

## *Language in Evidence: The Pragmatics of Translation and the Judicial Process*

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### *Introduction*

When Nancy Reagan first urged American teenagers to “just say no to drugs” in 1982, her words augured a shift of huge proportions in federal expenditures and policies pertaining to drug crimes in the United States. According to the National Drug Enforcement Policy Board, since 1981 federal spending on drug enforcement has tripled to \$3 billion, and in the same period the FBI’s drug-enforcement budget has increased from \$8 million to \$100 million. Similarly, U.S. Attorney drug-enforcement expenditures are currently \$100 million, as compared to the 1981 figure of \$20 million. The war on drugs has continued to show its effects in courtrooms across the country: more than one third of the nation’s 44,000 federal prisoners were convicted of drug crimes, and the U.S. Sentencing Commission projects that within fifteen years, the federal prison population will have increased to up to 150,000, with over half imprisoned for drug violations.<sup>1</sup> These figures reflect a tremendous increase in the volume of drug-related cases handled by the federal courts since the war on drugs was declared, and especially since the passage of the Anti-Drug Abuse Act of 1986. What is not indicated in the numbers, however, is how federal attorneys have developed prosecution strategies in order to raise conviction rates. One strategy that has been particularly effective is the use of conspiracy law. As a rule, it is far easier to prove conspiracy than the underlying crime, making the use of this charge popular at a time when public opinion and government policy both advocate heavy sentences even for first-time offenders.

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The picture is complicated by the fact that a disproportionate number of those charged with drug crimes are men of Hispanic descent.<sup>2</sup> The high rates of conviction of this group promote popular associations between immigration and drug crime, and Mexican immigrants in particular have faced resentment, bias, and, increasingly, violence from those who oppose immigration. Yet the popular stereotype of the drug-dealing Mexican immigrant may be more a consequence of the practices of the federal legal system than of actual criminality. At least some of these inequalities in prosecution and conviction may be attributable to inadequate recognition of the language rights of non-English-speaking defendants. For example, government informants may receive lighter sentences by providing federal investigators with information about their colleagues' illegal activities, but fluent English speakers are preferred as informants over those who do not speak English well, because the use of English enhances credibility and sympathy.

An additional concern, in light of the increased use of conspiracy law to prosecute individuals accused of narcotics crimes, is the use of tape-recorded evidence to support the charge of conspiracy. Covert recording of face-to-face conversations, or wire-tapping of telephone conversations between suspected co-conspirators, one of whom may be an informant, has become a primary means of gathering evidence that the suspects have planned or engaged in criminal activity. The consequences of this investigative method for minority language rights is seen when recorded conversations are conducted predominantly or exclusively in a language other than English. Whereas recordings of English-language conversations are usually entered directly into evidence, sometimes accompanied by written transcripts, non-English recordings must be translated and only this written document is admitted. Hence, recorded evidence stands on its own merits when the recorded speech is in English,<sup>3</sup> but when it is in another language, what is admitted into evidence differs in two ways from the original conversation: first, it is presented in English instead of the original language, and second, it appears in the form of a written document rather than of a spoken conversation.

In short, rules of evidence do not reflect the complexities associated with the use of translations. Although it is recognized in the law that in order to guarantee a fair trial, a non-English-speaking defendant must be provided with a qualified interpreter during the courtroom proceedings, no such assurances are made for the representation of the defendant's speech in courtroom exhibits such as written translations of conversations. In this article I explore these problems, taking as data a series of tape-recorded conversations in Spanish that

were translated into written English and used as evidence in a federal trial. Evidence of this kind raises numerous issues for discourse analysts concerned with the workings of the legal system. First, we must consider how talk that is created in one context and becomes embedded in another is transformed in the process of recontextualization. Second, we must explore the lack of fit between speech and its written representation. Third, we must uncover the pragmatic effects of translation. Finally, we must determine the consequences of these factors, separately and in conjunction, for the judicial process.

### *Background of the Case*

The data come from a federal case involving a marijuana distribution network in the Southwestern United States. One of those charged in the case, AS, is a Federal Bureau of Investigations informant who tape-recorded a series of telephone calls between himself and two of his associates. The tapes were later entered into evidence in a federal trial against one of these associates, HU, on the charge of conspiracy to possess marijuana with intent to distribute it. The telephone conversations had been conducted in Spanish and were consequently translated into English by the FBI. The written translation was submitted as evidence in the federal government's case against the defendant.

In his defense, HU argued that he believed that at the time of his arrest he was acting as an informant for the federal Drug Enforcement Agency. He had previously been in contact with the DEA through his work as an informant for the local police department, and he claimed that prior to the activities that resulted in his arrest he had attempted to notify his police contact but was unable to reach him. This defense was rejected, as was the appeal, and HU was sentenced to 51 months in prison.

According to the affidavit sworn by the FBI investigator assigned to the case, HU was charged with conspiracy on the evidence of recorded telephone conversations in which he "specifically admits that he supplied ... 207 pounds of marihuana to [AS]. [HU] further states that [AS] owes him money for the marihuana transaction and [HU] agrees to accompany [AS] to [location deleted] to collect money from [AS's] partner." The content of the telephone conversations was therefore an important part of the case, but the jury was required to evaluate this content on the basis of the written English translations that were exhibits in the trial. Moreover, the instructions from the judge to the jury assumed that the transcripts were accessible to interpretation by the jurors.

The judge advised, “You may draw reasonable inferences from the testimony and exhibits that you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the evidence in the case.” But as Gumperz (1982) and other scholars have pointed out, inferences are contextually and especially culturally situated; in the absence of recognized common experience, common sense is a dubious standard by which to evaluate evidence.<sup>4</sup>

### *The Recontextualization of Language*

One issue that is highlighted by such data, then, is the dynamic nature of context. Linguistic evidence is speech recontextualized — language taken from one context and inserted into another — and this process may itself have linguistic consequences. That is, language shapes context just as context shapes language. The theoretical shift in discourse analysis from context to contextualization was initiated by Gumperz (1982), who suggested that language is not produced within a prior context but instead contextualizes itself through linguistic and paralinguistic cues. Gumperz’s research focuses upon spontaneous speech, but as Bauman and Briggs (1990) demonstrate in their discussion of performance, pre-existing bounded texts also participate in the processes of contextualization and recontextualization.

In the present data the texts of the telephone conversations occur in two contexts: that of the conversations themselves and that of the courtroom into which they are introduced as evidence. Further, the texts are recontextualized in the courtroom environment through translation and transcription. What originates in one setting as the dynamic production of spoken Spanish is transformed in the other setting into a written document in English translation, and this document is again recontextualized as it is read into the court record for transcription by the court reporter.<sup>5</sup> We can immediately locate ostensible differences between the two contexts. The first appears private and spontaneous, without orientation to an audience, while the second is public and static, presented solely for the sake of evaluation by the audience of jurors. But in fact the relationship between contexts is more complex than this description would suggest. Because one of the participants, AS, is working in collaboration with the FBI to record the conversations they cannot be viewed as unproblematically private or spontaneous.<sup>6</sup> AS’s orientation toward the overhearing audience of federal agents and jurors brings the conversations into an intertextual

relationship with their later incarnation as courtroom evidence. This relationship is also indexical in that language that is employed in one context points to its use within another setting. But at the same time that AS shapes his discourse for its later use, he must obscure this orientation from his interlocutor, HU, in order to avoid suspicion.

AS’s solution to the problem of this dual contextualization is twofold. On the one hand, he seeks to advance his own agenda by introducing the topic of drug possession as an apparently natural extension of the current conversation. He achieves this redirection of the topic through reported speech and cohesive devices such as repetition and connectives. On the other hand, AS must elicit from HU an admission of marijuana possession, and for this maneuver he employs strategies such as referring and question-asking. He simultaneously weaves these strategies into the fabric of the ongoing discourse in order to deflect his interlocutor’s suspicion. The exchange in (1) illustrates this complex phenomenon. I provide only the text of the transcript here and elsewhere because the members of the jury were required to come to a decision without reference to the actual tape-recordings. The format conforms to that used in the transcripts, except that I have inserted line numbers and italicized the features under discussion. My comments and additions appear in square brackets.

- (1) [Hu]: (A) ..HE SAID, “YOU KNOW, MY NAME IS NOT ARTURO,  
(B) IT’S FOR PROTECTION.” AND SHIT. AND *I TOLD HIM,..*  
(UNINTELLIGIBLE)...
- (PHONE BEEP INTERRUPTS CONVERSATION, INAUDIBLE, UNINTELLIGIBLE)
- [Hu]: (C) UNDERSTAND?
- [As]: (D) UH-HUH.
- [Hu]: (E) *BECAUSE...*
- [As]: (F) *YEAH, BECAUSE I TOLD HIM, “NO, YOU KNOW WHAT,*  
(G) *[H] GAVE ME 207 POUNDS OF MARIHUANA AND*  
(H) *THAT WAS ALL. AND THAT WAS ALL.” BECAUSE HE*  
(I) *WAS TELLING ALL THIS BULLSHIT..*
- (PHONE BEEP AGAIN, UNINTELLIGIBLE)
- [As]: (J) ...A REAL ASSHOLE. ALL RIGHT, THEN..I..I...
- [Hu]: (K) (UNINTELLIGIBLE)
- [As]: (L) *..BECAUSE..THAT’S WHAT YOU GAVE, RIGHT?*
- [Hu]: (M) *YEAH. LOOK, JUST GIVE THOSE GUYS ANY EXCUSE.*

This interaction takes place within a larger discussion of threats made against AS by the supplier of the marijuana, who had not yet been paid. In the preceding discourse, AS has requested the name of the man who has threatened

him, and HU's first comment, in (a)-(b), is in response to this request. AS's following contribution in (f)-(i), in which he highlights the issue of HU's possession of marijuana, thus seems to lack relevance. However, AS maximizes the possibility that the utterance will be interpreted as conversationally relevant. He does so by linking it to HU's contribution through repetition of the latter's discourse in an intertextual process that lends cohesion to the two turns at talk (Norrick 1987; Tannen 1989). HU's use of *because* in (e) is repeated by AS in (f) and (h), and again in (i), and the construction *I told him*, in HU's line (b), recurs in AS's line (f). Another linking device that AS employs is the discourse marker *yeah* in (f), which implies a connection between the previous discourse and his own utterance. But at the same time that he emphasizes the contextual appropriateness of his contribution, AS orients his discourse toward the legal system that will ultimately utilize it. In lines (f)-(h) he uses reported speech to make explicit reference to HU's possession of marijuana, and then asks for confirmation of this quoted statement in (i). In this way he is able to broach the crucial topic in very specific terms while avoiding accountability for doing so, since he appears merely to be giving an accurate report of an event. The explicitness of his language is striking in light of the absence of such overt referring terms within other topics. Vague referring expressions in the first mention of an entity are common elsewhere in his discourse, as for example in (2), in which first mentions are italicized:

- (2) [AS]: (A) O.K, WHAT'S HAPPENING, BRO?  
 [HU]: (B) NO, YOU FIRST. WHAT'S HAPPENING?  
 [AS]: (C) NO, WELL, HERE... I HAD A ROUGH TIME *OVER THERE*.  
 [HU]: (D) *YEAH?*  
 [INTERRUPTION]  
 [AS]: (E) NO, WELL...*MY "PRIMO", MY PAL OVER THERE..*  
 [HU]: (F) *YEAH.*  
 [AS]: (G) ..*HE FINGERED US.*  
 [HU]: (H) OH, REALLY?  
 [AS]: (I) *YEAH, WELL...LOOK, I TOOK A FEW OF THE ONES I HAD THERE...*

The contrast between the vagueness of the referring terms in (2) and the precision of AS's reference whenever he raises the topic of HU's possession of marijuana points up the covert goals behind AS's discourse. This strategy, together with the others discussed above, anticipates the recontextualization of

the conversations as evidence in the trial against HU. The indexicality of such discursive features calls into question the juridical notion of objective fact based on disinterested evidence (Philips 1992).

At the same time, it must be recalled that according to his testimony HU also believes that he is acting as an informant, which may alter the interpretation of his responses to AS. For example, HU's reply in (m), *Yeah. Look, just give those guys any excuse*, should not be construed as a clearcut expression of agreement with AS's question, since, as Shuy (1981) has demonstrated, minimal responses such as *yeah* and *uh huh* do not necessarily signal agreement but merely the receipt of information (cf. Schiffrin 1987).

The ambiguity of both speakers' contributions is lost, however, in the context of the courtroom. Indeed, their skill at shaping the discourse is attested to in the very fact that their exchanges are accepted into evidence as normal conversations and are not challenged as carefully crafted speech designed to maintain both men's covert positions as informants. Of course, since only AS has legitimacy in this role his speech, unlike HU's, is not scrutinized for evidence of wrongdoing. Instead, AS's speech serves to frame — in the linguistic, if not the legal, sense of that word — HU's language as displaying criminality. The collection of strategies that AS employs to redirect the conversation is in this way quite effective when the discourse becomes embedded in its new context, the courtroom.

### *The Lack of Fit Between Speech and Writing*

As suggested earlier, the process of recontextualization is shaped not only by AS's orientation toward his future audience, but also by the substitution of written for spoken language. It has long been observed by discourse analysts that speech and writing are not equivalent channels of communication, either formally or functionally (e.g., Chafe 1982, Halliday 1987, Lakoff 1982, Stubbs 1983). Hence written versions of spoken language, no matter how narrowly transcribed, cannot be claimed to correspond exactly to the speech upon which they are based. The transfer of speech into a written representation is therefore no easy task, and the resulting document will almost inevitably be problematic in certain respects. Lakoff (1982), for example, observes that narrow transcriptions of speech are often difficult even for trained analysts to understand and may highlight communicative features that go unremarked in the oral channel but that are associated with incompetence when written — such features as

repetition, false starts, hesitations, and discourse markers like *you know* and *I mean*. And Halliday (1987), in a critique of the transcription methods used by discourse analysts, argues that oral and written language cannot be viewed as analogous discourse types, for speech is process, produced and revised on-line, while writing is product, made available to an audience only after an invisible stage of revision.

Although the methodological and theoretical implications of transcription are a central issue for researchers of discourse, the problems — and often the consequences — are far greater for those with no linguistic training who must make sense of written versions of speech. Transcripts are becoming increasingly common in American public life, especially in areas, like journalism and the law, in which “what was really said” is of central concern. In the law in particular, the transcription process and the interpretation of the resulting text can mean the difference between liberty and imprisonment for an individual accused of a crime. Yet as Prince (1984) points out, attorneys and judges rarely draw upon linguists as expert witnesses in such cases, because of the erroneous belief that laypersons on the jury possess the commonsense knowledge about language that is necessary to yield a just decision. Prince details a perjury case in which linguistic expertise was instrumental in the jurors’ decision. The prosecution’s arguments hinged on a written transcript of a tape-recorded conversation in which the defendant participated. Prince was able to show that the transcript was inadequate as evidence both because of the ambiguities inherent in natural conversation and because intonational contours crucial to the interpretation of the interaction were eliminated from the written text. Such reports demonstrate vividly the shortcomings of written transcriptions as legal evidence.

In the present data, the loss of intonational information also plays a role. Because only the transcripts served as the official exhibits in the trial, the tapes were not introduced into the courtroom. Hence interpretations of the defendant’s speech that are available in the oral channel — particularly when these are pragmatic or discourse-based rather than propositional — become obscured in the written medium. For example, in (3), HU’s response in (o) to AS’s contribution in (h)-(n) could potentially be either a marker of agreement or a minimal response indicating sustained attention.

- (3) [AS]: (A) O.K., LOOK, IT’S A GOOD THING..DAMN! THAT’S  
 (B) GREAT BECAUSE TOMORROW OR THE DAY AFTER I WAS  
 (C) GOING TO DELIVER TO THEM THE MONEY FROM OVER  
 (D) THERE. BECAUSE..AND THEN...I EVEN ASKED

- (E) THEM, “LISTEN, HOW MANY POUNDS DID YOU GIVE  
 (F) ME?”  
 [HU]: (G) *YEAH*.  
 [AS]: (H) AND THEN THEY WOULD TELL ME, “NO, NO, WE’LL  
 (I) TALK ABOUT THAT LATER.” [HU: BACKCHANNEL] AND  
 ALL THAT  
 (J) BULLSHIT. AND I TOLD HIM, “NO, WHAT DO YOU  
 (K) MEAN TALK?” MAYBE THEY DON’T KNOW HOW MANY.  
 (L) I TOLD HIM...AND I DID TELL HIM THAT YOU HAD  
 (M) GIVEN ME 200...UH...UH...207 POUNDS OF  
 (N) MARIHUANA.  
 [HU]: (O) *YEAH*.

The understanding of HU’s *YEAH* in line (o) as a minimal response is supported on several grounds: first, he uses this marker throughout AS’s extended turns in ways that can only be interactionally rather than propositionally oriented. The usage is seen clearly in line (g). Second, AS’s strategy of embedding incriminating statements against HU in reported speech reduces the likelihood that HU is responding simply to those statements; he may instead or in addition respond to the proposition in the matrix clause.<sup>7</sup> Also favoring this analysis is the fact that AS’s intonation contour in line (n) is not a falling declarative as transcribed, but rather a rising question, the (.) representing a pause: *y si le dije que tú me habías dado dos cien- dos* (pause) *cien-* (pause) *dos dos ciento siete libras de la m- de la mota?* Taken together, these features condition the more neutral interpretation, but the omission of intonation patterns in the transcript, coupled with the lesser salience of interactional considerations in reading written texts, could easily cause the jurors to overlook this possibility. Nor does it seem likely that the intonational contours would be restored with any accuracy when the transcripts were read aloud into the court record.

### *The Pragmatics of Translation*

The issue of translation makes the problems surrounding these texts even more complex. Berk-Seligson (1990) has demonstrated that court interpreters affect the construction of testimony by focusing on their lexical choices far more than on syntax, and by neglecting to consider pragmatic differences between languages. Like interpreted testimony, translated evidence is not an unmediated representation of the discourse from which it derives. The points of pragmatic

inconsistency are somewhat different between interpretation and translation, however, due to the divergent nature of these two activities. Berk-Seligson notes, for example, that interpreters often render testimony in a hyperformal register to which jurors tend to respond positively. In translation, however, the relationship between spoken and written discourse is more conflicted, and instead of being rendered in a consistently hyperformal register, translated material often appears to style-shift between the informality of spoken language and an incongruous formality. Embedded into the colloquial language of the transcripts are expressions and terms that are marked as formal in English but are unmarked in Spanish, such as the nominative first-person pronoun in a predicate nominal construction: IT'S GOING TO BE YOU THEM...YOU AND I AGAINST THEM! for *Vamos a ser tú ellos ... tú y yo contra ellos*. Other marked forms include CORRECT rather than "right" for *correcto*, ALSO rather than "too" for *también*, ALLOW rather than "let" for forms of *permitir*, and YES rather than "yeah" for *sí*. The contrast is even more striking in light of the differences in the translations made by the two FBI language specialists who provided the transcripts. One translator consistently prefers the more formal style, while the other regularly employs more colloquial English translations.

The transcripts also contain literal translations between Spanish and English that are marked not as formal but as foreign, such as the deletion of the verb in the second clause of I HAVE TO GET TOGETHER WITH THE ONE THAT...GAVE IT TO ME..AND YOU WITH ME for *Yo tengo que [juntarme?] con un ah con él que me la dió (7 second pause) y tú conmigo*. Faithfulness to Spanish structure can also yield strikingly divergent meanings, as for example in the rendition of Spanish *aha* as AHA instead of "uh-huh." And not all occurrences of Spanish words are translated, such as COMPA (from *compañero*) for what is elsewhere rendered as BUD. This variation between and within transcripts leads to subtle pragmatic differences in the interpretation of the discourse. For instance, the inconsistent stylistic level of the translation may function like hypercorrection in leading jurors to respond negatively to the speaker (O'Barr 1982). Berk-Seligson's experimental finding that hyperformality in witnesses' discourse, unlike hypercorrection, garnered positive responses from subjects does not contradict such an analysis. Mock jurors in her study evaluated hyperformality positively in spite of anomalies between witness's background and his or her speech as rendered by the interpreter, and she suggests that this is due to a perception among subjects that hyperformal speech is appropriate in the courtroom setting. But given that the transcripts in the present study represent casual telephone conversations, the mismatch between levels of

formality in the translations is more apparent and more stigmatized. Especially in a camaraderie-based culture such as the United States (Lakoff 1973), markers of formality may be construed as indicators of a lack of openness and honesty.<sup>8</sup> And finally, the embedding of Spanish-influenced translations or of untranslated Spanish forms into the transcript creates an "accented" version of written English that can potentially generate negative subjective reactions in English-speaking readers, much as accented spoken English is stigmatized by monolingual listeners, as shown by Ryan and Carranza (1977). From these examples it is clear that the pitfalls of courtroom interpretation are to some extent compounded in translation, due to the additional considerations of recontextualization and the mismatch between speech and writing.

### *Linguistic Evidence and the Judicial Process*

To what extent, then, was the outcome of this case a result of a configuration of the foregoing factors? Certainly the evidence of the transcripts alone should not have been sufficient to convict the defendant, for every contribution by HU in the transcripts that could be taken as an admission of guilt is defective in some way, whether due to vagueness of reference or to ambiguity within the utterance. The latter situation occurred in example (1), the relevant lines of which are reproduced as (4) below.

- (4) [AS]: (L) ..BECAUSE..THAT'S WHAT YOU GAVE, RIGHT?  
 [HU]: (M) YEAH. LOOK, JUST GIVE THOSE GUYS ANY EXCUSE.

HU's *Yeah* in (m) is interpretable as either an agreement marker or as a floor-gaining device, especially in the absence of intonational cues. Similar problems plague the other examples. In spite of the federal agent's assertion in his affidavit that in the phone conversations HU "specifically admits" and "states" his role in drug trafficking, at no point does HU do anything more than respond minimally to assertions made by AS about HU's actions. As Shuy (1993) points out, even when one speaker controls a particular topic of discourse, listeners tend to hold all participants responsible for the interaction. Shuy has used this observation to develop a theory of what he calls conversational contamination, which he has employed as an expert witness for the defense in several trials. Hence, HU's conformity with the rules of conversation does not force the conclusion that he agrees with assertions made by AS, nor that his responses are admissions or statements of guilt. Unfortunately, not every term

used in law has a legal definition. Admitting and stating are two such speech acts that must be interpreted solely on the basis of juror common sense. Such intuitions may not be available to jurors without linguistic training, nor, as I have suggested above, may they be culturally shared by both the jurors and the defendant.

But in this case, the problems raised in this article did not in themselves result in the conviction of the defendant, because the transcripts served only as corroborative evidence for the prosecution. The prosecution's case was bolstered not only by the testimony of the informant, AS, but also by the defendant's decision to plead not guilty because of his claim that he too was acting as an informant. The federal government denied this claim, and HU's admission was taken to be further evidence of guilt. The outcome of the case did not, then, hinge upon translated evidence, but language issues did come into play in the defendant's conviction and sentencing. Ironically, HU's case was not greatly harmed by the representation of his speech in the translated transcripts because his defense focused instead upon his belief that he acted with public authority, as an informant for drug-enforcement officials, but this claim was rejected because HU, unlike AS, is not a fluent speaker of English and so was quickly abandoned as an informant and left to face charges without government protection. As a minority-language speaker, HU was not permitted the same opportunity to cooperate with authorities that was available to AS, although HU sought out such an arrangement and testified that he believed that he was working as an informant at the time of his arrest. And despite the fact that his lawyer concedes that HU faced discrimination because of his lack of fluency in English, he will not bring a suit against the government for violating HU's civil rights, because such a case is uncertain, especially in the current political climate of anti-immigrant sentiment. Thus, the legal process offers little hope for a non-English-speaking individual like HU, since it appears almost inevitable that language limitations will close off many defense options. The present inability of the judicial system to cope with the ramifications of linguistic diversity may serve in part to explain the disproportionately high number of Spanish-speakers in the U.S. prison system today.

### *Conclusion*

As I have discussed, the primary difficulties confronting Spanish-English translation in the courtroom — pragmatic conflicts concerning context, me-

dium, and language choice — can bias the jury against the speaker whose words are entered into the court record through translation. Moreover, authority is inevitably conferred upon the translator's transcripts because of their status as official documents. Just as writing highlights dysfluencies that are overlooked in speech, the written recontextualization of the conversations in the courtroom setting casts suspicion upon what might otherwise be heard as an innocent interaction. And unlike testimony from witnesses, the evidence of the transcripts is frozen — vagaries and ambiguities must be resolved by the listeners without recourse to clarification by the speakers. If sensitivity to the pragmatic possibilities of language is not fostered in jurors, legal decisions made on the basis of linguistic evidence will fail to conform to the standard of proof beyond a reasonable doubt. Until the linguistics of linguistic evidence is more fully understood by jurors, this criterion will not be met, to the detriment of the judicial process.

### NOTES

1. The statistics in this section are taken from Nadelmann (1991).
2. In a study of sentencing in federal cases involving drugs or firearms in eight judicial districts, the U.S. General Accounting Office found that defendants were males between the ages of 21 and 40 who oftentimes were first offenders. In five districts, defendants were more likely to be Hispanic than of any other ethnicity (U.S. General Accounting Office 1993).
3. In fact, even when English-language recordings are available, their poor quality makes them difficult to understand and juries often rely exclusively on the written transcript, which, as I will discuss below, is often inaccurate (cf. Prince 1990).
4. Green (1990) points out that in asking jurors to draw upon their commonsense abilities to interpret evidence, judges are conflating two very different tasks. The instruction is appropriate for courtroom testimony, which is clearly marked as a special discourse type and which is evaluated only for truth or falsity. But tape-recorded evidence of conversations is difficult to interpret, because such interpretation requires a good deal of background knowledge about the topic, interlocutors' speech varieties and interactional styles, and so on, all of which jurors usually lack.
5. Walker (1990) shows the error in the general belief that transcripts of judicial proceedings made by court reporters are verbatim records of the event. Inaccuracies are introduced because of both practical limitations and political considerations; most significant for the legal process is Walker's finding that court reporters treat the speech of courtroom participants differently, improving the grammar and style of judges and attorneys, for example, but not of witnesses and defendants. Walker proposes that in light of the issues of representation raised by these inequitable practices, court reporting should be viewed as a form of translation, but as I will discuss, translation itself is problematic for the judicial system.
6. Shuy (1987, 1993) describes the methods by which government agents and informants attempt to elicit and record incriminating statements by individuals suspected of criminal activity. Such covert motives, he shows, produce oddities of speech that Green calls "unnatural conversation" (1990:271).
7. This embedding strategy was also employed in one of Shuy's (1993) cases, in which a jeweler was accused of agreeing to accept stolen goods.

8. Anecdotal evidence suggests that even accurately translated Spanish could create negative juror reactions given cultural differences in register. Richard Rodriguez writes in his autobiography, *Hunger for Memory*, that a man of Mexican background is expected by his culture to be “*feo, fuerte, y formal*” (“ugly, strong, and formal” — strikingly, *formal* here probably means not only “formal” but “trustworthy” or “reliable”). I thank Robin Lakoff for bringing this remark to my attention.

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