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**Accent, standard language ideology, and  
discriminatory pretext in the courts**

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**ABSTRACT**

Title VII of the U.S. Civil Rights Act clearly forbids an employer to discriminate against persons of color for reasons of personal or customer preference. Similarly, a qualified job applicant may not be rejected on the basis of linguistic traits linked to national origin. In contrast to racial discrimination, however, an employer has considerable latitude in matters of language, provided in part by a judicial system which recognizes *in theory* the link between language and social identity, but in practice is often confounded by blind adherence to a standard language ideology. The nature and repercussions of this type of linguistic discrimination are here explored. (Language and law, accent, discrimination, standard language ideology, critical language studies)\*

“The stranger within my gate,  
He may be true or kind,  
But he does not talk my talk –  
I cannot feel his mind.  
I see the face and the eye and the mouth,  
But not the soul behind.  
The men of my own stock,  
They may do ill or well,  
But they tell the lies I am wonted to,  
They are used to the lies I tell;  
And we do not need interpreters  
When we go to buy and sell.”  
Rudyard Kipling

In 1965, at the age of 29, Sulochana Mandhare left her home in Maharashtra, India, and came to the United States. At that point in her life, Ms.

Mandhare – a native speaker of Marathi – had been studying English for almost 20 years.

Ms. Mandhare is soft-spoken; she speaks an English which is characterized by full vowels in unstressed syllables, distinctive intonation patterns, aspirated fricatives, and a lack of distinction between initial /v/ and /w/. She is an intelligent and articulate woman, and she tells her story in a clear and completely comprehensible language.

After some time in the U.S., Ms. Mandhare relates, she decided to continue her education. She had arrived with undergraduate degrees in both liberal arts and education; but she returned to school, and in 1972 completed a master's degree in education at New Orleans's Loyola University. In 1979 she was certified as a school librarian after completing a program at Nichols State University. After working for one year as an elementary school librarian, Ms. Mandhare applied for and was given a job as a librarian at a school serving kindergarten through second grade in the Lafargue, Louisiana, school district, for the 1980–81 school year.

Ms. Mandhare speaks of that year as a happy and successful one. Her responsibilities were to oversee the small library, read stories to the children, and introduce them to using the resources; she enjoyed this work. Therefore, when in April 1981 she was told that her contract would not be renewed because of her “heavy accent, speech patterns, and grammar problems” – in spite of her excellent skills as a librarian (*Mandhare* 1985:240–41) – she was stunned and angry.<sup>1</sup> She investigated her options; and because she understood that the U.S. Civil Rights Act prohibits discrimination by national origin in the workplace, she filed suit. This civil action was decided in Ms. Mandhare's favor, but the decision was reversed by the U.S. Court of Appeals in favor of the school board.<sup>2</sup>

Ms. Mandhare's case, and others like hers, are important because they provide real-life examples of many phenomena which have long been of interest to linguists. There is a body of work on the processes involved when listeners evaluate speakers (Lambert et al. 1960, Carranza & Ryan 1975, Rickford 1985), on social stereotyping based on language (Lambert 1967, Giles & Ryan 1982), on the psychological processes involved in speech accommodation (Giles 1984, Giles & Coupland 1991), on the cognitive processes which structure collaboration in discourse (Clark & Wilkes-Gibbs 1986), and on language-focused discrimination (Labov 1969, Giles 1971, Kalin & Rayko 1978, Milroy & Milroy 1985, Rickford & Traugott 1985). More recently, there has developed a body of work on the relationship among institutionalized power constructs, ideology, and language (Thompson 1984, Kress 1985, Fairclough 1989). But in spite of such extensive inquiry, many areas remain unexplored. One such area is the range of ways in which *accent* is defined, and how it is put to use.

*Accent* is used by phoneticians to discuss pitch or stress, or by orthog-

raphers to refer to specific diacritics. More generally, however, the term is used as a loosely defined reference to sets of distinctive differences over geographic or social space, most usually phonological and intonation features. In the case of second language learning, accent may refer to the carryover of native language phonology and intonation into a target language.

One of the first, and sometimes most difficult, lessons for a linguist in training is the abandonment of subjective evaluations. In the pursuit of knowledge about the structure and function of language, heavily influenced by scientific method, *belief* has no place; it can serve only to obscure the process of discovery. Linguists proceed on the assumption that all naturally occurring languages, whether or not they have a literate tradition, are equally functional and have the same potential to develop further functions as necessary; there has been no evidence in the many years of inquiry to disprove this basic thesis. Linguists further differentiate language from speech, speech from communication, and fluency from communicative competence. (Like accent, *fluency* is a general term without technical definition.) The crucial concept of communicative competence is defined as the ability to use and interpret language in a stylistically and culturally appropriate manner. This moves far beyond the set of phonological and intonation features which bundled together may be marked as accent.

The general public, however, does not make such distinctions. For most people, accent is a dustbin category: it includes all the technical meanings, and a more general and subjective one: accent is how *the other* speaks. It is the first diagnostic for identification of geographic or social outsiders. For a native of the north side of Chicago – a cab driver, elementary school teacher, or district judge – all the following “have an accent”: people from southern Indiana, Georgia, Brooklyn, England, or South Africa; the native speaker of African American English Vernacular who lives down the street or west of the Loop; the co-worker from Jamaica; and the man selling papers on the corner whose Guatemalan phonology and intonation shine through into his English. No distinction is made between pidgin or creole, socially or geographically based variation, native or nonnative language: they are all just accents, which may be described as adenoidal, barbarous, broad, cute, distinct, educated, flat, foreign, funny, guttural, harsh, heavy, lilting, nasal, posh, provincial, quaint, rough, rustic, sing-song, strong, and uneducated (McArthur 1992:10). The subjective nature of these qualifiers is clear.

Much of linguistic variation is structured around social identity. Linguists know this, but nonlinguists know it too, and act on it: accent becomes both manner and means for exclusion. The fact is, however, that when people reject an accent, they also reject the identity of the person speaking: his or her race, ethnic heritage, national origin, regional affiliation, or economic class.<sup>3</sup> Thus the concept of accent, so all-encompassing in the mind of the public, is a powerful one which needs to be investigated.

In the remainder of this article, my goal is to illustrate the nature and some of the repercussions of accent discrimination. In the process, I hope to demonstrate that accent – particularly when associated with racial, ethnic, or cultural minorities – is most likely to pose a barrier to effective communication when two elements are lacking. The first element is a basic level of communicative competence on the part of the speaker, *independent* of L1 phonology and intonation. The second element, even more important but far more difficult to assess, is the listener's goodwill. Without that goodwill, the speaker's command of the language, i.e. his or her degree of communicative competence, is irrelevant. Prejudiced listeners cannot hear what a person has to say, because accent, as a mirror of social identity and a litmus test for exclusion, is more important.

After a more general discussion of background issues, the examination of accent discrimination, referred to here more specifically as *language-trait focused* (LTF) discrimination, is limited because of space considerations to the workplace and the courts. More generally this is the beginning of an exploration of why so many of us continue to use linguistic traits to rationalize and justify discrimination of all kinds – and to tolerate such discrimination, even when it is directed toward ourselves.

#### STANDARD LANGUAGE IDEOLOGY

In matters of language history, structure, function, and standardization, the average individual is, for the most part, simultaneously uninformed and highly opinionated. When asked directly about language use, most people will draw a very solid basic distinction of "standard" (proper, correct) English vs. everything else. If asked for a more exacting definition, most will not be able to provide it, or will couch it in terms of salient features of nonmainstream language varieties: "Proper English is having your subjects and verbs agree"; "Why can't they see that the word is spelled *a-s-k*, not *a-x*?"; "[kwɔfi] – that sounds so ignorant."

LTF discrimination stems primarily from the acceptance of a *standard language ideology* (a term coined by Milroy & Milroy 1985). The definition used here is: a bias toward an abstracted, idealized, homogeneous spoken language which is imposed from above, and which takes as its model the written language. The most salient feature is the goal of suppression of variation of all kinds.<sup>4</sup>

What is the source of the standard language (SL) ideology? How is it "imposed from above"? Who is responsible for its propagation?<sup>5</sup>

SL ideology is part of a greater power construct, a set of social practices on which people depend without close analysis of underlying assumptions. In a thought-provoking discussion of the relationship between language and social power, Fairclough (1989:33) points out that this institutionalization of

behaviors which originate with the dominant bloc (an alliance of those who see their interests as tied to capital and capitalism) functions to keep separate the powered and the disempowered:

Ideological power, the power to project one's practices as universal and "common sense," is a significant complement to economic and political power, and of particular significance here because it is exercised in discourse . . . There are . . . in gross terms two ways in which those who have power can exercise it and keep it: through coercing others to go along with them, with the ultimate sanctions of physical violence or death; or through winning others' consent to, or at least acquiescence in, their possession of exercise of power. In short, through *coercion* or *consent*.

The SL ideology is one route, and a major one, to establishing consent. There are four immediately identifiable proponents of SL ideology, all of which are part of the "dominant bloc": the educational system, the news media, the entertainment industry, and what has been generally referred to as corporate America. At the end of this article, I argue for adding the judicial system to this list.

*The educational system and standard language ideology*

Much of what the American educational system teaches children about language is factually incorrect; in this it is thorough, consistent, and successful across social and economic boundaries. The phenomenon has been observed by others:

It is a tribute to our educational system that the overwhelming majority of Americans have been instilled with a rocklike conviction that certain linguistic forms are correct, while others are wrong. Even those Americans who are uncertain about precisely which forms are correct are usually confident that to find the answer they need only look the matter up in the right book or consult the proper authority. (Burling 1973:130)

These are strong statements, but they are easily verified. Everyone has anecdotes about language arts instruction from their elementary school education, but stronger evidence is available in a wide range of texts written for teachers and children. The underlying message is clear in each of the following examples.<sup>6</sup>

(a) A direct link between "nonstandard" language and lack of logic and clarity, with blurring of the written/spoken boundaries:

Almost any sentence or sentence fragment may be acceptable in casual conversation. In more formal speaking and writing, however, nonstandard grammar is rarely acceptable. We need to know how to speak and write

in complete, grammatical sentences that convey our thoughts clearly to others. (Ragno et al. 1987:T22)

(b) There is one correct way to speak and write English:

[This series of textbooks] focuses on grammar study, listening and speaking skills, and correct usage. (Strickland 1983:T21)

(c) Overt authoritarianism:

Practice saying the following combinations of words. Avoid slurring any sounds, such as *whacha* for *what do you* . . . *Whip* is pronounced *hwip*, not *wip* . . . pronounce the following troublesome words correctly. Consult the dictionary if you are in doubt . . . Twenty-five words often misspelled because of faulty pronunciation: *busy, which, since, history* . . . (John et al. 1975:28-9)<sup>7</sup>

SL ideology is found at work not just in textbooks and language arts instruction classrooms, but also in school administration. In 1987, the Board of Education of Hawaii put forth a proposed policy on "Standard English and Oral Communication," which would have outlawed Hawaiian Creole English (HCE) in the schools. A survey of 986 graduating seniors, conducted by a Honolulu newspaper, indicates how well many of those students were indoctrinated in the SL ideology, and serves as an illustration of the ideology's close relationship to issues of race and economics.

Whereas only 26 percent of the private school students surveyed felt that HCE use should be allowed in school, 54 percent of the public school students supported this idea . . . Comments ranged from "Pidgin English fosters illiteracy," "Pidgin is a lazy way to talk; it promotes backward thinking," and "Correct English will get you anywhere" to the polar opposites of "Banning pidgin would violate our freedom of speech," "Pidgin is a natural language," and "It's our way to make Hawaii different from anywhere else in the United States." (Verploegen 1988, as cited by Sato 1991:654)

Many empirical studies of American students also illustrate this phenomenon. Using matched-guise testing, Carranza & Ryan 1975 showed that African-American, Anglo, and Hispanic students all found Spanish-accented English to be lacking in prestige and inappropriate for a classroom setting;<sup>8</sup> in Ryan et al. 1977, "Small increments in accentedness were found to be associated with gradually less favorable ratings of status, solidarity, and speech characteristics" (summarized by Eisenstein 1983:173).

Are there no examples of educators with more informed and enlightened approaches to diversity in language? teachers who strive to teach children to read and write, and at the same time respect the sanctity of the home lan-

guage and social identity? teachers who question underlying assumptions, and who do not automatically contribute to the propagation of the current power distribution? Of course there are. Take for example Mary Berger of Columbia College in Chicago – who, as an English teacher, “teaches standard style to augment, not replace, dialect” (Warren 1993:2). The *Chicago Tribune* found Ms. Berger’s methods so remarkable that they ran an article on her approach, and highlighted her classroom practice of “[not] scold[ing] her black students . . . when they said ‘ax’, rather than ‘ask’ . . . ”

For the most part, however, teachers are bound by the standard language ideology. For example, almost exactly 15 years after the controversial *King* case was decided in Ann Arbor, parents of African American middle school students complained to the school board about a teacher who allegedly had been ridiculing Black students for using their home language, specifically for saying *ax* instead of *ask* (Windsor 1993:C1, C3).<sup>9</sup>

Standard language ideology is a basic construct of our elementary and secondary schools’ approach to language and philosophy of education. The schools provide the first exposure to SL ideology, but the indoctrination process does not stop when the students are dismissed.

#### *The media and the standard language ideology*

The media – and by this is usually meant national broadcasting institutions – have taken on the job of defending the “national culture” (Cormack 1993: 102–3), which means the propagation of a homogeneous nation-state, in which every one must assimilate or be marginalized. As part of this process, the print and broadcast news media and the entertainment industry take on the job of reinforcing SL ideology on a daily basis.<sup>10</sup>

Perhaps the most pervasive representative of the standard language ideology is the news media. This is accomplished, in part, by means of language-conscious reporting, which is prescriptive without factual basis. It is sometimes also overtly discriminatory. An excellent example of this is the Hawai’ian print media coverage of Governor John Waihe’e, whose code-switching between HCE and creole-accented English is made an issue, and whose grammatical “errors” are corrected (reported by the National Public Radio show “All Things Considered,” September 12, 1990; also verified by the show’s reporter William Drummond, p.c.).

More usually, complaints about language use are tucked away as an afterthought, but the underlying message is clear: there is a right and a wrong way to talk, and it is perfectly acceptable, even judicious, to censor and punish those who do not conform:

Residents of Brooklyn, New York, have long been known – and sometimes mocked – for their heavy accents. Ginny Most reports on a group of students who are trying to learn to talk right – or should I say *correctly*.

[G.M.]: Some people have a funny way of saying what flows under the Brooklyn Bridge . . . [Student]: “wata – it’s so ugly” . . . (*CNN Headline News*, March 12, 1993)

Ungrammatical street talk by black professional athletes, and other blacks in public professions such as the music industry, has come to be accepted . . . The dilemma is that it doesn’t make much difference for the black professional athletes, etc., who talk this way – they’re wealthy men who are going to live well off their bodily skills no matter if they can talk at all, much less correctly . . . (Bob Greene’s sports column, *Chicago Tribune*, December 3, 1979)<sup>11</sup>

We like Hahn, 34, who was born in South Korea and whose positions on controlling growth are much like our own. Unfortunately, we think his heavy accent and somewhat limited contacts would make it difficult for him to be a councilman. (“For Santa Clara County,” *San Jose Mercury News*, October 18, 1988, as cited in Matsuda 1991:1346)

[Oprah] is an image. So is Jesse Jackson . . . They can effectively articulate with subject and verb agreement. And if it had not been for God who gives us the wisdom – we have to attribute this to God – to know how to sound, to articulate and to know how to use subject-verb agreements, we wouldn’t be where we are today. (Toni Tucker, African-American talk show host, as audience member on “Black English,” *Oprah Winfrey Show*, November 19, 1987)

Gov. Clinton, you attended Oxford University in England and Yale Law School in the Ivy League, two of the finest institutions of learning in the world. So how come you still talk like a hillbilly? (Mike Royko’s syndicated “Opinion” column, *Ann Arbor News*, October 11, 1992)<sup>12</sup>

The media claim that the intention is not to make news, but report it, and that they do not intend to serve as an agent of social change or an enforcer of norms. Of course, this line is crossed repeatedly by the media, simply by virtue of the topics chosen for reporting. In bringing to the public’s attention the boom in accent-reduction schools, and by slanting the tone of their reports toward an idealized standard, the media become complicit in the process of discrimination.

The SL ideology is introduced by the schools; it is vigorously promoted by the media, and (as is shown in the next sections) is further institutionalized by the corporate sector. Thus it is not surprising that many individuals do not recognize the fact that, for spoken language, variation is systematic, structured, and inherent, and that the *national standard* is an abstraction. What *is* surprising, even deeply disturbing, is the way that many individuals – though they consider themselves democratic, even-handed, and free of

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prejudice – hold tenaciously to a standard ideology which attempts to justify restriction of individuality and rejection of the *other*.

LTF discrimination can be found everywhere in our daily lives. In fact, such behavior is so commonly accepted, so widely perceived as appropriate, that it must be seen as the last widely open backdoor to discrimination.

### LTF DISCRIMINATION AND THE CIVIL RIGHTS ACT

Some types of LTF discrimination have been illegal *in the workplace* since 1964, when Title VII of the Civil Rights Act of 1964 (42 United States Code §§2000e-2000e-17 [1982]) was passed into law.<sup>13</sup>

Title VII provides recourse for workers who are discriminated against on the basis of race, color, religion, sex, or national origin.<sup>14</sup> However, it was not until 1980 that the Equal Employment Opportunity Commission (EEOC), a body created by Title VII, directly addressed trait-based discrimination.<sup>15</sup> In their *Guidelines on discrimination because of national origin*, revised on a regular basis, the EEOC currently defines national origin discrimination: “. . . broadly as including, but not limited to, the denial of equal employment opportunity because of an individual’s, or his or her ancestor’s place of origin; or because an individual has the *physical, cultural or linguistic characteristics* of a national origin group” (Federal Register 1988, ¶1606.1; emphasis added). The spirit of the law is clear: an employer may not reject a job candidate, or fire or refuse to promote an employee, because that employee externalizes in some way an allegiance to another culture.

In the case of racial discrimination, “It is clearly forbidden by Title VII to refuse on racial grounds to hire someone because your customers or clients do not like his race” (Matsuda 1991:1376, fn. 169). Similarly, a qualified person may not be rejected on the basis of linguistic traits that the employer or the employer’s customers find esthetically objectionable. In contrast to racial discrimination, however, an employer has some latitude in matters of language:<sup>16</sup> “an adverse employment decision may be predicated upon an individual’s accent when – but only when – it interferes materially with job performance” (Civil Rights Act of 1964, §701 et seq., 42 U.S.C.A. §2000e et seq.).<sup>17</sup>

Title VII is very limited in its scope. Under the law as it currently stands, discrimination on the basis of *regional* origination is not covered. An accent must be directly traceable to a specific national origin to be eligible for Title VII protection.

Raj Gupta, attorney counsel to the commissioner of the EEOC, states (p.c.) that some forces within the EEOC would like to see the definition of LTF-national origin discrimination made more comprehensive. So, in his example, a person from Appalachia would have recourse under Title VII

because the features of Appalachian are directly traceable to a number of dialects in Great Britain.<sup>18</sup>

*The legal process*

Alleged LTF-national origin discrimination cases usually begin when an individual files a complaint with the EEOC (or a similar agency on a state or local level). The employee may then file a civil action in the trial courts, in which he or she claims that civil liberties, as set out in the federal statutes known as the Civil Rights Act of 1964, have been violated. In some instances, these cases are brought to the courts not by the individual or group of individuals with the same complaint, but by a private agency acting for the injured party, such as the American Civil Liberties Union (ACLU), or by a government agency, such as the EEOC. This action may be initiated at the state level, as many states have adopted civil liberties legislation patterned on the federal statutes.<sup>19</sup>

An individual claiming LTF discrimination must first prove a *prima facie* case of disparate treatment, in four steps: (a) establishment of identifiable national origin; (b) proof of application for a job for which he or she was qualified, and for which the employer was seeking applicants; (c) evidence that the applicant was rejected in spite of adequate qualifications; and (d) evidence that, after such rejection, the job remained open, and the employer continued to seek applicants with the plaintiff's qualifications. After a *prima facie* case has been established, the burden shifts to the employer to rebut presumption of discrimination by articulating some legitimate, non-discriminatory reason for the action. If the employer does this, the burden shifts back to the plaintiff, to show that the purported reason for the action was pretext for invidious discrimination. The plaintiff can show the employer's pretext directly, by demonstrating that the employer was more likely motivated by discriminatory reasons; or indirectly, by showing that the proffered reason is unworthy of credence (Civil Rights Act of 1964, §701 et seq., 42 U.S.C.A. §2000e et seq.).

DISCRIMINATION IN THE WORKPLACE

In an excellent study of language and discrimination in the workplace in Great Britain, Roberts et al. 1992 provided numerous examples of discrimination focused on language, and directed toward ethnic and racial minorities. No such systematic and well-documented study exists for workers in the U.S., although this is an area of great importance. The evidence of discrimination provided here is limited to specific instances which have found their way into the legal system.

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TABLE 1. *Distribution of 25 LTF discrimination cases in the courts/EEOC hearings, by plaintiff's national origin*

Plaintiff's National Origin	No. Cases Filed	Court Found for <sup>a</sup>	
		Plaintiff	Defendant
<b>Asia, Pacific Rim</b>			
<i>Philippines: Lubitz, Fragante, Carino</i>	3	1	2
<i>Vietnam: Tran</i>	1	0	1
<i>China: Ang, Hou</i>	2	0	2
<i>India: Duddey, Mandhare, Patel</i>	3	1	1
<i>Cambodia: Xieng</i>	1	1	0
<i>Korea: Park</i>	1	1	0
Subtotal	11	4	6
<b>Caribbean/West Indies</b>			
<i>Dominican Republic: Meijja</i>	1	0	1
<i>Haiti: Stephen</i>	1	0	1
<i>Cuba: Rodriguez</i>	1	0	1
Subtotal	3	0	3
<b>Central/South America</b>			
<i>Venezuela: Dercach</i>	1	0	1
<i>Bolivia: Ipina</i>	1	0	1
Subtotal	2	0	2
<b>Eastern Europe</b>			
<i>Armenia: Vartivarian</i>	1	0	1
<i>Poland: Berke</i>	1	1	0
<i>Ukraine: Staruch</i>	1	0	1
Subtotal	3	1	2
<b>Africa</b>			
<i>Nigeria: Dabor</i>	1	0	1
<i>Liberia: Andrews</i>	1	0	0
<i>Ghana: Kpodo</i>	1	0	0
Subtotal	3	0	1
<b>Other</b>			
<i>African-American: Sparks, Edwards</i>	2	2	0
<i>Hawaiian Creole: Kahakua</i>	1	0	1
Subtotal	3	2	1
<b>Totals</b>	<b>25</b>	<b>7</b>	<b>15</b>

<sup>a</sup>Discrepancy in some of the totals is due to the fact that one case (Patel) was settled out of court; two others had not yet been decided (Andrews, Kpodo) at the time of this writing.

Table 1 provides a breakdown of 25 LTF-national origin discrimination cases heard in the federal and state courts and by the EEOC since 1972, with exceptions as noted. Further excluded or missing are cases which concerned the English-Only question (e.g. *H. Garcia*) and cases in which LTF discrimination played a minimal role in the plaintiff's arguments (*C. Garcia, Bell,*

and many others). In some of the cases included, both racial and national origin discrimination were at issue. In most of the cases, accent, language use, and communication figured prominently in the testimony, argumentation, discussion, and final opinion.<sup>20</sup>

How widespread is LTF discrimination? The General Accounting Office of the United States Government (GAO GGD 90-62 Employer Sanctions, 27) conducted a carefully designed statistical study of a stratified random sample of employers nationwide, and reported that 10% of their sample, or 461,000 companies employing millions of persons, openly if naïvely admit that they “discriminated on the basis of a person’s foreign appearance or accent” (ibid., 38). In hiring audits, specifically designed to detect discrimination on the basis of accent (telephone inquiries about advertised jobs), such discrimination was found to be prevalent (ibid.).<sup>21</sup> This type of behavior was documented again in *Carroll*, when an employment agency receptionist was directed by her manager to screen all persons inquiring over the telephone: to those who did not “speak right,” the job was closed. The receptionist was also told to make notations about the caller’s speech and accent (*Carroll*, 1173).

There are a number of possible reasons for the low number of documented cases. Employers who discriminate may do so in a nonblatant way; the persons discriminated against may be so accustomed to this treatment that they no longer react; if they are aware of the treatment, they may not know that they have legal recourse, or how to pursue it; complaints may be handled internally, and resolved before litigation becomes necessary. Of course, many people discriminated against on the basis of language may not find anything surprising or wrong about that fact. This is, after all, not the only society in the world that promotes a standard language ideology.

The bulk of the burden seems to fall, predictably, on the disenfranchised and the unassimilated. Cutler (1985:1164) claims that the manner of enforcement of Title VII “permits an employer to reject qualified applicants of a particular national origin as long as he hires more assimilated applicants of the same origin instead.”

Once cornered in a courtroom, what do the employers offer by way of excuses? The approaches taken by defendants range from the naïvely and openly discriminatory to the subtle.

In offering examples of Mr. Dercach’s communication problems, Mr. Moser explained that workers would ask Mr. Dercach what he wanted them to do, and then simply walk away, unable to understand. Mr. Moser refused to attribute such incidents to Mr. Dercach’s accent, but offered no other explanation. He said they just couldn’t understand him “like normal people with normal language.” (*Dercach*, 899)

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After listening to the transmission described by Dispatcher Mixon as *jar-gon*, . . . Rodriguez claims that during [a telephone] conversation Sgt. McElligat told him to “speak English like in Queens, New Jersey, not Little Havana.” Sgt. McElligat testified that he could not recall ever having talked to Rodriguez. (*Rodriguez*, LEXIS)

Managerial level employee Linda Sincoff told Xieng he was not being promoted because he could not speak “American.” (*Xieng*, Appeal Court Opinion, 5)

. . . the complainant’s supervisor had removed her because of concern about the effect of her accent on the “image” of the IRS, not any lack in either communication or technical abilities. (*Park*, EEOC press release dated June 8, 1988)

. . . the ability to speak clearly is one of the most important skills . . . we felt the applicants selected would be better able to work in our office because of their communication skills. (*Fragante* 1989:598)<sup>22</sup>

So the court has before it a plaintiff who claims that his or her basic civil liberties have been violated, and an employer who claims the right to make appropriate business decisions. How do courts handle this conflict? What factors, legal and otherwise, play a role in the decision-making process?

Some of those factors have to do with technicalities of the law and standards for evidence: in *Vartivarian*, for example, the plaintiff presented as evidence only double hearsay: “X said Y was angry because a person with an accent [plaintiff] had been hired behind his back.” There was no direct testimony, or any way to corroborate Vartivarian’s claims.

In some cases one must assume that a plaintiff may claim LTF discrimination when in fact none has taken place. Or there may be clear evidence of LTF discrimination which the court overlooks because there is, in addition, a bona fide reason to deny employment. In *Dercach*, the court felt that blatant LTF discrimination could not mitigate the fact that the plaintiff, while hardworking and knowledgeable, was illiterate. Because the job required close work with a written code book, and the ability to write multiple reports on a weekly basis, the court found for the defendant.

The courts have stated that “there is nothing improper about an employer making an honest assessment of the oral communications skills of a candidate for a job when such skills are reasonably related to job performance” (*Fragante* 1989:596–7). Matsuda 1991 calls this the *doctrinal puzzle of accent and antidiscrimination law*: Title VII disallows discrimination on the basis of accent when it correlates to national origin, but it allows employers to discriminate on the basis of job ability. Employers claim that “accent” impedes

communication, and thereby poses a valid basis for rejection; Matsuda found that the courts are especially receptive to this argument (1348 ff.).<sup>23</sup>

Employers further point out that the decision-making process in business is often unavoidably subjective in nature. The courts have supported them in this.

It does not follow, though, that ethnic discrimination is the only explanation why Plaintiff was not promoted. Other plausible explanations may exist. For instance, Nasser may not have chosen to promote Plaintiff simply because he personally did not like her. While making allowance for this kind of decisional criterion would arguably call into play the "business judgment" rule enunciated in *Williams*, the court does not reach its conclusion on the basis that it cannot review Defendant's proffered reason. (*Vartivarian*, 6558)

But how can the courts distinguish an *admissible* business judgment, based on business necessity or personal preference, from *inadmissible* considerations, based on race or national origin? Is it simply a matter of presentation of the right arguments by the employer? Cutler 1985 has pointed out that employers are favorably predisposed to potential employees who are "like" them, and less disposed toward potential employees who are "unlike" them. Because the courts fail to recognize this fact, and refuse to reject the validity of the personal preference rationale, "Title VII becomes a statute which, at best, coerces job applicants to assimilate and, at worst, keeps them jobless" (1985:1166).

I proceed from the point where the plaintiff and the defendant have made their cases; the court must now decide whose argumentation better fulfills the requirements set forth by the law. It is possible to trace the influence of the standard ideology through much of the court's deliberations.

#### STANDARD LANGUAGE IDEOLOGY IN THE COURTROOM

The opinions put out by the courts display a range of approaches toward communication and accent. One assumes that the courts are unbiased, and sometimes there is evidence of that.

Accent and national origin are obviously inextricably intertwined in many cases. It would therefore be an easy refuge in this context for an employer unlawfully discriminating against someone based on national origin to state falsely that it was not the person's national origin that cause the employment or promotion problem, but the candidate's inability to measure up to the communications skills demanded by the job. We encourage a very searching look by the [trial] courts at such a claim. (*Fragante* 1989:596)

## ACCENT AND DISCRIMINATORY PRETEXT IN THE COURTS

Testimony of both Plaintiff's and Defendants' witnesses have convinced the Court that the Plaintiff's accent was a major factor in the Defendants' evaluation of his supervisory abilities . . . a trait related to national origin must be of an immutable nature in order to come within Title VII protections . . . An accent would appear to approach that sort of immutable characteristic . . . (*Carino*, 1336-7)

Plaintiff's accent did not interfere materially with his job performance, nor would it have interfered materially with his job performance . . . if he had been promoted . . . (*Xieng*, Supreme Court Opinion, 2)

But at the same time, and sometimes *in the same cases*, it is clear that the courts are willing to depend on their own often factually incorrect understanding of language issues.

Fragante argues the district court erred in considering "listener prejudice" as a legitimate, nondiscriminatory reason for failing to hire. We find, however, that the district court did not determine [that] Defendants refused to hire Fragante on the basis that some listeners would "turn off" a Filipino accent. The district court after trial noted that: "Fragante, in fact, has a difficult manner of pronunciation . . ." (*Fragante* 1989:597)

The judge discounted the testimony of the linguist who stated that Hawaiian Creole pronunciation is not incorrect, rather it is one of the many varieties of pronunciation of standard English. *The linguist, the judge stated, was not an expert in speech.* (Matsuda 1991:1345-6, including quotations from *Kahakua* 1987:22-3, emphasis added)<sup>24</sup>

During the Vietnam conflict, Mr. Tran worked as an interpreter for the U.S. forces. That has misled him to believe that his English is better than it is in reality. Occasionally Mr. Tran's spoken English is readily understood, while other times it is understood only with difficulty and sometimes not at all (*Tran*, 472).

The judges who wrote these opinions are willing to depend on their own expertise in matters of language in a way they would never presume to in matters of genetics or mechanical engineering or psychology. In *Kahakua*, the judge heard testimony of expert witnesses, and then chose to give credence to that witness whose testimony most closely matched his own personal opinions on matters of language use. In none of these cases was there any attempt to assess the communication demands of the job in a non-prejudicial way, and *intelligibility* was a matter of opinion only.

How do some plaintiffs manage to win? *Xieng* provides an example of a successful case.

Phanna Xieng is a Cambodian-American who worked for Peoples National Bank of Washington. Mr. Xieng was repeatedly denied a promotion

although he had an excellent work history, high marks in his reviews, and for an extended period had been filling in on the very position for which he was applying. There were documented comments from his superiors concerning his accent as the primary stumbling block to his promotion. In this case, the court could not overlook the fact that Mr. Xieng could carry out the job he claimed he could do, in spite of his accent, precisely because *he had already been performing well at the job*. It might seem that being on the inside – already employed by the defendant – would provide an employee with a valid LTF discrimination complaint with some strong evidence; but there are many other cases of denied promotion which were not so successful as *Xieng*.

Is it the case, then, that the plaintiff's chances of winning a LTF discrimination case depend to the greatest degree on the integrity and objectivity of the judge hearing the trial? Unfortunately, it is not so easy as this. It becomes clear later that, for some areas of employment, even the most open-minded of courts may be subject to the unwritten laws of the standard language ideology.

#### *Education-related cases*

I consider here four cases in which educators sued their respective schools or school systems for racial and/or LTF-national origin discrimination:

(a) *Sparks*: an African-American who was dismissed from her job as a school teacher.

(b) *Hou*: a native of China and professor of mathematics who was refused promotion.

(c) *Edwards*: an African-American whose teaching contract was not renewed.

(d) *Mandhare*: a native of India who was denied reappointment to her position as a librarian at a K-2 school.

Ms. Sparks and Ms. Edwards won their cases; Ms. Mandhare won at trial court but lost on appeal; Dr. Hou lost his case.

Academic institutions were meant to be included within the scope of Title VII; nevertheless, the "trend in many courts has been to exercise minimal scrutiny of college and university employment practices, due, in large part, to the subjective factors on which many academic employment decisions are based" (*Hou*, 1546). They will intercede, but seem to do so with considerable forbearance for the opinions put forth by school administration. In addition, the courts have shown reluctance to reverse administrative decisions (*ibid.*, 1958).

This deference for academic decision making was the downfall of *Hou*. The judge pointed out:

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The issue of accent in a foreign-born person of another race is a concededly delicate subject when it becomes part of peer or student evaluations, since many people are prejudiced against those with accents. (*Hou*, 1547)

The judge went on to approve the loophole used by the institution.

We find that comments about Dr. Hou's accent, when made, were directed toward the legitimate issue of his teaching effectiveness. Teaching effectiveness, as the testimony at trial indicated, is an elusive concept . . . Teaching effectiveness does, however, include the ability to communicate the content of a discipline, a quality which should be carefully evaluated at any college or university. (*ibid.*)

There was never any discussion of appropriate, nonprejudicial assessment of Dr. Hou's communicative competence or intelligibility. The defense depended *exclusively* on anecdotal evidence provided by the defendant, and this satisfied the court.

[The college records showed that] he is at a decided disadvantage in the classroom because of his natural accent . . . he has a difficult time overcoming this handicap. The obvious grammatical errors on his application attest to his communication problems . . . (*Hou*, 1547).

The question must be, then, why other education cases prevailed where *Hou* could not. I consider *Sparks* and *Edwards* before a discussion of *Mandhare*.

*Sparks* and *Edwards* were built primarily on racial discrimination. In many pages of correspondence on the matter of Ms. Sparks's dismissal, the school administrator (Mr. Griffin) commented only once on the language issue: "Mrs. Sparks has a language problem. She cannot help the negro dialect, but it is certainly bad for the children to be subjected to it all day" (*Sparks*, 437). In *Edwards*, the discussion of language use is limited to general comments: "The plaintiff's contract was not renewed allegedly because of complaints received from parents and students . . . Several complaints concerned students' alleged inability to understand the plaintiff's 'black accent'" (*Edwards*, LEXIS).

In both these cases, the opinions indicate that the heart of the matter was racial discrimination. In other words, if the accent issue had never been raised in *Sparks* or *Edwards*, these plaintiffs would still have won. This was fortunate for the courts, as it relieved them of the trouble of dealing with the matter of language and accent. In discussing the LTF discrimination portion of *Sparks*, the court limited its comments to one short footnote: "With no disposition to be unkind, we question, based on the spelling and composition of the two letters . . . the ability of Mr. Griffin to diagnose a 'language-problem'" (*Sparks*, 442). The letters written by Mr. Griffin regarding the dismissal of Ms. Sparks, to which the court referred, were in fact poorly writ-

ten, and contained many spelling and/or typographical errors. Nevertheless, the court is clearly uncomfortable in chiding an educator (in this case, an administrator with advanced degrees) in matters of language use: "with no disposition to be unkind." More importantly, the court never addressed the *content* of Mr. Griffin's complaint – Ms. Sparks's "negro dialect" and its appropriateness for the classroom; it addressed only the superintendent's qualifications to make judgments on that dialect, *given his poor letter-writing skills*.

Would the court have thought seriously about this criticism if Mr. Griffin had written elegant, grammatically appropriate prose? if he had argued that Ms. Sparks's teaching effectiveness was compromised by her language use? It seems likely that the school system could have found a line of argumentation which would have pleased the courts; they failed to do so in this case.

The court neatly sidestepped the "concededly delicate subject" of LTF discrimination for *Edwards* as well: "The district court stated in its opinion that it was 'apparent' that the plaintiff could be easily understood and that there was no evidence the plaintiff made grammatical errors rendering her speech difficult to understand." In these two cases, the schools were deservedly punished for racial discrimination; for LTF discrimination, they were slapped on the wrist.

I return now to the *Mandhare* case, with which I began. Earlier it was established that Ms. Mandhare's contract as a school librarian was not renewed after that first year because her duties were thought to be compromised by her heavy accent, specifically because her "problems with speech and grammar made it difficult for her to be understood by students and teachers . . . plaintiff would do an excellent job at a school where her speech, grammar and story telling would not be so critical" (*Mandhare* 1985:238).

The official published summary of the case indicates that Ms. Mandhare then met with the Superintendent of Schools, and on the advice of her supervisor requested a transfer to Thibodaux Junior High School, as a librarian.<sup>25</sup> The school board refused to reappoint Ms. Mandhare to this requested new position; testimony revealed that, in their private and public deliberations, Ms. Mandhare's foreignness and accent were discussed.

The trial court was very firm in this case: Ms. Mandhare had been discriminated against, and must prevail. However, the school's initial decision that the plaintiff could not teach young children because of her "heavy accent and speech patterns and grammar problems [which] prevented her from effectively communicating with primary school students" (*ibid.*) *was never questioned*. The court took this claim on faith, and instead stated:

Defendant's contention that its legitimate reason for plaintiff's termination or non-appointment was that she had a communication problem because of her accent which prevented her from effectively communicat-

ing with primary school students is a feigned contention. Plaintiff was not being considered for a position which would require such communication. She was to be appointed librarian at a Junior High School, a position for which it was established that she was eminently qualified.

It is important to remember that in this case, as in every other case discussed, no effort was made to make an objective assessment of the communication skills required for the job, the plaintiff's speech, the quality of her interaction with children, or her intelligibility. The administrators found the plaintiff's accent difficult; they decided not to reappoint her to her job in the grade school. This alone would have made them the focus of the court's scrutiny (although not necessarily to the plaintiff's favor). However, they redeemed themselves in the court's eyes: they praised the plaintiff's industry and skill, and they went out of their way to locate a position in a school where her accent would *neither offend nor inconvenience*. The court could then focus on the school board, which refused to give the plaintiff this new job. The validity of the initial firing was never challenged. Thus everyone (except the school board) was happy: the administrators were left intact as arbiters of the SL ideology, and were lionized for their largesse; the court was not forced to challenge those educators on the factual basis for their decisions about appropriate language; and Ms. Mandhare was to be reinstated as a librarian, in a junior high school.

The question remains: Were Ms. Mandhare's civil rights protected? Were her best interests really served? Put more controversially, if Ms. Mandhare had been forbidden to ride a public bus, and challenged that restriction, should she then have been pleased to be offered alternate transportation in the form of a bicycle, a Mercedes-Benz – or another, different but equally functioning, bus?

Ms. Mandhare did not really want the transfer to another school in a school district which had treated her so badly; she wanted back pay, which she did not get. Whether or not she would have been satisfied with the new position was never established, because the trial court decision was reversed by the U.S. Court of Appeals for the Fifth Circuit:

The district court's determination that the Board had intentionally discriminated against Mandhare is clearly erroneous. The court focused on the wrong issue. It premised its conclusion on the Board's refusal to follow LeBlanc's recommendation that Mandhare be transferred to a junior high librarian position. That was not the issue as framed by the unamended pleadings and pre-trial order. Mandhare's action asserted discrimination in the Board's refusal to reemploy her as elementary school librarian, not their failure to create and transfer her to a junior high position. (*Mandhare* 1986:5)

The terrible irony of this reversal should be clear: Ms. Mandhare was originally protesting her *dismissal* on the basis of LTF-national origin discrimination; the judge in that first case chose not to deal with the delicate issue, but to bypass it completely by focusing on the possibility of a position in another school. This gave the appeal court an out, which it took. The appeal court accused the trial court of focusing on the wrong issue; and *on that basis*, it reversed the decision.

In the end, both courts were satisfied to let the school administrators and school board exclude on the basis of accent. In the analogy previously cited, the first court offered Ms. Mandhare a Mercedes-Benz when all she wanted to do was ride the bus. The appeal court said that the trial court had been wrong to offer Ms. Mandhare a Mercedes-Benz that did not exist and that no one was obliged to buy for her; it did not even question why she had been forced off the bus in the first place, and it certainly did not offer her the opportunity to get back on, or compensate her for her trouble.

The appeal court filed the reversal on May 2, 1986, six years after Ms. Mandhare was denied renewal. The failure of the American judicial system caused her untold emotional anguish and financial difficulty, and was detrimental to her health. Today she works as librarian for a private school in her home town of Thibodaux, but she will carry this experience with her for the rest of her life.

#### *Broadcast-related cases*

The Kahakua and the Staruch cases both have to do with the broadcast media, specifically with radio broadcasting. These cases are clearly very different from the others presented here because they involve decontextualized communication, in which heavier burdens are placed on the speaker.<sup>26</sup> Nevertheless, they provide interesting insight into the court's deliberations on matters of language.

Mr. Kahakua is a native of Hawaii, a bilingual speaker of Hawaiian Creole and English; as a meteorologist with 20 years of experience and considerable educational background, he applied for a promotion so that he could read weather reports on air. Mr. Staruch, a native of Western Ukraine, wanted to read news on the air, for the U.S. Bureau of Information, *in his native tongue*. This time, the plaintiff was penalized for speaking Ukrainian with a stigmatized regional accent of that language. Both lost their cases.

If the courts are deferential to academic institutions in matters of internal administration and language use, they seem to be even more willing to defer to the standards of the broadcast media, even when those standards involve blatant LTF discrimination. The arguments put forward by employers in these cases and accepted by the courts involve the following elements:

(a) Refusal to acknowledge accent as an immutable characteristic of national origin:

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The court added, “there is no race or physiological reason why Kahakua could not have used standard English pronunciations.” (Matsuda 1991:1345)

(b) Allowing direct and non-factual association of negative social values with stigmatized linguistic variants:

. . . the agency contended that the appellant’s accent was undesirable . . . found to lack authority, friendliness, clarity and other qualities desired in a broadcasted voice. (*Staruch*, EEOC Hearing Opinion)

[The judge said] The white candidate was selected because he had “better diction, better enunciation, better pronunciation, better cadence, better intonation, better voice clarity, and better understandability.” (Matsuda 1991:1345, citing from *Kahakua*).

(c) Willingness to allow the media to set its own standards on the basis of personal preferences, even when those preferences necessarily involve LTF discrimination:

. . . the judge credited the testimony of speech experts that . . . “Standard English should be used by radio broadcasters.” (*Kahakua*)

The agency stated that the appellant’s voice was not suitable for broadcast purposes . . . Appellant’s voice was described as having a definite Western Ukrainian accent. In the United States national network news is broadcast in “television accent” rather than the regional accents sometimes heard on local broadcasts . . . (*Staruch*)

(d) Lack of concern with established facts about language structure and use, or with consistent, non-prejudicial evaluation of language skills:

[An external review found] . . . “not persuasive” his pronunciation as “often incorrect,” delivery “dull” and “sounding strange to the listener.” (*Staruch*, *ibid.*)

I [expert witness “speech consultant”] urgently recommend he seek professional help in striving to lessen this handicap . . . *Pidgin can be controlled*. And if an individual is totally committed to improving, professional help on a long-term basis can produce results. (*Kahakua* 1989, Excerpts of the Record, 31, as cited by Matsuda 1991:1366, original emphasis)

The *Staruch* decision has to do with the limited scope of Title VII: the EEOC commissioners who heard the case accepted the argument that Ukrainian speakers who had evaluated *Staruch*’s speech did not like his *regional* accent.

The courts clearly have bought the argument that, in broadcast media, LTF discrimination is nothing more than good business practice; i.e., main-

stream language use is a bona fide occupational qualification. Kahakua's attorney, Richard Hearn, has put this more succinctly: The employer did not want Kahakua on the radio because Kahakua did not sound White ("All Things Considered," September 12, 1990).

Of course, the behavior of the courts follows logically if one accepts the premise that media appropriately embody the SL ideology, so that they should be entrusted with both the preservation and propagation of that standard, and the exclusion and disempowerment of those who do not subscribe to it.

#### ACCENT AND COMMUNICATION

Employers present to the courts a model of communication in the workplace which has three main points:

- (a) Good communication skills are necessary for job *X*.
- (b) Accent *Y* impedes communication.
- (c) The applicant speaks with accent *Y*.
- (d) Conclusion: The applicant does not possess a basic skill necessary for job *X*.

A first criticism of this model must address the overly simplistic characterization of communication, in which the listener is relieved of any responsibility in the communicative act, and the full burden is put directly on the speaker. Herbert Clark has developed a cognitive model of the communicative act (Clark & Wilkes-Gibbs 1986, Clark & Schaefer 1989) which is based on a principle of mutual responsibility, in which participants in a conversation collaborate in the establishment of new information. This involves complicated processes of repair, expansion, and replacement in iterative fashion until both parties are satisfied: "Many purposes in conversation . . . change moment by moment as the two people tolerate more or less uncertainty about the listener's understanding of the speaker's references. The heavier burden usually falls on the listener, since she is in the best position to assess her own comprehension" (Clark & Wilkes-Gibbs 1986:34). This contrasts markedly with the employer's version of communication, in which the speaker (the person with the accent) carries the majority of responsibility in the communicative act.

The whole concept of units of conversation in which two partners work toward mutual comprehension assumes a certain state of mind on the part of the participants. Work in accommodation theory suggests that a complex interplay of linguistic and psychological factors will establish the predisposition to understand. Thus Thakerar et al. 1982 conducted a series of empirical tests to examine accommodation behavior. They were not working directly with "accented" speech, but their findings are generally typical of

such studies, which verify something known intuitively: listeners and speakers will work harder to find a communicative middle ground and foster mutual intelligibility when they are motivated, socially and psychologically, to do so. Conversely, when the speaker perceives that the act of accommodating or assimilating linguistically may bring more disadvantages than advantages, in in-group terms, he or she may diverge even farther from the language of the listener.<sup>27</sup>

Roberts et al. 1992 (RDJ) point to the larger social context of language comprehensibility in the workplace, and demonstrate “how native speakers’ assumption that they have the right to dominate and control, and the way that this is reinforced by the worker’s lack of ability to negotiate the right to be heard, affect the detailed processes of routine interactions and their outcomes” (1992:35). All this work points to two crucial concepts not included in the employer’s model of communication in the workplace. First, *Linguistic competence on the part of the employee, taken alone, is insufficient for successful communication*. Degree of accentedness, whether from L1 interference, or a socially or geographically marked language variety, cannot predict the level of an individual’s communicative competence. In fact, communicative competence can often be so high as to compensate for strong L1 interference. RDJ provide an excellent example of this, in which an Asian factory worker tries to negotiate with his supervisor to obtain work for his son. The supervisor is at first unwilling to help, but the worker negotiates past the supervisor’s reluctance. In their commentary on the exchange, RDJ (1992:40–1) point out that, in spite of strong interference from the native language, the worker shows several positive qualities.

(a) He is sensitive to context, using an appropriate discourse convention to set the scene.

(b) He is focused, and able to keep relevant topics “on stage.”

(c) He is able to compensate for and repair communicative difficulties: “For example, when there is a confusion over ‘first’ and ‘fast’, he reformulates . . . ”

[Worker]: Boy say I not working on the fast.

[Supervisor]: Not working on the first?

[Worker]: On the fast Ramadan you know.

(d) He is in touch with cultural differences, and is able to negotiate the supervisor out of “a gatekeeping role.”<sup>28</sup>

A second crucial concept is that *the burden of communication is shared, on every level, by both participants*. If one accepts that good communication skills are necessary for job *X*, without further definition of those skills, one must still question the employer’s claim that accent *Y* impedes communication. In fact, it is not necessarily the accent which is the problem, but negative subjective evaluation on the part of the listener. It has been shown,

in cases such as *Dercach*, that lack of goodwill can be as much of an obstacle to understanding, if not more.

Matsuda (1991:1369 ff.) has pointed out the fact that no consistent, disinterested, fair procedures exist to verify these claims, and that development of such a protocol is imperative. This would provide an objective way to establish employment situations in which accent really is more likely to pose a valid obstacle. Thus claims made by the employer about the effect of accent on job performance would be subject to scrutiny that moves beyond the subjective and anecdotal. Of course, such measures are important precisely because accent, in the general sense that has been used here, can sometimes be an impediment to communication, even when all parties involved in the communicative act are willing, and even eager, to understand.

In Matsuda's scheme, the full communicative burden might be placed on the speaker if (a) the consequences of miscommunication are grave; (b) the job is primarily oral in nature; (c) the setting is stressful, and time is of the essence; or (d) interaction is contextless, and restricted to one-time exchanges. Of course, this list could, and probably must, be expanded and revised. For example, there seems to be no real reason to take together the conditions of context and amount of contact; in fact, one can think of cases in which the context is indirect (over the telephone) but not limited to one-time exchanges (a dispatcher speaking to the same truck drivers many times every day). There are many communicative situations where the burden is not distributed evenly because the power and solidarity factors between speakers interfere (e.g. doctor/patient interactions); all these variables must be taken into account. In addition, the variables of stress and time need further definition and clarification.

When all four of her conditions are met (as in the case of a 911 operator), Matsuda suggests that the speaker's accent should then be evaluated in an unbiased, consistent way to determine degree of intelligibility – possibly by means of matched-guise testing. This is thought to be one way to ascertain whether or not the candidate is intelligible to the pool of relevant, nonprejudiced listeners. Obviously, the construction of an appropriate matched-guise protocol would be a challenging task, and one that the courts are clearly neither able nor willing to take on at present.

In other cases where only one or two of these conditions are met, there is room and opportunity for goodwill and accommodation, and it is reasonable to expect that the burden be distributed between speaker and audience. Here Matsuda draws heavily on legislation such as the Physical Disabilities Act, where reasonable accommodation is a major factor.

Figure 1 presents a graphic view of a model in which an alternate configuration makes clear the link between LTF discrimination and association with particular ethnic and national groups. Of course, relative positive and negative evaluation of specific accents will vary according to age and background

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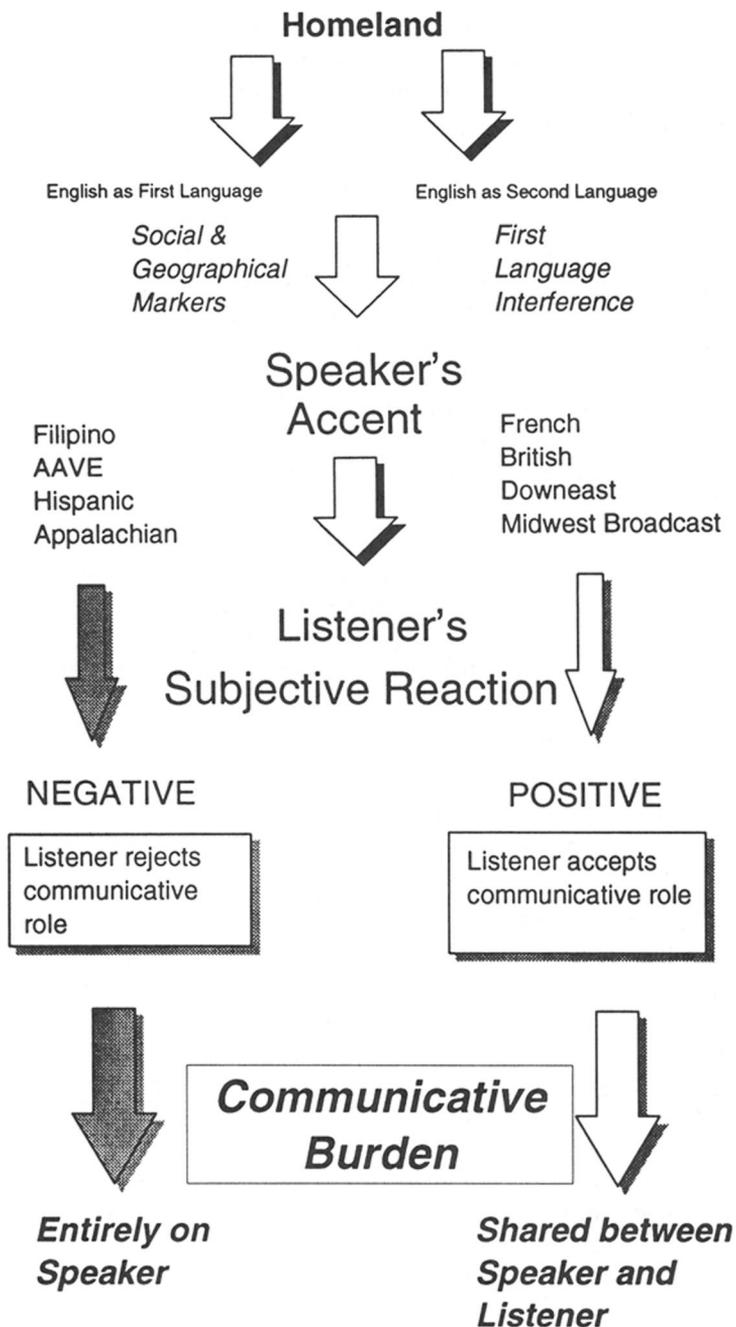


FIGURE 1: Sharing or rejecting the communicative burden.

of the listener, as well as a whole range of stylistic and discourse factors. However, there is empirical evidence for the general split between western European accents, which are generally seen as positive, and accents perceived as Slavic, Asian, or Hispanic. The fact that I was not able to document a single case of a plaintiff with a French, German, or British English accent is one kind of weak evidence, but there is more.

Kalin et al. 1979 conducted an experiment in which students were asked to play the role of personnel consultant, matching taped voices of applicants with jobs characterized as "high" and "low" status. The "applicants" spoke with a variety of ethnic accents. For the highest status job, the students ranked the applicants in the following order: English, German, South Asian, West Indian. This order was exactly reversed for the lowest status job.

Many of these students will go out into the work force, and will someday become involved in the hiring process. They will continue to confuse their valid concern that employees be able to communicate effectively with the political and social complexities of accent. They will first judge individuals not on how logically or clearly they talk about themselves, their goals, and their abilities, but instead on the rhythms of their speech – rhythms which are linked to skin color, economic resources, or homeland. They will exclude and discriminate on the basis of language because they have been taught, by example, that language is sufficient and appropriate justification for this behavior. They will continue to *hear* with an accent: the accent of the intolerant, empowered mainstream.

#### THE LINGUIST'S CONTRIBUTION

If ideology is most effective when its workings are least visible (Fairclough 1989:85) then the first step must be to *make visible* the link between the enforcement of SL ideology and social domination. The educational system is the obvious point of departure, but that system is itself part of the dominant bloc. Given the way schools, the broadcast and print media, the entertainment industry, and employers work together to promote an SL ideology, the education of the public is both a lonely and a difficult task, but certainly not an impossible one.

Beyond education, linguists have hard-won knowledge to offer which would be of some assistance in the difficult questions faced in matters of language policy. That knowledge is often not sought; and if sought, it may be summarily rejected; but in either case, it is often hotly resented. Nevertheless, there are good reasons to persevere, beyond the fact that the kind of linguistic diletantism demonstrated here is damaging to our professional pride. This type of behavior causes real harm to real individuals, and it deserves our attention.

In the judicial system, there may be some lessons for linguists to learn from psychologists and psychiatrists, whose contributions to trial law are better established, although the effectiveness and value of those contributions are often challenged (Faust & Ziskin 1988). Although the overall quality of psychologists' contributions to legal cases is still being debated, some issues have been clarified as a result of that body of testimony. The law now defines and takes seriously such human conditions as battered woman syndrome, clinical depression, and post-traumatic stress syndrome.

By contrast, although the courts have called on linguists to address technical matters of authorship and identification to be used as evidence,<sup>29</sup> they are less interested in a linguist's definition of communicative competence or assessment of intelligibility, as was seen in *Kahakua* and *Fragante*, because these are areas they deem within their own powers of reasoning and expertise.

*Xieng* provides an interesting illustration of the status of linguistics in the courts. There was no expert testimony at all on the pivotal matter, which was the employer's claim that Mr. Xieng's accent was too strong and impeded communication. However, a psychiatrist was called, who then argued and convinced the court that there did exist a "causal relationship between the [employer's] national origin discrimination and Xieng's severe emotional distress and depression" (*Xieng* 1991:A13).

Psychologists ask themselves a two-part question to determine the quality of their forensic contributions: (a) Can we answer questions with reasonable accuracy? (b) Can we help the judge and jury reach a more accurate conclusion than would otherwise be possible (Faust & Ziskin 1988:31)? That is, does the subject lie beyond the knowledge and experience of the average layperson? Can the expert give information without invading the province of the jury by expressing a conclusion as to the ultimate issue?

For most of the cases presented here, a list of questions could have been presented to linguists which would have met both these basic criteria. Questions about the process of standardization, differences between spoken and written language varieties, cultural differences in discourse style and structure which may cause processing difficulties, second language acquisition and accent, subconscious social evaluation of active variation, and change over time and space could be answered with reasonable accuracy. We *could* provide the judge and the jury with information and knowledge beyond that of the average layperson. But the issue is this: we cannot make them *want* that information, no matter how factually correct or how strongly supported by empirical evidence.

Linguistic contributions to the legal process are not valued because ideology intervenes in a way that it does not in matters of mental health. Judges may have no personal investment in accepting evidence linking systematic, long-term physical abuse with violent behavior; they are more likely to have

a strong personal reaction when asked to reconsider the assumptions underlying the standard language ideology.

Fairclough, who acknowledges this somewhat depressing state of affairs, also points out (1989:4) that “resistance and change are not only possible, but are continuously happening. But the effectiveness of resistance and the realization of change depend on people developing a critical consciousness of domination and its modalities, rather than just experiencing them.”

#### CONCLUSIONS

There are many people who must cope, day by day, with LTF discrimination. Some of them have other currencies – political and economic power, social pre-eminence, artistic excellence, academic achievement – which they can use to offset the disadvantages of accent, and to disarm the prejudiced listener. Most listeners, no matter how overtly negative and hostile, would be hard pressed to turn away and ignore Ann Richards, Jesse Jackson or Ed Koch, Cesar Chavez or Derek Wolcott, Butros Butros Ghali or Liu Xiaobo, Rigoberta Menchu, Benazir Bhutto or Corazon Aquino, if the opportunity for discussion presented itself.<sup>30</sup>

Of course, most people who do not speak the language of the mainstream do not have such extraordinary resources. There are many of them: since 1961, over 15 million persons have legally immigrated into the United States (U.S. INS 1992:11). Many times that number of citizens, born in the U.S., speak with a regional accent that is not fashionable, or are native speakers of a variety of English which is directly linked to race, ethnicity, or income. In a time when multiculturalism and diversity are held up as ideals, one might think that a standard language ideology would give way to a more realistic and tolerant approach to language use. Unfortunately, there is little evidence of this. LTF discrimination is a widespread problem which permeates much of our day-to-day existence. It is the site on which racism and ethnocentrism are institutionalized.

Some of the discussion around language standards is so emotional in tone that parallels can be drawn to disagreements between scientists and theologians over the centuries. In our own time, in the courts, science and rational inquiry have come up against public opinion based on personal preferences and intuition:

. . . the real problem faced is not legal but sociological. In the centers of population men have gone on assuming certain bodies of knowledge and certain points of view without realizing that they were living in a different world from that inhabited by a considerable portion of their fellow-citizens, and they have been unconscious of the danger which threatened

them at the inevitable moment when the two worlds should come in conflict. (*The Nation*, July 22, 1925:28, cited in Caudill 1989:23)

This editorial was written at the height of the Scopes trial, in which fundamentalists and empiricists argued the very definition of truth. It was a trial surrounded by sensational journalism, and followed with great interest by many people.

Scopes, a science teacher who taught the theory of evolution in a state which forbade him to do so, lost his case and was fined one hundred dollars. But something else, something perhaps more important, was won. Before the trial, one might gather that the majority of American citizens had never come in contact with evolutionary theory. After the trial, many of those people were thinking about their own beliefs, about science, and about the nature of authority and its relationship to knowledge. Whatever an individual's personal beliefs, after the Scopes trial it became increasingly difficult for anyone to dismiss out of hand the facts put forth by scientists. Today, more than 70 years later, evolution is taught in all public schools and most private ones.

The Scopes trial involved free speech, educational policy, and a range of sociological issues. When the topic is discrimination on the basis of language, the stakes are very different. *Mandhare, Hou, Xieng, Kahakua*, and the other cases like them test an even more basic freedom, the individual's right to be different:

The way we talk, whether it is a life choice or an immutable characteristic, is akin to other attributes of the self that the law protects. In privacy law, due process law, protection against cruel and unusual punishment, and freedom from inquisition, we say the state cannot intrude upon the core of you, cannot take away your sacred places of the self. A citizen's accent, I would argue, resides in one of those places. (Matsuda 1991:1391-2)

It seems that linguistics and LTF discrimination have yet to meet their Scopes trial.

#### NOTES

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<sup>1</sup> Court case citations are abbreviated as follows: *Mandhare v. W. S. Lafargue Elementary School, the Lafourche Parish School Board, Parish of Lafourche* appear in the text as *Mand-*

*hare*. This material originates from opinions, briefs, *Findings of Fact*, and other legal documents associated with each case. In the case of *Mandhare*, interviews with the plaintiff are also cited. Complete references are given at the end of this article.

<sup>2</sup> Later in this article I explore in greater detail the reasoning of the courts, and their interpretation of matters regarding language use and prescription in *Mandhare*.

<sup>3</sup> Many basic concepts in sociolinguistics have been challenged for their lack of theoretical cohesiveness within a more general theory of sociology. The concepts which have come under close scrutiny include such giants as *social class*, *status*, *prestige*, and *gender*. As such terms come into discussion, I will outline my working definitions. In the case of the concepts *class* and *status*, I follow sociologists Bell & Newby (1971:218 ff.): *class* refers to *economic* resources, whereas *status* is reserved for the determination of *what is achieved* with economic resources.

<sup>4</sup> Crucial here is the distinction between spoken and written forms of language. Because the written word was developed and exists to convey decontextualized information over time and space, standardization is necessary and appropriate. The problem at hand has come about because of a blurring between the written/spoken boundary; the written language has acquired dominance in the minds of speakers, so that goals appropriate for the written language are generalized to speaking, and the written word is adopted as a model for all language.

<sup>5</sup> The history of standardization is a long and complex one. It has been treated extensively elsewhere (see, e.g., the excellent presentation of these issues in Milroy & Milroy 1985 and Bailey 1991).

<sup>6</sup> Space does not permit a long discussion of the development of SL ideology in the schools, which was clearly well established at the beginning of the century. In 1911, J. Forbes Robertson addressed the Indiana Association of Teachers of English: "There are three causes of this poor English. They are ignorance, affectation, and indifference . . . one of the most important points to remember in the correct articulation and pronunciation of words is to give the vowels their correct sound" (Robertson 1911:5).

<sup>7</sup> One such dictionary might be the *Oxford English Dictionary*, with the following prescriptive definition of *accent*: "the mode of utterance peculiar to an individual, locality, or nation . . . This utterance consists mainly in a prevailing quality of tone, or in a peculiar alteration of pitch, but may include mispronunciation of vowels or consonants, misplacing of stress, and misinflection of a sentence. The locality of a speaker is generally marked by this kind of accent."

<sup>8</sup> Prestige is a particularly difficult concept in sociolinguistics. J. Milroy 1989 has argued that it is nothing more than a veiled appeal to socio-economic class structure; in fact, in most such discussions, the higher socio-economic groups are assumed to have the most prestige.

<sup>9</sup> On May 17, 1978, Judge Charles Joiner handed down a decision, in *Martin Luther King Elementary School Children v. The Michigan Board of Education and the Ann Arbor School District Board*, which directed the School Board to train teachers on the basis of "existing knowledge" regarding language use and variation; the existence and structure of Black English Vernacular; and the necessary skills to teach the plaintiffs, who were native speakers of BEV, how to read (see Chambers 1983 for detailed discussions of the *King* case).

<sup>10</sup> In entertainment, linguistic stereotypes have long been a stock-in-trade. Dialect was used to draw character in Chaucer, and can be followed to the present time. In broadcast and film entertainment, the use of linguistic stereotypes mirrors the evolution of national fears and obsessions: Japanese and German characters in Disney cartoons during the Second World War, Russian spy characters in children's cartoons in the 1950s and 1960s, Arab characters in the era of hostilities with Iran and Iraq. More general stereotyping is also prevalent in television programming and movies: situation comedies (*Beverly Hillbillies*, *I Love Lucy*, *Sanford and Son*, *All in the Family*) and animated films (*Jungle Book*, *Dumbo*) provide numerous examples. The 1993 film *Falling Down* provides a disturbing example. In that film, a middle-class worker, portrayed as beleaguered by inner-city life, loses his temper with an irascible convenience store clerk. The episode begins when the protagonist, D-Fens (played by Michael Douglas), asks the price of an item. The following is from the script:

The proprietor, a middle-aged Asian, reads a Korean newspaper . . . The Asian has a heavy accent . . .

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- Asian: Eighdy fie sen.  
D-Fens: What?  
Asian: Eighdy fie sen.  
D-Fens: I can't understand you . . . I'm not paying eight-five cents for a stinking soda. I'll give you a quarter. You give me seventy "fie" cents back for the phone . . . What is a fie? There's a "V" in the word. Fie-vuh. Don't they have "v's" in China?  
Asian: Not Chinese, I am Korean.  
D-Fens: Whatever. What difference does that make? You come over here and take my money and you don't even have the grace to learn to speak my language . . .

Here, the clerk's accent – and the Korean clerk – are portrayed as negative elements of urban life.

<sup>11</sup> For a more lucid discussion of the issues raised in this column, see Raspberry 1990.

<sup>12</sup> Headlines alone are often revealing: "Black English is silly" (*Chicago Sun-Times*, July 10, 1979); "Hush mah mouth! Some in South try to lose the drawl; 'accent reduction' becomes a big bidness in Atlanta; searchin' for the lost 'G'" (*Wall Street Journal*, December 13, 1991); "Proper English, Yes; but Educationalists, No" (*New York Times*, September 18, 1989); "Twangy Guy Next Door Ousts the Professionals" (*Marketing*, January 13, 1992); "Lose that Thick Accent to Gain Career Ground" (*Wall Street Journal*, January 4, 1990); "Most officials don't talk li' dat these days" (*Honolulu Advertiser*, September 29, 1987, cited in Sato 1991).

<sup>13</sup> Title VII is specific to employment issues; the legislation and court cases here cannot be applied to any other arena, e.g. education.

<sup>14</sup> Companies employing less than 15 workers are not bound by these statutes.

<sup>15</sup> Discrimination is a matter of law:

the effect of a statute or established practice which confers particular privileges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privileges granted and between whom and those not favored no reasonable distinction can be found. (*Black's Law Dictionary*, 1991:323)

<sup>16</sup> The discussion here excludes the very crucial "English Only" controversy, and the more general issues surrounding bilingualism. Those topics have been covered in great depth by Crawford 1992 and Baron 1990.

<sup>17</sup> Under §703(e) of Title VII, an employer may defend his or her actions on the basis of national origin (a) "by demonstrating the 'business necessity' of the disputed employment practice – i.e., by showing the practice 'to be necessary to safe and efficient job performance' (Cutler 1985:1168, fn. 20); or (b) by establishing a bona fide occupational qualification (BFOQ) (ibid.). The BFOQ is the more difficult case for the employer. The path taken depends on which of two different theories of liability is used: *disparate treatment*, in which proof of discriminatory intent is crucial, requires a BFOQ defense; for *disparate impact*, in which such proof is not required, the employer must establish only business necessity: "The Plaintiff makes out a prima facie case by showing that the employer's selection device has a substantially adverse impact on his protected group . . . it remains open to the Plaintiff to show that 'other . . . selection devices, without a similarly undesirable . . . effect, would also serve the employer's legitimate interest[s]' " (ibid., 1169).

<sup>18</sup> Of course the problems of associating specific regional or social dialects with specific foreign origins would be tremendous. Joe Salmons (p.c.) has brought to my attention work by Dillard 1992 which outlines the considerable difficulties of even identifying any salient features specific to Appalachian English (but see also Wolfram & Christian 1976 and Christian 1988, which provide evidence that these difficulties can be overcome).

<sup>19</sup> The EEOC reviews complaints; if they find a violation has taken place, they may take on the case, and file suit for the employee against the employer. Raj Gupta of the EEOC estimates that the EEOC prosecutes 70% of such cases; in the other 30%, they may or may not grant a Notice of Right to Sue. Lack of such Notice does not prohibit the employee from proceeding; the right to pursue such matters in the courts is sacrosanct. Thus the Notice of Right to Sue is primarily an indication to the employee of the strength of the case. For employees of federal

government agencies, the EEOC conducts the hearing, which is empowered by Title VII to hear discrimination cases; if they find for the plaintiff, they can order remedies. The federal agencies can appeal only to the EEOC.

<sup>20</sup> Tracking down and documenting these cases was a matter of many hours in the University of Michigan Law Library. Certainly, cases have been excluded by oversight: there are no summary statistics kept by the EEOC, and no central logging system for these cases. Many cases are not summarized for publication. Thus no guarantee can be made of thoroughness of representation. The search for cases included in this article was concluded in May 1993.

<sup>21</sup> This GAO study was conducted in response to a series of inquiries from Congress on the effect of the 1986 immigration laws. Not all the GAO's findings were clear or interpretable, especially in the matter of specifically accent-based discrimination. The report outlines a number of reasons for this, having to do with sampling and design questions.

<sup>22</sup> Matsuda 1991 provides a thorough overview of the Fragante and Kahakua cases.

<sup>23</sup> Dr. Jacqueline Macaulay, an attorney with a Ph.D. in social psychology, deals with family, employment, and civil rights cases; she has pointed out to me (p.c.) that the courts seem to be functioning on the basis of some "phantom legislature" which has mandated that a certain form of English is "Standard" and "unaccented."

<sup>24</sup> It seems that three distinct kinds of expert witnesses testify in these trials: linguists (e.g., Charlene Sato of the University of Hawaii testified in *Kahakua*), speech pathologists, and "speech consultants." This last class is the most troublesome one, composed of those who teach "accent reduction" classes, or otherwise have a vested interest in the official commendation of a "standard English." Some judges, especially the judge who heard *Kahakua*, are very receptive to arguments of this kind.

<sup>25</sup> Ms. Mandhare tells a very different story. In a phone interview, she indicated that her first year at the K-2 school was also the principal's first year, and that he openly admitted he had promised her job as librarian to someone else. He asked her to request a transfer, which she did not wish to do. After this episode, he told her in a one-on-one meeting that she had a "very heavy accent," although it had never been made an issue previously, and she had had no complaints from children or teachers.

<sup>26</sup> "In many circumstances, as in literary forms, lectures, and radio broadcasts, writers and speakers are distant from their addressees in place, time, or both. They might be assumed to adhere to a weakened version of mutual responsibility . . . speakers still monitor what they say . . . It is just that they do all this without feedback from listeners" (Clark & Wilkes-Gibbs 1986:35-6). The radio broadcasters, of course, are *reading* from prepared texts, and so the distribution of communicative burden does not apply in the way it does in other discourse.

<sup>27</sup> This has been stated more simply (and admittedly in an anecdotal way) by persons who daily depend on accommodation. Joy Cherian, Commissioner of the EEOC, has commented: "I myself speak with a foreign accent. My colleagues sometimes have to listen to me more carefully simply to fully understand what I am saying. Perhaps that makes for better communication between us" (EEOC PR, June 8, 1988).

<sup>28</sup> Fairclough (1989:47) defines a gatekeeping encounter as follows:

encounters such as a job interview in which a "gatekeeper" who generally belongs to the societally dominant cultural grouping controls an encounter which determines whether someone gets a job, or gets access to some other valued objective. In contemporary Britain, for example [as in the preceding passage], it is mainly white middle-class people who act as gatekeepers in encounters with members of the various ethnic (and cultural) minorities of Asian, West Indian, African, etc., origin.

<sup>29</sup> Miron 1990 and Shuy 1993 provide overviews of this type of "forensic linguistics" in the courtroom; see also Levi 1994 for a comprehensive guide to publications on language and the law.

<sup>30</sup> Ann Richards (governor and native of Texas), Jesse Jackson (African-American religious and political leader), Ed Koch (former mayor and native of New York), Cesar Chavez (Mexican-American activist for farm worker rights), Derek Wolcott (West Indian poet, awarded 1992 Nobel Prize for Literature), Butros Butros Ghali (Egyptian secretary-general of the United Nations), Liu Xiaobo (Chinese student activist and dissident, jailed after Tiananmen), Rigoberta Menchu (Guatemalan Mayan Indian, awarded 1992 Nobel Peace Prize), Benazir Bhutto (Pakistani prime minister), Corazon Aquino (president of the Philippines).

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