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Translating Equality: Language, Law and Poetry

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TRANSLATING EQUALITY: LANGUAGE, LAW AND POETRY

*A conversation with Kimiko Hahn¹ and Jenny Rivera²,
moderated by Professor Ruthann Robson³
November 6, 2009*

PROFESSOR RUTHANN ROBSON: This is our third annual interdisciplinary conversation, which pairs a distinguished CUNY professor from outside the law school with a distinguished professor from our own law school. These conversations discuss social justice issues across disciplines. Our first conversation was between Stephen Loffredo,⁴ who teaches Constitutional Structures and is director of our Economic Justice Project, and Frances Fox Piven,⁵ who is

¹ Kimiko Hahn is a poet and Distinguished Professor in the MFA Program in Creative Writing at Queens College, CUNY. She is the author of eight collected works of poetry, including *The Unbearable Heart*, which received an American Book Award, *Earshot*, which was awarded a Theodore Roethke Memorial Prize and an Association of Asian American Studies Award, and most recently, *Toxic Flora*. Her awards include a Pen/Voelcker award and a Guggenheim Fellowship. Hahn received an undergraduate degree in English and East Asian studies from the University of Iowa, and a master's degree in Japanese literature from Columbia University in 1984.

² Jenny Rivera is Professor of Law and Founder and Director of the Center on Latino and Latina Rights and Equality (CLORE) at CUNY School of Law. Professor Rivera received her A.B. in History from Princeton University and her J.D. from New York University School of Law. In 1993, Professor Rivera received her LL.M. from Columbia University School of Law, where she concentrated on Constitutional and Feminist theory. After graduating from NYU, Professor Rivera worked as a pro se law clerk in the Second Circuit Court of Appeals. Professor Rivera then worked with the Homeless Family Rights Project of the Legal Aid Society. From 1988 to 1992, Professor Rivera was associate counsel for the Puerto Rican Legal Defense and Education Fund, where she worked on language rights and other issues. In 1993, Professor Rivera clerked for then-District Court Judge Sonia Sotomayor. Professor Rivera has authored several articles on civil and women's rights, including *An Equal Protection Standard for National Origin Subclassifications: The Context that Matters*, 82 WASH. L. REV. 97 (2007), and *The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements*, 4 J. L. & POL'Y 463 (1996). Professor Rivera teaches administrative law, civil procedure, lawyering, property and courses on discrimination law. She formerly served as an Administrative Law Judge of the New York State Division of Human Rights, a former member of the New York City Commission on Human Rights, and as the Special Deputy Attorney General for Civil Rights for the New York State Attorney General.

³ Ruthann Robson is Professor of Law and University Distinguished Professor. She teaches in the areas of constitutional law and sexuality and the law. She is the author of numerous works of scholarship and creative writing.

⁴ Professor of Law, City University of New York School of Law; J.D., Harvard Law School.

⁵ Distinguished Professor of Political Science and Sociology at The Graduate Center, City University of New York; Ph.D., University of Chicago.

well known for her work on social movements and poverty. That conversation was about economic justice, and focused on socio-economic class and poverty.

Our second conversation was between Janet Calvo,⁶ who teaches in the area of health law and co-directs our Health Law concentration, and Nicholas Freudenberg,⁷ who is well-known for his work on health care and the responsibility of corporations. This conversation focused on health. Both of these conversations are now available in our own *New York City Law Review*.⁸

Today, we are thrilled to have Kimiko Hahn, a Distinguished Professor of English at Queens College. In addition to being a professor, she is well-known and highly regarded for her poetry, which is written in English, but often inspired by Japanese language and forms. Also, she has just written a new collection of poems inspired by science entitled *Toxic Flora*, which is forthcoming this spring.⁹

Our other speaker is CUNY Law's Jenny Rivera, who is the Director of CLORE, the Law School's Center on Latino and Latina Rights and Equality. She has written compellingly on language rights, language discrimination and language access.¹⁰ As well as having experiences in the political use of language in her position as Special Deputy Attorney General for Civil Rights for the New York State Attorney, this past summer she was part of a coalition supporting the confirmation of Justice Sotomayor, where she was

⁶ Professor of Law, City University of New York School of Law; J.D., New York University School of Law.

⁷ Distinguished Professor of Public Health and Social/Personality Psychology; Director, Doctor of Public Health Program at Hunter College and the Graduate Center, City University of New York; Ph.D., Columbia University.

⁸ See Stephen Loffredo & Frances Fox Piven, *A Discussion of Poverty, Class, and Economic Justice Between Frances Fox Piven and Stephen Loffredo*, 11 N.Y. CITY L. REV. 1 (2007); Janet Calvo & Dr. Nicholas Freudenberg, *A Conversation on Health and Law*, 12 N.Y. CITY L. REV. 63 (2008).

⁹ KIMIKO HAHN, *TOXIC FLORA* (2010).

¹⁰ Jenny Rivera, *An Equal Protection Standard*, *supra* note 2. See also Jenny Rivera, *Creating an Intimate Partner Violence Against Women Legal Theory*, 8 N.Y. CITY L. REV. 495 (2005) (illustrating that the "domestic violence movement is English language-centered and uncultural"); Jenny Rivera, *The Availability of Domestic Violence Services for Latinas in New York State: Phase II Investigation*, 21 BUFF. PUB. INT. L.J. 37 (2002-2003) (illustrating that "[m]onolingual Spanish-speaking Latinas are most adversely affected by the lack of bilingual/bicultural services"); Jenny Rivera, *The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements*, 4 J.L. & POL'Y 463 (1996) (illustrating the effects on particular cultures of having only a few Latino, African-American and Asian officials in the legal system); Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231 (1994) (illustrating how the lack of Spanish-speaking officials and personnel negatively affect Latina women).

forced to think about her use of language when talking to politicians and the public about the confirmation process.

Thank you both for being here today. So, let me start the conversation with a question that comes from the reading we have been doing in our constitutional law class. We have read *Hernandez v. New York*,¹¹ where a majority of the Supreme Court upheld a prosecutor's exclusion of Spanish-speaking potential jurors based upon the jurors' statements that they would try to accept the official translator's translation of any Spanish-speaking witnesses. The prosecutor seemed to want the potential jurors to say that they could—perhaps definitely—accept the official translator's version, no matter how they understood the testimony in Spanish. Do you think the prosecutor's expectation, which the Supreme Court adopted, is possible? Is it possible to say that one would definitely accept an official translation even if one knew it was inexact or even wrong?

PROFESSOR JENNY RIVERA: Good morning, thank you for inviting me to this conversation. In response to your question, I don't think it's possible for a juror to ignore what the juror hears on the stand, nor do I think it is possible for a juror to ignore what the juror understands or what the juror *thinks* they understand is the substance of the testimony. Therefore, I don't think it is reasonable for the prosecutor to expect potential jurors to ignore a communication and what they believe to be an incorrect interpretation of a communication.

I also don't think it's reasonable for a society that is based on the rule of law to expect anyone to ignore an error in the courtroom, if that may impact the integrity of the process. I believe that it is very valuable to the judicial process to recognize how jurors may be able to recognize a translation error, or at least communicate a different understanding of the testimony. Even if we want to avoid having four separate translators in the room (the jurors, potential jurors, the translator, and the official court reporter), we could certainly find a way to allow a person who happens to be bilingual to serve on a jury, for example, by making sure they do not hear the original Spanish version of the testimony.

However, I think even this approach creates problems, because language is not only about the technical word, and what that

¹¹ *Hernandez v. New York*, 500 U.S. 352 (1991) (holding that prosecutors can dismiss potential jurors who are bilingual in English and Spanish from juries that will consider Spanish language testimony, rejecting petitioner's claim of a racially motivated peremptory challenge pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986)).

word means, but language—and its meaning—also encompasses how the word is said, and how the words are put together.

PROFESSOR KIMIKO HAHN: Well, I'm not familiar with this case, but if you think back to whatever poetry class you had, way back when, you may recall the words “denotation,” the dictionary definition of a word, and “connotation,” the idea or feeling that we associate with those words. These are terms we use in everyday speech, not just literary terms. Add to that glorious ambiguity of language the issue of translation and the potential for multiple translations in the room. What does that mean for the individual and the various communities in that room? What does that mean in terms of your responsibilities in the future? How can we understand what someone is expressing?

PROFESSOR ROBSON: Embedded in the *Hernandez v. New York* discussion is a concept of the “right” to translate as well as the notion of “incorrect” translations. This “right” to translate was the underlying issue in the Marilyn Chin controversy where Chin translated Vietnamese poetry.¹²

PROFESSOR HAHN: The controversy was especially complicated because it involved poetry from the Vietnamese written in Chinese.

PROFESSOR ROBSON: The critique of the translation was that Chin wasn't being accurate enough and merely “noodling around.”¹³ You wrote that you felt

the real issue is who has the right to translate. All other aspects (who is most learned, who has the right background, who possesses particular kinds of access, etc.) are fascinating and not to be dismissed; however, to question whether a translator knows enough of the language is not the point . . .

. . . I studied Japanese with men trained during WWII. Translating from the Japanese was once their domain. Has that legacy of entitlement somehow continued? . . .

. . . Translation is such a peculiar synthesis of skills and sensitivities—who is to say what is ultimately the most important one?¹⁴

Can you expand on your own experiences while learning Japanese?

¹² Marilyn Chin, Letter to the Editor, 192 *POETRY* 251 (2008), available at <http://www.poetryfoundation.org/poetrymagazine/letter.html?id=181632> (responding to comments made by Joseph Bednarik criticizing Chin's translation); see also Joseph Bednarik, Letter to the Editor, 192 *POETRY* 421, 421 (2008) (responding to Marilyn Chin's reply).

¹³ Joseph Bednarik, Letter to the Editor, 192 *POETRY* 251 (2008), available at <http://www.poetryfoundation.org/poetrymagazine/letter.html?id=181631> (criticizing Marilyn Chin's translation of a Vietnamese poem to Chinese).

¹⁴ Kimiko Hahn, Letter to the Editor, 192 *POETRY* 501 (2008), available at <http://www.poetryfoundation.org/poetrymagazine/letter.html?id=181631>.

PROFESSOR HAHN: I learned some Japanese as a child, then in college I studied proper Japanese. There I was trained by men who learned the language when they were in the Second World War, later becoming part of the American Occupation. This was their very particular training. They were my literature professors, and I absolutely worshiped their translations. They were absolutely brilliant men.

However, I came to understand that, of course, they were making cultural decisions in their translations, and I began to increasingly question some of the decisions that they had made. (I should add, too, that at least one professor taught us to watch for these kinds of decisions in whatever translations we read.) This was the issue in the controversy involving my friend, Marilyn Chin.¹⁵

She was translating¹⁶ Vietnamese poetry, which was written in Chinese in the eighteenth century.¹⁷ The translator¹⁸ who had published the Vietnamese poet's work and his friends were furious with Marilyn Chin because they disagreed with her version.¹⁹ I don't speak or read Chinese but in her translation she changed the tone to one that was very sassy, more so than in earlier translations. That's Marilyn's right. Even if she's wrong, that's her right. And it's her right to publish her translation, but of course it's also their right to criticize her. Everybody immediately started taking positions. It became a huge argument within this tiny realm of poetry. Perhaps part of the issue was territorial. In any case, it was fascinating.

PROFESSOR RIVERA: I'll share an experience from legal practice, when I was a junior staff lawyer with the Legal Aid Society's Homeless Family Rights Project. We had a case that involved our representation of a Latina, who was Dominican. It was a class action case against the City of New York and the State of New York, and we were conducting discovery.

The case involved a failure to provide particular types of bene-

www.poetryfoundation.org/poetrymagazine/letter.html?id=182126 (responding to criticisms of Marilyn Chin's translation of a Vietnamese poem to Chinese).

¹⁵ See *supra* notes 12–14.

¹⁶ Marilyn Chin, Translator's Note, 192 *POETRY* 43 (2008), available at <http://www.poetryfoundation.org/archive/poemcomment.html?id=181316>.

¹⁷ See, e.g., Ho Xuan Hu'o'ng, *Floating Sweet Dumpling* 192 *POETRY* 41, 41 (Marilyn Chin trans., 2008), available at <http://www.poetryfoundation.org/archive/poem.html?id=181316>

¹⁸ Prof. Hahn is referring to John Balaban; see HO XUAN HU'O'NG, *SPRING ESSENCE: THE POETRY OF HO XUAN HU'O'NG* (John Balaban trans., Copper Canyon Press 2000).

¹⁹ John Balaban, Letter to the Editor, 192 *POETRY* 421 (2008), available at <http://www.poetryfoundation.org/poetrymagazine/letter.html?id=181747>.

fits. I accompanied my client to the City's offices for her deposition. I was sitting there with my client and the City's attorney, who was also Latina. We had a translator because my client did not speak English well, in fact, did not speak very much English at all. The attorney for the City started asking her questions about her experiences, who she was, and a little bit about her background. But then she asked her a question relating to letters that she had received from the City, and how she had used public benefits in the past. My client answered in Spanish, and the translation was moving along rather well. Then the translator translated what the client had said as, "I stole the money." I looked at the attorney for the other side. The two of us looked at each other and said, "That is incorrect." Now, the only way that was possible is because my adversary was Puerto Rican, as am I, and both of us understood a Caribbean version of what my client was saying—my client is Dominican, I am Puerto Rican.

We both understood that she did not say, "I stole the money." The translator was also Latina but she was not from the Latino-Caribbean. This was not a word or phrase that she would translate other than the way she translated it. The City attorney and I both said, "That's not the correct translation," and that we wanted to take a break and stop the record, and that is what we did. My adversary and I caucused, and she, of course, was not going to tell me anything other than she agreed that that was not the correct translation of what the client had said. But she agreed to allow me to translate the question to the client as well as the translator's interpretation of what my client had said. I was going to translate the Spanish to English and back to Spanish, to ask her if that was correct, so that I could then translate it to English for the record. My adversary agreed to let me do that first, and my client was beside herself, stating, "No, no, no, I never stole it." It was quite a moment. We went back on the record and explained the problem with the translation. My adversary asked the question again, and specifically asked the client, "Did you say and mean that you stole the money?" My client stated, "Oh, no, no" and then she went through exactly what she meant.

After this was done, the translator, without anyone asking, said, "I wish to put something on the record." My adversary and I were thinking, "What could that be?" The translator stated, "I want to put on the record that I have a certificate from" so-and-so, "and I am," whatever the language group, the national origin, Spanish-speaking language group she was from, "and I have given the offi-

cial, authentic and correct translation of what the person who is being examined has said.”

Both my adversary and I said “thank you,” but we again put on the record that both of us disagreed with the translator’s version, and that both of us accepted that the client did not say that she’d stolen the money. Thank goodness that we agreed. This translator was very invested, first of all—it could mean losing her job—but very invested in the perception that she had given the correct translation, regardless of what that could be. This person who was being examined would say, “I never meant that I stole the money.” This was very clear, and there were two other people, two other lawyers in the room, who not only spoke Spanish, but who understood this particular type of Spanish communication.

My adversary could have said, “I accept the official translation. You have the opportunity to put anything you want about it on the record, but that is the official translation.” Luckily, she agreed that the “official” translation was flawed. She and I saw each other twenty-some-odd years later, and we both remember it quite vividly. So, yes, there is something about who gets to translate, what it means, and how you clarify understandings about statements made.

Since that day I’ve always wondered what would have happened if I hadn’t been in the room and the adversary wasn’t willing to recognize that the translation was flawed? What could have happened? She could have put it into my client’s file and sent it to the federal government.

PROFESSOR ROBSON: How do you see the difference between language, dialect, and vernacular? We seem to think of English as one language, Japanese as one language, and Spanish as one language, but of course, that’s not really true.

PROFESSOR HAHN: We were speaking earlier how even Spain, that little country over in Europe [*laughs*], feels it owns the Spanish language even though there are many more people in this hemisphere who speak the language Spain originated. Of course, issues of ownership and change crop up in so many different ways—instances smaller than hemispheres. An example of what happens to English from one part of the country to another: I taught at Houston for one semester and loved the experience. I recall when I first arrived I could not understand the parking attendant, and thought, “Wow. This is my entrance into a different language adventure.” And, well, it was a pleasure. I love scenes like that, and it wasn’t even a matter of dialect in this case.

PROFESSOR RIVERA: When I grew up in New York City, I grew up in a neighborhood that was predominantly Puerto Rican. My experience with Spanish speakers involved Puerto Ricans who spoke Spanish. When I went to college, it was my first exposure to another Latino group—my roommates were Mexican-American. As they started to speak I said, “What are you saying?” And they would say, “What are *you* saying?” They didn’t understand me because they thought I spoke too fast, which is true in English too. It was quite comical, but once we got through the whole thing about, “That’s not Spanish. I don’t know what you’re speaking, but that is not Spanish,” we realized, of *course* it’s Spanish. Of course we can both be territorial in some ways, but very open to engaging in a conversation from our respective places. It allowed us not only to be able to speak in Spanish and understand each other, but to learn about these different cultures that brought us to this place to speak in Spanish, and about our different histories.

I didn’t know very much about the Mexican and Mexican-American experience. But through this initial linguistic debate, “What’s that language you’re speaking? Because it can’t be Spanish,” the conversation made both sides really open to learn something much deeper about our experiences in this country.

PROFESSOR HAHN: This issue of feeling territorial over language and what happens culturally is fascinating. My mother’s parents came from Japan and she grew up in Hawaii on a plantation. They brought to Maui the Japanese language that was spoken in Japan at the turn of that century, specifically the Japanese spoken by peasants, and there the language stayed undergoing its own evolution on that island. It was very different from the Japanese that evolved in Japan. When my mother visited as an adult and spoke Japanese, it was, I guess it was considered quaint.

We know that language evolves in this very weird way, and it forms our identity. It forms the way we view other people. So my mother grew up speaking this sort of peasant, old-fashioned Japanese in her home. She grew up speaking standard English in a tiny classroom in the middle of this tiny island. She also spoke Pidgin with her friends. Hawaiian Pidgin²⁰ is made up of English, Japanese, Chinese, Portuguese, and Hawaiian, and now probably more

²⁰ Despite its name, Hawaiian Pidgin has outgrown its “pidgin” origins. By definition, true pidgin languages are used only under restrictive circumstances by speakers of various native languages as a means of being understood by each other. Since its first use as a means of communication between people from Hawaii, China, Portugal, Japan, Korea, the Philippines, and many other countries, Hawaiian Pidgin is now spoken by its own native speakers and has therefore earned a “creole” classification. *See*

languages as well, such as Korean and other South Asian languages. All these languages were spoken by laborers and the others living on the plantations.²¹

It's a really interesting conglomerate, and very different from the way we speak English. When you hear someone speaking Hawaiian Pidgin, it can be quite difficult to understand. So she grew up basically speaking three languages, and that's just the way she lived as an immigrant daughter. It was glorious and culturally rich.

PROFESSOR ROBSON: If it is so essential to one's identity, and this is something that the courts grapple with, how is it like ethnicity? Isn't it unique because it is changeable, the language itself changes, everyone who speaks it changes, and people can learn other languages? How do you see it as essential to one's identity, or not?

PROFESSOR HAHN: Essential to identity, yes. Plus I think we must agree that Spanish, for example, is spoken in any number of ways. The differences arise not only from place of origin, but also through class, gender, and even one's own experiences. If we agree that it is complex, then that is a good starting point.

PROFESSOR RIVERA: There is the flawed approach in the law that it's mutable, that anybody can learn Spanish, Chinese, or any language. But that is really to decouple language from experience, to decouple from what the language means to us. I learned French in high school. So, my connection to that language is different than my connection to English and to Spanish. It is something I have learned in a particular way, and I am embarrassed by the way I speak it, by the way—and I should be. But I do have a different connection to it, even though it's a Romance language, and it has similarities to Spanish. In fact, I found it to be a beautiful language, and I connected to it because it reminded me so much of Spanish. My mother also loved it, even though she was disappointed I wasn't in the Spanish class. We had records that we took home. I would put them on the phonograph and she would come into the room, of the three rooms that we had, and she would listen to the records. "It's such a beautiful language. Oh, speak it. I love that." And she just loved this, and the sound of it, and I think, in part, it's because in many ways it was very reminiscent of Spanish.

It is about your culture or your experience, but I really do think, because of the history of various linguistic minorities in this

KENT SAKODA & JEFF SIEGEL, *PIDGIN GRAMMAR: AN INTRODUCTION TO THE CREOLE LANGUAGE OF HAWAII* 2–3, (2003).

²¹ See *id.* at 3–14 for a short history of the development of Hawaiian Pidgin.

country, that even if you don't speak—and I'll put it this way—a word of that other language, the language means something to you. Maybe you know “hello” and “goodbye.” Maybe you know a few phrases. Maybe you can order something at a store. So you need not even be fluent, and I think this is the other flaw in this. “All right, how good are you? Are you bilingual?” You get certain protections if you're bilingual and if you're not bilingual, then you get some other kind of protections.

But it's also something about the connection. I know enough Latinos who don't speak Spanish very well, or at all, who would be just incensed by anyone saying, “This is an English-only country.” And bilingual people who would be very proud to say, “It's an English-only country.” So, any language is part of other experiences that, like various histories in this country, the law doesn't always capture so well. And I think that's what's problematic, that dichotomy in the legal analysis.

PROFESSOR ROBSON: When we think of English-only, there are real questions about what the government should require people to learn in order to do business with the government, for example obtaining driver's licenses or public benefits.²² One thing that arose in the student questions involved concerns about government resources, and where does it end. Does there have to be a critical mass of people that speak a certain language before the government should provide translators, or provide things on the subway? What kinds of things should the government take into account, assuming that it is ready to apply language services, and not just apply a draconian English-only policy?

PROFESSOR HAHN: On the one hand, just for practical reasons you can't have the word “exit” on a door in every language that is spoken, say, in Queens. There wouldn't be enough space on the door! On the other hand, there was a recent article about a man who's making his Spanish-speaking employees speak English

²² Challenges against government English-only requirements have been both struck down and upheld. In *Alexander v. Sandoval*, 532 U.S. 275, 292–93 (2001) the Supreme Court held in a 5–4 decision that Alabama's administration of a driver's license examination only in English was immune from a private challenge under Title VI of the Civil Rights Act of 1964. The Arizona and Alaskan Supreme Courts have both struck down voter-approved amendments to the state constitutions requiring state and local governments to conduct business only in English. See *Ruiz v. Hull*, 957 P.2d 984 (Ariz. 1998) (striking down the initiative on First Amendment grounds); *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183 (Alaska 2007) (striking down an initiative requiring government employees to exclusively use English in their official duties). Thirty states have declared English their official language, see U.S. ENGLISH, <http://www.usenglish.org/view/13> (last visited Jul. 4, 2010).

when they're at work. His reasoning was that it is good for business. I just thought to myself, "Since they're mostly Latino people going to your store, what would really be good for business is for you to learn Spanish. That's what's good for business." But, it is also good for business for his workers to learn English. I think we should all be taught two languages: a language that everyone shares (and I use that word knowingly), but also a second language—whether that is Spanish taught in school or a language that one's grandmother speaks, like Hmong or Russian. I don't understand what the problem is with being a more culturally rich person. This is the case in Europe and in Hawaii where my mother grew up. It is a part of life. I can imagine those who might think this is not American, but in fact it is very American to speak more than one language. This country has undergone a cultural lapse.

Why have Americans become increasingly narrow minded? What's wrong with speaking two languages? Does that mean you're compromising English? I can't understand what the issue is. Is it better to be stupid? This reminds me of the so-called global warming issue. Even if there isn't such a phenomenon as climate change, isn't clean air a positive thing?

PROFESSOR RIVERA: One of the things that comes up is contracts for government services, and I think, "What's the big deal? What's the objection?" Some of the primary objections are, "Well, it's just too costly. It's unwieldy. It's not practical. We can't do it." We know we can. That has evolved over time. But those responses are really no longer justified. There are ways, of course, of providing various linguistic-appropriate services—I'm not even talking about culturally appropriate services—that we can do very conveniently, and very easily. We can do it by hiring a bilingual provider. You can do it through a translator phone service. So, there are many, many ways that you can do this that are cost efficient, practical, and not overly demanding.

So that addresses the ability to do it, right? Now, we get to the essential problem, which I think is about the willingness to do it. We could argue that some of this is rights-based. These are benefits that people are legally entitled to receive and they should have access to them, and we can put this into some category of rights. You could argue it as anti-discrimination: not to provide it means someone who speaks a different language falls subject to discrimination, not on the basis of language, but based on national origin. We can connect language to national origin, making that a rights-based case.

I think part of it is also historical. We have a reason to provide these services. We've been presented with someone who has difficulty in accessing the services, and we have to accommodate it in some way. But we have done something that created a particular situation. There are consequences to our history, and those consequences include discrimination.

One of those consequences is that there are people with different abilities and experiences who are part of the fabric of this country. So, with that kind of history, then I say it's a duty and obligation, as opposed to merely a concern about someone being able to get something we may or may not think they're entitled to. We think about it as sort of a different kind of entitlement, not just a particular benefit. We think about how our history has consequences attached to it, and we build the framework to address those consequences. It's like remediation. In my opinion, we don't desegregate because it's just morally right, though it is. You desegregate because, my goodness, you put people in this position, and they can't have a good, comfortable life. They can't afford to be in good housing, or to move or travel as maybe they wish they could. We destroyed their history, because of what's done to their ancestors, and what we continue to do. You need to remediate that and respond to that. So I would say, it's a very complex answer, but practically, we can do it. But I think there are various arguments for why we must do it.

Then you get back to the knee-jerk reaction. "You can't do it. It's too costly." Or, "Why don't they speak English? Why don't they learn English?" Or, "Why aren't there English classes?" I don't know. You tell me. But you have to at some point say, "That decontextualizes that moment, that consequence, from this much broader history." We need to think about why we need to respond, why we need to provide those services, and how we provide those services.

PROFESSOR HAHN: How to *teach* English is also an ongoing issue. On the one hand, I'm a professor of English and even *my* grammar is not perfect [*laughs*]. The way our own language, English, is being taught to children, native speakers—the reading requirements, grammar, and so on—all of that is being slowly chewed away. We know it is not being done particularly well. Some has to do with the need for higher pay and respect for public school teachers, plus greater expectations.

Given this problem, how is one supposed to learn a second language? How are people supposed to come to this country and

learn English, when even our native speakers are not really given a first-class education—perhaps unlike a certain section of the working class was taught in the 1940s and 1950s. It's partly a general education issue, and believe me, in the English department, we are overwhelmed. We keep hiring people to teach freshman composition. Sometimes it feels dire.

Why is that? My personal opinion is that after about five years a professor is burnt out from trying to bring everyone up to speed. Although we have all taught English composition, if that's your main task in an English department, it's overwhelming. The other problem is that we need more and more people to teach freshman comp in the form of remediation. It doesn't matter what class you're from. Even when I taught at Yale, I had students who were not adequately prepared. So it's not just a problem of a second language.

PROFESSOR ROBSON: How about English as a second language? There have been some studies, mostly from the '90s, that have not really been updated, focusing on how ESL has really been put on the back burner and there are documented declines in enrollment of ESL students.²³ As CUNY professors, how do you experience the current climate for ESL students at CUNY? If it is not optimal, what do you think might be done to improve the situation?

PROFESSOR HAHN: I think it still goes back to my previous comment. I think that everything needs to be sharpened, beginning with language arts. But I don't want to speak for the whole English department.

PROFESSOR RIVERA: There is a whole history behind the push for linguistically appropriate courses and language courses for students for whom English is not their first language. Some of it is about language and pedagogy, and what's the best way to teach an English language course. But some of it is the politics, and the history of oppression. What is the struggle for competence in the classroom, and access for students who speak a language other than English as their first language, primary language, or language of preference or choice, if not a struggle for identity? If not a struggle for equality? If not a struggle for finding your place, in what appears to be a hostile environment?

It is one thing to say, "We should have a language that we all

²³ See Ricardo Otheguy and Mary O'Riordan, *The CUNY Celebration and the Disappearing Guests: The Search for ESL Students in the City University of New York*, 9 COLLEGE ESL 1 (2000).

can understand and communicate in.” But it’s another thing to say, “Your language is dirty. And when you speak you’re showing your ignorance by not being able to speak English.” Or, “Because you speak that other language, or you speak English with a particular type of affect or accent, you’re telling me that you really don’t understand the language, and are not able to communicate.” These, I think, are very different things.

These issues are also embedded in the struggle to set up appropriate educational programs for “English-language learners,” which is now the phrase that has been applied to what used to be students who are learning English as their second language. It’s all very politicized in the way we think about that movement to address these consequences of our history, as people in this country who speak languages other than English, and have added to the fabric of our democracy.

PROFESSOR ROBSON: What about accents that are not from another language? There have been a lot of studies focusing on “accent discrimination,”²⁴ so that if you are interviewing for a job, or doing work on the phone, even where people can’t see you, if you have a so-called black accent, if you have a southern accent, if you have an Appalachian accent, there is a sense that “That’s not real English,” or “It’s some kind of English, but it certainly isn’t derived from what we think of as proper English.”

PROFESSOR HAHN: We were just talking about identity. Do we want to strip people’s identity away? Identity is inherent in an accent, being able to hold on to your accent, because that’s who you are, where you come from, and often times, it makes someone interesting.

We love people with accents when they’re on TV. This is what I do in terms of art, in terms of teaching poetry workshops. I’m trying to get students to go back to the particulars of their lives, and not to write what they think a white guy from the fifties would write. When they do this, they’re imitating somebody else’s poetry, and I’m trying to get them to write their own poetry, which has to do with their own life, their own identity, what they ate, who their grandparents were, and what kind of flowers grew up in their backyard or on their apartment building window. I’m trying to get them

²⁴ E.g., Agata Gluszek, *Speaking With a Nonnative Accent: Perceptions of Bias, Communication Difficulties, and Belonging in the United States*, 29 J. LANGUAGE SOC. PSYCHOL. 224 (2010); Agata Gluszek & John F. Dovidio, *The Way They Speak: A Social Psychological Perspective on the Stigma of Nonnative Accents in Communication*, 14 PERSONALITY SOC. PSYCHOL. REV. 214 (2010).

back to those particulars. We know people who can flip in and out of accents really easily. A personal example: my daughter is 24, and when she's with me she speaks the way I'm speaking. When she's with her friend from down the block, she sounds like her. I mean we all have the capacity to have various sides to our identity. There is nothing inherently wrong in that.

PROFESSOR RIVERA: The only thing I would add to that is that accent discrimination is always about more than the accent. It's not really about the accent. It's about something else that's going on. I doubt that if I went to a place with a French accent that I would be mistreated. Whereas I think there's been enough documentation, as we just mentioned, that with other types of accents, based on the language or acculturation, they don't get that attention. The British accent is cute. The French accent is cute. But the "Mexican" accent is not so cute, and you have to question whether it is really about the accent. Is it being able to communicate? Is it about the other side being able to understand? Is it what the listener, or the anticipated listener, will connect to the accent? They're connecting to a type of person, a particular group, a particular education, a particular level of accomplishment. So I think that is really what we want to get to with the accent issues. There's always more.

I've had some clients who were complaining about being discriminated against based on their language. They wanted to and did speak Spanish. It wouldn't take long for them to tell me other stories about the workplace that had absolutely nothing to do with speaking Spanish, but were instead about being discriminated against: "They don't want our music. They don't want two or more of us in one corner." It was always more than just speaking Spanish, and in that sense, as a lawyer, it made that an easier case. If you focused only on the language, then perhaps it would be harder to make the case that it is about national origin discrimination. It's not just about the way you translate something like this. It's much deeper. You've got to get past this as a lawyer. Those other examples made it easier, made it possible to say, "That workplace is infused with discrimination against people because of their identity, and they expressed that identity through language." That, or their accent, becomes the way people get targeted.

PROFESSOR HAHN: The flipside though is a lawyer, who we all know as President Obama. He's not black enough. What does that mean? And yet when he does that fist bump thing he's *too* black. It's context and who you're targeting.

PROFESSOR ROBSON: When you're dealing with people writing poetry, if people can flip back and forth, why do you have to talk to them about digging deeper, and trying to be authentic? What's standing in the way of that in terms of professionalization? We think about that at the law school, in terms of being educated in undergraduate or graduate school.

PROFESSOR HAHN: One thing that stands in the way is what I like to call "permission." When I was an undergraduate, I was struck by the way T.S. Eliot uses a lot of different languages in *The Waste Land*.²⁵ A little Latin, a little Greek, a little Hindi. He throws it in there, and it's this wonderful tapestry of language, and most of it is English. Because I'm a rather sassy person myself, I was thinking, "Why shouldn't I do that?" So, some of my poetry contains the language that I heard my grandmother speaking. I included notes in the back saying, "Well, this means 'bad girl,'" or something like that. I gave myself permission by seeing what a poet from another generation was doing. So as a teacher, one thing I know I can do is give a student permission to write about their own life.

One would think that this would be obvious. One would think that that's why they're in the poetry workshop, to write about themselves. But expanding on my earlier comment about writing from one's own experience, students in my poetry workshop often use language to form a block between the reader-listener and themselves. It's ironic, but just because you're using language does not mean you're actually expressing yourself. Sometimes you can hide, even in poetry—not good poetry—but even in poetry you can hide behind language and think, "Oh, I'm expressing myself. I'm talking about my boyfriend who just left me," but writing something down is not the same as artistic expression, pulling the reader into the experience of, say, grief.

My role is to give my students permission, but ultimately the writer has to give him or herself permission to do the really hard work of true expression. How do I do that? I do that through constructive criticism. I do that by having them read a lot, reading contemporary work from diverse quarters, and in so doing, get permission to do what writers before them have done. I also do this by "tricking" them into authentic expression through writing exercises—which, to tell the truth, I have to do for myself at times.

PROFESSOR ROBSON: Professor Rivera, what would you say about complaints or observations that many first-year law students

²⁵ T.S. Eliot, *The Waste Land*, in COLLECTED POEMS 1909–1962 51–69 (Harcourt Brace Jovanovich, 1st ed. 1991).

might have, especially coming from a literary background, that law school is kind of the opposite, that what we are doing is stripping away every permission that anyone has ever given you in order to put you into a little mold or box? That legal argument is not about expressing yourself, authentically or not?

PROFESSOR RIVERA: This is an experience where you are also learning a language. This is another language. The technical aspects of it, like the vocabulary, the tonation of it, all of that is something you have to learn. The other thing is the culture. It's a profession that has cultural markers attached to it. You must conduct yourselves in a certain way through language. Language allows people to conduct themselves in a certain way. One speaks a certain way in court, such as before the judge, both on the record and off the record, that is different than the way you might speak outside of that courtroom.

I do think that the profession places value on how we speak. I think that it's important to recognize it as such, to recognize you've had the legal training, and then to learn it with a vengeance. You have to learn it with a vengeance, so that you can be the one who's using that language to the benefit of your client and to strengthen the arguments you're making, and the social justice issues that are important to you.

You really do have to recognize the way that language is used. Although you may think, "Oh, if I could only say it this way," as I've sometimes said in my Property class, you can only say it that way. But once you've mastered it, it's sort of the difference between someone who knows very little about something, and can only do so much with it, and the master, who really understands, and has the freedom and the liberty to play with it and to push it in other directions.

So, if you're a person who only cooks on occasion, you're only going to be able to do so much. You can't invite me over to dinner because you're not going to have a decent meal for me. You're going to have what you bought in the store, and maybe toast. But if you become a master chef, of course you're going to take this to new heights. The sauces, the choices that you make, the presentation—and so, you use the building blocks, even those which may feel very limited, and just want to crush you. You just feel crushed when you take them in. You feel crushed when you take the final examination, in part because you can't really express all that you think you can, but that's about the learning. You've got to take

baby steps before you can run a marathon. I think there really is something to that.

Creativity comes, in some sense, with really getting a handle on the nuances. You may read some of those decisions in these casebooks and say, "That's horrible. Who wrote this? This is horrendous." And I might agree with you. You may read others and say, "That's fabulous. They really wrote something that just speaks to me in so many ways." Well, most of those jurists don't automatically come to the—the computer screen now, but a pen and paper before—and just write that way. It comes with time. You have to invest in it.

PROFESSOR HAHN: You probably don't know this, but a lot of people don't like lawyers [*laughs*]. But when they need a lawyer, they're hiring you to translate the language that you're learning here. It's a translation, right? You're translating for us.

PROFESSOR RIVERA: I think it also suggests that, even if you learn the language, that without the acculturation, without the immersion in the way the language is deployed, you'd still be at a disadvantage. You might get some of the crafting of the will and the divorce settlement, but there's something more going on, as you say, very strategically, I'm not hiring you because you know the law. I'm hiring you because you understand how to best communicate, "I didn't steal the money," to those people in the courtroom. If a non-lawyer just says, "I didn't steal the money," it doesn't get across the same way, or doesn't have the same persuasive impact that it would have if a lawyer did it, because that's what lawyers have mastered. That's what law students have gained in this process.

You've also learned the way others who are masters of it are deploying it, so that you can respond. Use that to the benefit of those social justice goals that you have. No one came to me and expected me to go in and communicate their argument the same way they would communicate it, for the very reason that Professor Hahn just mentioned. They expected more from me, because they understood the law is already so distant. You bring the client closer by being, as I said, the translator. You bring the client closer by finding a way to give voice to this issue in a way that doesn't lose the passion behind the issue.

Of course, if you're a lawyer, you're supposed to be dispassionate. There's plenty of that going around, right? Let's just use my discrimination example: the lawyer who is perhaps not able to really, thoroughly communicate that discrimination in the work-

place, because they're not able to appreciate it, and translate all those experiences as national origin discrimination. It's your ability to do that. But you have to master the language of the prison, the box, to be able to break out and do that for your client.

PROFESSOR HAHN: And that's probably why people love to watch lawyers on TV, right? Most of the time all of the proceedings are pretty darn boring, unless you're involved in it. But why do you want to watch it on TV? It's really for the kind of language and repartee, how one lawyer will see an opening because of one word, and that quickness and facility with translation.

PROFESSOR ROBSON: So we don't have any television shows about poets. The question is "why not?" How do you see poetry as being exciting and part of the social justice initiative, then? Using poetry with all the things that Professor Rivera has just said about the law.

PROFESSOR HAHN: Well I feel about language the way a ceramist feels about clay or a dancer feels about body movement. When I'm reading poetry, I can almost feel it in my mouth, as if the words were tangible things. What I would hope to give to the students here is, returning to my opening remarks, the play between denotation and connotation. The essential ambiguity that is both the beauty and danger of language. Poetry is not entirely ambiguity or clarity, despite what one learned in an Introduction to Poetry class. And lawyers need to be able to play with words. What I hope to do is to excite people with words, which is to some extent what Jenny is doing. You might want to Google poems and have them as part of your legal enterprises, social justice poems. Or just add a poem that plays with words in a manner that reveals something about language and how to use it: *Those Winter Sundays*, by Robert Hayden would be a good one.²⁶ Or perhaps you do already?

PROFESSOR ROBSON: We didn't set this up this before, but would you share something from your new book?

PROFESSOR HAHN: This is from my new book, which is called *Toxic Flora*, and almost all the poems are inspired by the science section of the *New York Times*. This poem is called *On Deceit as Survival*.

Darwin could not believe an insect
would visit a blossom that had no reward
and insisted that the green-winged orchid

²⁶ Robert Hayden, *Those Winter Sundays* in ROBERT HAYDEN: ESSAYS ON THE POETRY 59 (Laurence Goldstein & Robert Chrisman eds., 2001).

must withhold its nectar deep inside.
But he was deceived as well
since this orchid does not offer nectar
in its own Darwinian desire
to attract then rid itself of the useful bee.
Still others smell like feces or carrion
for the sort that prefers
to lay eggs in such environs.
Yet another species resembles
a female bumblebee,
ending in frustrated trysts—
or appears to be two fractious males
which also attracts—no surprise—
a third curious enough to join the fray.
What to make of highly evolved Beauty
bent on deception as survival—
liposuction, rejuvenated clitoris,
plumped lips? I plead with daughters
to forget the enhanced buttocks
and rely on soap as fragrance.
But, how can a mother instruct on deceit
when girls so readily flaunt thigh and thong?
and when parking lots are replete
with broken fences and the preternatural buzz
of the car alarm?²⁷

PROFESSOR ROBSON: My question is whether there is a gendered notion to language and that men and women speak a different language? That languages are gendered? That men are from—I always get this wrong—men are from Mars and women are from the moon? No. I especially mean in terms of Spanish. I am thinking of Jenny naming a Center for Latino and Latina Rights and dealing with those sorts of questions.

PROFESSOR RIVERA: Well it is tremendously gendered. Spanish and many of the Romance languages are a little bit easier because those languages always have the “o,” the “a,” or something to designate words that are feminine or masculine. The articles are feminine and masculine. Even without the obvious identifiers of what is generally the gendered use of language, some language is

²⁷ KIMIKO HAHN, *TOXIC FLORA* 17–18 (2010).

only appropriate for men versus women. So I do think that language is very gendered and we can see that in the legal field. So much of legal language represents the male experience and a male way of communicating. That's not exactly what you're talking about, but this has changed over time. When I first started practicing, I really found it very off-putting when male colleagues would talk about sports. I felt that they were very comfortable with this lingo, but I was not. I was not really comfortable with the sports that we discussed, even though I love baseball. But I found it to be a way to distance themselves from female law students and female lawyers by creating this little world, this secret place for males who grew up and experienced sports and could talk about those sports. Even if I was trying to follow a team, ask about the stadium, I couldn't even ask the questions in order to be included in the group, because that alone would present an opportunity to be mocked. This language also allows for a lot of male bonding. That's fine when it's not also affecting the professional relationships. But, I think it does result in certain people feeling more comfortable with each other than they would with someone who is not part of this bond.

I think that has evolved over time with more female sports teams. Females now feel much more comfortable with sports than I did and much more comfortable engaging in this sort of discussion. It will be interesting to see if that means that those male discussions now start being less frequent because that sort of secret language and secret world is not available anymore, as more and more females understand it and are part of it. I do think it is gendered in how it plays itself out in different ways and allows professionals to be distanced from ourselves, and from those who are not lawyers, and think differently as a result.

PROFESSOR HAHN: When the whole trend of political correctness started, it wasn't what it has evolved into, which I would describe as a sort of hysteria and which has been purposefully misused by the Right. What it was really about was being sensitive to a context. Playing devil's advocate, hopefully these guys talking about sports aren't doing it on purpose to keep the women out of the conversation. But if they had been more socially sensitive they would have noticed and would in some way have engaged everybody in the discussion. Whatever you want to call it, political correctness, just being sensitive, just being smart. And then, of course you can always do the opposite: "Oh, I see there's somebody in the room here. I'm going to talk about something they don't know and

ice them.” So this sensitivity can play out both ways, and you can use language in a way that suits your needs, and that’s part of the training.

By the way, I like the way you all use the word “adversary”! Very cool. [*laughs*]

PROFESSOR ROBSON: One thing that has interested me is the use of “brother” and “sister” by oral advocates and by the judges. Justice Roberts uses the word “brother” more than any other justice when he’s talking either about counsel or about his brothers on the bench. If it’s a woman he just leaves it off. There are no sisters on the bench, though every once in a while someone gets to be a “friend.”

PROFESSOR RIVERA: I don’t know where you’re going but I’ll just say this, I just can’t see that Justice Sotomayor or Justice Ginsburg is Justice Roberts’ sister. I just don’t see that. Or that he’s their brother.

Compared with someone who tries to deploy that language of the familiar or the political when they are not even close. Even if Justice Roberts were to realize that perhaps some people are being excluded when he refers to brothers on the bench, even by merely saying the words “and sister” or whatever might be appropriate in the moment, it doesn’t mean there is a group. I think because his judicial philosophy and approach is so far afield, we’re just beginning to see reactions during oral argument. So the attempt to be familiar and to suggest, “we’re all in this together and don’t we all have the same perspective,” I think is being deployed there. I think it is important for when that is not the case, that the people on the receiving end of that invitation reject it. I once had a person who tried to say “Hi, sister,” and I said “I’m not your sister.” Because we were so distant in many other ways. His point was, don’t we share this, the more common experience? That was true. So he thought then as a result of that experience, don’t we share a common philosophy? That was untrue. To try to deploy the language to suggest that there was more going on there I thought very problematic, so I tried to nip that in the bud.

I think that as lawyers and law students we are often trying to negotiate in that way. As you were describing in your class, that students are deploying language in that way, sort of embracing but pushing them away, finding common ground somewhere else. There might be one meaning. There are also a lot of others that apply in that context. You might say, “I reject that because we’re all jurists we may also be brother and sister on the bench. Beyond that

we share nothing in common or have very little in common, or we have to work through it and I have to see if I'm willing to say you're my brother in philosophy in this case, on this issue, or the way we talk about this experience."

PROFESSOR ROBSON: And it's also usually used when you're disagreeing with somebody.

PROFESSOR RIVERA: That too, that too.

PROFESSOR ROBSON: Do you have any last comments?

PROFESSOR HAHN: I have really enjoyed this conversation so thank you. How cosmopolitan: to talk about what I love and the language I love. Thank you for introducing me to the language of litigation, outside the TV drama. I wish you all a sensitivity that will take you further than your adversary.

