

The Ohio State University
Winter Quarter, 2006

Syllabus
Linguistics 597.02
Language and the Law: A Cross-Cultural Perspective

Mondays and Wednesdays, 9:30-11:18; 212 Enarson Hall
Instructor: Craige Roberts: 210 Oxley Hall, 292-8302; roberts.21@osu.edu
Office Hours: Tuesdays 1:30-2:30pm and by appointment
Course Website: www.ling.ohio-state.edu/~croberts/597.02

Issues of interpretation are constantly before the courts, even in relatively homogeneous, monolingual cultures. Constitutions, statutes, contracts and other legal documents often contain language which is vague or ambiguous. It then falls to the courts to determine the interpretations that will prevail in application. But there are difficult questions about the extent to which the law, or expert opinion more generally, can determine the meaning of a word or expression. Equally difficult, and very controversial in the U.S. today, is the question of whether a law should be understood in terms of the intent of its framers, or only in terms of the “plain meaning” of the text itself.

Such questions become all the more difficult in multilingual communities and international jurisdictions, where issues of interpretation are compounded by the problem of translation. If knowledge is power, linguistic knowledge is essential for access to power. Hence, the linguistic rights and responsibilities of citizens and other residents have a crucial role in ensuring not only justice in the courts, but equitable participation in social institutions generally. Linguistic rights have thus become the focus of intense controversy in contemporary multicultural societies.

In discussing questions of interpretation, we will focus on real court cases, mostly in the U.S. legal system, which illustrate the challenges and pitfalls that interpretation presents to the courts. We will study questions of language rights through a variety of international legal instruments, such as the UN's Universal Declaration of Human Rights, as well as comparing various national constitutions with provisions bearing on language rights.

Course Requirements:

There will be one quiz, in week 4, which will account for 15% of the total grade. Students will be assigned a short paper (3300 words—roughly five pages), due in week 5, which will account for 20% of the grade. Students will also write a second, research paper (maximum 4800 words—roughly seven pages) which accounts for 30% of the grade. A rough draft of the final paper must be turned in for comments in the beginning of week eight; students will receive 5% of their grade for turning in a complete draft, without any expectation that it will be polished at that point. The remaining 30% of the grade will be based on the frequent, short homeworks, described below.

Students should have read the assigned materials before the class meeting on which they are scheduled to be discussed. For each date on the schedule, the homework listed **is due in class on that date**. The homework will require you to address issues and questions based on the reading for that date, hence matters which have not yet been discussed in class. You may need to go to a dictionary or other reference work to complete some answers. Clear, coherent, intelligent answers will receive a \checkmark , with + given if special insight is reflected, - reserved for incomplete or sloppy work. Late work will not be accepted for a grade, except in case of illness. Unless you have done your homework, you won't be prepared to participate in class.

Students with Disabilities: Students who need some accommodation because of a disability must contact the instructor to arrange an appointment as soon as possible to discuss the course format, to anticipate needs, and to explore potential accommodations. The instructor relies on the Office of Disability Services for assistance in verifying the need for accommodations and developing accommodation strategies. Students who have not previously contacted the Office for Disability Services are strongly encouraged to do so (614-292-3307; www.ods.ohio-state.edu).

Academic Misconduct: Academic dishonesty will not be allowed under any circumstances. Cheating on tests or on other assignments will be reported to the University Committee on Academic Misconduct. The most common form of misconduct is plagiarism. Remember that any time you use the ideas or the materials of another person or persons, you must acknowledge that you have done so in a citation. This includes material that you have found on the Web. The University provides guidelines (this will be the subject of your first paper).

Readings:

The basic text for the course will be:

Solan, Larry (1993) *The Language of Judges*. University of Chicago Press.

A variety of legal reference works is listed on the course website, along with links to other on-line resources. Relevant cases to read will be announced in class, and found under the “essential cases” link on the website. We will also read the following articles and book chapters. As noted, some are available on-line; the rest (marked with ‘*’) are in a reader available through Zip Publishers:

Cardozo, Benjamin. (1921) *The nature of the judicial process*. Yale University Press, “Introduction”, pp. 1-30. At:

<http://xroads.virginia.edu/~HYPER/CARDOZO/CarNatI.html>

*Chierchia, Gennaro & Sally McConnell-Ginet (2000) *In Introduction to Semantics*. Chapter One: Implication Relations. MIT Press.

*Conley, John M. & William M. O’Barr (1998) *Just Words: Law, Language, and Power*. University of Chicago Press. Chapter 6: “The Discourses of Law in Cross-Cultural Perspective.”

- *Dunning, Timothy & Bruce Downing (1995) Legal interpreting on trial: a case study. In Morris, M. (ed.) *Translation and the Law*. Philadelphia: John Benjamins.
European Charter for Regional or Minority Languages.
- *Gibbons, John (2003) *Forensic Linguistics: An Introduction to Language in the Justice System*. Blackwell. Chapters 3 “Interaction and Power”.
- *Greenawalt, Kent (1995) *Fighting words: individuals, communities, and liberties of speech*. Princeton University Press. Chapter 6: “Obscenity”.
- *Kontra, Miklos (1996) Language Rights arguments in Central Europe and the USA: How similar are they? In Douglas A. Kibbee (ed.) *Language Legislation and Linguistic Rights: Selected Proceedings of the Language Legislation and Linguistic Rights Conference*. IMPACT: Studies in Language and Society, Volume 2.
- *Kunz, Keneva (1995) Where the Devil Meets his Grandmother: Iceland and European Community Legislation. In Morris (1995).
- Monaghan, Leila (1997) Column on the Ebonics controversy for the February 1997 newsletter of the Society for Linguistic Anthropology. Available online at <http://www.stanford.edu/~rickford/ebonics/>.
- Nunberg, Geoffrey (1992) Afterward. In Crawford (ed.) *Language Loyalties: A Source Book on the Official English Controversy*. University of Chicago Press.
- Nunberg, Geoffrey (2003) High Definition. *American Lawyer*, January 17, 2003. Available on-line at: <http://tinylink.com/?7fcc2DkrNv>
- Nunberg, Geoffrey (2005) The book of Samuels. Commentary on the NPR program *Fresh Air*, available on-line at: <http://www-csli.stanford.edu/~nunberg/johnson.html>
- The OSU Linguistics Department. File 1.3: “Good” Language? In *Language Files*. OSU Press.
- Scalia, Antonin (1997) Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws. In Scalia, *A Matter of Interpretation: Federal Courts and the Law*, Princeton University Press, Princeton, NJ. Available on-line at <http://www.tannerlectures.utah.edu/lectures/scalia97.pdf>
- Solan, Larry (1999) Refocusing the burden of proof in criminal cases: some doubt about reasonable doubt. *Texas Law Review*.
- Tiersma, Peter (1999) *Legal Language*. University of Chicago Press, Chapter 14.

Topics and Readings:

I. Interpretation in the Law (3.5 weeks)

Introduction (Week One)

Wednesday, 1/4:

Read: Brief definitions of terms *common law*, *civil law* on the reference websites suggested. *Wikipedia* entry on *social network theory*:

http://en.wikipedia.org/wiki/Social_networking

Theories of Legal Interpretation (Week Two)

Monday 1/9:

Read: Cardozo (1921); Scalia (1997); Entry on *textualism* at:
<http://tinylink.com/?wqAaAW7qHJ>.

Homework: Write one short, clear paragraph (no more than 80 words, preferably less) on each of the following questions:

Who is Heraclitus, and why is he quoted in Cardozo's essay [p.28]?

What does *dicta* mean [p.29]? What does Cordozo mean in using it here?

Scalia says "The text is the law" [p.97], but later says that "In textual interpretation, context is everything." [p111]. Are these claims consistent?

Wednesday 1/11:

Read: Solan, Introduction and Chapter 1; OSU Language Files 1.3 (in reader)

Homework:

Write one short, clear paragraph in response to this question: Does Solan agree with Cardozo or with Scalia? How do you know?

Do Exercise 5, File 1.3.

Linguistic semantics.(Week Three) (no class on Monday, 1/16)

Wednesday 1/18:

Read: Handout on semantics (linked from website)

Chierchia & McConnell-Ginet (reader)

Fintel, Kai von (2005) Supremes Decide on the Meaning of 'Any'. Available on his semantics blog at: <http://tinylink.com/?c9ZYyAAfX9>

Homework:

Do the following exercises from Chierchia & McConnell-Ginet::

Exercise 1, pp.23-24: # 5, 6, 7, 8, 10, 15, 16

Exercise 3, pp.32-33: #1, 2, 7

Exercise 4, pp.37-38: #3-7, 9-11

Exercise 5, pp.40-41: #1-3, 5, 8-10, 12-13, 16

Answer briefly: What is a leading question in the courtroom? When are they forbidden, and why?

Special language and interpretive rules in the law. (Weeks Four and Five)

Monday, 1/23:

Read: Solan (1993) Chapter 5; article by Nunberg: <http://www-csli.stanford.edu/%7Enunberg/CLShall.pdf>

Homework: Consider the Pennsylvania Plain Language Consumer Contract Act, Chapter 37, at <http://members.aol.com/StatutesPA/73.Cp.37.html>, and give short answers to the following:

How do Solan's recommendations and criticisms bear on the language guidelines in the Act?

Do you think the Act itself is written in plain English? Bring both Solan and Nunberg to bear on your brief discussion.

Wednesday, 1/25:

Read: Tues: Solan (1993) Chapter 2.

Quiz: On all material through today's lecture (including Solan, Chapter 2).

Monday, 1/30: [***NOTE: **Class will start at 10:00am.**]

Read: Solan (1993), Chapter 3, pp.64-81.

Paper #1 due in class.

Language in the Courtroom (*Weeks Five and Six*)

Wednesday, 2/1:

Read: Solan (1993), Chapter 4; read Scalia's dissenting opinion in *Chisom v. Roemer*, 501 U.S. 380 (1991): <http://tinylink.com/?fQg2e65Uae>; Nunberg editorial from "Fresh Air" at <http://www-csli.stanford.edu/~nunberg/johnson.html>

Homework: Write a brief answer to this question: How does the absurd result rule interact with the plain language rule?

Monday, 2/6:

Read: Solan, Chapter 7

Homework: Write one page (500 words max) summarizing the judicial interpretive philosophy you find most appealing, and why.

Legal Discourse and Power in the Courtroom. (*Weeks Six and Seven*)

Wednesday, 2/8:

Read: Gibbons (2003) Chapter 3

Homework: Briefly (100 words or less) summarize Gibbons' argument that "Language is probably the most powerful interpersonal weapon other than force itself."

Monday, 2/13: Jury Instructions

Read: Tiersma (1999) Ch. 14; *Free v Peters*; Solan (1999)

Homework: Briefly address this question: How would the plain language rule bear on the use and interpretation of *reasonable doubt* in jury instructions?

Wednesday, 2/15:

Read: Conley & O'Barr (1998) Chapter 7.

II. Language and Law Across Cultures

Laws about language.

Monday, 2/20:

Read: Greenawalt (1995) Chapter 6

Language rights and the legal status of languages: (Weeks Eight and Nine)

Wednesday, 2/22:

Read: Nunberg (1992); Monaghan

Draft of final paper due in class.

Monday, 2/27:

Read: Kontra; European Charter (on-line)

Translation and the law. (Week Ten)

Monday, 3/6:

Read: Kunz (1995); Dunning & Downing (1995); European Charter for Regional or Minority Languages.

Wednesday, 3/8:

Summary Discussion

Final paper due in class.