EDUARDO D. FAINGOLD
University of Tulsa, Tulsa, Oklahoma, USA
eduardo-faingold@utulsa.edu

Code-switching in the work-place: the linguistic rights of Hispanics in the United States

Introduction

This paper is based on an expert witness report that I wrote for the plaintiffs in Maldonado v. Altus, 433 F.3d 1294 (10th Cir. 2006). Hispanic city street department employees of Altus in Oklahoma alleged that the employer's English-only policy violated Title VII and 42 U.S.C. Section 1981 and 1983. A previous ruling in favor of the employer who implemented English-only policy got reversed. Tenth Circuit held that a jury could reasonably find that the English-only policy had a disparate impact on Hispanic workers and a trial court erred in concluding that the employer had established a business necessity for the policy. The Appeals Court found the evidence of business necessity was "scant", stating that there was no prior written record of any relevant communications, morale or safety problems related to the use of a language other than English (http://www.nmbar.org).

I will show why, in the US, Hispanic bilinguals, i.e. Spanish-speakers who also speak English as their second language, inevitably will speak Spanish to each other in the workplace or outside of it. The reason is that the speech of Hispanic bilinguals in the US and other bilinguals elsewhere is characterized by a linguistic behavior known as "code-switching" . I argue that code-switching is not a matter of choice or individual preference but a natural behavior that occurs unconsciously and unintentionally among bilinguals, and, moreover, that this behavior is crucially connected to the national origin of the speakers, and is also of social and cultural importance to the members of bilingual communities, especially to Hispanics in the US.

According to the Equal Opportunity Employment Opportunity Commission (EEOC) Guidelines, employer rules and requirements to speak only English in the work-place can create an atmosphere of inferiority, intimidation and xenophobia. According to the EEOC, moreover, the employer needs to show a legitimate and clearly articulated business necessity for such rules and requirements (Del Valle 2003: 151, Krahnke et al 2003). Lacking such a necessity, English-only in the work-place, Bseeking a linguistically-homogenized work-environment, may be offensive and intimidating to Hispanic and other bilinguals, *mutatis mutandis*, not unlike the practice of slave owners of intentionally mixing captured slaves who spoke different African languages to discourage the use of languages other than English in the plantations (Holm 1988: 6).

Significantly, the US is one of the relatively few countries in the world that adopts a "hands-off" constitutional policy towards language obligations, as opposed to, e.g., Canada, Belgium and Spain, where language legislation, i.e. the promulgation of official and/or national languages and specific measures to protect them, becomes a source of bitterness and conflict, and sometimes litigation or secession, between minority and majority linguistic, ethnic, and national groups (Faingold 2004b, Faingold 2007). It is worth mentioning, too, that in April of 2002, the Oklahoma Supreme Court ruled unconstitutional a petition to make English the official language of the State because such measure infringes on the right of free speech, among other freedoms (Associated Press, 4/3/02).

Definition and Examples of Code-Switching

Code-switching is "the alternate use of two or more languages in the same utterance or conversation", as defined in one of the most widely cited textbooks on bilingualism (Grosjean 1982: 145). Another leading authority on bilingualism defines code-switching as "the use of two or more linguistic varieties in the same conversation". Further, she writes that "[code-switching] can be intra- or extra-sentential and also intra-word" (Myers-Scotton 1990). Similarly, another authority on bilingualism writes that "code-switching is the alternation of two languages within a single discourse, sentence, or constituent" (Poplack 2000). Similar definitions can be found throughout the bilingualism literature by other scholars. In a recent study, Toribio (2001a) defines code-switching as "the ability on the part of bilinguals to alternate between their linguistic codes in the same conversational event." She writes that code-switching "may be intersentential or intrasentential" and provides one example of each, in sentences (1a) and (1b) respectively (Spanish forms appear in italics. Slashes indicate language switches in the translations):

(1a) *Érase una vez una linda princesita blanca como la nieve.* Her stepmother, the queen, had a magic mirror on the wall.

Once upon a time there was a beautiful princess as white as the snow. / Her stepmother, the queen had a magic mirror on the wall.

(1b) *Por la noche, los siete enanitos* found her on the ground seemingly dead.

At night, the seven dwards / found her on the ground, seemingly dead.

Psycholinguistic Constraints on Code-Switching

The use of one or more languages may look like simply a matter of conscious awareness of what language a person is speaking and then intentionally choosing a language based on what others think is appropriate. However, the truth is very different. First, language knowledge is unconscious (Chomsky 1981, 2006). While we remember the content of conversations, it is very difficult to remember and repeat the exact words anyone has spoken. By the same token, bilinguals, who are used to code-switching, are often unaware of switching between languages. As a leading authority puts it: "[Code-switching] takes place quite unconsciously; speakers (including those who condemn code-switching...) are often quite unaware that they are switching from one language to another. Their main concern is with communicating a message of intent..." (Grosjean 1982: 148 - 149). Thus, bilingual speakers may not be aware of what

language they are using at a particular moment in a conversation; bilinguals who regularly use more than one language may unconsciously code-switch or use more than one language to talk about the same subject. In a recent study, "[a] dramatic example of this was observed by one of the authors when he was present in a conversation among a number of bilinguals who were accustomed to code-switching, switching between languages frequently during a single conversation. At one point the author stopped the speakers and asked what language they had just used. Surprisingly, they were unable to say..." (Krahnke et al 2003). One of the leading authorities on Hispanic linguistics and bilingualism notes that "speakers who engage in intrasentential shifting [code-switching] are frequently unaware of having shifted well after the fact and may not be able to recall the exact moment of the shift, or to give justification for having changed languages in midstream" (Lipski 1985: 3).

Further, a well-known linguistics textbook states: "Linguistic knowledge is, for the most part, *not* conscious knowledge. The linguistic system, the sounds, structures, meanings, words, and rules for putting them all together, is learned subconsciously with no awareness that rules are being learned[,] [j]ust as we may be unconscious of the rules that allow us to stand or walk, to crawl on all fours if we choose, to jump or catch a baseball, or to ride a bicycle..." (Fromkin & Rodman 1993: 12 - 13). In recent studies, Jacqueline Toribio, a leading researcher on language acquisition, bilingualism, and linguistic theory shows that code-switching is an underlying syntactic mechanism, part and parcel of the unconscious rule-governed knowledge, Chomsky's linguistic competence, in the mind of the bilingual speaker (Toribio 2001a, 2001b). She provides strong experimental evidence that code-switching can be used to support what Chomskyian theoretical linguistics calls the "Functional Head Constraint", among other formal principles discussed by Toribio (2001b), a formal principle that permits constituent-internal code-switchings in sentences such as (2a) but prohibits such code-switchings in sentences such as (2b) (Spanish forms appear in italics; the star means that a sentence is not well-formed, i.e. that it is not something that bilinguals will say):

(2a) All of them *hablan español*.

They all speak Spanish

*(2b) *Ellos han* completed degrees while working full time.

They have completed degrees while working full time

The use of one or more languages may seem as simply a matter of intentionally choosing a language. Yet, in recent years, Grosjean (1997, 1998, 2001) found that bilinguals activate multiple "modes", different language process mechanisms, representing the level of activation of each language at a given point in time, according to such factors as the language proficiency, attitudes, kinship relations, the setting (location, presence of monolinguals, degree of formality), and the stimuli (book read, TV program watched). When they are interacting with monolinguals, bilinguals are in a totally monolingual language mode in that they are interacting with monolinguals of one or the other languages they know. One language is active and the other is deactivated. In contrast, when bilinguals communicate with other bilinguals, they find themselves in a bilingual mode with bilinguals who share their two languages and with whom they can code-switch. In this case, both languages are active but the one that is used as the "base", the main language of communication, is more active than the other. Grosjean's modes are supported by his own experiments and data as well as studies of code-switching among German and Turkish bilinguals in Germany (Treffers-Daller 1998) and bilingual speakers of English and several immigrant languages in Australia (Clyne 2003: 189 - 190).

Finally, many monolingual English-speakers overlook the difficulty that speakers of other languages have in expressing themselves in a language in which they may be fluent but not native (Grosjean 1982: 231 - 236). Krahnke et al (2003: 150) note that the vocabulary of speakers of Spanish and other languages "may be limited, however, either in general or for some types of subject matter, such as the kinds of culturally specific matters that members of a cultural group might talk about. For example, if employees talk with each other about their families, a child's behavior, or health, they may not find possible to do so in English because they simply do not have the language proficiency to do so. So they are faced either with no talking about some subjects or trying to do so in English and suffering serious limits on communication. In addition, some non-native-English-speakers may not be proficient in communicating legal or financial matters that are complex and for which their English is not adequate. Are they to be prevented from having such conversations?"

Sociolinguistic Constraints on Code-Switching

In a conversation, the use of one or more languages may appear to be just as a matter of choice for Hispanic bilinguals. Yet, Hispanic bilinguals feel obliged to use Spanish with Spanish-speaking relatives, teachers, friends, and others, to answer in English may be construed as an unfriendly gesture, or even dislike, by the addressee; they feel constrained to have or show a positive attitude toward their native language (Faingold 1999, 2004a). By the same token, language choice is also constrained by the social relationships among bilingual speakers participating in a conversation, i.e. by the hierarchies found among speakers in the group. Hispanic bilinguals of lower status may be obliged to answer in Spanish when spoken to in Spanish by other bilinguals of higher status, to answer in English may be considered an expression of disrespect (Krahnke et al 2003).

A pioneer in the field of sociolinguistics has demonstrated convincingly that for Spanish-speakers in the US, as well as other ethnic groups such as Blacks, Italians and Jews, there is a vital connection between language and ethnicity (Labov 1978). In addition, a well-known authority in the area of the sociology of bilingualism and ethnicity states: "Since language is the most elaborate symbol system of humankind, it is no wonder, then, that particular languages become symbolic of the particular ethnocultures in which they are embedded and which they index" (Fishman et al 1985: xii). A pioneer in the study of bilingualism in the US wrote fifty years ago that language "is at once a social institution, like the laws, the religion, or the economy of the community, and a social instrument which accompanies and makes possible all other institutions. As an institution it may become a symbol of the community group" (Haugen

1956: 87). Similarly, as another leading expert on bilingualism writes: “It is a well-accepted notion among sociolinguists that language is not just an instrument of communication. It is also a symbol of social group identity, an emblem of group membership and solidarity” (Grosjean 1982:117).

Finally, AMexican Americans@, the largest of Spanish-speaking group in the US, as well as the other US Hispanic minorities, “are extremely attached to their language and culture and have no problems in retaining them. The region they live in once belonged to them, as the Spanish place names remind them; they often return to Mexico to visit relatives, newcomers to the States arrive almost daily, many TV and radio stations broadcast in Spanish...” (Grosjean 1982: 101). As one of the leading authorities on Hispanic linguistics and Spanish in contact with English and other languages puts it: “This type of language shifting [Code-switching], which is characterized by a smooth flow between Spanish and English, is common in most United States Hispanic communities, and has even become an identifying characteristic of much of Hispanic-American literature in the United States” (Lipski 1985: 3).

Thus, for US Hispanics, especially Mexican Americans, Spanish appears to be a crucial marker of social and cultural identity.

Widespreadness of Code-Switching

In the US, Spanish and English code-switching has been found to be widespread not only among Mexican Americans in the Southwest but also among other Hispanic groups (Elías-Olivares 1976, 1995, Faingold 1999, 2004a, Jacobson 1982, Lipski 1985, Pffaf 1982, Poplack 1998, 2000, Reyes 1982, Silva-Corvalán 1994, Timm (1975), Toribio 2002, Torres (1997), Valdés 1982, Zentella 1997). Moreover, code-switching is found all over the world, since it is both biologically and socially determined, as discussed above. In the US, in addition to Spanish and English, code-switching is found among speakers of Black English and Standard English (DeBose 1992, Ervin-Tripp 2002), Portuguese and English (Faingold 1999, 2004a), Hebrew and English (Faingold 2004a), Yiddish and English (Rayfield 1970). In Canada among speakers of English and French (Heller 1988, Poplack 1998), Finish and English (Poplack et al 1990); in Austria among speakers of German and Hungarian (Gal 1979); in Germany among speakers of German and Italian (Auer 2000) and German and Turkish (Treffers-Daller (1998), in Belgium among speakers of French and Dutch (Treffers-Daller1994); in Britain among speakers of English and Chinese (Wei et al 2000); in the Netherlands among speakers of Arabic and Dutch (Nortier 1989 [cited by Coulmas 2005]); in Australia among speakers of English and German (Clyne 2000) and speakers of English and several languages spoken by immigrants (Clyne 2003); in Africa among speakers of English, Swahili and other African languages (Myers-Scotton and Jake 2000); in Israel among speakers of Spanish and Hebrew (Berk-Seligson 1986, Faingold 2004a), in Marocco among speakers of Arabic and French (Bentahila & Davies 1983). More examples of code-switching can be found in Romaine’s (1995: 1 - 2 and 2000: 55) authoritative textbooks, among speakers of Panjabi and English bilinguals in Britain, speakers of Tok Pisin and English in Papua New Guinea, speakers of Japanese and English in the US, speakers of Spanish and English in the US, speakers of Yoruba and English in Africa, speakers of Malay and English in Singapore, etc. I have cited some well-known studies from a variety of languages and countries to show that code-switching is “universal”. Thus, the studies cited here indicate that code-switching widespreadness is a natural epiphenomenal property of the psycholinguistic and sociolinguistic constraints discussed above.

Summary and Conclusion

In summary, based on the large body of linguistic evidence available to me, I can ascertain that code-switching between Spanish and English among US Hispanics is not a matter of choice but an unconscious and unintentional linguistic behavior as well as a crucial marker of social and cultural identity for these individuals or groups. Lacking a business necessity, seeking a linguistically-homogenized work-environment in the US, English-only rules, may be intimidating and offensive to Hispanic and other bilingual individuals or groups because such rules prevent these individuals or groups from doing something that is natural and spontaneous as well as culturally relevant to them.

References

Auer, J. C. 2000. A conversation analytic approach to code-switching. In L. Wei (ed.). The Bilingual Reader. London: Routledge.

Bentahila A. and Davies, E. E. 1983. The syntax of Arabic-French code-switching. Lingua 59: 301 -330.

Berk-Seligson, S. 1986. Linguistic constraints on intrasentential code-switching: A study of Spanish/Hebrew Bilingualism. Language in Society 15: 313 - 348.

Clyne, M. 2000. Constraints on code-switching: how universal are they? In L. Wei (ed.). The Bilingual Reader. London: Routledge.

Clyne, M. 2003. Dynamics of Language Contact. English and Immigrant Languages. Cambridge: Cambridge University Press.

Chomsky, N. 1981. Lectures on Government and Binding. Dodrecht: Foris.

Chomsky, N. 2006. Language and Mind. Cambridge: Cambridge University Press.

Coulmas, F. 2005. Sociolinguistics. The Study of Speakers= Choices. Cambridge: Cambridge University Press.

DeBose, C. E. 1992. Code-switching: Black English and Standard English in the African American linguistic repertoire. Journal of Multilingual and Multicultural Development 13: 157 - 167.

Del Valle, S. 2003. Language Rights and the Law in the United States. Finding our Voices. Clevedon, UK: Multilingual Matters.

Elías-Olivares, L. 1976. Ways of Speaking in a Chicano Community: A Sociolinguistic Approach. Ph.D. Dissertation, University of Texas, Austin.

Elías-Olivares, L. 1995. Discourse strategies of Mexican American Spanish. In C. Silva-Corvalán (ed.). Spanish in four Continents. Studies in Language Contact and Bilingualism. Washington, DC: Georgetown University Press.

Ervin-Tripp, S. 2002. Variety, style-shifting, and ideology. In Eckert, P. and Rickford, J. R. (eds.). Style and Sociolinguistic Variation. Cambridge: Cambridge University Press.

Faingold, E. D. 1999. The re-emergence of Spanish and Hebrew in a multilingual adolescent. International Journal of Bilingual Education and Bilingualism 2: 283 - 295.

Faingold, E. D. 2004a. Multilingualism from Infancy to Adolescence. Greenwich, CT: Information Age Publishing.

Faingold, E. D. 2004b. Language rights and language justice in the constitutions of the world. Language Problems and Language Planning 28: 11 - 24.

Faingold, E. D. 2007. Language rights in the 2004 draft of the European Union Constitution. Language Problems and Language Planning 31: 25 – 36.

Fishman, J., Gertner, M., Lowy, E. G., Millan, W. G. (eds.). 1986. The Rise and Fall of the Ethnic Revival. Perspectives on Language and Ethnicity (Contributions to the Sociology of Language). Berlin: Mouton de Gruyter.

Fromkin, V. and Rodman, R. 1993. An Introduction to Language. Forth Worth, TX: Hartcourt Brace.

Gal, S. 1979. Language Shift: Social Determinants of Linguistic Change in Bilingual Austria. New York: Academic Press.

Grosjean, F. 1982. Life with two Languages. An Introduction to Bilingualism. Cambridge, MA: Harvard University Press.

Grosjean, F. 1997. Processing mixed language. In A. De Groot and J. F. Kroll (eds.). Tutorials in Bilingualism. Psycholinguistic Perspectives. Mahwah, NJ: Lawrence Erlbaum.

Grosjean, F. 1998. Studying bilinguals: methodological and conceptual issues. Bilingualism, Language and Cognition 1: 131 - 49.

Grosjean, F. 2001. The bilingual=s language modes. In J. Nicol (ed.). One Mind, Two Languages. Bilingual Language Processing. Oxford: Blackwell.

Haugen, E. 1956. Bilingualism in the Americas. A Bibliography and Research Guide. Montgomery, Alabama: University of Alabama Press.

Heller, M. (ed.) 1988. Codeswitching: Anthropological and Sociolinguistic Perspectives. Berlin: Mouton de Gruyter.

Holm, J. 1988. Pidgins and Creoles. Vol. 1. Theory and Structure. Cambridge: Cambridge University Press.

Krahnke, K., Hoffman, L. and Krahnke, K. 2003. Managing language use in the workplace. The Journal of Behavioral and Applied Management 4: 148 - 157.

Jacobson, R. 1982. The social implications of intra-sentential code-switching. In J. Amastae and L. Elías-Olivares (eds.). Spanish in the United States: Sociolinguistic Aspects. Cambridge: Cambridge University Press.

Labov, W. 1978. Sociolinguistic Patterns. Oxford: Blackwell.

Lipski, J. 1985. Linguistic Aspects of Spanish-English Language Switching. Tempe, AZ: Center for Latin American Studies, Arizona State University.

Myers-Scotton 1990. Codeswitching and borrowing: Interpersonal and macrolevel meaning. In R. Jacobson (ed.) Codeswitching as a Worldwide Phenomenon. New York: Peter Lang.

Myers-Scotton, C. and J. L. Jake. 2000. Matching lemmas in a bilingual language competence and production model: evidence from intrasentential code-switching. In L. Wei (ed.). The Bilingual Reader. London: Routledge.

Nortier, J. 1989. Dutch and Moroccan Arabic in Contact. Code-Switching among Moroccans in the Netherlands. Utrecht: Foris.

Pffaf, C. W. 1982. Constraints on language mixing: Intrasentential code-switching and borrowing in Spanish/English. In J. Amastae and L. Elías-Olivares (eds.). Spanish in the United States: Sociolinguistic Aspects. Cambridge: Cambridge University Press.

Poplack, S. 1998. Contrasting patterns of code-switching in two communities. In P. Trudgill and Cheshire, J. The Sociolinguistic Reader. Vol. 1. Multilingualism and Variation. London: Arnold.

Poplack, S. 2000. Sometimes I=ll start in Spanish y termino en español: toward a typology of code-switching. In L. Wei (ed.). The Bilingual Reader. London: Routledge.

Poplack, S., Wheeler, S. and Westwood, A. 1990. Distinguishing language contact phenomena: Evidence from Finnish-English Bilingualism. In R. Jacobson (ed.) Codeswitching as a Worldwide Phenomenon. New York: Peter Lang.

Rayfield, J. R. 1970. The Languages of a Bilingual Community. The Hague: Mouton.

Reyes, R. 1982. Language mixing in Chicano Spanish. In J. Amastae and L. Elías-Olivares (eds.). Spanish in the United States: Sociolinguistic Aspects. Cambridge: Cambridge University Press.

Romaine, S. 1995. Bilingualism.Oxford: Blackwell.

Romaine, S. 2000. Language in Society. An Introduction to Sociolinguistics. Oxford: Oxford University Press.

Silva-Corvalán, C. 1994. Language Contact and Change. Spanish in Los Angeles. Oxford: Clarendon Press.

Timm, L. A. 1975. Spanish-English codeswitching. El porque and how-not-to. Romance Philology 28: 473 - 482).

Toribio, J. 2001a. Accessing bilingual code-switching competence. International Journal of Bilingualism 5: 403-436.

Toribio, J. 2001b. On the emergence of bilingual code-switching competence. Bilingualism: Language and Cognition 4: 203-231.

Toribio, J. 2002. Spanish-English code-switching among US Latinos. International Journal of the Sociology of Language 158: 89-119.

Torres, L. 1997. Puerto Rican Discourse: A Sociolinguistic Study of a New York Suburb. Mahwah, NJ: Lawrence Erlbaum.

Treffers-Daller, J. 1994. Mixing two Languages. French-Dutch Contact in Comparative Perspective. Berlin: Mouton de Gruyter.

Treffers-Daller, J. 1998. Variability in code-switching styles: Turkish-German code-switching styles. In R. Jacobson (ed.). Codeswitching Worldwide. Berlin: Mouton de Gruyter.

Valdés, G. 1982. Social interaction and code-switching patterns: A case study of Spanish/English alternation. In J. Amastae and L. Elías-Olivares (eds.). Spanish in the United States: Sociolinguistic Aspects. Cambridge: Cambridge University Press.

Wei, L., Milroy, L. and Ching, P. S. 2000. A two-step sociolinguistic analysis of code-switching and language choice: the example of a bilingual Chinese community in Britain. In L. Wei (ed.). The Bilingual Reader. London: Routledge.

Zentella, A. C. 1997. Growing Up Bilingual. Puerto Rican Children in New York. Malden, MA: Blackwell.