Velasquez was hired as a patient representative that advertised that a “Bi-Lingual Spanish” speaker was preferred. During a three month probationary period, numerous non-language related conflicts occurred between Velasquez and other staff members. Additionally, the office manager had asked her and Monserrate Nieves-Martinez, the director of patient relations and Velasquez’s supervisor, not to speak Spanish to each other. Following the reprimand, Velasquez went up the chain of command and asked Martinez’s supervisor if there was an English Only policy at the hospital. Velasquez stated she was told “there is no such policy but you are not allowed to speak Spanish here,” whereas the supervisor reported saying “English was the custom when conducting business, however if she felt the need to speak Spanish, speak Spanish.” Velasquez also stated that Martinez told her on several occasions that other co-workers didn’t “like it when we speak Spanish.” One week after the reprimand, Velasquez was terminated.

In light of Velasquez’s personnel file, the court found she was terminated for reasons other than language. Even when addressing the issue of language, the court stated her argument had no merit. First, it noted the EEOC allows for language policies that do not

apply at all times of the workday, and by Velasquez's own admission she was allowed to speak with Spanish speaking patients and while in the cafeteria. Further, it stated that national origin discrimination would not apply based on language use alone. Velasquez argued that the hospital had a No Spanish policy, but since no evidence was given that Spanish was the only restricted language (for example, if Polish and French were allowed but not Spanish), the court disregarded the claim. Finally, the court stated that it was implausible Velasquez was fired as a result of discrimination since the same people that hired her (one a Latina herself) fired her. Although initially language and national origin are not correlated by this court, a presupposed connection is revealed. The discrimination argument "is simply not plausible in this case, given that the hospital advertised for an employee not merely with Spanish language ability, but one who was bilingual in Spanish." The assumption is the hospital must have known it would be hiring a Latino since it wanted a bilingual speaker; speakers of other nationalities would be characterized as merely having the ability to speak Spanish. In addition to this incongruity, *Gutierrez* above revealed it is possible to for businesses to hire bilinguals and still be discriminatory in their company language policies.

***EEOC v. Premier Operator Services, Inc.* 113 F. Supp 2d 1066 (N.D. Tex. 2000)**

Several bilingual operators for this long distance telephone company were fired after refusing to sign an English Only policy. Operators who signed under protest were laid off, and all were replaced by non-Latino workers. Although their ability to speak Spanish was cited as a business asset, and they were tested to ensure they had sufficient abilities to speak and understand Spanish when they were hired, the company discouraged use of the language at any time other than when helping customers place calls. This policy prohibited the use of Spanish at lunch, on break, when making personal calls (going so far as to consider placing a public telephone outside the building for Spanish speakers to use), and at any time before or after clocking out while inside the building. A sign posted at the building entrance declared "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. Other languages may be spoken to customers who cannot speak English."

The court was quick to point out the discriminatory nature of combining speaking languages other than English with violence. Ruling in favor of the plaintiffs, Judge Paul Stickney stated that blanket English Only policies would naturally impact speakers from non-English speaking countries of origin more than others, and questioned whether a business necessity could ever exist, even for a part-time policy—it was obviously a business necessity to speak *Spanish*. Even assuming the English Only policy was necessarily to ensure harmony (which Premier provided no evidence for), it only served to disrupt the workplace and create feelings of “alienation and inadequacy.” Further, the court cited the testimony of linguist Susan Berk-Seligson and claimed that bilingual speakers would have difficulty “turning off” Spanish after they had hung up with a customer, and such inadvertent slips would be grounds for termination. Although the plaintiffs won nominally, *Premier Operator* filed for bankruptcy prior to the trial and did not appear for the court date.

This decision, however, was a full-fledged victory for language rights advocates. The court clearly articulated that even those Spanish speaking plaintiffs born in the United States were entitled to protection under Title VII. Although most courts fall back on the precedent established in *Garcia v. Gloor*, this court noted that *Gloor* occurred before the EEOC Guidelines were adopted and, importantly, that the Guidelines must receive deference from the judicial system since Congress reviewed and specifically discussed the English Only guidelines in 1991 and chose not to make any changes³. Additionally, “*Gloor* was also decided prior to the extensive research, studies and scientific findings” done by linguists. Even though *Gloor* determined that a “fully bilingual” speaker could “readily comply” with such a policy, the court stated that Berk-Seligson had provided evidence that bilingual speakers might inadvertently use Spanish, not out of personal preference or insubordination, but because of the nature of code-switching. Since they could be reprimanded or terminated for this, they suffered disparate impact from these policies. “The ease of compliance with a rule should not be the measure of its discriminatory effect,” stated the opinion.

³ Precedent established by *United States v. Rutherford*, 442 US 544, 544, 61 L. Ed. 2d 68, 99 S. Ct. 2470 (1979)

Rosario v. Cacace 337 N.J. Super. 578 (2001)

Gisela Rosario was hired as a secretary/medical assistant in Dr. Cacace's practice. As most of his patients were Spanish speaking, one of the job requirements was to be bilingual. The other staff members, including Cacace, were bilingual speakers, with the lone exception of Rosario's immediate supervisor, Marge DeSantis, the office manager. DeSantis did not approve of Rosario and her co-worker speaking in Spanish unless directly translating for DeSantis, and on a number of occasions threatened them, saying, "This is America, you got to speak English, you don't have to be talking in Spanish. I am going to have to get rid of you." Rosario defended her use of Spanish, stating that "it is a common custom among people of Spanish national origin to speak Spanish to each other.... Sometimes we would do it unconsciously. You're talking to somebody and then they ask you something in Spanish so you answer in Spanish. It is just unconscious." In other instances, when Rosario was talking with a patient in Spanish, DeSantis would enter the room to find out what was being said. Rosario claimed that when she was terminated DeSantis praised her as a quick learner, but said she could not tolerate the Spanish. Cacace claimed DeSantis informed him that at the end of the trial period Rosario's skills had been found to be lacking, and that letting her go was purely a business decision.

Since, with the exception of DeSantis, all employees were bilingual speakers of Latino heritage, the court found that there was no discrimination based on national heritage. Citing *Gloor* and *Spun Steak*, the court noted that bilinguals do not have the right or privilege to speak the language of their choice during office hours. However, acknowledging that the problem stemmed from the monolingual supervisor, the motion judge noted "maybe Ms. DeSantis should learn Spanish, but that's not for me to decide today." It is clear that while DeSantis could not control the language used by the dentist and hygienists, she exerted her control over the employees in the front office. Rather than attempting to fit into the prevailing office culture, she was able to shape it to suit her, since as *Gloor* pointed out, English is the presumed language of the workplace.

Cosme v. Salvation Army 284 F. Supp. 2d 229 (D. Mass. 2003)

Iris Cosme worked as a clerk at one of the Salvation Army's thrift stores. Although she had limited English proficiency, she was able to interact with customers and coworkers, using an interpreter when needed. Although the Salvation Army has an English Language Policy, Cosme's supervisor rarely enforced any of the company rules, until she began to feel employees were taking advantage of her, and then she became more strict. As a result, Cosme was reprimanded for tardiness and for using Spanish after her supervisor asked her to speak in English. Three incidents led to her termination. In the first, the supervisor spoke to her in English and Cosme answered in Spanish "despite repeated requests by [her supervisor] Gnerre to try to answer in English." Cosme alleged the supervisor asked, "What the hell did you say? ... I'm sick of you speaking Spanish." In the second incident, after being reprimanded for being late for work, Cosme spoke to a coworker in Spanish. The supervisor repeatedly asked what had been said, and Cosme said, "Pam... it's nothing." In the final incident, Cosme spoke to a coworker, supposedly asking for a cup of coffee, and the supervisor demanded to know what was being said. Cosme reported the supervisor said, "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," and threw a coffee cup at the back wall, breaking it. Cosme left for a two week vacation, and the day she returned she was fired for insubordination and frequent tardiness.

The court upheld the language policy as clear and valid, following EEOC Guidelines, though it pointed out it was not bound to follow them, citing *Kania* and *Prado*. Because the policy existed, requests made by the supervisor were not unreasonable. (Cosme did not file a disparate impact claim, so the court did not address this issue.) Although Cosme claimed she did not have sufficient English ability to follow an English Only policy, the court believed she did. In order to be qualified for the job, she needed to have an adequate ability to speak English; this ability should also be adequate to follow the policy. Further, it stated, she and the supervisor "admit to having made each other laugh—a feat normally requiring a certain level of common lingual understanding." Apparently the court was not a fan of silent movies. More ridiculously, it concluded Cosme should be able to follow the policy because she was able to defend herself, in English, on at least two occasions. When her supervisor chastised her for being late, she

responded, “Pam, it’s only 8:31,” and as previously noted she told her, “Pam... it’s nothing.” “While at first glance these terse responses seem unremarkable, they represent adequate language comprehension,” stated the court, equating the ability to understand a language with the ability to produce it. More worrying is the belief that, because she was able to give these “terse responses,” Cosme was able to fully communicate at those moments. Because the court determined she was able to speak English, it agreed with the Salvation Army that she was being insubordinate. “Cosme argues that Gnerre characterized the mere act of speaking Spanish as constituting insubordination; indeed, the three incidents all involved Cosme speaking Spanish. The insubordination, however, arose from Cosme’s refusal to accommodate the requests of her supervisor, Gnerre. In other words, the issue is not that Cosme spoke Spanish, but that she ignored Gnerre’s requests and directives.” Looking again at those “terse responses” it is hard to see how Cosme would have translated her Spanish responses into an English Gnerre would have found acceptable. No other case so clearly illustrates Lippi-Green’s assertion that “I can’t understand you” really means “I dare you to make me understand you” (1997, p. 69).

Argueta v. North Shore Long Island Jewish Health System (E.D. NY 2003)

Liberty Argueta worked in the outpatient billing department, and was fired after “attacking” a coworker with a bagel (while the specifics of the attack were relevant to the case, they are not necessary to include here). Argueta claimed to have been fired as a result of national origin discrimination, with an English Only policy as one example in her argument. The plaintiff stated her supervisor had told her they could not speak Spanish with each other, though the supervisor said she had been told “it was illegal to tell the employees that they couldn’t speak any other language.” The court noted that even if the supervisor had instructed Argueta not to speak Spanish, she meant not *with her*, not as a policy in general. North Shore denied having any English Only policy, other workers claimed to speak Spanish “all the time,” her supervisor practiced Spanish with the employees, and Argueta herself spoke Spanish with others.

While Argueta’s case is flimsy, what is important is whether the court would uphold the EEOC Guidelines if evidence supported it. Unfortunately, it did not, citing

Velasquez's assertion that language in itself cannot be used to identify members of a minority class.

EEOC v. RD's Drive In Civ 02 1911 PHX LOA

The owners of RD's Drive In surely wish the Federal Commissioner of Indian Affairs had been more effective in eliminating Navajo, as the EEOC sued the restaurant in 2003 for an English Only policy. In an effort to monitor the appropriateness of the workers' speech in response to customer and monolingual English employee complaints about "trash talking" in Navajo, all employees were required to sign a policy that stated, "The owner of this business can speak and understand only English. While the owner is paying you as an employee, you are required to use English at all times. The only exception is when the customer cannot understand English. If you feel you are unable to comply with this requirement, you may find another job." Although RD's website claims that "**The English policy of RD's Drive-In is part of the [owners'] respect for the Navajo language**" (bold theirs), the respect apparently is not strong enough to propel them to learn the language itself, but rather restrict the use of Navajo among the Native Americans who comprise approximately 90% of their employees, according to their figures. The owners and their supporters at ProEnglish depict this as a battle between government and small business, as well as an "undeclared war on English" and "bad social policy for the country at large." ProEnglish, incidentally, is one of John Tanton's organizations. Tanton is the previous chair of US English (proponents of the constitutional amendment mentioned above) who was forced to resign after a racist internal memo ("As whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion?") was published. Both ProEnglish and US English have received funding from Tanton's umbrella group US Inc., which also funds other Tanton-founded anti-immigrant organizations that the Southern Poverty Law Center has designated as hate groups (SPLC, 2003).

Although the case has not reached court yet, an article in *Forbes Small Business* (Adler, 2003) sheds some light on the positions of those involved. The owners of the drive in correlate the use of Navajo to "trash talk" directly to the decline in customers and ability to keep employees. Establishing an English Only policy was for the survival of the

business, and now that the rule is in place, the atmosphere is described as “heaven.” *Forbes* never questions the assumption that “trash talk” can only occur in Navajo, or whether the described increase in national fast-food chains in the town is really what caused sales to decrease. The owner does not speak Navajo, and the writer implies this is because it is “so complex that it was used as a military code in World War II.” Further sympathy for the owners is gained because they are personally named in the lawsuit and their son had to move his family (daughter and pregnant wife) into the basement of the house while he works at RD’s for less than minimum wage, though the article mentions in passing this is because they didn’t incorporate the business.

Language is a flashpoint for those on the nearby reservation who remember the assimilationist policies of previous generations and are trying to keep Navajo alive. Navajo is the first language for three of the four plaintiffs, and they were told that being bilingual was a customer-service asset when they were hired. “It was easier to explain things to other employees in Navajo. What would take once to explain in Navajo took four or five times in English,” explains one woman. Another plaintiff notes that if rude behavior and language was the problem, those individuals should have been dealt with. Instead, a language, and all those who speak it, was held liable for the actions of a few.

Settlements

In general, the courts have upheld English Only policies when they believe that the employees can comply. However, not all complaints end up in the courts. Sometimes businesses make immediate policy changes upon being notified by the EEOC that the existing corporate policies are out of compliance with the Guidelines. Other times, the EEOC is forced to sue offending companies on behalf of affected employees, but is successfully able to settle the matter out of court during the preliminary stages of the trial. The EEOC has had its greatest success when the English Only policies apply to all employees, regardless of their perceived ability to speak English.

Several high profile settlements have occurred in the last five years. In 1999, the Polish and Latina plaintiffs in *EEOC v. Synchro-Start Products 29 F. Supp. 2d. 911 (N.D. Ill. 1999)* were awarded \$55,000 because the company’s English Only policy applied to even those employees who had limited or no English proficiency. In denying the motion

to dismiss, the court praised Judge Reinhardt's dissent in *Spun Steak*, and strongly supported the validity of the EEOC Guidelines. In another 1999 settlement, \$52,500 was awarded to speakers of Spanish, Tagalog, and Haitian Creole who were disciplined for speaking their native languages in the nursing home where they worked (*Martinez v. Lenox Health Care and Vencor*). One certified nursing assistant recalled, "I was told that this was America and that if I was unable to speak English, this was neither the place nor the job for me" (ACLU, 1999). Watlow Batavia paid \$192,500 to eight employees in the so-called "buenos dias" case (*Solero v Watlow Batavia, 2000*). This case received its name, and notoriety, because one employee was fired after saying good morning to a coworker in Spanish.

The largest known settlement occurred in the 2001 case of *EEOC v. University of Incarnate Word*. The San Antonio, Texas university was asked to pay \$2.44 million to eighteen Latino housekeepers who were subjected to abuse (both verbal and physical) by a nun enforcing a full time English Only policy. Most recently, the EEOC has reached a \$1.5 million settlement with Colorado Central Station Casino (*EEOC v. Anchor Coin, 2003*) for an English Only policy that applied to all workers regardless of their ability to speak English. Spanish monolinguals claim to have hidden in closets with bilingual employees to discuss work assignments so they would not be punished for speaking Spanish.

While the monetary awards are not what is important in these cases, the numbers reflect the high cost of establishing English Only policies indiscriminately. In each of these settlements, employees were disciplined if they did not utilize a language in which they had little or no proficiency. Both Synchro-Start and Colorado Central Station Casino's English Only policies were the result of monolingual English speakers who felt they were being talked about in a language they could not understand. However, in order to make *those* employees feel comfortable, the companies forgot they had other monolingual speakers working for them as well.

MYTHS OF LANGUAGE USE

As the cases above illustrate, the prevailing monolingual ideology is firmly implanted in both the judicial system and businesses' understandings of language use. Several cases presume English as the logical choice for the workplace, the language of professionalism and courtesy, while others equate the use of languages other than English with insubordination, vulgarity, and violence. The following sections discuss some of the beliefs about language use and characteristics attributed to bilingual speakers, coupled with the cases where these attitudes are found.

To Be American, One Must Speak English

In several cases, authority figures told their employees directly that since they were in America, they were obligated to speak English (*Gotfryd, Martinez, and Rosario*). These employees were expected to meet the demands of their employers in exchange for the privilege of working in America. This ideology of homogeneity believes that America has only ever had one language and should continue to do so, even though there is sufficient evidence to disprove that assumption. However, through the process of erasure, any contrary evidence is ignored. Unfortunately, this ideology is not limited to employers. The judicial system has both supported and rejected this belief. The court in *Gloor* sided with Gloor's English Only policy since English, "spoken well or badly" is the language of the land. Conversely, in *Gutierrez*, the Municipal Court attempted to make the correlation between operating a business in America and using English, though the court rejected this notion. The Municipal Court's argument further illustrates the confusion caused by Official English legislation at the state level. Although California has a constitutional amendment declaring English as the official language of the state, the goal of which is to "preserve, protect, and strengthen," it does *not* state that business—governmental or private—needs to be conducted exclusively in English.

For both employers and the courts, unable to utilize race or religion as a defining characteristic, the use of English is still acceptable in defining the borders and identity of America. As we've seen, it is the whole of language use, not just accent as Lippi-Green has suggested, which remains the "last backdoor to discrimination."

A Single Language Ensures Racial Harmony

The idea that employees could all get along if they had a common language was explicitly appealed to in *Gutierrez, Gonzalez, Dimaranan, Spun Steak, Long, Martinez, Roman* and subtly hinted at in *Tran, Velasquez, Rosario, Cosme, and RD's*. The court in *Prado* also utilized this belief in reaching its decision. However, it is not the languages of the majority of employees or customers that determine the business's definition of "common." Instead it is based on the language that is common among the managers, who might be the minority in terms of numbers, but hold the most power within the company. This plays out on a macro scale as well. Although English speakers remain the majority group within the United States, their hold on that status is slipping. As the "common" becomes less common, they work harder to ensure they maintain their position of power, even as they become the minority. The idea that English is a unifying force is self-serving, at best. If a single language ensured harmony, and multiple languages caused chaos, then Ireland would be at peace and Switzerland would be torn by civil war.

If You Know English, You Have No Right Using Another Language

Most of the cases discussed were decided in favor of the businesses because employees could speak English and therefore would have no hardship in following the companies' English Only policies (*Gloor, Gonzalez, Dimaran, Spun Steak, Kania, Roman, Rosario*). English is presumed to be the most desirable, most logical language choice, and once it is "mastered" there would be no reason to fall back on one's native language. The belief that because an employee *can* do something they *must* do something was rejected by some of the courts (*Spun Steak* dissent, *Premier*), but upheld by most others. There is an assumption that bilinguals have two distinct, compartmentalized languages, and that Spanish should, and can, be switched off until the employees get home. Zentella (2002) addresses the problems caused when monolinguals believe languages are separate sets of rules instead of "flexible symbolic systems of communication that are enmeshed with the speakers' identities and the communicative context" (p. 328). It is only when businesses begin to question the presumed natural superiority of English and accept that languages other than English are intrinsic to their employees that language discrimination in the workplace will cease.

Businesses Know What Is Best for English Language Learners

In both *Gloor* and *Prado*, the businesses knew that their employees needed to improve their English and the best way is practice, practice, practice. This need for repetition is also implicit in *Cosme* as the supervisor repeatedly asks Cosme to try her response in English. Cosme is apparently expected to be grateful for this attention, rather than frustrated by it. Embedded here is the assumption that English is everyone's target language. Businesses assume their employees need English to function in their daily lives and therefore are doing employees a favor "offering" them the opportunity to use English at their workplace. However, as Goldstein (1997) illustrated, many immigrants do not need English, either outside or at work in order to be successful. Finally, there is the notion that languages are easily learnt. Since it required no special training for monolingual English speakers to learn their native tongue, they presume it will be as easy for others to acquire. Voluminous amounts of data in the field of second language acquisition would disprove this assumption (see Gass & Selinker, 2001 for an introduction).

The Rights of Monolingual English Speakers Must Be Protected

English speakers have the right to understand everything being said around them, according to nearly every case examined. Three different classes of hearers are identified: the customer (*Gloor, Rivera*), the manager (*Gloor, Gutierrez, Gonzalez, Spun Steak, Long, Prado, Tran, Rosario, Cosme, RD's*), and coworkers (*Gutierrez, Gonzalez, Dimaranan, Spun Steak, Long, Martinez, Kania, Tran, Roman, RD's*). Managers and coworkers appear to suffer strongly from linguistic paranoia, some apparently with good cause (*Dimaranan, Long*). However, rather than dealing with the specific behavior of specific individuals, policies affecting large groups of employees are enacted to ensure monolingual listeners are not talked about. The fear that only bilinguals would be able to be managers of bilingual employees appeared in the dissent of *Gutierrez* and *Prado*, though exactly such an outcome was suggested by the courts of *Gutierrez* and *Rosario*. It is argued that those of African and Asian ancestry would be restricted from moving into management positions because they do not speak Spanish. (This is an assumption in itself about what a Spanish speaker looks like. For example, the Caribbean contains many

people of African heritage who speak Spanish). By claiming they are looking out for the best interests of (non-Spanish speaking) protected minority groups, monolingual English speakers are able to ensure they do not lose their positions of power.

The belief that English speakers have the right to understand everything being said leads to a corollary belief that employees use a language other than English in order to hide what they are talking about. These speakers appear to embody a wide array of deviant behaviors, but once English is mandated, these behaviors apparently disappear. English represents appropriate behavior while undesirable traits seem to be embedded in other languages directly. This process is named *iconization* by Irvine and Gal (2000), which is the belief that the qualities of a society are mirrored in the qualities of their language. Recently this has been illustrated by Huntington (2004) who warns that unless Mexican immigrants start using English, America is going to face the erosion of its core values—the rights of individuals, the rule of law, a work ethic, and the ability and duty to create a better world—which will be replaced by Hispanic traits such as a lack of ambition or self-reliance, a lack of a work ethic or desire to be educated, a distrust of those outside of the family, and acceptance of poverty (notice that Latino traits are identified negatively as a “lack” of American values, when they could just have easily been cast in a positive light). This characterization of languages other than English (and their speakers) as the polar opposite of the values implicit in English language (and subsequently its speakers) occurs repeatedly in the cases reviewed above.

Speakers of Other Languages Are...

Insubordinate. Though explicitly stated in *Cosme*, other businesses believed their employees were purposefully avoiding the use of English to get at the supervisors (*Gotfryd, Rosario*). It was a generally held belief by most businesses, and the courts that heard their cases, that bilingual speakers just did not feel like using English, though they were perfectly capable of it. *Gloor's* court spoke of the “language one chooses to speak” and the “deliberate disregard” of English, and *Spun Steak* pointed out using English was merely an “inconvenience” for bilinguals. Again, there is the assumption that English is the natural choice, and that any other is a deviation from the (mythical) norm. Insubordinate, is of course, a word used by authorities to describe those they feel they

ought to have control over and yet do not. From the other perspective, they are asserting their rights or independence, as the founders of this country called it.

Discourteous. A common refrain was that using English was socially appropriate, thereby implying that other languages (and their users) were purposefully rude. *Gutierrez*'s dissenters stated the case was really about "common courtesy," as did the supervisors in *Long*. Spanish was "inappropriate and inconsiderate" in *Roman*, Tagalog was "rude and disruptive" in *Dimaranan*, and Polish was labeled "offensive and derisive" in *Kania*. Worse, employees suffered "humiliation" at the hands of Spanish speakers in *Spun Steak*. The languages themselves seem as guilty of misconduct as those who speak them.

Disruptive. Languages other than English interfere with monolinguals' ability to work productively. The Municipal Court in *Gutierrez* worried that Spanish between coworkers created a "Tower of Babel" in the workplace (nevermind there would be the constant use of Spanish with clients throughout the workday). The lunchroom conversations in *Gonzalez* seemed to disrupt the typing pool when they were conducted in Spanish, but apparently not when they were in English. As mentioned above, *Dimaranan*'s use of Tagalog was labeled disruptive by her coworkers, and non-Spanish speakers feared for their safety in *Spun Steak* since the use of Spanish distracted them while they operated machinery, though conversing in English themselves was not a problem. Whereas English is a legitimate code of communication, other languages appear to be nothing but annoying, distracting noise.

Engaged in a bad habit. Though most courts upheld the belief that using English was simply something that employees needed to get used to, none went as far as *Gloor*'s, which equated using Spanish to smoking. Although an employee might be willing to engage in risky and harmful behavior, there is no reason a business should be expected to sanction it. The need and or desire to speak Spanish is nothing more than a craving. Accompanying this is the notion that other languages can be "quit" through the steady reinforcement of a good habit like using English throughout the workday.

Violent. *Premier Operator* equates Spanish with guns, knives and weapons, whereas the plaintiff in *Argueta* is dismissed for using a bagel in a confrontation. Again, the

identity constructed for those who use Spanish is based on stereotypes the majority maintains (see Huntington's stereotypes above).

Vulgar. In *Gonzalez*, they discuss condoms in the workplace, while the language policy in *Tran* is enacted to prevent him from further sexually harassing coworkers. *RD*'s claims the Navajo "trash talk" made its policy necessary. Of course there are many cases where English speakers have engaged in sexual harassment or held inappropriate conversations. However, none of those cases blamed the language the comments were delivered in, but rather held the individuals responsible. In these English Only instances, the removal of the language is viewed as the solution, which presumes the language is somehow innately connected to inappropriate behavior.

SUMMARY JUDGEMENT

With the exception of *Gutierrez* (which was vacated) and *Premier Operator*, all courts have granted the employer the right to dictate which privileges employees can enjoy during company time—including which languages they are allowed to use and when. In each instance, the courts have repeatedly upheld *Gloor*'s assertion that bilingual speakers *can* and *must* speak English when it is mandated, and there is no undue burden placed upon them, perhaps only an inconvenience. Several critics have used the "back of the bus" metaphor (*Spun Steak* dissent, *Premier Operator*) noting that just because African-Americans had the ability to sit in the back of a bus during the days of segregation did not mean the practice was not discriminatory. In both cases the comfort of the dominant group was given higher regard than the rights of the minority group, and the minority was forced to keep its ethnicity out of view.

As bleak as these cases appear, there is some hope. Blanket English Only policies have consistently been found illegal, with both the EEOC and courts acknowledging that employees have a right to the language of their choice during their breaks and lunches. The EEOC reports an increase in the number of English Only investigations it is conducting, up 600%, from 32 in 1996 to 228 to 2002 (Michigan Employment Law Letter, 2003). While this might not seem like good news, it's less an indication of a rise in instances than it is of a rise in profile within the workforce and priority within the

EEOC department. Both employers and employees are being educated about language rights in the workplace, and while the court's position on the EEOC Guidelines is only mildly supportive, most employers are settling with the EEOC and amending their policies without taking the complainant to court.

Additionally, English speakers are becoming more vocal about the need for monolinguals to learn Spanish. The Governor of New Mexico called for the citizens to become bilingual in order to increase productivity. He remarked: 'I wish I knew Spanish better than I do.... Had I had Spanish as a young student, it would be very helpful to me in my job (Las Cruces Sun-News, February 6a, 1987, 1A)' (Dubois, 1990, p. 234). Chef Anthony Bourdain agrees with the courts' suggestions that management needs to learn the language of their employees.

Suggestions for those considering chef-life: Learn Spanish! I can't stress this enough. Much of the workforce in the industry you are about to enter is Spanish-speaking. The very backbone of the industry, whether you like it or not, is inexpensive Mexican, Dominican, Salvadorian and Ecuadorian labor—most of whom could cook you under the table without breaking a sweat. If you can't communicate, develop relationships, understand instructions and pass them along, then you are at a tremendous disadvantage. Should you become a leader, Spanish is absolutely *essential*. (2000, pp. 289-290)

President Clinton stated that he hoped he would be "the last president in American history who can't speak English" (Huntington, 2004). As evidence that his wish may be granted, President Bush has instated a tradition of giving his early May radio address in Spanish to coincide with Cinco de Mayo. Additionally, the Democratic response to the 2004 State of the Union address was given by New Mexico Governor Bill Richardson in Spanish, and Democratic presidential nominee John Kerry claims to be listening to Spanish language tapes when he is campaigning. The increasing number of Spanish language political ads run by both parties during the 2004 presidential campaign also illustrates that politicians have become more aware of Spanish speaking voters and value their support. Though surely no one believes the politicians' use of Spanish is purely altruistic and done to further language rights, the ends might justify the means. Though

campaign promises are never guaranteed, it would be difficult for a candidate to ask for the Latino vote *in Spanish* and then, once in office, support an English Only agenda. Similarly, once businesses fully realize the capitalist value of the country's Spanish speakers, perhaps the humanitarian value will emerge and language rights for all speakers will prevail.

For language (and concurrent identity) rights to truly progress, the monolingual population needs to be educated about what language really means, for an individual and for a society. What monolinguals are asked to give up—complete comprehension and the security and surety that come from it—pales in comparison to what they expect bilinguals to give up.

We cannot do without our tongue without brutally mutilating our individual consciousness, without being left without blood. If this is so, is it reasonable to ask millions of human beings to do without this fundamental part of their lives solely so that others are not inconvenienced, or in order to comply with a few debatable rules of urbanity? Is it not more sensible and less painful to explain to monolingual Americans that to live in places where various tongues converge can have a certain enriching enchantment, because diversity is also an expression of cultural riches? (Montaner, 1992, p. 164)

Perhaps the judicial system is beginning to see that an ideology based on homogeneity does not benefit the country. In his 1998 decision in *Webb v. R&B Holding*⁴, Judge James King writes,

“Over the years, work environments have come to reflect our increasingly multi-cultural world. With the coming together of numerous diverse ethnicities and cultures in the common workplace, there are bound to be not only instances of cultural harmony but also some occasions of cultural friction.”

Instead of restricting language use, businesses should work toward maximizing the potential that diversity brings to the workplace. As businesses have accepted varieties of race, religion, and gender working together, they must embrace varieties of language as well. This nation of immigrants prides itself on being populated by “rugged individuals.”

⁴ An African-American clerk sued her company because they would not create an English Only policy, and claimed that being “subjected to a Spanish speaking working environment” created a hostile work environment. Judge King quoted the EEOC Guidelines favorably in supporting the defending business.

It needs to expand its self-definition to include the individuality and identity of its entire population, not just those who are limited to English Only.

A Summary of Court Cases Involving English Only Workplace Policies

Year	Case	Location	Court	Language	Employer’s reason for English Only Policy	Outcome
1979	<i>Saucedo v. Brothers Well Service, Inc.</i>	Texas	Houston District Court	Spanish	Safety	Found for plaintiff.
1980	<i>Garcia v. Gloor</i>	Texas	5 th Circuit Court of Appeals	Spanish	Customer preference; Sales staff must be fluent in English to read literature; Good practice; Better management	Found for defense.
1987	<i>Jurado v. Eleven-Fifty Corporation</i>	California	9 th Circuit Court of Appeals	Spanish	Business can control product	Found for defense.
1988	<i>Gutierrez v. Municipal Court</i>	California	9 th Circuit Court of Appeals	Spanish	Creates racial harmony; Better management; United States and California are English speaking; Spanish is disruptive and creates a “Tower of Babel”; English Only is required by the California constitution	Found for plaintiff, but US Supreme Court vacated & has no precedential value.
1991	<i>Gonzalez v. Salvation Army</i>	Florida	Tampa District Court	Spanish	Creates racial harmony; Better management	Found for defense.
1991	<i>Dimaranan v. Pomona Valley Hospital</i>	California	Central California District Court	Tagalog	Creates racial harmony	Found for defense.
1993	<i>Garcia v. Spun Steak</i>	California	9 th Circuit Court of Appeals	Spanish	Creates racial harmony; Safety; Better management—increases quality of product	Found for defense.
1995	<i>Long v. First Union Bank</i>	Virginia	4 th Circuit Court of Appeals	Spanish	Creates racial harmony	Found for defense.
1997	<i>Prado v. L. Luria & Son</i>	Florida	Southern Florida District Court	Spanish	Good practice; Better management	Found for defense.
1998	<i>Kania v. Archdiocese of Philadelphia</i>	Pennsylvania	Eastern Pennsylvania District	Polish	Creates racial harmony	Found for defense.
1998	<i>Tran v. Standard Motor Products</i>	Kansas	Kansas District Court	Vietnamese	More effective communication; Safety; Creates racial harmony	Found for defense.
1998	<i>Rivera v. Baccarat</i>	New York	Southern New York District	Spanish	courtesy to customers	Found for plaintiff, on other counts. Supreme Court vacated the judgment.
1998	<i>Martinez v. Labelmaster</i>	Illinois	Northern Illinois District Court	Spanish	Creates racial harmony	Found for plaintiff, on other counts.
1999	<i>Gotfryd v. Book Covers</i>	Illinois	Northern Illinois District Court	Polish	none given	Found for defense.
1999	<i>Roman v. Cornell University</i>	New York	Northern New York District Court	Spanish	Creates racial harmony	Found for defense.
2000	<i>Velasquez v. Goldwater Memorial Hospital</i>	New York	Southern New York District Court	Spanish	Creates racial harmony	Found for defense.
2000	<i>EEOC v. Premier Operator Services, Inc.</i>	Texas	Dallas District Court	Spanish	none given	Found for plaintiff. \$700,000 awarded.

2001	<i>Rosario v. Cacace</i>	New Jersey	New Jersey Superior Court	Spanish	Better management (presumed reason)	Found for defense.
2003	<i>Cosme v. Salvation Army</i>	Massachusetts	Massachusetts District Court	Spanish	none given	Found for defense.
2003	<i>Argueta v. North Shore.</i>	New York	Eastern New York District Court	Spanish	none given	Found for defense.
pend- ing	<i>EEOC v. RD's Drive In</i>	Arizona	Phoenix Civil Court	Navajo	Better management; Creates racial harmony	pending.

Court Cases and their Sources

Aguilar	Aguilar v. St. Anthony Hospital 07 F. Supp. 2d 747 (N.D. Ill. 2001)
Argueta	Argueta v. North Shore Long Island Jewish Health System (E.D. NY 2003)
Carino	Carino v. University of Oklahoma Board of Regents 750 F. 2d 815 (10 th Cir. 1984)
Cosme	Cosme v. Salvation Army 284 F. Supp. 2d 229 (D. Mass. 2003)
Dimaranan	Dimaranan v. Pomona Valley Hospital 775 F. Supp. 338 (C.D. Ca. 1991)
Fragante	Fragante v. City and County of Honolulu 699 F. Supp. 1429 (D Hawaii 1987)
Gloor	Garcia v. Gloor 618 F.2d 264 (5 th Cir. 1980)
Gonzalez	Gonzalez v. Salvation Army 89-1679-CIV-T-17 (11th Cir. 1991)
Gotfryd	Gotfryd v. Book Covers No. 97 C 7696 (N.D. Ill. 1999)
Gutierrez	Gutierrez v. Municipal Court 838 F.2d 1031 (9th Cir. 1988)
Jurado	Jurado v. Eleven-Fifty Corporation 813 F.2d 1406 (9th Cir. 1987)
Kania	Kania v. Archdiocese of Philadelphia 14 F. Supp. 2d 730 (E.D. Pa. 1998)
Long	Long v. First Union Bank 894 F. Supp. 933 (E.D. Va. 1995)
Marquez	Marquez v. Baker Process 42 Fed. Appx. 272 (10 th Cir. 2002)
Martinez	Martinez v. Labelmaster

	No. 96 C 4189 (N.D. Ill. 1998)
Olivarez	Olivarez v. Centura Health Corp. 203 F. Supp. 2d 1218 (D. Co. 2002)
Prado	Prado v. L. Luria & Son 975 F. Supp. 1349 (S.D. Fla. 1997)
Premier Operator	EEOC v. Premier Operator Services, Inc. 113 F. Supp 2d 1066 (N.D. Tex. 2000)
RD's	EEOC v. RD's Drive In Civ 02 1911 PHX LOA
Rivera	Rivera v. Baccarat, Inc. 2000 US App., 10 F. Supp. 2d 318 (S.D. NY. 1998)
Rivera (b)	Rivera v. Nibco 204 F.R.D. 647 (E.D. Ca. 2001)
Roman	Roman v. Cornell University 53 F. Supp. 2d 223 (N.D. NY. 1999)
Rosario	Rosario v. Cacace 337 N.J. Super. 578 (2001)
Saucedo	Saucedo v. Brothers Well Service, Inc. 464 F. Supp. 919 (S.D. Tex. 1979)
Smothers	Smothers v. Benitez 806 F. Supp. 299 (D. P.R. 1992)
Spun Steak	Garcia v. Spun Steak 998 F.2d 1480 (9 th Cir. 1993)
Tran	Tran v. Standard Motor Products 10 F. Supp. 2d 1199 (DC. Kansas 1998)
Webb	Webb v. R&B Holding 992 F. Supp. 1382 (S.D. Fla. 1998)
Vasquez	Vasquez v. McAllen 660 F. 2d 686 (5 th Cir. 1981)
Velasquez	Velasquez v. Goldwater Memorial Hospital 88 F. Supp. 2d 257 (S.D. NY. 2000)

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