A DIACHRONIC AND SYNCHRONIC ANALYSIS OF RACIAL AND GENDER EPITHETS IN JUDICIAL OPINIONS, 1900-1997

by

BRUCE WILLIAM BREON

(Under the Direction of Don R. McCreary)

ABSTRACT

This dissertation examines the frequency with which several racial and gender epithets occur within state appellate court judicial opinions. Totals of linguistic tokens for several racial and gender epithets are compared in order to determine if any historical, lexical, or geographic patterns of distribution exist. Additionally, totals and frequency rates for epithet usage were compared to frequency rates for profanity usage in the same genre to determine whether epithets are becoming more, or less, common than profanity. A synchronic analysis of opinions was conducted in order to determine how appellate court judges included one specific racial epithet when it was used by one of the parties in the case.

INDEX WORDS: Racial epithets, Gender epithets, Taboo speech, Hate speech, Obscenity, Profanity, Language and culture, Law and language

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DEDICATION

For my mother, Lillian M. Breon. Hey, yo! Ma! I finally wrote a book; so give it a rest already.

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INTRODUCTION

Marcia Clark lost the O.J. Simpson case the moment jurors learned that Mark Fuhrman had an inordinate fondness for the word "nigger." The jurors in that case—and indeed most Americans who sat glued to their television sets through the so-called "Trial of the Century"—were appalled by Fuhrman's blatant racism and his unrepentant expression of animus toward Blacks. Fuhrman's profligate use of the word "nigger" and his repeated denials that he had used the word irreparably damaged his credibility as a witness. Jurors believed defense arguments that such an open racist could have planted evidence against a black defendant. As is well known, the jury eventually acquitted O.J. Simpson despite other evidence.

The consternation Fuhrman caused was not confined to Marcia Clark and her team of prosecutors. The news media did not know how to handle the word "nigger" in reported discourse. News directors had turned the O.J. trial into a media circus, and Fuhrman's views on race were clearly material to that trial. But Fuhrman's liberal use of epithets made those same news directors so uncomfortable they printed stories dealing with Fuhrman's racism in code, resorting to orthographic euphemisms such as "n*****" or "n------." The media's obvious discomfort with stories containing the word "nigger" reached its height when broadcasters actually began saying "the N-word" in news broadcasts. (Woods 1995; Lester 1996.) The "N-word" euphemism lent an air of childishness to Fuhrman's racism and robbed it of the bitterness and hatred which underlay his utterances. The lengths to which the media went to avoid using the word "nigger" in reported discourse, however, is instructive for students of language taboo.

The issue I examine in this dissertation is whether racial and gender epithets are becoming (or have already become) taboo words. This dissertation is a two-phase study of racial and gender

epithets. In the first phase of the study, I examine a set of judicial opinions from all 50 states and which span the nearly the entirety of the twentieth century (1900-1997) to determine the rate of epithet usage within that genre. In the second phase of the study, I examine one small sample of opinions from a single year to determine *how* one specific epithet is used within that sample of judicial opinions.

Statement of the Problem

The problem this study addresses is whether racial and gender epithets are becoming more taboo as evidenced by the rate of their usage in 20th-century, state appellate-court judicial opinions. This dissertation is an extensive follow-up inquiry to a smaller pilot study into the usage of racial and gender epithets in the same genre. (Breon 1998.) I will compare the results of this study to the results of earlier taboo-word studies within the same genre. This research was designed to answer the following questions:

(1) What is the rate of epithet usage within state appellate court judicial opinions?

(2) Is the use of racial and gender epithets increasing or decreasing?

(3) How does epithet usage compare to profanity usage in the same genre?

(4) Are there any discernible patterns in the use of racial and gender epithets? (a) In terms of epithet usage over time? (b) In terms of geographic variation? (c) In terms of choice of epithet?

(5) How are epithets used within the judicial opinions?

Purpose and Objectives

The objective of this dissertation is to examine the use of racial and gender epithets within 20th century, state appellate court judicial opinions. This dissertation is designed as a two-phase

study in order to incorporate both synchronic and diachronic, and both quantitative and qualitative methodologies. The purpose of the first, diachronic phase of this study is to use quantitative analyses to test the theory that our culture is undergoing a shift in linguistic taboos from traditional taboo words dealing with sex, the body, or bodily functions to newer taboos of racial and gender epithets. Four principal research questions guide this first phase of the dissertation: (1) What is the rate of epithet usage within state appellate court judicial opinions for each of the ten decades of the 20th century? (2) Is the use of racial and gender epithets increasing or decreasing? (3) Are there any discernible historical, lexical, or geographical patterns of distribution in the use of racial and gender epithets? And, (4) how does the rate of epithet usage compare to the rate for usage of profanity in within the same genre?[1]

The objective of the second, synchronic phase of this study is to use qualitative methods to discover how one specific epithet is used within a sample of judicial opinions from the 1990s which contain that epithet. Specifically, the focus of the qualitative analysis is to draw upon the tools of discourse analysis in order to understand how judges employ the epithet "Nigger" in judicial opinions.

Definition of Terms

This section defines the essential terms of this dissertation, outlines the theoretical and methodological perspective I have taken with respect to defined terms in the dissertation, and provides needed background for the most important of those terms. It includes five subsections: *Theoretical Rationale for Definitions Used*; *Taboo, Profane, or Obscene?*; *Defined Terms*; *A Note on Capitalization* and *A Final Note on Person and Voice*.

[1] I established the rate of profanity usage within this genre in previous studies conducted at the University of Georgia. (Breon 1996, 1997, 1998.)

Theoretical Rationale for Definitions Used

Both law and linguistics are jargon-laden fields. Sometimes that jargon is helpful, and at times even indispensable to clarity. But at times the jargon tends only to inflate diction at the expense of clarity. In the few instances where it adds to clarity, I employ linguistic or legal terms of art. Elsewhere, I have adopted a folk taxonomy, and use terms such as "term" or "word" rather than "lexical item" or "lexeme." It may seem odd to think of an analysis of legal language using a "folk taxonomy," but (perhaps ironically) I use "folk taxonomy" as a linguistic term of art.

Charles Frake described the objectives of ethnoscience—which include a methodology incorporating folk taxonomy—in *The Ethnographic Study of Cognitive Systems* (1962). Frake, along with Hymes (1962) and other academics, was part of a academic movement that developed in the early 1960s which sought to create a new paradigm for cross-cultural study. Frake and others advocated a move toward dealing with the ways an ethnic group divides or categorizes its world rather than how Westerners had previously described indigenous cultures. In other words, Frake's method looks at the world from the perspective of the terms (or names or lexemes) which a given ethnic group used. This method is also sometimes referred to as a "folk classification." Frake elicited terms from a semantic field in order to understand the cognitive features which the members of the group being studied used to segment that particular semantic field or domain. Frake believed that this method would go beyond "getting words for things," and would actually "get the things that go with the words." (Frake 1962:125.) Frake, then, espoused an "emic" rather than "etic" approach to the study of a culture.[2]

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[2] Throughout this dissertation, I use the term "emic" in the same sense as Pike (1954). By analogy with phonology, an etic perspective in anthropological linguistics is that of a trained observer's (*i.e.*, an outsider) approach to linguistic phenomena within a culture. An etic approach begins an analysis by looking for certain preset categories in the linguistic data. An emic perspective, on the other hand, refers to how a member of a culture (*i.e.*, an insider) would interpret
(continued...)

Judicial opinions are often a mixed genre, especially in cases involving the taboo words which are the subject of this dissertation. Thus, as used in this dissertation, folk taxonomy does not refer simply to the legal terms of art which jurists or legal scholars use to segment their semantic domain. In this study, folk taxonomy also encompasses how working class people refer to their world. The elevated diction and Latinate syntax of judicial opinions can co-exist with instances of far less formal speech, such as cases cited in later chapters which include utterances from African American Vernacular English (A.A.V.E.) or working class speech. Therefore, whenever possible, I have tried to use terms of art only where they add to clarity. Otherwise, the terms I use in this dissertation should be given their ordinary meaning, as defined in standard reference works.

Adopting a folk taxonomy serves at least two purposes. First, I am studying a hypothesized shift in linguistic taboos within our culture. Therefore, it is vital that I try to proceed from the perspective of those who use or avoid using the taboo words in the data set for this study. More importantly, using a folk classification avoids epistemological quagmires such as how to define "race" or "gender." Current thinking among many geneticists and biologists holds that "race" as that word is commonly understood in the U.S. does not really exist. (Bamshad and Olson 2003.) On the other hand, social scientists have emphasized the fact that race is a socially-constructed reality in U.S. society. (López 1995.) Ultimately, however, I am not writing about race or gender in this dissertation. I am writing about how people who use racial or gender epithets refer to race and gender. Whether there are legitimate biological bases for concepts such as race and gender is peripheral to my analysis. Therefore, as set forth in the *Defined Terms* subsection below, I use

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[2] (...continued)
the same linguistic phenomena. An emic perspective allows meaning to emerge rather than trying to neatly fit linguistic or cultural phenomena within certain pre-existing categories or linguistic classes.

"race" and "gender" in the way that speakers possessing communicative competence[3] would understand and use those terms.

Taboo, Profane, or Obscene?

In this subsection I provide an overview of both the denotations and connotations behind the word taboo. The material in this subsection expands upon and supports the material in the *Defined Terms* subsection below.

The word "taboo" is one of the many words that first came into English as a result of British imperialism. According to the *Oxford English Dictionary* (*O.E.D.*), "taboo" was first attested in English in 1777 in the first edition of *Cook's Voyage to the Pacific.* When Captain Cook arrived in Tonga, he was confused by the islanders avoidance of certain activities or words. When he asked the Tongans why they avoided certain behavior or foods, the islanders replied that the things they were avoiding "were all taboo." This aversion to certain activities, places, people, and words was so strong that the islanders even forced the British to abide by the Tongan social conventions. Cook observed that if any of his crew were found walking in a taboo area "they would be knocked down with clubs." (Cook 1785, as quoted in the *O.E.D.*)

According to the *Oxford English Dictionary*, as taboo was originally used in Polynesia, Melanesia, and elsewhere in the Pacific, it referred to objects or places which were set apart for, or consecrated to, a special use or purpose. The taboo object was restricted to the use by a god, king, priests, or chiefs, while it was forbidden to general use. Further, a taboo could extend only to a particular class of people—especially women—or even specific individuals. Cook expressed his confusion over how and why something was considered taboo by the local islanders.

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[3] As described in the Theoretical Perspective section of this chapter.

> [T]hey were all taboo, as they said; which word has a very comprehensive meaning; but, in general, signifies that a thing is forbidden. Why they were laid under such restraints, at present, was not explained. (Cook 1785, as quoted in the *O.E.D.*)

A taboo could be temporary or permanent and often could be ameliorated or lifted altogether by a priest or chief. For example, Cook observed that one taboo which had been imposed only the day before was lifted by a large slaughter of hogs. According to the *O.E.D.*, taboo is generally thought to have a religious or superstitious origin that resulted in certain things being reserved to the gods and therefore forbidden to mortals. Taboos were thought to have extended to political and social affairs, and were usually controlled by the king or chiefs in conjunction with the priests. While some items were permanently taboo, the chiefs frequently imposed temporary taboos, and often quite arbitrarily. Hopkins (1862) holds that taboo was one "of the great instruments used by both king and priests for maintaining their power and their revenue." (Hopkins 1862, as quoted in the *O.E.D.*)

Freud was among the first to introduce the term and concept of taboo to the intelligentsia of the West when he published *Totem and Taboo* in 1913. Freud believed that the idea of taboo was difficult for Europeans to grasp because Westerners no longer possessed the idea which taboo connotes. (Freud 1913:24.) Freud seized upon the paradoxical and antonymous nature of the word taboo.

> The meaning of taboo, as we see it, diverges in two contrary directions. To us it means, on the one hand, "sacred," "consecrated," and on the other "uncanny," "'dangerous," "forbidden," "unclean." (Freud 1913:24.)

Although Freud described the South Pacific islanders in the ethnocentric prose common to his era, Freud was able to correctly discern that the taboos among the "savage Polynesians" had correlates among the Europeans of the early 20th century.

> It may begin to dawn on us the taboos of the savage Polynesians are after all not so remote from us as we were inclined to think at first, that the moral and conventional prohibitions by which we ourselves are governed may have some essential

> relationship with these primitive taboos and that an explanation of taboo might throw a light upon the obscure origin of our own categorical imperative. (Freud 1913:29.)

Though interesting as historical background, most of Freud's insights into the nature of taboos are well beyond the scope of this dissertation. Freud inevitably turns his inquiry toward sexuality and the incest taboo in an attempt to provide cross-cultural support for his formulation of the Oedipus Complex. Freud's contribution to the Western understanding of taboo was his iteration of the idea that taboo expresses and carries within it two separate and opposite qualities, both the sacred and the profane.

According to the *O.E.D.*, Westerners originally limited their sense of the profane to those individuals who were not initiated into "the religious rites or sacred mysteries." Persons or things regarded as unholy or which had desecrated what was holy were also profane. Thus, the profane element of taboo could describe irreverent or even blasphemous behavior. In its current use, we have largely lost the blasphemous connotations the word profane carries, and conflate the idea behind the profane element of taboo with the obscene. Indeed, for lexicographers, lawyers, and the majority of native English speakers in the U.S., the idea of profanity is inextricably linked with obscenity, and obscenity is inextricably linked with sex.

According to the *Oxford English Dictionary*, "obscene" denotes something which is "offensive to the senses, or to taste or refinement; disgusting, repulsive, filthy, foul, abominable, loathsome." The link between obscenity and sexuality is also attested in the *O.E.D.*: "Offensive to modesty or decency; expressing or suggesting unchaste or lustful ideas . . . obscene parts [and] privy parts." Well into the 20th century, British statutory law continued to express the belief that mere use of certain words could "deprave and corrupt persons who are likely to read, see or hear" them. (1959 Act 7 & 8 Eliz. II c. 66 §1, as quoted in the *O.E.D.*)

One of the precepts of this dissertation is that what is taboo in one time and place may not be in another time and place. Popular film illustrates this point well. In 1939, when Clark Gable's character, Rhett Butler, uttered "Frankly, my Dear, I don't give a damn" to Scarlett O'Hara at the end of *Gone With the Wind*, audiences were scandalized. Some of the shock which audiences initially felt in 1939 even remains. At least one current academic seems to lament that *Gone With the Wind* was the first tear in an increasingly vulgar social fabric: "Wouldn't society be better off . . . if Rhett Butler had told Miss Scarlett, 'Frankly, my dear, I don't give a DIDDLEY DO?'" (Nunnally 1995:37, emphasis in original.) As the critical and popular acceptance of contemporary films such as Quentin Tarrantino's *Pulp Fiction* or *Kill Bill* indicates, most Americans are willing to tolerate more profanity than Nunnally.

The shift in what constitutes taboo subjects or language is further evidenced by the fact that many novels or plays which were originally banned or otherwise censored have since become part of the Western canon of literature. D.H. Lawrence is one such author whose works were banned, but are now taught in universities. According to the *O.E.D.*, Lawrence suggested that obscenity was purely a matter of personal opinion, whereas pornography was something specific: Lawrence defined pornography as "making sex dirty for money."

In at least one sense, we continue to use the word "taboo" in a manner which is similar to how the islanders Cook encountered in Polynesia and Melanesia over two centuries ago used the word. According to *Webster's Dictionary*, taboo is defined as a "sacred prohibition put upon certain people, things, or acts which makes them untouchable, unmentionable, etc." or "any social prohibition or restriction that results from convention or tradition." It is true that the social force behind the taboo prohibition often now stems from secular sources in U.S. society, but the sense of prohibition is just as strong nonetheless.

Despite the relative stability of the denotation of taboo since is has come into our lexicon, there is no clear consensus among scholars as to what constitutes a taboo word, nor is there a generally accepted test for how to gauge the acceptability of a given word. One scholar has suggested that a word is taboo if "one would not use it [when] speaking to one's mother." (Eckler 1986:201-202.) The shortcomings of Eckler's method is readily apparent to anyone who has ever seen an episode of *The Osbournes*. There is, however, some consensus among scholars that most taboo words in cultures around the globe generally refer to the subjects of sex, excretion, the supernatural, and death. (Crystal 1987:61; Freud 1913; Goodwin 1990:691; Montagu 1967:100-106; Dooling 1996:42-46.)

James L. Brain (1990:180) has suggested that the underlying reason behind the universality of taboo subjects is "a subconscious linking made in our minds between sex-incest-feces-death." My findings in earlier papers into taboo word usage suggest that Brain's argument has some merit. In an earlier study into profane taboo words (Breon 1996:15), I found that the three most commonly used taboo terms were Shit, Fuck, and Motherfucker—terms which conjure three of the four subject areas delineated by Brain. Brain suggests that Western aversions towards bodily emissions are just as strong as those found in other cultures such as the islanders encountered by Cook in the 18th century. Brain argues that the underlying reasons for the emotions evoked by the taboo subjects are human universals.

Linguists have adopted the term "taboo" and use it to refer to the prohibition of certain words or topics in social interactions. (Akmajian, *et al.* 1995:289; Fromkin and Rodman 1998:430; O'Grady *et al.* 1993:435.) Allan and Burridge (1991:22) note that certain terms are taboo because those terms have been "contaminated" by the underlying taboo topics. They further note that even the socially acceptable euphemisms used to replace the taboo term can themselves undergo a shift and become taboo. Bloomfield (1933:400-401) postulated that words which are "under a ritual or

ill-omened tabu" are likely to disappear, but that "[t]abus of indecency do not seem to lead to obsolescence." Bloomfield cites such "ill-omened" taboos as the Indo-European word for "bear" which was replaced by euphemisms among many Germanic and Balto-Slavic peoples. For example, in Russian the Indo-European word for bear was replaced with a compound meaning "the honey eater." (Bloomfield 1933:400.)

Freud (1913:31) believed that the psychological force behind the taboos which Bloomfield describes as ill-omened was "nothing other than the objectified fear of the 'demonic' power which is believed to lie hidden in a tabooed object." He further believed that a taboo prohibited anything that might provoke the demonic power in the tabooed objects in order to avert its wrath. Unlike many of Freud's ideas which have been abandoned by contemporary academics, his views on the psychological motivations behind certain types of taboos have some merit—as some of the case exemplars used for this dissertation will later attest.

Defined Terms

The principal defined terms used in this dissertation are set forth below in alphabetical order. Additional terms will be defined as they arise.

Addressee. As used in this dissertation, "Addressee" is the person or persons to whom an utterance is directed.

Addressor. As used in this dissertation, "Addressor" is the person who makes an utterance.

Diachronic Analysis. As used in this dissertation, "diachronic analysis" is a type of linguistic analysis that focuses on changes over time.

Epithet. As used in this dissertation, "epithet" means a word or phrase used to characterize a person negatively or to insult a person by virtue of some immutable characteristic (such as race

or gender) of that person; or that negatively characterizes a person by virtue of a real or perceived cultural attribute of the class of people to which the Addressee of the epithet belongs.

Euphemism. As used in this dissertation, "euphemism" means a word or phrase which speakers possessing communicative competence employ to avoid using a word or subject which is taboo, *e.g.* "to pass away" rather than "to die."

Gender. As used in this dissertation, "gender" refers to the biological sexes of male and female. "Gender" also refers to any socially-constructed attribute which speakers usually ascribe to one sex irrespective of whether that trait is exclusively limited to that biological sex. Gender encompasses a person's biological sex, his or her sexual orientation, and the linguistic and behavioral characteristics of a person. Thus, an epithet which negatively characterizes a biological male because he possesses traits most speakers identify as feminine is a gender-based insult.

Genre. As used in this dissertation, "genre" is a particular speech style that is oriented to the production and understanding of a certain specific kind of text. (Baumann 2001:79.)

> The invocation of a generic (*i.e.*, genre-specific) framing device such as "Once upon a time" carries with it a set of expectations concerning the further unfolding of the discourse, indexing other texts initiated by this opening forumula. (Bauman 2001:79.)

The expectations evoked by the framing device provide a framework for endowing the discourse with internal cohesion, coherence, and other means that allow a reader to make sense of the text in the way the writer intended. The principal genre at issue in this dissertation is the judicial opinion.

Judicial Opinion. As used in this dissertation, "judicial opinion" means a formal document drafted by a judge which explains and supports the judge's decision in a case. As used in this dissertation, "judicial opinion" is synonymous with "opinion," "case," or "decision."

Lexeme. As used in this dissertation, "lexeme" means the smallest distinctive unit within the semantic system of a language. By analogy with phoneme, a lexeme is an abstract unit which

underlies sets of related grammatical variants. (Crystal 1980:199.) For example, the racial epithet "Nigger-lover" is a variant of the lexeme "Nigger." (*Cf.* "word" below.)

Profanity. As used in this dissertation, "profanity" is the subset of taboo words which are taboo because they are perceived to be sacrilegious or offensive because they refer to bodily parts or functions in a socially unacceptable way. Originally, profanity denoted irreverent or blasphemous behavior and subjects, but in its current use in the U.S. we have largely lost the blasphemous connotations the word profane carries. The force behind the social prohibition on profanity often now stems from secular sources. For many native English speakers in the U.S., the idea of profanity is inextricably linked with obscenity or social offensiveness rather than with religiosity.

Racial. As used in this dissertation, "racial" is the adjectival form of "race" where "race" means a group of people distinguished by a set of readily-visible, genetically-transmitted morphological variations which are common to that group but less common outside of that group. The most common morphological variations speakers in the U.S. use to distinguish members of a race include skin color, hair color and texture, and the presence or absence of an epicanthic fold in the skin on the eyelids. (Weiss and Mann 1985:439-467.)

Synchronic Analysis. As used in this dissertation, "synchronic analysis" is a type of linguistic analysis that focuses on the state of a language at one point in time.

Taboo. As used in this dissertation, "taboo" means an internalized inhibition that speakers possessing communicative and cultural competence (Hymes 1962) feel against broaching certain topics or using certain words out of a fear of losing face (Goffman 1955) or offending others (Brown and Levinson 1978).

> [T]aboo terms are classified as such because of a belief, be it ever so vague, that their form reflects the essential nature of the taboo topics they denote. This is exactly why the terms themselves are often said to be unpleasant or ugly sounding, why the are miscalled "dirty words." (Allan and Burridge 1991:23.)

In this dissertation, I use taboo as a top-level, umbrella term to refer to the class words which carry a social prohibition. Profanity and epithets both exist as subsets under this top-level term as two distinct types of taboo words.

Word. As used in this dissertation, "word" means the basic meaning-carrying unit of language that exists between the levels of morpheme and sentence as intuitively understood by native speakers of the language.

A Note on Capitalization

I capitalize all racial and gender epithets whenever that epithet is a member of the data set used in my analysis. (The list of epithets is set forth in Chapter 3.) When referring to or quoting other studies or cases which contain any of the epithets which are part of the data set for this dissertation, I have retained the capitalization used by the author of that opinion or study. Thus, if "bitch" appears in lower case within a quotation yet it appears in the upper case "Bitch" in my analysis, the difference is not haphazard. Similarly, I capitalize all profanity which were part of the data set for my earlier taboo word studies, but retain lower case use of those terms when quoting other authors.

The practice of capitalizing defined terms is a legal convention rather than a sociolinguistic one. In many formal legal documents—especially transactional documents—defined terms are usually capitalized, though they may be italicized or underlined instead. I adopted this convention because I am conducting this study from an emic perspective and it is a well-established practice in the law. Moreover, capitalizing the taboo words in my analysis visually sets them apart from the rest of the text, and clearly delineates them as part of the data set.

A Final Note on Person and Voice

For most of this dissertation, I have chosen to write in the first-person, active voice. This style is consistent with the growing trend in academe, especially with qualitative studies. (Creswell 1994.) I have broken with this style, however, for Chapters 3 and 4. While at first the shift to third-person, passive voice may seem jarring, I adopt the more traditional style of writing for methodological consistency. Describing the quantitative methodology and reporting the quantitative results lends itself readily to third-person, passive voice, and comports with the established patterns and theoretic precepts of the quantitative study. (Creswell 1994.)

Background and Pilot Studies

While completing coursework at the University of Georgia for my Ph.D. in linguistics, I became interested in studying taboo words. As a scholar, I was intrigued by how the topics and words that are prohibited by a culture can provide an insight into that culture. In earlier studies of taboo words, I focused on the profane elements that are taboo in our culture, primarily words dealing with sex, the human body, and bodily functions. In those studies, I examined appellate court judicial opinions for the presence of seven words traditionally viewed as taboo by our culture. The words the earlier studies investigated came from the comedian George Carlin's (1972) routine, *Seven Words You Can Never Say on Television*, which was the basis for a landmark free speech case, FCC v. Pacifica Foundation, 438 U.S. 726 (1978). The seven words were: Shit, Piss, Fuck, Cunt, Cocksucker, Motherfucker, and Tits.

The popular perception in the press and among the population at the time of my earlier studies was that profanity was becoming both more prevalent and more accepted (Ayto 1996:15; Passman 1992:51.) While observation suggested this idea was true, research had not discovered anyone who had attempted to quantify and test the phenomenon. In my earlier studies on profanity

use , I found that there the popular perception was correct: there was indeed a growing trend in America toward acceptance of words which were once taboo (as measured by the frequency with which any one of the seven specific taboo words appeared in judicial opinions). Before the sweeping cultural changes of the mid 1960s and early 1970s, the use of profanity within judicial opinions was virtually nonexistent. From the mid 1970s on, however, use of profanity has increased dramatically, as the graph in Fig. 1.1 shows.

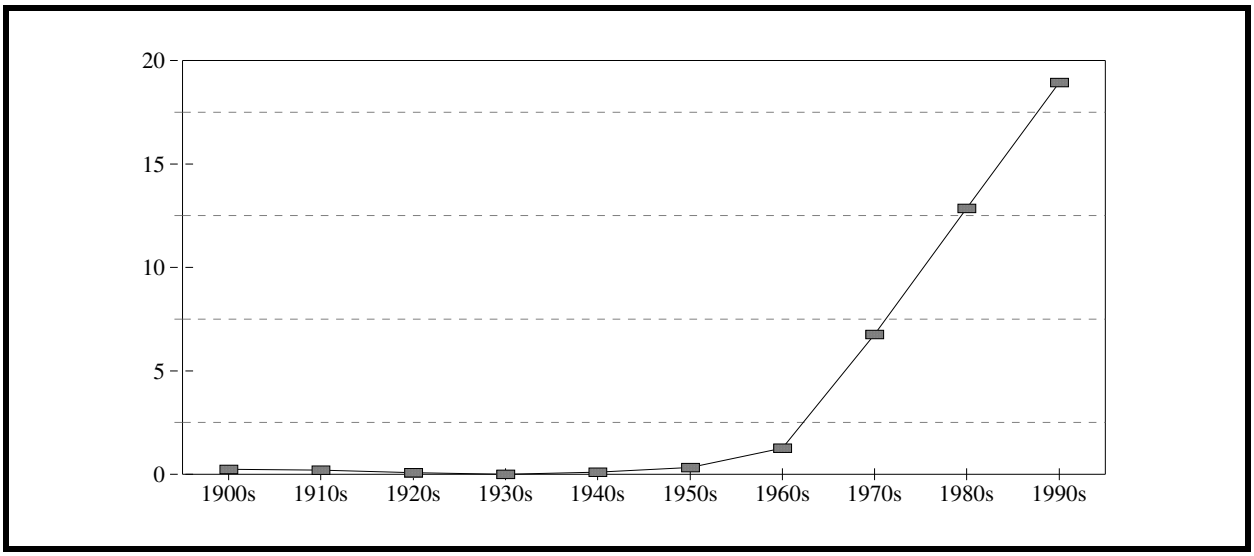

Fig. 1.1. Number of Judicial Opinions per 10,000 Containing Profanity.

While it may theoretically be possible for a society to so merge the sacred and profane such that no taboos remain, it is more plausible, however, that the dramatic increase in the use of profanity during the 1960s and 1970s indicated that older taboo words had been replaced by a newer set of words which carries social stricture. Richard Dooling (1996:7), an attorney who specializes in gender and racial discrimination lawsuits and who has written on taboo word usage, believes that as formerly prohibited terms for sex and excrement have become more acceptable, voicing racial or ethnic slurs and gender stereotypes has simultaneously become less acceptable.

Although Dooling includes healthy doses of polemic with his academic observations, he had piqued my interest. Dooling's basic premise intuitively made sense, and there was some evidence within popular culture which supported his hypothesis. For example, the N.A.A.C.P. engaged in well-publicized lobbying attempts and threatened a boycott of Merriam-Webster to have the word "nigger" stricken from the dictionary. (Fulwood 1998.) Further, one academic has commented that the worst thing that can happen to an scholar's career now is to be called "racist," making the word "racist" itself something of an epithet.

> We have now reached a point where the term [racist] can be used, usually without explanation or justification, to stigmatize any policy, statement, symbol, statistic, outcome, word or expression that any minority member does not like, including all kinds of legitimate, scholarly, and protected material. . . . As a result, the epithet "racist" has become the contemporary equivalent of the 1950s charge of "communism." Since nobody on campus wants to be labeled a "racist," and since nobody knows what the term means, most people stay clear of saying or doing anything that some minority member may label as "racist" . . . studiously avoid[ing] touchy issues, provocative statements, or ambiguous symbols or behaviors. (Trout 1995)

Just how far this new taboo extends was seen when, David Howard, a non-elected city official in Washington, D.C., was forced to resign for using the word "niggardly" during a budget discussion (Leo 1999), an event which prompted one newspaper columnist to pun "Isn't homonym some kind of slur?" (Judge 1999:1.)

One example of the growing taboo against racial epithets comes from the genre which will be used for this study. In one case, the California Court of Appeals did not allow a retired African-American educator to legally change his name to "Mr. Nigger." (Lee v. Ventura County Superior Court, 11 Cal.Rptr. 763 (1992).) Mr. Lee, the applicant for the name change, argued that he wanted to steal the degradation from the epithet nigger by reappropriating it from bigots. The Court of Appeals wrote that Mr. Lee had a common-law right to call himself whatever he wanted to, and to conduct whatever social experiment he wanted to. His rights, however, did not require the State of

California to participate in his social experiment. The court held that "no person has a statutory *right* to officially change his or her name to a name universally recognized as being offensive." (Lee, 11 Cal.Rptr. 763, 765, emphasis in original.)

As racial epithets appear to have become more taboo, social prohibitions against using words such as "fuck" have lessened considerably. In a 1994 interview with *U.S. News & World Report*, one prominent professor said that if she used fuck in class, no one would bat an eye, "but she would never dare to use any racial epithet in any context." (Sheidlower 1995:xxi.) The professor's caution is understandable, but lamentable. The refusal to use a racial epithet even within reported speech is a stance that would prevent her from discussing hate crimes, Mark Fuhrman's perjury, or other important and pressing social issues openly with her classes. The professor's reluctance is exactly the kind of self-censorship and chilling of free expression that the First Amendment is supposed to guard against. The refusal to admit that the study of racism or racist speech are worthy avenues of inquiry imperils academic freedom. If scholars tacitly or explicitly agree that an entire subject area cannot be pursued, then the result is intentional ignorance borne of fear.

The fear that renders certain topics taboo derives from the belief that power and meaning reside in the word itself rather than in the social construction that we as a culture agree to link with a series of sound waves. (Bloomfield 1933:400-401; Fromkin and Rodman 1998:428-431; Allan and Burridge 1991 *passim*.) The belief that words themselves are powerful is a long and deeply held belief in our culture, as the Bible attests: "In the beginning was the Word, and the Word was with God, and the Word was God." (John 1:1.) As the prominence given to "the Word" in our culture indicates, human beings appear to believe that we conjure the world into being with language rather than use language to describe our world.

The examples above add weight to the hypothesis that racial epithets have become increasingly taboo among "polite society." At the time I began this dissertation, no one had

attempted to empirically test the hypothesis that racial and gender epithets were becoming increasingly taboo. For the most part, previous scholars had dealt with racial and gender epithets primarily in one of two ways: as ethnographers documenting a small slice of a culture's verbal repertoire (Allen, 1983; Schultz, 1979; Solomos, 1972; Zhu, 1993), or as participants in the public debate regarding hate speech and/or the "gendered" implications of pornography. (Matsuda, *et al.* 1993; Crenshaw, *et al.* 1995; MacKinnon 1993; Gates 1993; Strossen 1995; Dershowitz 1992.) My motivation for beginning this dissertation was to look for our culture's new taboo words.

But if racial epithets are now taboo, readers may well wonder why a racial epithet—or any other taboo word—would appear within a judicial opinion. Judges are conservative by nature and training, and it seems counter-intuitive that a member of a conservative speech community would willingly breach a cultural taboo. The answer to as to why a judge would include an epithet in his or her opinion lies within the genre itself and the culture which gives rise to the genre.

Description of the Genre

The genre I chose for my investigation into the use of profanity was state appellate court judicial opinions. I chose the genre of judicial opinions for several reasons. First, judicial opinions are normative texts which define what is, and what is not, acceptable in our society. (Dernbach, *et al.* 1994.) Second, courts are among the most formal institutions in our society, an environment in which formal register and hypercorrection predominate. (O'Barr 1982:52, 84.) Therefore, to utter a taboo word in this environment is a serious breach of a cultural standard which respects the formal register and the authority of the court. Instances of a breach of this standard provide insight into the culture at large.

The third reason I worked with judicial opinions in my earlier studies (and do so again here) is that they are public records, which obviates the need for obtaining university approval to work

with human subjects. The fact that the opinions are government documents also means that they are not subject to copyright restriction. Fourth, the full text of judicial opinions for all 50 states are available on-line, which facilitates research by allowing keyword searches of the corpus for each taboo word rather than laboriously poring over texts trying to uncover their usage. Neither the design nor scope of my prior studies or this dissertation would have been possible without computer search capability.

Much human discourse cannot be interpreted correctly without an understanding of the unstated schemas which organize information for any particular domain. (D'Andrade 1995:125.) The genre of judicial opinions is no exception to the preceding rule of cognitive processing. In order to fully appreciate the role that epithets may play within a judicial opinion, it is first necessary to understand exactly what a judicial opinion is and what "structures of expectation" (Tannen 1993:59) attorneys, judges, and legal scholars bring to the text of a judicial opinion.

A judicial opinion is a formal document which explains and supports the basis for the judge's decision in a case. (*Black's Law Dictionary* 1990.) Opinions are not merely interesting anecdotes, stories of how a court applied the law. The cases themselves comprise the law. Put more plainly: cases don't illustrate the law, cases are the law. The opinion will state the material facts of the case, the relevant law, the legal issue the case poses, and how the law applies to the set of facts presented in that case. The opinions themselves then become case law which subordinate courts within the same jurisdiction must follow in subsequent cases. (Jacobstein, *et al.* 1994:25.) As the terms are used in this dissertation, the word, "case" may be used synonymously with "opinion" and "decision." For example, one could say that the Supreme Court's decision in Roe v. Wade has been modified by more recent opinions.

Judicial opinions contain five essential sections: facts, issue, rule, analysis (or reasoning), and holding. (Dernbach, *et al.* 1994:19.) Each opinion typically includes these elements in some

form, and usually—though not always—in the order stated above. There is one additional element that may appear within a judicial opinion, and that is *dicta*. Dicta are observations and personal opinions of the judge that are entirely unnecessary for deciding the case then before the court. (*Black's Law Dictionary* 1990.) *Dicta* are essentially editorial comments by the judge that bear upon issues which are collateral to the case then before the court. *Dicta* are usually found within the analysis section of an opinion.

The procedural history and material facts of a case will be set forth in the "Facts" or "Statement of Facts" section of the opinion. The specific legal question which the case at hand presents will be set forth in the "Issue" section, and will be stated as a question. For example, "May a motorist run a red light when rushing an accident victim to the hospital?" The rule "section" of an opinion is typically only a sentence or two long, and sets forth the general rule that applies to fact patterns which are similar to the case then before the Court. For example, a relevant rule for the issue above might be, "A motorist must stop at a red light."

There is often more than one rule statement in an opinion, however. The reason for this is that judges must often address subsidiary issues before addressing the larger legal issue the case focuses on. For example, while the general rule may be that a motorist must stop at a red light, there might be an exception for genuine emergencies. If there is an established test for whether a given circumstance constitutes an emergency, that test would be guided by a separate rule.

The analysis section is often the longest section of a judicial opinion, though, of course, the length of the analysis section depends somewhat on the factual complexity of the case before the court and the clarity of the law in that subject area. A court's analysis may range from simple explanations of how a legal rule or policy applies to a case or it can be a more involved explanation of "why the analysis from one area of the law is applicable to an entirely different area of the law."

(Dernbach, *et al.* 1994:21.) Very complex cases such as class action suits or large antitrust actions may contain extremely long analysis sections.

The holding is the ultimate decision which the judge reaches in the case before the court, *i.e.*, the holding is the answer to the question posed in the legal issue. A holding may be either express or implied. (Dernbach, *et al.* 1994:21.) An express holding will often utilize discourse markers, such as "*We hold* that a driver may run a red light in a genuine emergency, provided he may do so safely." An opinion with an implied holding sets forth the court's ultimate decision and provides reasons for that decision, but does not explicitly state its holding. As might be imagined, implied holdings are more difficult to identify than express holdings.

Table 1.1

The Sections of a Judicial Opinion. (Adapted from Dernbach, *et al.* 1994:29.)

Facts	What happened?
Rule	The law
Issue	Does the law apply to these facts?
Holding	The law does or does not apply to these facts.
Analysis	Why the law does or does not apply to these facts.

According to the legal doctrine of *stare decisis* (Latin for "to stand by a decision"), once a court has laid down a rule of law as applicable to a certain set of facts, lower courts must adhere to that rule and apply it to all future cases where the facts are substantially the same. (*Black's Law Dictionary* 1990.) A trial court cannot ignore the legal precedent even if the trial judge thinks the opinion is poorly reasoned or incorrect. The model proposed by Dernbach, *et al.* (1994) presented in Table 1.1 summarizes the sections of a judicial opinion and provides a synopsis for each section.

As this dissertation examines judicial opinions from appellate courts rather than trial courts, some discussion of the differences between those bodies and their function is called for. Appellate courts have little in common with the public's understanding of what a court does. The most obvious difference between an appellate court and a trial court is that the litigants themselves do not appear before the appellate court. For the most part, appellate courts have jurisdiction only to review matters of law as they were determined in the trial court, *i.e.* an appellate court is only a court of review to determine whether or not the judgment of the court below was correct. (*Barron's Law Dictionary* 1991.) Appellate court judges work exclusively from the written records from the trial court. In a minority of cases, an appellate court may grant oral argument so that the attorneys for the litigants may appear, but, ordinarily, appellate court judges work with reported speech and other forms of written discourse rather than live speech itself. The records from the trial court are forwarded to the appellate court, however, so the appellate justices do have trial transcripts and other records from the lower court proceedings.

The significance of this two-tier court system for this dissertation is that for a racial or gender epithet to be included in an appellate opinion, the epithet must be used—and the taboo against using epithets must be breached—three times: once in the original utterance, once more during the trial court proceedings, and finally the appellate court must choose to include the epithet in its opinion.

A short example of an appellate court opinion will help illustrate the style, tone, and format which those practicing or studying law expect from the genre. I contemplated using an opinion containing an epithet as my example, but decided that to do so might be a distraction. I focus on the text of opinions containing epithets in the synchronic analysis in Chapter 6, and did not want to deal with such texts prematurely. Additionally, many cases which contain epithets are too lengthy to use as a brief example. Therefore, I have chosen a more prosaic case as my exemplar, People v. Marsh,

11 Cal. Rptr. 768 (1992). This case deals with a situation most Americans deal with every day, driving in traffic. I have inserted explanatory comments between quoted passages. The footnote and the emphasis (italics) which appear within the case are both within the original text of the case. Most of the text of the opinion is quoted below.

> This case raises the issue what constitutes "approaching traffic" to which a driver must yield the right-of-way before making a left turn or U-turn. (Marsh, 11 Cal. Rptr. 768, 769.)

Here, the Court immediately states the legal issue in the first line of the opinion. While it is not common to state the issue so early, it is by no means unique. An increasing number of contemporary judicial opinions include an early statement of the legal issue to serve as a roadmap for the opinion.

> While we are loathe to add to California's brobdingnagian body of case law—especially for an infraction—the question badly needs attention.
>
> Vehicle Code section 21801, subdivision (a), provides: "The driver of a vehicle intending to turn to the left or to complete a U-turn at an intersection . . . shall yield the right-of-way to all vehicles *approaching* from the opposite direction which are close enough to constitute a hazard at any time during the turning movement . . . ." (Italics added.) (Marsh, 11 Cal. Rptr. 768, 769.)

The preceding paragraph sets forth the applicable legal rule for the factual circumstances of this case.

> In the case before us, appellant, having stopped southbound in a left-turn pocket for a red light, executed his turn as soon as the light turned green and before traffic in the opposite direction could move. (Marsh, 11 Cal. Rptr. 768, 769.)

The "facts" section of an opinion is usually much longer than the single sentence above, but the length of a given fact section naturally depends somewhat on the complexity of the case presented. As stated earlier, in a complex cases such as antitrust cases, class actions, or death penalty appeals, the facts section of an opinion may be quite long. (See *e.g.*, United States v. Microsoft, 253 F.3d 31 (D.C. Cir. 2001).)

The judge presents the defendant's argument below as counterpoint to the rule quoted above.

> [The defendant] argues he did not violate the statute since northbound traffic, being stationary at the time he turned in front of it, was not *approaching* within the meaning of section 21801.
>
> We would have rejected this argument out of hand were it not for the rather troubled history of the law in this area. Having reviewed that history, however, and being cognizant of the impact of the rule not only for traffic control but also for determination of civil liability, we feel compelled to address the issue. (Marsh, 11 Cal. Rptr. 768, 769.)

The paragraphs above serve as the transition to the legal analysis (or reasoning) section of the opinion which follows below. The second paragraph above also resituates the importance of a simple traffic infraction by showing how this seemingly mundane matter impacts public policy regarding allocation of fault in auto accidents.

> The rule embodied in section 21801, subdivision (a), was originally set forth in section 551, subdivision (a),[4] as follows: "The driver of a vehicle within an intersection intending to turn to the left shall yield the right of way to any vehicle *approaching* from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard." (Italics added.) (Marsh, 11 Cal. Rptr. 768, 769.)

The footnote within this paragraph is *dicta*; it is not necessary to decide this case. The cynical observation in this footnote, along with the earlier observation about "California's brobdingnagian body of case law" serve as editorial comments on the exponential growth of the law. The footnote also furthers the acerbic tone of this opinion.

> This [rule] seemed to work just fine until 1956, when another appellate department published People v. Bull (1956) 144 Cal.App.2d Supp. 860, 301 P.2d 311. Bull dealt with a situation identical to ours and dissected section 551, subdivision (a), with a precision not previously brought to bear on it. After carefully parsing the statute, that court held that the complaint before it did not correctly charge the offense and reversed Mr. Bull's conviction . . . [because i]t would be a contradiction in terms to say that a *standing* car was *approaching*. . . .

---

[4] It may be that part of the problem is what once took 551 laws now takes 21,801.

> In response to the Bull court's suggestion, the Legislature amended section 551 the following year to require that left- or U-turning drivers yield to any vehicle "which *has approached or is approaching*." (Italics added.) . . .
>
> This laid the issue to rest for 30 years, but in 1988 it sprang back to life like some kind of statutory zombie when the Legislature inexplicably deleted the phrase "which has approached," from section 21801, subdivision (a). This essentially returned the law to its pre-Bull form and breathed life back into the argument that drivers stopped at a signal can turn left in front of opposing traffic when the signal changes *if they can do it quickly enough*.
>
> Simply stating the proposition in plain language seems to refute it. No one can seriously argue allocation of right-of-way should be reduced to a contest of reaction times. Putting people into 4,000-pound, combustion-powered, gasoline-laden machines; stressing them out in a daily commute; and then telling them right-of-way is simply a matter of whether they are quick enough to "get off the line" before the other drivers seems like such a patently bad idea that it would be insulting to ascribe it to the Legislature. And we will not. (Marsh, 11 Cal. Rptr. 768, 769-70.)

Although the Court has not yet explicitly set forth its holding, it telegraphs its holding in the paragraphs immediately above. The judge makes it plain that he does not accept the defendant's argument.

> We are cognizant of the rule of State of South Dakota v. Brown (1978) 20 Cal.3d 765, 144 Cal.Rptr. 758, 576 P.2d 473, that reenactment of a statute implies approval of prior judicial interpretations of the words and phrases used in the statute.
>
> And we acknowledge the rule that "[w]hen legislation has been judicially construed and a subsequent statute on the same or an analogous subject is framed in the identical language, it will *ordinarily* be presumed that the Legislature intended that the language as used in the later enactment would be given a like interpretation." [Citations omitted.] Appellant's argument, based on these cases, that the Legislature, having deleted any reference to stationary vehicles, must have intended to restore the rule of Bull, *supra*, 144 Cal.App.2d Supp. 860, 301 P.2d 311, is neatly crafted and assiduously researched, but ultimately unconvincing. (Marsh, 11 Cal. Rptr. 768, 770, internal citations omitted.)

The judge sets forth the applicable rules of statutory interpretation in the two paragraphs above. The judge explains in his analysis below why his rejection of the defendant's argument does not run afoul of the rules of interpretation set forth above.

> In fact, there simply was no "rule of Bull." Appellate department decisions are not binding authority, especially with regard to *dicta* therein, so there was never a rule

> capable of "restoration" by the subsequent legislative amendment. (Marsh, 11 Cal. Rptr. 768, 770.)

As stated in the introduction which preceded Marsh, according to the doctrine of *stare decisis*, lower courts must ordinarily follow the decisions of appellate courts. Unlike the explicit holding of the case, however, courts are not obligated to follow the reasoning or commentary contained within *dicta*. Additionally, even though the Bull case was decided by the appellate division, it is the appellate division of the Superior Court—not the Court of Appeals itself. (Judicial Council of California 2002.) As such, the court hearing the Marsh case is not subordinate to the court which decided the Bull case. Superior Court judges are not obligated to follow the decisions of fellow Superior Court judges.

The law distinguishes between two types of authority in case law, binding authority and persuasive authority. (Dernbach, *et al.* 1994:12.) Because the Marsh court is not subordinate to the Bull court, and because the cited rules from the Bull case are *dicta* rather than the holding of the case, the judge here is not "bound" to follow Bull. The judge in Marsh may choose to follow the Bull case as persuasive authority, but he may also ignore the case as non-binding authority.

> [T]he "rules" appellant cites were, after all, self-constructed by the courts to guide them in determining the intent of the Legislature. The ultimate task before us is not to grade appellant's argument or harmonize legislation and prior appellate interpretation, but to discern the Legislature's intent. (Landrum v. Superior Court (1981) 30 Cal.3d 1, 12, 177 Cal.Rptr. 325, 634 P.2d 352.)
>
> Penal Code section 4 provides, "The rule of the common law, that penal statutes ought to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice." This rule applies with equal force to penal provisions of other codes such as the Vehicle Code. [Citations omitted.]
>
> Approaching this statute "with a view to effect its objects," we are absolutely convinced that the legislative intent was to interpret "approaching" as a reference to direction rather than motion. We hold that a fair interpretation of the words "approaching from the opposite direction" includes all vehicles coming from that direction *whether or not* their progress has been momentarily interrupted by traffic control devices. (Marsh, 11 Cal. Rptr. 768, 770.)

After painstakingly analyzing the applicable law and dissecting the appellant's arguments, the Court expressly states its holding, framing its holding with the discourse marker "We hold . . ."

> It may be that the Legislature could more clearly have expressed itself with a word like "opposing" or "facing"; but nothing in the law requires such clarity, and one need only spend a few minutes with a thesaurus to realize this is an awkward concept to phrase. The wording they came up with is plenty clear enough for most people, and we are satisfied the driving public correctly understands the section. As long as common usage recognizes "traffic that has stopped" (an oxymoron) and "traffic that is moving" (a redundancy), we see no reason why the Legislature cannot employ such usage in referring to stationary "approaching" cars.
>
> To hold otherwise would encourage semantic precision, and words like "diametrical," at the expense of the understanding of most motorists. It would also encourage traffic patterns unimaginably masochistic. If *that* was the Legislature's intent, it will have to speak more clearly; otherwise, the law is clear enough.
>
> Judgment affirmed. (Marsh, 11 Cal. Rptr. 768, 770-71.)

Although the legal issue People v. Marsh addresses may seem minor, the case serves as a good illustration of how judges approach and solve legal problems. Moreover, the acerbic tone, the aside in the footnote, the passages the court chose to emphasize, the parenthetical comments, and the oblique reference to Swift make this opinion more provocative than many other cases.

Theoretical Perspective

One of the principal hypotheses for this dissertation is that racial and gender epithets are replacing profanity as the taboo words of our culture. This hypothesis contains certain theoretical and philosophical presuppositions which in turn implicate corresponding sociolinguistic theories. The presuppositions inherent in the hypothesis are:

(1) our culture recognizes certain words or topics as taboo

(2) speakers know what words or topics are taboo; and

(3) what is taboo may change over time

Communicative Competence

The *sine qua non* of a taboo is that members of a culture feel an inhibition against breaching some established cultural standard. The very notion of a taboo, of course, presupposes that there *is* a cultural standard for linguistic behavior, which, in turn, begs the question "How do speakers know about the standard?" The issue of how speakers understand and respect cultural standards implicates the sociolinguistic theory of *communicative competence*.

Dell Hymes was the seminal proponent of the theory of communicative competence, a theory which was a natural outgrowth of the "ethnography of communication" (Hymes 1962) approach he advocated. (Saville-Troike 1989:20-21.) Hymes and others were not persuaded by the generativists' insistence that the study of linguistics should be abstracted from the actual use of language, an abstraction Chomsky argued for in his distinction between competence and performance. (Chomsky 1965:3-15.) Hymes argued that speakers of a language must possess more than grammatical competence to be able to communicate effectively. In order to use language effectively speakers must also know *how* language is used by members of a speech community, and whether a particular use of language is appropriate for a given setting. (Hymes 1971.)

Speakers manifest communicative competence by mastery of two sets of skills, one linguistic and the other pragmatic. (Orwig 1999.) The linguistic aspects of communicative competence pertain to how speakers internalize the elements and structures of their language. The pragmatic aspects of communicative competence deal with how speakers use language in social interactions. Many of the linguistic elements of communicative competence are irrelevant to this study, *e.g.*, the attainment of phonological competence, so I will not address those elements here. Many of the pragmatic elements of communicative competence play a larger role in the qualitative analysis, thus I treat those aspects more fully in Chapters 5 and 6.

The essential aspect of communicative competence here is the element of cultural competence. Cultural competence is the bedrock skill upon which all other aspects of communicative competence rest. Cultural competence is the ability to understand behavior from the standpoint of the members of a culture and to behave in a way that would be understood by the members of the culture in the intended way. (Orwig 1999.) As used here, culture is defined in Goodenough's (1964:36) well-known formulation that "culture consists of whatever one has to know or believe in order to operate in a manner acceptable to its members." Culture, then, is the sum of the social matrices in which we live, and cultural competence entails that members of a society understand those social matrices and act appropriately.

In sum, I proceed from the assumption that the appellate judges who wrote the opinions in the corpus possess communicative competence. Therefore, if a judge includes a word which speakers possessing communicative competence would recognize as taboo, then that judge must be aware that he or she is breaching a cultural taboo and is consciously choosing to do so. What the judge may be trying to do by breaching that standard is the subject of the synchronic analysis in Chapter 6. For the purposes of the diachronic analysis, the theory of communicative competence applies because it assumes that judges are representative of other members of their society as to what constitutes a taboo word.

Language Change

The second idea which underlies this study is that all natural languages inexorably change over time (Labov 1984:9.) Or, to put it another way: just as the instantiation of cultural information is dynamic, so too is its expression. One aspect of a culture which undergoes change is its lexicon, and one aspect of the lexicon which undergoes change is what speakers consider to be taboo. What

is taboo at one place and time may be acceptable elsewhere or during a different era. (Nunnally 1995:36.)

Broadly speaking, there are two ways for a linguist to approach language change. One is to look at the internal factors of language change such as the phonological, morphosyntactic, or psycholinguistic forces for change. The other approach is to look at the sociolinguistic forces of language change. (Atchison 1991:134.) I proceed from the latter perspective in this dissertation. As such, I am more concerned with examining language change as evidence of a change within the culture rather than gathering data on the internal forces of language change. (*Cf.* Goodenough 1975.) Here, I focus on the external factors of language change, the social elements of language use and concurrent historical developments in the culture at large.

Atchison (1991:134) has suggested three broad categories of the sociolinguistic causes of language change: fashion, foreign influence, and social need. All of her factors are relevant here. Fashion and social need are both manifested in the forces of immigration and civil rights law, and a change in the standard for what the speech community considers prestige speech. Foreign influence plays a role in immigration patterns and military history.

Charles Lang (1995) has argued that while the U.S. may be a nation of immigrants, Americans have never been very supportive of immigration. That is, while we are proud of our immigrant heritage, that pride is limited to those who have been in the U.S. for generations and have assimilated into the majority culture. According to one study, this trait has been part of our national psyche since at least the 19th century. (Simon 1995.) The table in Table 1.2 presents a brief overview of some U.S. policies and laws which have been hostile to immigration.

Table 1.2

Overview of U.S. Immigration Policy.

1798	Alien and Sedition Acts. Resident aliens suspected of being subversives could be expelled. Extended residency requirement to fourteen years
1882	Chinese Exclusion Act. Excluded Chinese laborers for a (renewable) period of 10 years. The Act was not repealed until 1943.
1902	Chinese Exclusion Act extended indefinitely.
1908	Per diplomatic agreement, Japan refused to issue passports to Japanese laborers who wanted to come to the U.S.
1917	Immigration Act. Established literacy test for reading English or other language. Also created Asiatic Barred Zone which excluded immigrants from India, Indochina, the East Indies, Polynesia, parts of Russia, Arabia, and Afghanistan.
1921	National Origins Act. Established quotas for immigrants from each nation based on 3% of the total foreign-born population in the U.S. in 1910, effectively excluding those from countries outside Western Europe.
1944	Korematsu v. United States, 323 U.S. 214 (1944). U.S. Supreme Court rules that interning Japanese Americans is constitutional.

At the turn of the 20th century, the labor demands of America's industrial economy drove immigration to record levels. Approximately 25 million immigrants arrived in the U.S. between 1860 and 1920. The majority came from southern and eastern Europe, although there were also significant numbers of Chinese and Irish immigrants. From 1860 to 1930, the foreign-born population of the United States never dropped below 13 percent. (Simon 1995.) From 1930 to 1980, fewer numbers of immigrants entered the U.S. than around the turn of the 20th century—even if one includes illegal immigrants in the calculation. Though the foreign-born population of the U.S. was approximately 8.5% for the 1990s, many immigrants did enter the U.S. in the 1980s and 1990s. (Simon 1995.) In contrast to earlier patterns, the majority of more recent immigrants arrived from Latin America and Asia. (U.S. Immigration and Naturalization Service 1994.)

Several primary sources in the law reflect changing social needs and are significant for this dissertation. Foremost among these sources are those laws establishing and expanding civil rights. The U.S. Supreme Court plays a crucial role in establishing the scope of civil rights. In a single ruling, the Supreme Court can change the nature of a civil right throughout the entire country. Such a change occurred in 1948 in a little-known cased called Shelley v. Kraemer, 348 U.S. 1 (1948).

At the time the Shelleys moved to St. Louis, restrictive covenants of homeowners' associations limited the Black population to small enclaves of city housing which became increasingly substandard due to overcrowding. The housing shortage for Blacks was acute. But, in 1945, with the help of a black real estate agent, the Shelleys found a home owner who wanted to sell their home to the Shelleys. The Shelleys purchased the home despite a neighborhood covenant prohibiting the sale of properties to any member "of the negro or mongoloid race." (Shelley, 348 U.S. 1 .)

The covenant allowed other property owners to enforce the covenant by bringing suit, and provided that any minority purchaser must forfeit title to their property if the covenant were upheld in court. Other property owners on the same block sued to enjoin the Shelleys from taking title to the property. Eventually, the case was appealed to the United States Supreme Court, and the Court held that racial restrictive covenants could not be enforced by the courts since this would constitute state action and violate the 14th Amendment. The import of Shelley was to reinstate the viability of the 14th Amendment and render the doctrine of "separate but equal" vulnerable to future legal attack.

The case of Shelley v. Kraemer set the stage for the much better known case of Brown v. the Board of Education, 347 U.S. 483 (1954). Before the Supreme Court decided Brown, courts had held that the doctrine of "separate but equal" was constitutional, *i.e.*, that as long as establishments provided "equal" facilities for patrons, those establishments could segregate people on the basis of

race. (Plessy v. Ferguson, 163 U.S. 537 (1896).) In Brown, however, the Supreme Court held that separate educational facilities were inherently unequal and, as such, violated the 14th Amendment to the U.S. Constitution. The effect of Brown, was that courts could no longer enforce, and legislatures could no longer enact, laws which promoted segregation.

The Civil Rights Act of 1964 (42 U.S.C. § 1981, *et seq*.) is probably the most important civil rights legislation since the 13th and 14th Amendments to the Constitution. When Congress passed the Civil Rights Act, U.S. Supreme Court decisions limited enforcement of the 14th Amendment to state action. (Brown applied specifically to public educational facilities.) The effect of this "state action" judicial limitation was that while the government could not discriminate on the basis of race itself, private individuals could—and, of course, did— discriminate. For example, before the Civil Rights Act, many restaurants, hotels, and other public establishments refused service on the basis of race.

In order to legislate the actions of individuals, Congress, used its considerable power to regulate interstate commerce to prohibit discrimination based on race, color, religion, or national origin in public establishments that had a connection to interstate commerce. As contemplated by the Civil Rights Act, "public establishments" included hotels, restaurants, gas stations, bars, or places of entertainment. (Legal Information Institute 2002.) The effect of the Civil Rights Act was tremendous. Not only did it integrate lunch counters, bus lines, and night clubs, but its passage marked a change in Congress's willingness to legislate matters which had previously been left to the states and to private individuals. It also set the stage for the judicial and administrative expansion of Title VII of the Civil Rights Act to include sexual discrimination and sexual harassment.

Taken as a whole, civil rights litigation such as the Civil Rights Act and the Supreme Court cases of Shelley and Brown broke down societal barriers between the races. As such, these changes

changed the complexion of our communities, our schools, and thus our culture and our language. The sweeping advances in civil rights law in the post World War II era changed the social climate of the U.S., and hence changed what constitutes prestige language. Before the Civil Rights movement, equality before the law was discouraged, segregation was accepted, and expressions of hate were tolerated. In short, while many people in the pre-Civil Rights era (approximately before 1950) might have been surprised at being censured for using a racial epithet, most people today would not be so surprised.

Although there are no previous studies directly on point, it would seem to follow from my theoretical position and historical developments that the diachronic data will show the following. First, epithet usage early in the century will be higher than in the post civil rights era. If one were to superimpose a hypothesized graph line onto the earlier line graph documenting the increase in usage of profanity, it would look like that in Fig. 1.2.

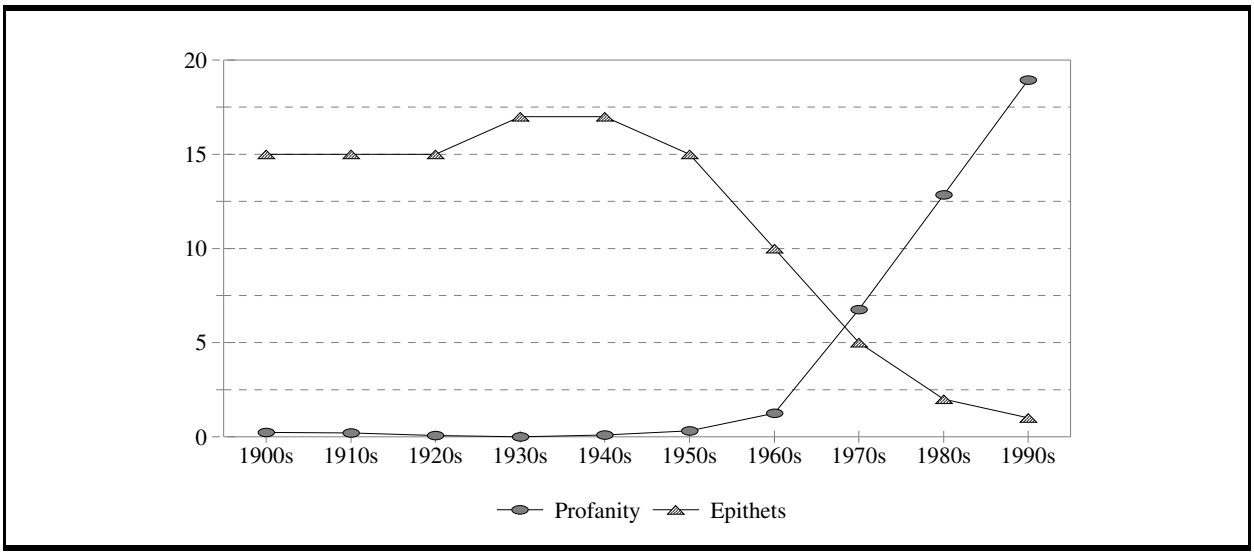

Fig. 1.2. Schematic of Hypothesized Relationship Between Usage Rates for Profanity and Epithets, per 10,000 Opinions.

The second prediction that follows from my theoretical perspective is that usage of race-specific epithets will correlate with certain historical events and/or the relative acceptance or rejection of a given group at that point in history. For example, I would expect use of epithets referring to Asians to increase during World War II and shortly thereafter because of the well-documented animus toward Japanese Americans during that time. Similarly, I would expect increases in epithets referring to Asians during periods of heavy immigration by Asians, and increases in epithets referring to Hispanics during periods of heavy immigration by Hispanics.

Why Linguistics?

I could have completed this dissertation as part of a Sociology or Anthropology program just as easily as Linguistics. And, in fact, I draw on many of the insights and techniques of those fields in this dissertation. But this dissertation squarely fits within the multi-disciplinary approach of Sociolinguistics. It is axiomatic that a lot of what we do in language is unconscious. (Boas 1911; Sapir 1927; Whorf 1941.) In this dissertation, I approach my analysis by focusing on texts to elaborate culture rather focusing on culture to elaborate texts. Although the distinction is not entirely clear cut, it is more than semantic. This dissertation belongs to the field of Sociolinguistics because I rely on the language of the judicial opinions to discern the social and cultural information attached to language, *e.g.* how do people use and make sense of language? As Silverstein (1976) emphasized, language is itself meaningful social behavior.

Limitations and Delimitations

The applicability of the findings of this study may be restricted by several factors which could not be controlled. Additionally, decisions which were made to delimit the focus and scope of the study may further restrict the extent to which results may be generalized. These limitations

and delimitations include: an inability to control all of the variables that might influence the outcome of the study; the nature of the genre; the variables chosen for study; the large size of the database and corpus; the degree to which the texts chosen for study are representative of the culture at large; the degree to which the database included all possible subjects for study; and the polysemous nature of language.

Limitations of the Study

The corpus for this study is extremely large—a total of over four million cases—but despite the large size of the corpus, it will not contain *every* reported opinion for all appellate courts, for every state. That is, there may be other appellate opinions which Westlaw has not yet added to its databases.

The next limitation is the degree to which intervening variables may have affected results. The homogeneity of the speech community, however, likely decreased the influence of the intervening variables of age, sex, race, and class. A lack of historical demographic data about state appellate court judges precluded identifying the sex, age, race, or socioeconomic class of those judges. Despite the lack of hard data, however, it is likely that few readers would argue with the proposition that nearly all judges from 1900-1950 were middle-aged (or older), upper-middle-class, white men. Only slightly more readers would dispute the same proposition as applied to the period 1950-1975. Even today the vast majority of judges nationwide are white males.[5]

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[5] According to the Judicial Council of California (2002), 89% of all superior court judges in California are white (683 men and 85 women). The demographics of the judiciary in California are not an aberration: 82% of all Court of Appeals judges in Texas are white. (Texas State Office of Court Administration 2002.) Some counties in Texas still do not have *any* non-white judges (Ellis 1997), and 100% of all judges on the Texas Court of Criminal Appeals are white. (Texas State Office of Court Administration 2002.) The picture on the federal bench is no more diverse. As of July 2000, 86% of the judges sitting on the entire 13-Circuit federal Court of Appeals were white.
(continued...)

Despite the overall homogeneity of the judges, however, certain individual judges may be more or less representative than their colleagues. In other words, it is possible that a highly idiosyncratic judge could have skewed results by including epithets in a disproportionately high number of his opinions. This limitation would be particularly noticeable in a state or an era with a small population and few reported opinions. Although this limitation likely is ameliorated by the extremely large size of the corpus, it cannot be eliminated.

Finally, it is an inescapable fact that all natural languages are polysemous (Atchison 1994.) Therefore, an additional limitation was the fact that many of the epithets included in this study carry additional meanings which are not epithets. For example, when used as a noun "bitch" can be used to insult a woman or to refer matter-of-factly to a female dog. Moreover, when used as a verb, "bitch" means "to complain." The word "spade" may be used as a hurtful epithet or to refer to a garden tool. Many epithets in this study are similarly polysemous.

Every effort was made to control for the potential for misinterpretation caused by the polysemous nature of the words studied. The extremely large size of the corpus, however, prevented individual scrutiny of every opinion in which each of the words under study appeared. Therefore, it is inevitable that some opinions contain one or more words that form the basis for this study, yet do not contain an epithet.

Delimitations of the Study

The scope of this dissertation was delimited by the researcher in several ways. First, the study was restricted to the genre of judicial opinions from state appellate courts. It is possible that a study which focused on other racial and socioeconomic segments of our society would yield a

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[5] (...continued)
Of this number, three-quarters were men. (Alliance for Justice 2000.)

different picture of epithet use. Second, the study was delimited by the choice to "restrict" the universe of judicial opinions to the entirety of the 20th century and the entire United States. It is possible that a smaller study delimited to one particular state or time period much shorter than a century would have yielded different results.

Finally, this study was delimited by the specific epithets chosen for study. As readers will recognize, many epithets are excluded from this study. Among those epithets excluded are epithets referring more specifically to ethnicity rather than race, *e.g.* "Mick," "Guinea," or "Frog." Additionally, another group of epithets exist in the grey area between insults based on ethnicity or race and insults based on religion. "Kike" and "Raghead" are but two examples of this particular group of epithets. It would have been temporally impractical to search for every conceivable epithet in a corpus this large. Therefore, this study is delimited to 19 specific epithets which are set forth in Chapter 3.

Although every effort was made to minimize the effects of the limitations and delimitations above, readers should take care in extrapolating the results of this study to other genres or time periods.

Importance of the Study

The importance of this dissertation to the field is manifold. First, despite the many scholars who have dealt with the topic of hate speech or epithets in general, no one has attempted to empirically test the hypothesis that racial and gender epithets are becoming increasingly taboo. Thus, this dissertation serves a need by examining the use of racial and gender epithets within one influential genre of our society, and quantifying that use. Second, this study is important because it is relevant to the growing public dialog on the issue of race. A sociolinguistic study which is both diachronic and synchronic in its perspective, and which uses both qualitative and quantitative

methods, has the potential to contribute to the public dialog on race, gender, and diversity. Ideally, sociolinguists, anthropologists, sociologists, legal practitioners, as well as others who are interested in the public dialog on race, will find this dissertation useful.

The third reason this study is important is the contribution it makes by quantifying the databases used in this study, and hence establishing a very large and potentially productive corpus. Simply establishing the size and parameters of the databases in which I searched for epithets was not a light undertaking. In fact, determining how many reported cases existed in each of the 50 state court databases for the 97 years encompassed in this study was more cumbersome than finding the epithets themselves. The contents of this database can now be used profitably by other scholars who have access to Westlaw. The foundation which I have laid will allow other researchers to pursue their own research agendas using the figures which I established.

Fourth, this study is important is because it contributes to the growing linguistic literature documenting language change, in this case, a putative shift in linguistic taboos. This dissertation could also serve as a model for future studies assessing the relative "taboo-ness" of epithets or other semantic domains.

Finally, I believe this dissertation serves a valuable function by seeking to minimize the political or ideological intrusion by the author. I believe that saying one is against using epithets to refer to others takes about as much courage and integrity as saying Pol Pot was not a good person. As Henry Louis Gates, Jr. said of people who pass restrictions on speech to proclaim their opposition to racial epithets: "big deal." I take it as a given that anyone reading this dissertation believes using a racial or gender epithet to hurt another is beyond the pale.

I am neither naïve nor disingenuous enough to claim that the words I am studying are mere sequences of sound. "Bitch!" is more than [bɪ č]. Even Saussure recognized that language has an individual aspect and a social aspect. One is not conceivable without the other. (Saussure 1915:8-

9.) Of course, the epithets at issue here are overfreighted with a tremendous amount of cultural baggage. That is precisely what makes them so interesting to study. I do not completely ignore the opprobrious nature of these epithets, and address some of the sociolinguistic implications of the words in my synchronic analysis. For the bulk of the dissertation, however, I do not seek to explain *why* we use epithets. Rather, I have tried to focus on investigating how frequently several epithets appear within one influential genre in our society and examining the results for significant patterns of distribution.

Summary and Overview

As set forth above, the purpose of this study was to examine the effect of three variables on the rate of epithet usage. This first chapter provided background information about previous studies, established the premise for this study, delineated the genre, and set forth the theoretical perspectives which inform this study.

The second chapter contains a review and analysis of the supporting literature relevant to taboo language and epithets. I provide a detailed overview of the diachronic methodology and procedures in Chapter 3, and present the results of the diachronic analysis in Chapter 4. I shift my focus from a macro analysis to a micro analysis in Chapter 5 in which I lay out the synchronic methodology. I present the results of the synchronic analysis in Chapter 6. In Chapter 7, the final chapter, I summarize the findings of both phases of the research, discuss the implications of this research, and provide suggestions for future study.

REVIEW OF THE RELEVANT LITERATURE

This chapter presents a review of the literature that is germane to this dissertation. The material in this chapter is divided into eight sections. The first two sections provide an introduction and background to the current study. The third and fourth sections discuss the current state of First Amendment law with respect to taboo words, and provide background on how courts analyze laws which restrict freedom of expression. The fifth section, *The Whorfian Hypothesis Meets the First Amendment*, presents two ideologically based views on whether certain types of speech do not warrant First Amendment protection.

The antepenultimate section, *The Academy's Approach to the Unspeakable*, presents the historical, ethnological, and gender difference approaches to taboo speech that previous scholars have taken. The final two subsections within this section examine studies into the cognitive and emotional aspects of taboo speech and hate speech. The final substantive section, *Kindred Studies*, examines the studies most relevant to this dissertation. The final section is a summary of the literature review.

Introduction and Background

The objective of this dissertation is to examine the use of racial and gender epithets within 20th century state appellate court judicial opinions. This dissertation is a two-phase study incorporating both synchronic and diachronic analyses. The purpose of the diachronic phase of this study is to use quantitative analyses to test the theory that our culture is undergoing a shift in linguistic taboos from traditional taboo words dealing with sex, the body, or bodily functions to newer taboos of racial and gender epithets. The objective of the second, synchronic phase of this study is to use qualitative

methods to discover how one specific epithet is used within a sample of judicial opinions from the 1990s which contain that epithet.

While completing coursework at the University of Georgia for my Ph.D. in linguistics, I became interested in studying taboo words. As a scholar, I was intrigued by how the topics and words that are prohibited by a culture can provide an insight into that culture. I completed several studies on the use of the profane terms which our culture considers taboo, and noted the possibility of a shift in the subjects and terms which our society considered taboo, a shift away from profane taboo terms to racial and gender epithets. I began this study to investigate the use of racial and gender epithets.

At the time I began this dissertation, no one had attempted to empirically test the hypothesis that racial and gender epithets were becoming increasingly taboo. For the most part, previous scholars had dealt with racial and gender epithets primarily in one of a few ways: as ethnographers documenting a small slice of a culture's verbal repertoire or gender differences in taboo speech (Allen 1983a, 1983b; Schultz 1979; Solomos 1972; Zhu 1993; Kocoglu 1996), historical analyses of linguistic taboos (Schulz 1975; Mohr 2003), or inquiry into the cognitive aspects of taboo speech (Sevcik *et al.* 1997). The literature also includes plentiful examples from the public debate regarding hate speech and/or the "gendered" implications of pornography. (Matsuda *et al.* 1993; Crenshaw *et al.* 1995; MacKinnon 1993; Gates 1993; Strossen 1995a, 1995b; and Dershowitz 1992.) Despite the fact that there was not much research which was directly on point when I began my research, some sources have since addressed the topic to varying degrees.

Congress Shall Make No Law Abridging the Freedom of Speech. Usually.

Legal practitioners and scholars within the U.S. share the same cultural inhibitions as the lay population; they are part of the same culture and share many of the same cultural values and standards. Because I have conducted this study from an emic perspective and draw from a corpus of appellate cases, it is instructive to examine how appellate courts have viewed taboo language, and how the case law has evolved when use of taboo language is weighed against the protection of free speech. In contemporary U.S. society, non-lawyers often think of the freedom of speech as something absolute and inviolable. The current state of First Amendment law, however, is not nearly as clearly defined or easily grasped. From Justice Holmes's well-known statement that the First Amendment does not guarantee one the right to yell fire in a crowded theater (Schenck v. United States, 249 U.S. 47 (1919)) to recent case law involving the burning of crosses (R.A.V. v. City of St. Paul, 505 U.S. 377 (1992)) and flags (Texas v. Johnson, 491 U.S. 397 (1989)), First Amendment jurisprudence is fascinating, complex, and contentious. It can also be a semantically imprecise and philosophically inconsistent area of law as well.

Among other protections, the First Amendment to the U.S. Constitution provides that "Congress shall make no law . . . abridging the freedom of speech." The philosophical precept which underlies the First Amendment is that the government has no place in suppressing ideas simply because it does not agree with those ideas. This ideal goes back to John Stuart Mill and his essay *On Liberty* in which he argued that "the mental well-being of mankind" depends on the "freedom of opinion, and freedom of the expression of opinion." Mill believed that "the general or prevailing opinion on any subject is rarely or never the whole truth, [and] it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied." (Mill 1859:54.) Oliver Wendell Holmes, Jr. echoed the philosophical values of Mill when he enunciated the metaphor that has come to be known as "the Marketplace of Ideas" in an impassioned dissenting

opinion in a case that squarely put the defendants' First Amendment right to free speech in conflict with the government's desire to stifle dissent during war time.

The defendants in Abrams v. U.S., 250 U.S. 616 (1919) had published two pamphlets expressing political views on World War I and the Russian Revolution. They were charged with four separate counts of conspiring to violate provisions of the Espionage Act of Congress. The Act prohibited writing or publishing "disloyal, scurrilous and abusive language about the form of government of the United States . . . intended to bring the form of government of the United States into contempt, scorn, contumely, and disrepute." The Act also criminalized speech which sought to "incite and advocate curtailment of production of things and products . . . necessary and essential to the prosecution of [World War I]." (Abrams, 250 U.S. 616, 617.) The defendants were found guilty and sentenced to 20 years in prison. Their appeal went all the way to the U.S. Supreme Court, and, although they lost their appeal, the passionate and eloquent dissenting opinion by Justice Holmes stands as a bellwether of free speech.

> In this case sentences of twenty years imprisonment have been imposed for the publishing of two leaflets that I believe the defendants had as much right to publish as the Government has to publish the Constitution of the United States now vainly invoked by them. . . .
>
> Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. . . . But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. . . . I regret that I cannot put into more impressive words my belief that

> in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States. (Abrams, 250 U.S. 616, 629-31.)

Abrams was not the first time that courts were faced with weighing individual liberty against the state's desire for control, and if the Supreme Court's docket is any indication, it will be far from the last.

Analyzing Laws Which Restrict Speech

At the risk of oversimplification, the first and most important step a court must take when confronted with a statute which restricts speech is determining whether the statute attempts to regulate the content, the essential message conveyed. If the law does seek to restrict the message which is conveyed, the law is said to be a content-based restriction. If the law does not seek to restrict the message communicated but rather seeks to avoid some societal ill unconnected with the speech's message,[1] then the law is content-neutral. (Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748 (1976).) This initial classification is extremely important because the likely outcome of the case usually hinges upon this initial classification. Because of the value placed upon speech and public dialogue noted in the subsection above, courts will likely strike down a content-based speech restriction as unconstitutional.

If a court determines that a statute restricting speech is content-based, it will examine the law under a standard called strict scrutiny. Under this standard, the government must prove three things in order for the statute to pass constitutional muster: (1) the government must have a compelling state interest as its objective in passing the legislation; (2) the means the government have chosen to meet its objective must be necessary to achieve that end; and (3) the government does not have

[1] For example, banning distribution of all leaflets or handbills in order to address litter problems. (Schneider v. State, 308 U.S. 147 (1939).)

any less restrictive means of accomplishing its objective. (Virginia Pharmacy Board, 425 U.S. 748 (1976).)

If a court determines that a statute restricting speech is content-neutral, it will weigh the state's professed interest in passing the restriction against the harm posed by a restriction on speech—even if that restriction is content-neutral and does not seek to give preference to some topics over others. In contrast to content-based restrictions on speech, a government must prove only that it has a significant state interest in passing the law, and that the law is narrowly drawn to further that significant state interest. (Schneider, 308 U.S. 147 (1939).)

Constitutionally Unprotected Speech and Taboo Words

Not all speech is entitled to the same degree of protection. When the Court creates an entire category of unprotected speech, it generally does so because it believes that the harm caused by some types of messages cannot be cured with more speech. The Supreme Court has delineated five principal categories of speech that are not protected by the First Amendment. They are: (1) obscenity; (2) defamation; (3) fraudulent misrepresentation; (4) fighting words; and (5) advocacy of imminent lawless behavior. The Supreme Court will not strip speech of First Amendment protection unless that speech is without value in the context of public dialogue. As stated in one case, unprotected speech is limited to "utterances [that] are no essential party of any exposition of ideas [and] of slight social value as a step to truth." (Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942).) Of the five categories of unprotected speech noted above, two are important for this dissertation, obscenity and fighting words.

Obscenity

The first category of constitutionally unprotected speech that is relevant to this dissertation is obscenity. To say that the legal standards regarding obscenity have had a capricious history in Anglo-American law and that those laws have often been inconsistently applied is circumspect in its understatement. For example, in a British magazine article entitled, *The Maiden Tribute,* the writer T.W. Stead exposed the existence of a white slave trade. English officials did absolutely nothing to those who were involved in the white slave trade, but the government did put the author of the article in prison for a year for writing about an indecent subject. (Chafee 1942:151, cited in Miller v. California, 413 U.S. 15, 45, footnote 9 (1973).)

Black's Law Dictionary defines obscene as "objectionable or offensive to accepted standards of decency." Webster's lists a similar definition: "offensive to one's feelings, or to prevailing notions of modesty or decency; lewd." The U.S. Supreme Court has tried many times over several decades to define obscenity and to provide specific guidelines as to what, if any, materials may be banned on the basis of obscenity. The Court has not always been helpful in this regard, with one case leading to Justice Stewart's famous concession that he could not clearly and succinctly define "hard core pornography." But, he helpfully offered, "I know it when I see it, and the motion picture involved in this case is not that." (Jacobellis v. Ohio, 378 U.S. 184, 197 (1964).

The first major contemporary case in which the U.S. Supreme Court dealt with the issue of obscenity was Roth v. U.S., 354 U.S. 476 (1957). In Roth, the Court confirmed what earlier cases had appeared to suggest: obscene material is not protected by the First Amendment. In Roth the Court sustained a conviction under a federal statute that prohibited mailing "obscene, lewd, lascivious or *filthy*" materials. (Roth, 354 U.S. 476, 494, emphasis added.) The language of the statute and the Court's matter-of-fact recitation of a statute with such value-laden wording, illustrate just how strongly the ideas of morality and social prohibitions—*i.e.*, taboos—are linked with

obscenity in American society. Terms such as "filthy" quickly devolve into semantically murky and jurisprudentially unclear value judgments. The key to the holding in Roth was the Court's rejection of the defendant's claim that obscene materials were protected by the First Amendment. Five Justices joined in the opinion stating:

> All ideas having even the slightest redeeming social importance . . . have the full protection of the [Constitutional] guaranties . . . But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance. (Roth, 354 U.S. 476, 484.)

Aware that unfettered discretion in the hands of local law makers could unduly restrict speech which was protected under the Constitution as state and local governments attempted to restrict obscene materials, the Court placed restrictions on how broadly the government could define obscenity. The Supreme Court held that obscenity is defined as "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." (Roth, 354 U.S. 476, 490.) The Court defined "prurient" as "materials having a tendency to excite lustful thoughts.[2]

The standards the Court laid down in Roth were later modified during the turbulent 1960s and 1970s when American societal mores were being redefined. Justice Harlan called the cavalcade of obscenity/pornography cases being reviewed by the Court in a re-examination of prevailing cultural standards during this time period as "the intractable obscenity problem." (Interstate Circuit, Inc. v. Dallas, 390 U.S. 676, 704 (1968) (concurring and dissenting)). Chief Justice Burger conceded that the Court's obscenity decisions had a "somewhat tortured history" (Miller v. California, 413 U.S. 15, 20 (1973)), and Justice Brennan (Paris Adult Theater I v. Slaton, 413 U.S. 49, 92 (1973)) voiced his frustration over the Court's inability to resolve the issue of obscenity. "The

[2] In a much later case, the Supreme Court held that "prurient" does not apply to "normal, healthy sexual desires" even though the material may "excite lustful thoughts." (Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 498 (1985).)

problem is," Justice Brennan wrote, ". . . that one cannot say with certainty that material is obscene until at least five members of this Court, applying inevitably obscure standards, have pronounced it so."

During this time of great social change, a U.S. Commission on Obscenity and Pornography concluded a two-year study, and determined that the obscenity standards of the Supreme Court had the unintended effect of prohibiting materials which were protected by the First Amendment.

> Present laws prohibiting the consensual sale or distribution of explicit sexual materials to adults are extremely unsatisfactory in their practical application. . . . These vague and highly subjective aesthetic, psychological and moral tests [of obscenity] do not provide meaningful guidance for law enforcement officials, juries or courts. As a result, law is inconsistently and sometimes erroneously applied and the distinctions made by courts between prohibited and permissible materials often appear indefensible. (Report of the Commission on Obscenity and Pornography 53 (1970), cited in Miller, 413 U.S. 15, 40, footnote 5.)

A large part of the reason the Supreme Court's prodigious caseload of obscenity cases led to a series of obscure standards was that *none* of the obscenity cases after Roth was decided by a majority. In other words, the waves of social change during the 1960s were not confined to the streets or college campuses; even the Justices of the Supreme Court could not agree on an applicable obscenity standard.

One of the ways in which the First Amendment protects speech is by prohibiting vague and unclear restrictions on speech because such restrictions would produce a "chilling effect" and lead citizens to censor their own speech. If people do not know what speech is banned and what speech is not, they will often err on the side of caution and keep their mouths closed. Therefore, the government must provide fair notice to citizens of what speech the government seeks to ban. In order to provide more guidance that the Court had in earlier obscenity cases such as Jacobellis, the Court in Miller v. California, 413 U.S. 15 (1973) attempted to be more specific about what speech could be banned without running afoul of the First Amendment.

By a five-to-four majority, the Court in Miller provided a new definition of obscenity, a definition which built on the prior definition provided by Roth, but which also resolved some issues which Roth had not. The Miller case differs somewhat from earlier obscenity cases, and, in some ways, bears more similarities to the current social debate regarding spam e-mails sent by operators of pornographic websites. Miller involved the application of a State's criminal obscenity statute to a man who had conducted a direct mail campaign by sending sexually explicit materials to "unwilling recipients who had in no way indicated any desire to receive such materials." (Miller v. California, 413 U.S. 15, 19.) The recipient of one envelope complained to the police, and the defendant was then tried and convicted of violating a California statute which prohibited knowingly distributing obscene matter.

The Supreme Court recognized the chilling effect that restricting expression could have, so it limited how broadly the government could define "obscene materials." The Court in Miller imbued the words "obscene material" with a specific judicial meaning which derived from the Roth case, and held that obscene material dealt with sex. After the Court limited the subject area contained within "obscene" to those materials which described or depicted sexual conduct, it still needed to provide some standard to distinguish those materials which depicted or described sexual conduct in an acceptable manner (such as medical texts) from those materials which depicted or described sexual conduct in an unacceptable manner. To provide that guidance, the Court in Miller formulated a new test.

> The basic guidelines for the trier of fact must be: (a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. (Miller, 413 U.S. 15, 25, citations omitted.)

The Court also went one step further than earlier decisions had and provided some examples of what a state statute could prohibit as obscene:

> (a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.
>
> (b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals. (Miller, 413 U.S. 15, 25-26.)

The last important issue resolved by the Supreme Court in Miller was clarification of what was meant by the term "community standards." In several preceding cases there had been some differences among lower courts as to whether to the community standards of the local community, the state, or the nation should apply. In Miller, the Court made it clear that the term community standards applied to the standards which prevailed in the local community where the case was brought. "It is neither realistic nor constitutionally sound," wrote Chief Justice Burger to require "the people of Maine or Mississippi [to] accept public depiction of conduct found tolerable in Las Vegas, or New York City." (Miller, 413 U.S. 15, 33.)

Although Miller was the first obscenity case since Roth decided by a clear majority, the decision was not unanimous. Justice Brennan, who had written the plurality opinions in many of the Court's earlier obscenity cases, later abandoned his belief that obscenity could be prohibited at all. Brennan believed that no formulation of the courts, by the legislature, or by the states could adequately distinguish obscene material that was unprotected by the First Amendment from protected speech. (Paris Adult Theater I, 413 U.S. 49, 73 *et seq*.) He reiterated that same belief in a dissenting opinion in Miller.

Justice Brennan was not alone in his opposition to the majority decision in Miller. In a separate dissenting opinion, Justice Douglas expressed his concern with the majority's new standards.

> The difficulty is that we do not deal with constitutional terms, since "obscenity" is not mentioned in the Constitution or Bill of Rights. . . . . The Court is at large because we deal with tastes and standards of literature. What shocks me may be sustenance for my neighbor. What causes one person to boil up in rage over one pamphlet or movie may reflect only his neurosis, not shared by others. We deal here with a regime of censorship which, if adopted, should be done by constitutional amendment after full debate by the people.
>
> Obscenity—which even we cannot define with precision—is a hodge-podge. To send men to jail for violating standards they cannot understand, construe, and apply is a monstrous thing to do in a Nation dedicated to fair trials and due process. (Miller, 413 U.S. 15, 40-41, 43-44.)

Although Justice Douglas held out the possibility that speech *could* be censored via a Constitutional amendment, it was an option he hoped the citizenry would not exercise. Douglas believed censorship constituted a radical break with the traditions of a free society. In his view, free people must be willing to tolerate some speech they find offensive in order to protect the right of free expression for all. In the words of Justice Douglas, "The First Amendment was not fashioned as a vehicle for dispensing tranquilizers to the people. (Miller, 413 U.S. 15, 44-45.)

Fighting Words

The government may not usually prevent or punish words on the grounds that listeners will find them offensive. Indeed, speech that many listeners find offensive is frequently the speech which courts afford the most protection. But the Supreme Court has carved out an exception to the First Amendment where the speech is likely to provoke a fight

In Chaplinsky v. New Hampshire, 315 U.S. 568 (1942), a man was picketing outside Rochester City Hall. He was arrested because he said to a police officer, "You are a God damned racketeer, and a damned Fascist and the whole government of Rochester are Fascists or agents of Fascists." By modern standards, the defendant's actions seem quite tame, even amusing. But the defendant in Chaplinsky was convicted for violating the following statute:

> No person shall address any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name, nor make any noise or exclamation in his presence and hearing with intent to deride, offend or annoy him . . . (Chaplinsky, 315 U.S. 568)

In the defendant's appeal, the Supreme Court first set forth the "fighting words" exception to the First Amendment.

> [I]t is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument. (Chaplinsky, 315 U.S. 568, 572)

The Court held that the standard for whether speech was offensive was not what a particular addressee thinks is offensive, but rather "what men of common intelligence" (Chaplinsky, 315 U.S. 568, 574) believed would cause an average addressee to fight. It would strain credulity to claim today that "damn Fascist" would provoke the average person into a fight. The Supreme Court apparently found the defendant's speech extremely offensive, however, because it held that evidence or argument was "unnecessary to demonstrate that the appellations 'damn racketeer' and 'damn Fascist' are epithets likely to provoke the average person to retaliation" and lead to a breach of the peace. (Chaplinsky, 315 U.S. 568, 574.)

In the years since Chaplinsky, the Supreme court has seemingly limited the scope of the fighting-words doctrine. In several later decisions, the Court has continued to limit the government's ability to punish individuals for uttering offensive language. For example, in one case the Supreme Court ruled that an individual could not be criminally prosecuted for wearing a jacket bearing the words "Fuck the Draft" into a courthouse. (Cohen v. California, 403 U.S. 15 (1971).)

The state argued that the defendant's jacket constituted fighting words under Chaplinsky, and violated a California statute prohibiting "maliciously and willfully disturbing the peace or quiet of any neighborhood or person by … offensive conduct." (Cohen, 403 U.S. 15, 16.) The Supreme Court disagreed, writing in its 1971 ruling that the words on the jacket were not a direct personal insult, and noting that no one had reacted violently to the jacket. In a well-known and frequently quoted opinion, Justice Harlan wrote:

> For while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual. (Cohen, 403 U.S. 15, 25.)

The Cohen case established the rule that fighting words were confined to direct personal insults. Even when limited to direct personal insults, however, lower courts have applied the fighting-words doctrine in frustratingly inconsistent ways. Hudson (2004) offers the following cases as evidence of that fact. In one case, a court held that yelling "fuck you all" to a police officer and security personnel at a nightclub did *not* constitute fighting words. (Cornelius v. Brubaker, Minnesota District Court, 2003.) Yet in a similar case, another court held that calling a police officer a "fucking asshole" in a loud voice and attempting to spit on the officer *did* constitute fighting words. (State v. York, Maine Supreme Judicial Court, 1999).) As the two cases above imply, courts are more prone to uphold a conviction if a person's fighting-words are coupled with some form of threatening conduct. But even when a defendant's words are read within the context of his original utterance, the viability of the fighting words doctrine is difficult to reconcile with how the current conservative Supreme Court has applied it.

Advocates for racial minorities, women, homosexuals, and other traditionally disadvantaged groups have argued that an exception to the First Amendment should be made for "hate speech." Activists argued that threatening speech which was directed against a person because of that

person's race, sex, or sexual orientation was harmful in ways that other insults were not. Many state and local lawmakers responded by passing some form of "hate crime" law or criminalizing bias-motivated speech or acts. One such law was challenged in R.A.V. v. City of St. Paul, 505 U.S. 377 (1992).

The defendant in R.A.V. was a teenager who, along with several of his friends, burned a cross inside the fenced yard of a black neighbor. The defendant placed the cross in his neighbor's lawn in the middle of the night and set it on fire. The defendant was prosecuted under a St. Paul ordinance which provided that "whoever places on public or private property a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender commits disorderly conduct and shall be guilty of a misdemeanor." (R.A.V., 505 U.S. 377, 380.)

The defendant in R.A.V. argued that the St. Paul ordinance was unconstitutional in two ways. First, the ordinance was overbroad, *i.e.*, the ordinance banned not only speech that wasn't protected by the First Amendment, but that the ordinance also banned speech which was entitled to full protection under the Constitution. The second basis on which the defendant attacked the constitutionality of the ordinance was that it was a content-based restriction on speech.

Although the decision in R.A.V. was unanimous, the Court was still bitterly split. Only five of the nine justices, the bare minimum for a majority opinion, joined in the Court's majority opinion written by Justice Scalia. The other four justices wrote and/or joined in separate opinions which concurred with the majority's decision, but not with its reasoning. Moreover, the concurring opinions read more like dissents than concurring opinions.

The Court struck down the law, and held that it was an impermissible, content-based restriction on speech because "it prohibits otherwise permitted speech solely on the basis of the subjects the speech addresses." (R.A.V., 505 U.S. 377, 381.) The majority recognized that its

holding in R.A.V. was difficult to reconcile with the fighting words doctrine set forth in Chaplinsky. Fighting words were the first exception to the First Amendment formally carved out by the Supreme Court, and Chaplinsky even explicitly mentioned epithets as a type of fighting word. If epithets were one type of fighting words, and fighting words could be restricted without violating the Constitution, then how could Scalia claim that a subset of a prohibited category of speech was "permitted expression" under the Constitution? Justice Scalia attempted to distinguish R.A.V. without explicitly overturning Chaplinsky.

> The content-based discrimination reflected in the ordinance does not rest upon the very reasons why the particular class of speech at issue is proscribable, it is not aimed only at the "secondary effects" of speech . . . and it is not for any other reason the sort that does not threaten censorship of ideas. In addition, the ordinance's content discrimination is not justified on the ground that the ordinance is narrowly tailored to serve a compelling state interest in ensuring the basic human rights of groups historically discriminated against, since an ordinance not limited to the favored topics would have precisely the same beneficial effect. (R.A.V., 505 U.S. 377, 393-96.)

In short, Scalia argued that the state could have banned *all* fighting words, but could not ban only those fighting words which were based on race, religion, or gender. In so doing, Justice Scalia implicitly created a new "underbreadth" doctrine. Justice White wrote in his concurring opinion, "I agree with the majority that the judgment of the Minnesota Supreme Court should be reversed. However, our agreement ends there." (R.A.V., 505 U.S. 377, 397.)

White believed that R.A.V. could easily have been decided simply by holding that the St. Paul ordinance was overbroad because it criminalized expression that was protected by the First Amendment as well as unprotected expression. If the Court had based its decision on the overbreadth doctrine, as a matter of Constitutional construction, the case was over and the Court would not have to address the defendant's other argument. White believed that fighting words could be prohibited, but that the ordinance also prohibited categories of speech that are constitutionally protected—however repugnant they may be. White lamented that the Court found the

> ordinance facially unconstitutional on a ground that was never presented to the Minnesota Supreme Court, a ground that has not been briefed by the parties before this Court, a ground that requires serious departures from the teaching of prior cases and is inconsistent with the plurality opinion in Burson v. Freeman, 504 U.S. 191 (1992), which was joined by two of the five Justices in the majority in the present case. (R.A.V., 505 U.S. 377, 398.)

White believed that the majority decision cast long-settled principles of First Amendment law aside. Even though he agreed that the ordinance was unconstitutional, he believed "the Court's reasoning in reaching its result [was] transparently wrong." (R.A.V., 505 U.S. 377, 399.) He attacked the majority's reasoning, emphasizing that previous decisions "plainly stated" that certain narrowly defined types of expression could be prohibited because that speech lacked the values the First Amendment was designed to protect. "Today, however, the Court announces that earlier Courts did not mean their repeated statements." (R.A.V., 505 U.S. 377, 400.)

White was particularly bothered by Justice Scalia's new "underbreadth" doctrine. He felt that it was illogical to hold that the law could "proscribe an entire category of speech because the content of that speech is evil, but that the government may not treat a subset of that category differently without violating the First Amendment." (R.A.V., 505 U.S. 377, 401.) White believed that if the larger set of speech did not deserve First Amendment protection, then any subset of it was "by definition, worthless and undeserving of constitutional protection." (R.A.V., 505 U.S. 377, 401, citation omitted.)

In a separate concurring opinion, Justice Blackmun was even more critical. He saw "no First Amendment values that are compromised by a law that prohibits hoodlums from driving minorities out of their homes by burning crosses on their lawns." (R.A.V., 505 U.S. 377, 416.) But as did Justice White, Blackmun concurred in the judgment because he believed that the particular ordinance passed by St. Paul reached beyond fighting words and prohibited speech protected by the First Amendment.

In a third and final concurring opinion, Justice Stevens struck a middle position. He believed that both the majority opinion and White's concurring opinion skewed their analyses because of "the allure of absolute principles." (R.A.V., 505 U.S. 377, 417.) Unlike the majority, Stevens did not believe that all content-based regulations were presumptively invalid. He also believed that fighting words were not wholly unprotected by the First Amendment. (R.A.V., 505 U.S. 377, 428.) White believed that the Court should not prohibit or protect entire categories of speech. He believed the approach was too broad and ignored the context of an utterance in favor of an easy, bright-line rule. Stevens believed "[t]he meaning of any expression and the legitimacy of its regulation can only be determined in context." (R.A.V., 505 U.S. 377, 427.)

> [T]he categorical approach is unworkable, and the quest for absolute categories of "protected" and "unprotected" speech ultimately futile. My analysis of the faults and limits of this approach persuades me that the categorical approach presented in . . . Justice White's opinion is not an adequate response to the novel "underbreadth" analysis the Court sets forth today. (R.A.V., 505 U.S. 377, 428.)

Stevens wrote that the defendant was free to burn a cross to express his views about racial supremacy, as long as the burning was not an individual threat directed to a specific person. He believed the St. Paul ordinance was not an unconstitutional content-based regulation of speech. However, like the other concurring justices, he believed that it was constitutionally overbroad. Otherwise, he would have voted to uphold it. (R.A.V., 505 U.S. 377, 436.)

The Whorfian Hypothesis Meets the First Amendment

In this section, I shift focus to provide an overview of the Critical Race Studies approach to hate speech, and the gender scholars approach to sexual harassment and pornography. I also provide an overview of the arguments advanced by free speech advocates who oppose restrictions on hate speech and pornography.

On one side of the hate speech debate stand those who believe that any use of an epithet does harm not only to the addressees of the hate speech, but also to a culture. (Matsuda, *et al.* 1993; Delgado 1995; MacKinnon 1993.) On the other side of the debate stand those who just as fervently believe that restricting hate speech is ultimately more harmful to a culture than hate speech. (Strossen 1995a, 1995b; Gates 1993, 1998; Dershowitz 1992.) The philosophical difference between the two groups is great. The fervor with which each side advances its arguments provides a clue as to what is at stake in the hate speech debate.

> There is a tendency to interpret many of the recent revisionist approaches to free speech as if they were simply calls for exceptions to otherwise clear cut rules and principles, as if, say, pornography or racism are so exceptionally evil that they fall outside the parameters of the kinds of speech that are "obviously" protected under the First Amendment. This misses the fact that the new approaches, with varying degrees of explicitness, involve theoretical and epistemological challenges to the underlying premises of free speech law in general; over the long run, what the new approaches are calling for are not exceptions but a restructuring of free speech law as a whole. (Streeter 1995.)

As both side would likely admit, it is the theoretical and epistemological bases for the proposed restructuring that is the source of the conflict.

The Linguistic Perpetuation of Dominance

Critical Race Theory evolved from two different approaches to jurisprudence and public policy. The first was the jurisprudential school of thought known as Critical Legal Studies. The other primary influence on the development of Critical Race Theory was the development of African American thought in post civil rights era. (Tate, 1996).

Critical Legal Studies was essentially a Marxist critique of law which sought to de-construct the prevailing narrative in legal philosophy. Deconstruction originally arose as a philosophical perspective and set of techniques popularized by Jacques Derrida and other influential French thinkers to interpret, or deconstruct, literary and philosophical texts. (Balkin 1998.)

Deconstructionism first gained acceptance in the U.S. in literature and philosophy departments, but was later also embraced by many scholars within legal academe.

> Legal academics on the left, and particularly feminists and members of the Critical Legal Studies movement . . . employed deconstructive techniques to discover and critique ideological commitments they claimed underlay legal doctrine. Deconstruction has proved useful for ideological critique because ideologies often work through forms of privileging and suppression: Certain features of social life are privileged in thought and discourse, while others are marginalized or suppressed. Deconstructive arguments try to recover these subordinated or forgotten elements in legal thought and legal doctrine. (Balkin 1998.)

In short, the scholars who embrace Critical Race Theory are disillusioned with the prevailing liberal ideology that espouses equity but does not address the social and economic disparity between racial minorities and the white majority in America.

The other intellectual influence to which Critical Race Theory owes a debt is the work done on race by Derrick Bell and Alan Freeman in the mid 1970s. In fact, Bell is often grouped with scholars working within Critical Race Theory, and some of his essays have appeared in Critical Race Theory collections. In *Remembrance of Racism Past: The Civil Rights Decline* (1993), Bell advanced three main arguments in his critique of the law's approach to problems of race and social justice: (1) Constitutional contradiction; (2) the interest convergence principle; and (3) the price of racial remedies.

According to Bell, the Constitutional contradiction describes the philosophical prominence given to property over justice by the framers of the Constitution. Before it was repealed by the 13th Amendment, Article IV, Section 2 of the Constitution stated:

> No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

The scope of this clause was adjudicated in Dred Scott v. Sanford, 60 U.S. 393 (1856). Dred Scott had been born a slave, but was taken by his master into the free portion of the Louisiana territory.

After his master died, Scott sued for his freedom, arguing that because slavery was outlawed in the free territory, he had become a free man there. A Missouri court rejected Scott's argument, but he succeeded in bringing his case to federal court where it was eventually appealed to the U.S. Supreme Court.

The threshold issue in federal court was whether a slave had standing—the legally recognized ability to bring suit. If he did not, then the Supreme Court could dismiss Scott's suit for lack of jurisdiction and avoid the politically volatile question of whether his substantive claim had merit. The Court ruled that because Scott was a slave he could not sue in federal court. The Supreme Court went even further in its ruling, holding that all Blacks—slaves as well as free—were not and could never become citizens of the United States. Justice Taney, a staunch supporter of slavery, wrote the majority opinion for the Court. In language that makes modern readers gasp, the Court held that African Americans

> had no rights which the white man was bound to respect; and that the Negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold and treated as an ordinary article of merchandise and traffic, whenever profit could be made by it. (Dred Scott, 60 U.S. 393, 407.)

In light of such judicial history in the U.S., it is hard for Bell and others to place much faith in the majority's interpretation of the Constitution.

Bell argued that the interest convergence dictates that Whites will promote advances for Blacks only when those advancements also promote the self-interest of Whites. Bell (1992:185) illustrates the interest convergence principle in a parable in which space aliens offer to solve all of society's fiscal, environmental, and energy needs in exchange for all persons of African descent. Even though many Whites opposed the aliens' offer, the majority were willing to exchange the lives of Blacks to advance their own desires. Bell argues that, as in his parable, U.S. history demonstrates that white Americans have always been willing to sacrifice the well-being of minorities to advance

their own economic self-interests. Furthermore, Bell contends that economic and legal structures protect white privilege and ensure the continued subordination of Blacks.

Lastly, according to Bell, the price of racial remedies dictates that Whites will not support civil rights policies if those civil rights policies might also threaten the privileged social status of Whites.

> Few Whites are able to identify with Blacks as a group . . . few Whites are ready to actively promote civil rights for Blacks. Because of an irrational but easily roused fear that any social reform will unjustly benefit Blacks, Whites fail to support the programs this country desperately needs to address the ever-widening gap between the rich and the poor, both Black and White. (Bell 1992:4.)

Critical Race Theory—as did its intellectual predecessors—contends that the law is neither apolitical nor neutral as conventional wisdom holds. Scholars in Critical Legal Studies and Critical Race Theory maintain that the law is not simply an instrument of society, but that the law produces and is the product of social power. (Crenshaw *et al.* 1995). The perspective advanced in both Critical Legal Studies and Critical Race Theory holds that many of the doctrines which are the foundation of the American legal system are fictions. For example:

> [T]he dominant story of human relations in contract law assumes autonomous individuals freely choosing the terms of their bargains, and accepting full responsibility if they choose badly. However . . . much contract law (and much contracting) does not fit this model. . . . Institutions like the market can be unfairly coercive and oppressive even as they purport to be the home of freedom and self-realization. (Balkin 1998.)

Some in the Critical Race Theory school go further, even to the point of questioning the Western philosophical faith in free will. Delgado and Stefancic (1992:1280) advance an argument thoroughly steeped in post-modernism, stating that Marketplace of Ideas metaphor for speech "implies a separation between subjects who do the choosing and the ideas or messages that vie for their attention." Delgado and Stefancic believe that there is no such separation, and that the idea of "an autonomous subject choosing among separate, external ideas is simplistic."

Despite the assertion that there is "no canonical set of doctrines or methodologies" to which all Critical Race Theory scholars subscribe, those who embrace Critical Race Theory do nonetheless share common goals and beliefs. The first is that they seek to expose how a "regime of white supremacy and its subordination of people of color have been created and maintained in America." The second commonality within Critical Race Theory is the goal of changing the bond that exists between law and racial power. (Crenshaw *et al.* 1995:xiii) According to Lawrence *et al.* (1993:6), the "defining elements" of Critical Race Theory are:

> 1. Critical race theory recognizes that racism is endemic to American life. Thus, the question for us is not so much whether or how racial discrimination can be eliminated while maintaining the integrity of other interests implicated in the status quo such as federalism, privacy, traditional values, or established property interests. Instead we ask how these traditional interests and values serve as vessels of racial subordination.
>
> 2. Critical race theory expresses skepticism toward dominant legal claims of neutrality, objectivity, color blindness, and meritocracy. . . .
>
> 3. Critical race theory challenges ahistoricism and insists on a contextual/historical analysis of the law. . . .
>
> 4. Critical race theory insists on recognition of the experiential knowledge of people of color and our communities of origin in analyzing law and society. . . .
>
> 5. Critical race theory is interdisciplinary and eclectic. It borrows from several traditions, including liberalism, law and society, feminism, Marxism, poststructuralism, critical legal theory, pragmatism, and nationalism. . . .
>
> 6. Critical race theory works toward the end of eliminating racial oppression as part of the broader goal of ending all forms of oppression.

According to Critical Race Theory, the Supreme Court's willingness to tolerate racist speech and its unwillingness to adopt race-conscious remedies to rectify racial discrimination stems from the traditional liberal principles which underlie American anti-discrimination and First Amendment law. Gotanda (1995:257) argues that the Supreme Court's color-blind approach actually fosters white racial domination by neglecting the social and historical context of racial subordination in

America. It is a view shared by several of his colleagues as well. Delgado and Stefancic (1992:1261) believe that the current approach to free expression not only fails to remedy the "repression and abuse subjugated groups must face, but often deepens their dilemma."

Like Bell before them, Delgado and Stefancic (1992:1261) believe that few Whites are able to identify with minorities, but they recast Bell's belief more broadly as a philosophical principle they call the Empathic Fallacy. The Empathic Fallacy holds that people can enlarge their sympathies through linguistic means.

> By exposing ourselves to ennobling narratives, we broaden our experience, deepen our empathy, and achieve new levels of sensitivity and fellow-feeling.

In short, the Empathic Fallacy is the belief that we can transcend bigotry and narrow-mindedness through dialog. According to Delgado and Stefancic, however, we can only do so to a very limited degree.

Apparently without recognizing the irony or contradiction, Delgado and Stefancic later state that they "can use speech, jujitsu fashion, on behalf of oppressed peoples." (Delgado and Stefancic 1992:1276.) Along those lines, several scholars in Critical Race Theory have argued for a readjustment of perspectives in Constitutional law that gives weight to the "narrative style" that traditionally disadvantaged minorities use to describe how their experience is framed by racism. According to Delgado and Stefancic (1998:484), the narrative style, or "storytelling" recaptures excluded perspectives by destroying the majority's "unconsciously-accepted mind set and presuppositions in order to show the contingent, self-serving nature of much legal doctrine."

> Points that others might not be prepared to hear-because those points may seem bizarre or incredible-might be rendered intelligible if transmitted through a story . . . So, for example, a white person unconvinced by an African American's statement about unconscious discrimination might understand the point differently if it were embedded in a story whose context, details, and plot could make the discrimination nearly undeniable. (Kairys 1998:669.)

The criticism of the Marketplace of Ideas metaphor is not just doctrinal; it is also linguistic. According to Streeter (1995), the Marketplace metaphor requires imagining symbolic and linguistic phenomena as if they were analogous to market exchange. Streeter points out, however, that an exchange implies that something is transferred from one person to another. For Streeter, the Marketplace metaphor breaks down because it stresses the contents of the exchange over the style in which it is delivered, "just as in real market exchanges it makes little difference if you pay by check or cash."

> [I]n language the "package" can be everything. The marketplace metaphor, then, draws our attention away from the importance of just the kind of stylistic differences that sociolinguists say are central to the workings of everyday language.

It is uncertain how Roman Jakobson, Dell Hymes, or Michael Silverstein would have viewed Streeter's overall argument, but it is likely that all three would endorse his view that the emotive function of language often outweighs referentiality.

Conduct, Not Speech

MacKinnon (1993) has argued that the proper concern of the law as it relates to speech is not what that speech says, but rather what it does. If a male co-worker "forces" a pornographic magazine or poster on a female with the intent to hurt her in the workplace, it could qualify as hostile work environment harassment. If this kind of speech is unacceptable at work, MacKinnon asks, why does no one recognize that it also prevents women from coming into their own outside the workplace? According to MacKinnon, the "speech" of pornography, racial and sexual harassment, and hate speech add nothing to the free and open exchange of ideas which is often cited as the rationale behind current First Amendment jurisprudence. MacKinnon argues that what the foregoing categories of speech really do is preserve the power of one social group over another. She argues that the current jurisprudential approach to the First Amendment allows stronger, more

dominant speakers to silence weaker ones. And it is traditionally women who have been silenced by the speech of men.

MacKinnon (1993) argues that pornography, racial and sexual harassment, and hate speech are acts of intimidation, subordination, terrorism, and discrimination, and should be legally treated as such. The theory advanced by MacKinnon and her colleague Andrea Dworkin (1981) is that pornography is the oppression of women—not speech about, or representations of oppression, but oppression itself. Thus, according to MacKinnon and Dworkin, most Constitutional scholars have their analyses of First Amendment cases all wrong. Pornography should be considered conduct, not speech. As such, pornography, racial or sexual harassment, and hate speech fall outside the protection of the First Amendment.

MacKinnon and Dworkin define pornography as "the sexually explicit subordination of women through pictures and words." (MacKinnon 1995.) In MacKinnon's opinion, pornography acts against women twice, once when it is made and again when it is viewed. First, women are coerced, degraded, raped and (MacKinnon believes) even killed in the making of pornographic pictures and films. Then, the viewers of the pornography further participate in the degradation, rape and murder of women. MacKinnon argues that there should be a new cause of action that would allow women to bring suit for the harms caused by pornography. (MacKinnon 1995.) Toward that end, MacKinnon and Dworkin drafted a model ordinance that would have allowed women to bring a lawsuit against those who produced works that in their view were pornographic.

The City of Indianapolis passed such a model ordinance drafted by MacKinnon and Dworkin that expanded upon their basic definition of pornography. Under the ordinance, pornography was defined as:

> the graphic sexually explicit subordination of women, whether in pictures or in words, that also includes one or more of the following:

> (1) Women are presented as sexual objects who enjoy pain or humiliation; or
>
> (2) Women are presented as sexual objects who experience sexual pleasure in being raped; or
>
> (3) Women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt, or as dismembered or truncated or fragmented or severed into body parts; or
>
> (4) Women are presented as being penetrated by objects or animals; or
>
> (5) Women are presented in scenarios of degradation, injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual; or
>
> (6) Women are presented as sexual objects for domination, conquest, violation, exploitation, possession, or use, or through postures or positions of servility or submission or display. (Indianapolis Code § 16-3(q), cited in American Booksellers Association, Inc., v. Hudnut, 771 F.2d 323, 324 (1985).)

Although MacKinnon succeeded in getting her model law passed, it was never used. Almost as quickly as the ordinance had been passed, a coalition of booksellers, civil libertarians, and free speech activists went to court and prevailed in their claim that the law violated the First Amendment. (American Booksellers Association, Inc., v. Hudnut, 771 F.2d 323 (1985).) The court was unpersuaded by MacKinnon's and Dworkin's arguments which were advanced by the City of Indianapolis. The court was particularly unsympathetic to an attempt to add the imprimatur of the state to one particular point of view.

> Under the ordinance graphic sexually explicit speech is "pornography" or not depending on the perspective the author adopts. Speech that "subordinates" women and also, for example, presents women as enjoying pain, humiliation, or rape, or even simply presents women in "positions of servility or submission or display" is forbidden, no matter how great the literary or political value of the work taken as a whole. Speech that portrays women in positions of equality is lawful, no matter how graphic the sexual content. This is thought control. It establishes an "approved" view of women, of how they may react to sexual encounters, of how the sexes may relate to each other. Those who espouse the approved view may use sexual images; those who do not, may not. (American Booksellers, 771 F.2d 323, 328.)

The court did not dispute the City's argument that speech helped condition certain attitudes the City found offensive. But the court observed that if "the fact that speech plays a role in a process of conditioning were enough to permit governmental regulation, that would be the end of freedom of speech." (American Booksellers, 771 F.2d 323, 330.)

MacKinnon's and Dworkin's proposed cause of action is largely superfluous because a woman who was genuinely coerced into pornography could bring a lawsuit under several causes of action that already exist. For example, a victim who had been coerced into performing in a pornographic film could file suit for battery or false imprisonment as well as press criminal charges for rape. The creation of a new cause of action is unnecessary, but does provide a hint at MacKinnon's and Dworkin's larger agenda.

MacKinnon has said in interviews that her model ordinance makes it possible for a woman who can prove she has been hurt by pornography to sue not only the producers of the pornography, but "*everyone who profited down the food chain from this use of her.* (MacKinnon 1995, emphasis added.) The language in MacKinnon and Dworkin's proposed ordinance begs the question: does this mean that any woman could bring suit against any person who bought a copy of a magazine that woman deemed pornographic? Though MacKinnon and Dworkin would likely label the question fanciful, the plain text of their ordinance and MacKinnon's statements in the media undercut such criticism.

Under MacKinnon and Dworkin's ordinance enacted by Indianapolis, a woman aggrieved by trafficking in pornography may file a complaint "as a woman acting against the subordination of women" with the office of equal opportunity. (Section 16-17(b), cited in American Booksellers, 771 F.2d 323, 326.) And in an interview with public television, MacKinnon has argued that pornography harms not only the women involved in the production of pornography, it also produces "a whole series of harms *to other women*. And it is those women that would be able to bring legal

claims for being hurt by the pornographers." (MacKinnon 1995, emphasis added.) Any opposition to proposals to censor speech based on viewpoint cannot be dismissed simply as slippery slope hysteria. MacKinnon and Dworkin have shown that the criticism is valid.

According to Critical Race Theory and gender scholars such as MacKinnon and Dworkin, not all classifications based on race or sex are harmful. Rather than the current color-blind paradigm and jurisprudential approach to the First Amendment, the law should adopt a progressive form of cultural pluralism. (Crenshaw, *et al.* 1995.) This begs the question, however: a "progressive" form of cultural pluralism as determined by whom? It is possible that any one of the proponents of censorship would be happy to fulfill that duty. For example, Gotanda (1995) has proposed one legal theory that could be used to address racial inequities. Under his theory, a court could look to the Fourteenth Amendment to promote and protect "the free exercise of race." According to Gotanda, this approach takes race into account and allows "benign discrimination" but would also prevent the "establishment" of any one race.

It is ironic that Gotanda chooses the phrase"benign discrimination." As much of the Critical Race Theory narrative emphasizes, discrimination is not benign. Yet, such a proposal provides insight into the true motivation of scholars such as Matsuda, Delgado, MacKinnon, and Dworkin. They do not seek to abolish discrimination so much as they endeavor to replace one form of discrimination with another of their own choosing. For example, some minority scholars have argued that white male academics should not write on racial issues; they have also argued that hate speech directed toward minorities should be criminalized, but hate speech directed toward Whites should not. (Crenshaw *et al.* 1995.) To the extent scholars hold such views, they defeat their own stated objective of increasing public debate on the topic of race and racial equality. Moreover, if such a perspective is the "progressive pluralism" which they have in mind, then their cure is worse than the disease which they aim to treat. A view which forbids an entire subject area to a group of

people because of their race is not only racist, it fosters the same in-bred perspective on a pressing social problem which they criticize in their deconstructions of prevailing legal doctrine.

Defending Pornography

The counter-position to those who would curtail speech in order to shape a culture's thought, is that simply changing the way a person talks about race or gender does not mean that person has changed the way he or she thinks about the subject. As poetically stated by Nunnally (1995:40), "silencing a mouth does not change a heart, and . . . developing true tolerance requires people to learn more than what not to say."

Most objections to proposed speech restrictions typically invoke one or more of three arguments. First, restrictions on speech threaten the basic democratic and philosophical principles of our society of which free speech is one. Second, the restrictions have a chilling effect on public discourse. Third, the restrictions are the first step on a slippery slope toward unchecked censorship.

Alan Dershowitz has long championed the First Amendment and represented numerous defendants who were the targets of censorship. He is also one of the most impassioned believers in the slippery slope argument against censorship. According to Dershowitz (1992:64), "if we compromise the right of free speech in one area, it will be more difficult to resist the voracious appetite of the censor in other areas." For Dershowitz, it does not matter what political viewpoint one holds; all speech should be protected. Dershowitz argues that no matter how odious a particular point of view may be, restricting that point of view is far more dangerous. Even—or perhaps especially—where speech is the most offensive and the reasons for restricting it are the most compelling, freedom of expression should still be preserved. Dershowitz argues that if we agree to the censorship demands of any group, "it will become far more difficult to mount a principled

opposition to the equally righteous demands of others who would be censors." (Dershowitz 1992:85.)

In one of the great ironies of life, both Dershowitz and the Critical Race Theorists have at least one argument in common. The Critical Race Theorists claimed that the current approach to First Amendment law actually worked against full participation by minorities. Derhsowitz claims that the First Amendment guarantees are themselves not truly democratic—at least in one sense.

> The freedom of Americans to read, listen, view, speak, sing, or tell jokes should not be subject to the majority vote of anyone: not a jury, not a legislature, not even a plebiscite of all the people. The First Amendment is essentially an undemocratic—indeed anti-democratic—restriction on majority power. If any Americans wish to satisfy their intellectual, emotional, or artistic needs by exposing themselves to expression that all other Americans despise, that should be their right under the First Amendment. (Dershowitz 1992:81.)

Although Dershowitz is a staunch supporter of the right to free speech, even he concedes that the First Amendment guarantees are not absolute. Dershowitz believes that no American has the right to exercise their freedom of speech in a way that harms another. (Dershowitz 1992:81.) He is quick to add, however, that "harm" does not include being offended by art or literature. According to Dershowitz, there is no philosophical difference between the films which MacKinnon and Dworkin want to criminalize and artwork which is prominently displayed in museums and galleries.

> It is not a particularly compelling argument to try to distinguish Mapplethorpe from *Debbie Does Dallas*. Once the door is open to censorship, the alleged artistic merits of a photograph, book, or film is only a matter of degree. Whether it is art, pornography, or both is in the eye of the beholder. . . .
>
> When I defended porn star Harry Reems, the male lead in *Deep Throat*, against an obscenity conviction, a famous Broadway stage actress drew snickers during Reem's defense fund rally when she warned "Today, Harry Reems, Tomorrow, Helen Hayes!" If you don't believe that, ask the new president of Czechoslovakia, playwright Vaclav Havel, who spent years in a Communist prison for writing words that are now performed all over the world. (Dershowitz 1992:71-72.)

According to many free speech advocates, protecting minority viewpoints against majority opinion is perhaps the most important function of the First Amendment. David Coles (1993) argues that the only speech a government is likely to restrict in a democratic society is the unpopular speech of the politically marginalized. Coles argues that if an idea is popular, a representative government would not be able to suppress it even if that speech were not protected by the First Amendment. If an idea is not popular, however, the only thing that may stand between it and would-be censors is "a strong constitutional norm of content neutrality." (Coles 1993, cited in Gates 1993:44.)

As stated in the preceding sections, even speech such as fighting words or obscenity cannot be prohibited in a way which would also prohibit protected expression. Therefore, when a government wishes to restrict speech that is not protected by the First Amendment, it must be very clear in the law it enacts, and the law must be narrowly drawn so it does not prohibit protected speech. If a government were to enact vague or ambiguous restrictions on speech, it could lead to a "chilling effect" as citizens censored their own speech rather than risk punishment by the state. According to many free speech advocates, the problem with the proposed restrictions on hate speech or pornography is that those restrictions invariably punish protected expression as well.

Like Dershowitz, Nadine Strossen, an N.Y.U. law professor and the first female president of the A.C.L.U., has advanced slippery slope arguments against restrictions on speech. She also incorporates other philosophical and legal strands into her argument, namely that vague restrictions on speech have a chilling effect, and that they are philosophically and ideologically a step backward. Strossen usually targets the anti-pornography censors in her work (her favorite foils are Catharine MacKinnon and Andrea Dworkin, whom she describes as "puritanical and antisexual"), but her arguments are applicable as rebuttal to the Critical Race Theorists as well.

Strossen (1995a) copiously quotes MacKinnon and Dworkin in her book and thoroughly bolsters her contention that MacKinnon and Dworkin's arguments to restrict pornography in the

name of equality are really puritanism. Strossen argues (1995a) that we are in the midst of "sex panic" in which all depictions of human sexuality are threatened.

> [MacKinnon and Dworkin] are women who deeply believe that the whole world is distorted, and that my sense of freedom and individual liberty is distorted, my sense of who I am is distorted because of the pervasive problem of patriarchy, and that there is no such thing as freedom for a woman in that context. It is a critical aspect of MacKinnon's world view that she sees violence and degradation inherent in any sexual depiction of a woman, even if it is consensual sex. (Strossen 1995b.)

Though Strossen toys with the line between deconstruction and *ad hominem* attacks against MacKinnon and Dworkin, she offers substantive arguments as well. For example, Strossen (1995a) argues that no matter how carefully MacKinnon and Dworkin's restrictions on speech are drafted, they are invariably vague and therefore invest officials with a tremendous amount of discretion in the enforcement process. That unchecked discretion, according to Strossen, is what exerts a chilling effect on speech.

Lively (1994) has expressed reservations on how officials would exercise their discretion. He notes that past performance does not auger well for the future.

> Reliance upon a community to enact and enforce protective regulation when the dominant culture itself has evidenced insensitivity toward the harm for which sanction is sought does not seem well placed. A mentality that trivializes incidents such as those [the Critical Race Theorists relate are] likely to house the attitudes that historically have inspired the turning of racially significant legislation against minorities. (Lively 1994:59.)

Glaser (1994) seconds Lively's argument, pointing out that when any minority group proposes restricting speech it sows the seeds of its own demise. Once a politically disenfranchised group has succeeded in passing restrictions on speech, Glaser argues the most important questions to ask are: Who is going to enforce them? Who is going to interpret them? Who will decide whom to target in their enforcement? For Glaser, the answer is the same for all three questions: those who already wield power in our society. (Glaser 1994:7.)

Lively and Glaser make a strong point, and one the Critical Race Theorists and MacKinnon and Dworkin would do well to note. In jurisdictions which have adopted restrictions similar to the ones they propose, the enforcement and interpretation of those restrictions worked against their enunciated goals. The dangers Glaser and Lively caution against have already come to pass in Canada. Canadian laws that proceed from MacKinnon and Dworkin's views on pornography did not reduce the amount or availability of material they believed was harmful. Contrary to the aims of Dworkin and MacKinnon, the Canadian government did not seize or ban any materials they wanted to prohibit. Instead, one of the first enforcement actions the government took was against a gay and lesbian bookstore in Toronto. Officials used the law against gay and lesbian pornography and literature by feminists. (Strossen 1995a:230, *et seq.*) The victims of the Canadian restrictions included books by the black feminist scholar bell hooks, and, in an ironic twist, books by Andrea Dworkin. The experience in Canada indicates that those who are comfortable with the formal register and rules-based approach of the legal system will use the system in ways not envisioned by the proponents of restrictions on speech.

The most compelling arguments against the restrictions on speech proposed by MacKinnon or the Critical Race Theorists are arguments which point out that the restrictions work against the philosophical ideals of equality the censors claim to profess. Strossen advances a compelling slippery slope argument to attack MacKinnon and Dworkin, but she also argues that state control of pornography would infringe women's rights. In a magazine interview, Strossen explained her motives for writing *Defending Pornography*.

> The reason I wrote the book was to add the perspective which usually is lacking in the anti-censorship argument, which is that from a women's rights point of view, including from a reproductive freedom point of view, censoring pornography is damaging. When the Dworkin-MacKinnon law was passed in Indianapolis in 1984, the A.C.L.U. . . . made a two-pronged argument: We argued that this law was unconstitutional: (1) Because it violated the First Amendment; and (2) it violated the gender equality guarantee of the constitution.. . . [A]ny law that equates women

> with children and men with satyrs is hardly a step forward for gender equality. (Strossen 1995b.)

Strossen argues that free speech, not restrictions on speech, is the best weapon to fight sexism and inequality. According to Strossen, censorship poses a greater threat to women's rights than sexually graphic words or images, and banning pornography would not reduce sexism or violence against women. Strossen is not an apologist for pornographers, nor is she the lone woman opposing MacKinnon and Dworkin's censorship efforts. Betty Friedan, one of the most influential thinkers in late 20th century feminist thought, has endorsed Strossen's view and even provided her with a jacket blurb for *Defending Pornography* in which she stated that "free expression is an essential foundation for women's liberty, equality and security."

Let Them Talk

Only the most unabashed sexist or racist would fail to have some sympathy for a person who had been the target of a bigot's invective. As Chair of the African American Studies Department at Harvard University, Henry Louis Gates, Jr. is not unsympathetic to the view that hate speech can be used to demean the humanity of minorities. He agrees that racism continues to exist in U.S. society, although he disagrees with Matsuda, Delgado, and Bell in terms of how much that racism limits opportunities for minorities.

> Am I still subject to pernicious white racism? Of course I am. But can I live where I want, marry who I want, travel where I want, make as much money as [I want]? Absolutely. (Gates 1998.)

Gates argues that the long-term consequences of weakening the First Amendment are worse "than whatever immediate hurt or pain a woman would feel for being called a bitch or a Black would feel for being called a nigger." (Gates 1998.) Gates points out that if an attack against a minority involves more than epithets and involves actual physical harm, already existing laws can provide

a remedy. "It's not worth it to me," argues Gates, "to assuage the pain [of racism] by killing off the First Amendment." (Gates 1998.)

Whereas Strossen directs most of her attention to refuting arguments by Catharine MacKinnon and Andrea Dworkin, Gates (1993) focuses on rebutting the arguments by Lawrence, Matsuda, Delgado, and others who identify themselves with Critical Race Theory. Gates believes that Critical Race Theorists should be commended for reinvigorating the debate about freedom of expression. He concedes that "the intelligence, the innovation and the thoughtfulness of their best work deserve a reasoned response, and not, as so often happens, demonization and dismissal." (Gates 1993:49.) Gate's admiration for Critical Race Theory, however, ends there. Gates notes that the authors of *Words That Wound* identify their fight as "a fight for a constitutional community where 'freedom' does not implicate a right to degrade and humiliate another human being." (Lawrence, *et al.* 1993, cited in Gates 1993:48.)

> Like much sweepingly utopian rhetoric, however, they invite a regime so heavily policed as to be incompatible with democracy. Once we are forbidden verbally to degrade and to humiliate, will we retain the moral autonomy to elevate and to affirm? (Gates 1993:48.)

Gates emphasizes that much of the effort to restrict hate speech has been largely symbolic, an approach for which he has little sympathy.

> Speech codes are symbolic acts. They let a group of people say, "This symbolizes that we at the University of Wisconsin are not the sort of community where we would tolerate someone saying the word 'nigger.'" Well, big deal. But there are other symbolic consequences, like . . . the effect on freedom of inquiry. I think we're all bigger and more secure than that. I think we have to allow people to say even unpopular things and nasty things in order to protect the right of us to attack our government and say whatever's on our minds. (Gates 1998.)

But if Gates has little sympathy for symbolic attempts to "communicate" support of beleaguered minorities by enacting speech codes, he has even less sympathy for most of the responses to Critical Race Theory. Gates believes relying on absolutist First Amendment principles

is woefully inadequate. Moreover, Gates argues that many who espouse a strict construction of the First Amendment either willfully ignore—or are ignorant of—how the First Amendment has been applied.

> [T]he conventional lay defense of free speech absolutism, and its concomitant attack on those who would curtail free speech, suffers from a bad case of historical amnesia. . . . The First Amendment, we are told, has stood us in good stead through more than two centuries; and our greatness as a society may depend on it. The framers of the Constitution knew what they were doing, and (this is directed to those inclined to bog down in interpretive quibbles) in the end the First Amendment means what it says.
>
> The only flaw of this uplifting and well-rehearsed argument is that it is false. Indeed, the notion that the First Amendment has been a historical mainstay of American liberty is an exemplary instance of invented tradition. To begin with, the First Amendment was not conceived as a protection of the speech of citizens until 1931. Before then, the Court took the amendment at its word: "*Congress* shall make no law. . ." Congress could not; but states and municipalities could do what they liked. . . . So the expansive ethic that we call the First Amendment, the eternal verity that people either celebrate or bemoan, is really only a few decades old. (Gates 1993:38-39.)

Gates argues that the Critical Race Theorists' attempts to shift constitutional debate from the First to the Fourteenth Amendment similarly overlooks constitutional history. For example, arguments that the equality provisions of the Fourteenth Amendment should take precedence over the First Amendment ignores the fact that many civil rights advances for minorities relied mainly on the First Amendment. When Matsuda looks to the Fourteenth Amendment and defines one element of actionable racist speech as speech "directed against a historically oppressed group" (Matsuda, cited in Gates 1993:41), she ensures her proposed law's unconstitutionality. Gates points out that a content-specific restriction on speech "can never be content-specific enough" to pass constitutional muster. (Gates 1993:41.) Gates argues that Matsuda's use of the phrase "historically oppressed" is unconstitutionally vague.

> Are poor Appalachians, a group I know well from growing up in a West Virginia mill town, "historically oppressed" or "dominant group members"? Once we adopt the "historically oppressed" proviso, I suspect is it a matter of time before a group

> of black women in Chicago are arraigned for calling a policeman a "dumb Polak." Evidence that Poles are a historically oppressed group in Chicago will be in plentiful supply; the policeman's grandmother will offer poignant firsthand testimony to that. (Gates 1993:41-42.)

Gates's critique of Matsuda's definition above hints at one of his lesser developed arguments in *Let Them Talk*, but an argument he later developed more fully, namely that class can be as important as race.

> By redefining our terms, we can always say of the economic gap between black and white America: the problem is still racism. . . . and by stipulation, it would be true. But the grip of this vocabulary has tended to foreclose the more sophisticated model of political economy that we so desperately need. I cannot otherwise explain why some of our brightest legal minds believe that substantive liberties can be vouchsafed and substantive inequities redressed by punishing rude remarks. (Gates 1993:48.)

Gates believes that public debate about racial differences and discrimination is helpful, "but the real issue is scarcity" and that the economic issue often masks itself as a racial issue. According to Gates, class is often as important, or even "more important in one's daily life, than race, even within the black community." (Gates 1998.) Gates argues that the power inherent in racism is often inversely proportional to the "vulgarity with which it is expressed." (Gates 1993:45.) He worries that the Critical Race Theorists' attempts to restrict hate speech ignore the fact that those in power have "long switched to a vocabulary of indirection." Gates also criticizes the Critical Race Theorists' suggestion that equality must precede liberty. According to Gates, the "First Amendment may not secure us substantive liberties, but neither will its abrogation." (Gates 1993:48.)

Linguistic Relativism vs. Linguistic Determinism

Although they do not couch their arguments to restrict speech in linguistic terms, the Critical Race Theorists and gender scholars implicitly endorse a strong statement of the Whorfian hypothesis, *i.e.*, that language determines thought. When stated in a somewhat weaker form, the Whorfian hypothesis is often rendered as "language influences thought." Similarly, although Gates

and Strossen never mention the Whorfian hypothesis either, they implicitly emphasize the countervailing principle of linguistic relativity.

The Whorfian hypothesis balances two principles: linguistic determinism and linguistic relativity. Linguistic determinism is the belief that language shapes how we think. Adherents of a strong statement of the theory maintain that distinctions which are encoded in one language are not found in other languages. (Crystal 1987:15.) The import of the Whorfian hypothesis is that if the way a language is built has a causal connection to how the speakers think about the world, then one should be able to go from that language's grammatical categories and see parallels and patterns writ large in the culture.

Building upon the work of Johann Herder and Wilhelm von Humboldt in the late 18th and early 19th centuries, Franz Boas, Edward Sapir and Benjamin Lee Whorf were all interested in the dynamic between language and culture. Early researchers had noticed that Native American languages had distinctive structural patterns that were built on different lines from English, German, French, or other Indo-European languages. The question then followed, did the Native Americans view the world differently and think differently, *i.e.*, along the lines on which their language is built? In the face of widespread concern about determinism in the early 20th century, Boas wanted to show that traits of European languages did not determine behavior.

Boas was chiefly concerned with the benefits linguistic research could provide in gathering ethnographies among American Indian tribes. For Boas there was a fundamental difference between language, or what he called "linguistic phenomena," and other ethnological phenomena. That difference was the degree of awareness which speakers brought to their language. Language was always below the level of awareness for speakers. Although other aspects of culture could also be unconscious, Boas believed that the nonlinguistic aspects of culture can, and do, break through to

the level of awareness—particularly when an ethnographer is interviewing an informant. (Boas 1911:23.)

Even though Boas believed that "the unconscious formation of [linguistic] categories is one of the fundamental traits of ethnic life" (Boas 1911:25), he did not deal with equating language and culture as a primary concern; his great concern was to separate the notions of race, language, and culture, and he largely succeeded in that endeavor. For example, Boas was instrumental in refuting the notion of the determinacy of race on language and culture. (Blount 1995:3.) By writing about the "unconscious nature of linguistic phenomena" Boas sowed the seeds for the later work to be done by Sapir and, especially, Whorf. To a far greater degree than either Sapir or Whorf, Boas was circumspect in how far he was willing to extend the link between language and culture. "It does not seem likely," wrote Boas "that there is any direct relation between the culture of a tribe and the language they speak." (Boas 1911:66, quoted in Blount 1995:3.)

While concerned with the same basic idea as Boas—*i.e.*, that both language and social behavior served as a mirror of the underlying culture—Edward Sapir developed his ideas on language, culture, and society more fully than did Boas. In *The Unconscious Patterning of Behavior in Society* (1927), Sapir distinguished between social behavior and individual behavior. Sapir believed that social behavior was culturally organized and depended upon underlying cultural patterns for meaning. Sapir's intellectual link to Boas (and also to Whorf), was that Sapir believed underlying cultural patterns were below the level of consciousness. He believed that the structure of language was also determined unconsciously, and depended upon another shared "underlying and unconscious pattern." (Blount 1995:3-4.) According to Sapir, that commonly held unconscious pattern should be "imputed to society rather than to the individual." (Sapir 1927:31.) Sapir believed that the patterns shaping language behavior differed "only infinitesimally from individual to individual." He further believed that the complex and shared network of patterns "lie entirely

outside the inherited biological tendencies of the race and can be explained only in strictly social terms." (Sapir 1927:39.)

Both Boas and Sapir believed they could study culture by looking at language patterns, and that by doing so they could study culture without an informant's secondary interpretations or rationalizations distorting the true nature of the culture. Neither Boas nor Sapir, however, tried to determine the unconscious patterning of linguistic behavior to the degree Sapir's student, Benjamin Lee Whorf did. Whorf wanted to discover and document how linguistic patterns within a language influenced thought and behavior in the culture using that language. His basic premise is that a person's language plays a role in determining how that person sees the world. Some successive scholars have misstated Whorf's views as "The language a person speaks determines the way that person sees the world." This reduction goes beyond what Whorf himself wrote, and, despite his shortcomings, does his work a disservice.

The obvious shortcoming of the Whorfian hypothesis is that human beings can and regularly do make observations and form judgments even if their vocabulary lacks a ready means to express those observations and judgments. For example, if a culture has only two or three basic color terms, it does not mean that members of that culture perceive the colors we call blue and yellow as the same color. Rather, a culture with fewer basic color terms than contemporary U.S. culture simply groups the color spectrum into bigger chunks than we do and labels those chunks with the available color terms of their culture. (Berlin and Kay 1969:139, cited in Kay *et al.* 1991:458.)

In *The Relation of Habitual Thought and Behavior to Language* (1941), Whorf tried to demonstrate the "linguistically conditioned features" of culture. (Whorf 1941:78.) That is, Whorf believed that there were unconscious patterns in languages which underlay the language's grammar. The unconscious patterns would then guide the speaker to apply the linguistic predispositions, and therefore shaped the way its speakers interpreted their subjective reality. The fact that the

unconscious patterns were shared by all members of a culture resulted in a similar world view, not that the grammar of the language determined the world view. Whorf did not espouse a harshly deterministic view that linguistic predispositions precluded seeing or understanding the world in a manner outside of a language's grammar. Whorf believed that language did have a strong influence on how people view the world, but as to how people *use* language, *not* how language is structured.

Like Boas and Sapir before him, Whorf believed that by understanding a language, one could gain an accurate understanding of the culture which spoke that language. The crux of Whorf and Sapir's ideas about the relationship between language and culture was named "the Sapir-Whorf Hypothesis," largely by others in the field. Although the term is something of a misnomer and is also misleading, the fact that other scholars provided such a label to describe the idea that language and culture affected one another underscores the importance Sapir's and Whorf's work held among anthropologists and linguists for much of the 20th century.

The Academy's Approach to the Unspeakable

The number of scholarly and empirical research studies dealing with profanity, racial or gender epithets, or taboo speech in general is disappointingly thin. To be sure, some scholars have assembled lexicons of taboo words (Spears 1989, 1998; Sobon 1997) or sexual slang (Richter 1993). There are also several books or essays for the popular media which address taboo speech or subjects, often within the context of the so-called "culture wars" in contemporary U.S. society. But, for the most part, popular works outweigh scholarly inquiries.

In this subsection, I provide an overview of the few available studies, and try to put those works within a context of similar studies. Most of the scholarly papers that have dealt with cultural or linguistic taboos have done so in four general ways: (1) ethnological descriptions of taboo subjects, items, people, or language; (2) etymological or historical studies of taboo speech;

(3) investigations into gender differences in the use of taboo speech; and (4) studies of the emotive or cognitive effects of taboo speech on speakers or listeners. I will address each of these four subject areas in that order.

The Ethnological Approach

Hoskins (2002) belongs to a long line of anthropologists (and Western missionaries before them) who have observed that menstruating women are taboo in many societies. She documented current menstrual practices in two eastern Indonesian societies, practices which still lead to the segregation of women in a "menstrual hut" during menstruation. Closely linked to menstrual taboos are taboos on sexuality or certain aspects of sexuality. For example, while it is now acceptable in the U.S. for popular movies and television to show love scenes between a man and a woman, love scenes between two women are far more problematic. And, despite recent relaxations in the media, scenes between two men have long been taboo. (Holleran 2001.) Homosexuality is frequently viewed differently when examined cross-culturally.

Link (2004) has discussed how Capt. Cook and his men viewed the many bisexual institutions and practices among the Hawaiians the British sailors encountered. Cook's men wrote horrified accounts of close and sexual relationships between males in Hawaii called *aikane*. (Link 2004:28.) The British sailors called the *aikane* practice "a shocking inversion of the laws of nature." The native Hawaiians obviously viewed the practice differently, as the kings of the islands of Maui, Kauai, and Hawaii all kept both male and female concubines. Link documents that the word *aikane* is a combination of "*ai*" meaning "to have sex with," and "*kane*" meaning "man." Interestingly, since Europeans arrived in Hawaii and imposed Western mores, the word *aikane* has undergone a semantic shift. According to Link, the term is now used among islanders to mean simply "good friend," and its etymology is completely lost to most contemporary Hawaiians. (Link 2004:28.)

Although Hawaiian society was tolerant of homosexuality and bisexuality before the arrival of missionaries in the 1820s, the society still had many taboos ("*kapu*" in Hawaiian), and the penalty for violating them was often quite severe. For instance, stepping on the shadow of the king was a capital offense. (Link 2004:28-29.)

Anthropologists and linguists have documented that some taboos may be so powerful that thy can lead to diglossic environments. (Dixon 1979.) Among certain Australian aboriginal tribes, a man is socially prohibited from communicating with his mother-in-law and sometimes other of his wife's relatives as well. (Haviland 1979, cited in Crystal 1987:42.) To avoid this taboo, some Australian aboriginal societies have developed and use a special language for communicating with the taboo kin. (Allan and Burridge 1991:6.) For example, in one such culture, Dyirbal speakers use Guwal as their everyday language, but use Dyalnguy as their "mother-in-law language." (Crystal 1987:42.) The two languages are essentially the same in terms of grammar, but the two share little or no vocabulary. Tuite and Schulze (1998) have documented similar cases of taboo-motivated lexical replacement for the taboo kin term "daughter-in-law" in many of the indigenous languages of the Caucasus.

Other ethnographers have focused on derogatory epithets for certain groups within their culture, often foreigners. Zhu (1993) conducted one such study, cataloging derogatory terms the Chinese use to describe foreigners. Schultz (1979) conducted a similar study gathering "Swiss swearwords" within Alpine communities. Solomos (1972) found that in Appalachia children used pejorative nicknames for one another as epithets. Allen (1983a) found that children in Appalachia used personal nicknames as ethnic epithets. This practice is not confined to the U.S.; "Natasha" has come to mean "prostitute" in Turkey as a result of the large number of Russian women who immigrated to Turkey and became prostitutes. (Gülçür and Ikkaracan 2002:414.)

Allen (1983b) has also observed that dietary stereotypes or ethnic staple foods could also be twisted into epithets as easily as personal names could. "Beaner" for example is sometimes used to refer to a Mexican or Latin American immigrant. Allen's findings comport well with another study on ethnophaulisms, derogatory slurs used to refer to immigrant groups. Mullen (2001) examined archival data going back 150 years in American history, and found numerous instances of epithets which were derived from customs of the ostracized immigrant groups which differed from the majority culture. For example, Mullen cites several examples of "pig-eater" or "cow-eater" being used contemptuously.

Relations between different ethnic groups in the U.S. are often strained, but differences between cultures are often exacerbated when an immigrant culture is forced to deal with a very formal environment such as the criminal justice system. Trinch (2001) studied just such a clash of cultures. She examined lexical variation among Latina women when describing the domestic abuse they had suffered. Trinch studied 22 protective-order interviews in which Latina women met with paralegal or volunteer interviewers. Trinch argues that discourse norms for the topic of sexual violence are "quite consistent cross culturally," and the lexical variation used in face of the taboo topic make it harder to conduct the interview effectively. She believes that the victims' use of ambiguous and vague terms to refer to sexual violence . . . puts the accuracy of an institutional record at risk." (Trinch 2001:585.)

Trinch validates the findings by other scholars that speakers will use euphemisms to avoid taboo terms that might distress themselves and their interviewers. (Trinch 2001:571.) The Latinas in Trinch's study would often turn to euphemisms in order to deal with the taboo subject matter of the interview. The euphemisms the Latinas used, however were "not only softer and more delicate terms," but could be ambiguous as well. Euphemistic lexical items such "sleep with" (instead of rape) may be intentionally employed in order to allow for ambiguity. Trinch argues, however, that

> the use of terminology that palliates indecency and indelicacy in order to uphold decorum plays a key role in the construction of sexual assault narratives. . . . Latina women's repertoire for discussing sexual violence is often just sexual or simply violent, but not marked [+sexual] and [+violent] at the same time. This type of speech, while perhaps a culturally appropriate voicing of sexual violence, can be highly problematic in terms of the institutional goals of securing a first person account of domestic abuse. (Trinch 2001:571-72.)

In some cases, the euphemisms for "rape" used by the victims allowed them to avoid the stigma of naming the act, but the euphemisms could result in a legally deficient report from the protective order interview. As such, a woman might be denied the judicial protection she deserves because the details of her abuse were in the report that is submitted to the judge.

The Historical Approach

All natural languages change over time. (Labov 1984:9.) That axiom and the following corollary form the core of the underlying precepts for this entire dissertation. One aspect of a culture which undergoes change is its lexicon, and one aspect of the lexicon which undergoes change is what speakers consider to be taboo. What is taboo at one place and time may be acceptable elsewhere or during a different era (Nunnally 1995:36.) One study found that between 1937 and 1942 in the U.S., "profanity was perceived as less of a vice, suggesting that the degree of cursing that is tolerated is relative and subject to change within cultures." (Mitchell 1943, cited in Ginsburg *et al.* 2003.)

Riisøy (2002:81) examined medieval Norwegian laws and found that not only were traditional taboos such as incest outlawed, but it was also a felony to transgress certain food taboos. A few of the medieval Norwegian felonies Riisøy unearthed are below.

> If a man or a woman eats meat three Fridays in a row, except to save their lives, the King and Bishop are entitled to all their possessions.
>
> If a person eats horsemeat, dog or cat, the King and Bishop are entitled to all possessions.

> If someone keeps a heathen at home for more than one year, then King and Bishop shall have all his possessions.
>
> If a man has carnal dealings with cattle, and is convicted of it, he shall be punished according to the law, and King and Bishop shall take their Possessions.
>
> If a person for three successive years does not go to confession and take penance, then King and Bishop shall take all his Possessions.
>
> If a person is an infidel, and that is known in three farms, then the person who is known to be a Troll and those who ride people are to be taken to the sea and sunk, and King and Bishop shall take their Possessions.
>
> Men and women who run off with each other are outlawed, and King and Bishop shall take all their Possessions.
>
> If a man sleeps with any of these women, it is outlawry: 1. A man's mother, 2. His sister, 3. Daughter, 4. Stepmother, 5. Daughter in law, 6. Brother's wife, 7. Son's daughter. (Riisøy 2002:78.)

Modern readers can take two things from Riisøy's findings. First, medieval Norwegian Kings and Bishops did very well for themselves. The second lesson to be learned from Riisøy's findings is that there is a definite, albeit imperfect, consonance between the medieval Norwegian felonies and current taboos and laws. While certain superstitions such as a belief in Trolls or religious interdictions about eating meat on Friday have been lost, some food taboos remain in contemporary Western culture. For example, most Westerners are horrified by the Korean practice of eating dog meat. There is a similar correspondence between the medieval Norwegian sexual prohibitions and contemporary mores. Laws against incest and bestiality remain on the books, but adultery is no longer a crime.

Turning further to the West and closer to our own time period, several scholars have addressed the issue of taboo words in English before the modern period. While most have approached the topic using the techniques of the literary scholar rather than linguist or anthropologist, their findings provide a useful and informative background to the present study.

Mohr (2003) examined the use of taboo language in three early modern English works of literature—*The Boke Named the Governour* (Thomas Elyot 1531), *De Copia* (Desiderius Erasmus 1512), and *The Arte of English Poesie* (George Puttenham 1589)—to understand why certain words were taboo and under what circumstances they were deemed inappropriate for literature. She found that taboo words in early modern English fell into two categories: the obscene and the profane. Mohr observes that while both types of taboo word were condemned, profanity was considered more taboo because it was "considered performative—oaths by God's name, or curses, have real effects, on both their objects and the deity, whereas obscenity is merely a violation of social norms." (Mohr 2003:253.) Yet, as early as the 18th century, the situation had almost reversed. For example, Mohr found that in early modern English, words such as Shit or Fuck were not considered "swearing," but were classed as "wanton" or "obscene" language.

Mohr's analysis of *The Arte of English Poesie* (1589) suggests that obscene words have "an offensive power in excess of their literal meaning" because they "expose body parts and actions which should be concealed." (Mohr 2003:254.) According to Mohr, Elyot's use of "wanton," "'unclean," and "lascivious" to describe certain words indicates that the source of the taboo was a linkage to sexuality. In addition to the sexual subcategory within obscene language, Mohr found that the other major category of obscene language was the scatological. In other words, the taboo associated with "excrement and the body parts which produce it" in early modern English texts suggests that it is a near universal taboo. (Mohr 2003:256.)

According to Mohr's interpretation, Elyot viewed the dangers of obscenity as its power to "stir up desire, possibly inflaming a reader beyond control and starting him down a path towards more and more dangerous venereal vice." (Mohr 2003:261.) Similarly, according to Mohr, Erasmus also believed that "obviously obscene words must be totally shunned." Like Justice Stevens five centuries later, Erasmus recognized the inherent difficulty in determining what is and what is not

obscene. He explains that even though "certain parts" of the body and "some actions" are not intrinsically "dishonourable," they are best kept private because of a "sense of decency peculiar to civilized man." Erasmus asks the rhetorical question, "How then do we recognize obscenity?" (Mohr 2003:265.) This suggests that Justice Stevens may have been on the right track when he implied that obscenity is in the eye of the beholder.

Erasmus's sometimes contradictory use of taboo words implicates a set of rules grounded in class and context that dictate who may say what and under what conditions. Erasmus drew a distinction between vulgar speech borrowed from "the low trades and occupations" and obscenity. For example, according to Erasmus, "dung," is not obscene although it is vulgar. One could use it freely when talking to a farmer, but not "if you are making a speech on affairs of state in the presence of the ruler." (Mohr 2003:267-268.)

Mohr's account of Puttenham's description of taboo words and their use largely recapitulates Erasmus, but Puttenham believes that almost any act or speech could be acceptable in the proper circumstances. Puttenham relates two stories about Sir Andrew Flamock farting and joking about flatulence in front of Henry VIII to illustrate the point.

> On the first occasion, the king blows his horn on entering the park at Greenwich, and Flamock, "having his belly full, and his tayle at commaundement, gave out a rap nothing faintly." Flamock evidently expects that his fart will amuse the king, as he does it intentionally—he has his "tayle at commaundement." When it looks as if he has misjudged the king's response, and Henry turns to him, apparently offended, Flamock makes a verbal joke to cover his physical one: the courtier "not well knowing how to excuse his unmannerly act, if it please you Sir quoth he, your Majesty blew one blast for the keeper and I another for his man." This witty response amuses the king, who "laughed hartily and tooke it nothing offensively." (Mohr 2003:270-271, citations omitted.)

All three authors Mohr studied agreed that taboo words have stronger and more intimate connection "to the things they represent than do neutral words or euphemisms." Mohr's analysis shows that the human propensity to blur the line between signifier and signified is neither a recent

nor unique phenomenon. Mohr is a student of literature rather than linguistics, so she did not mention how her work might inform linguistics. But, if one accepts some formulation of Chomsky's Language Acquisition Device (1964:10) as true, Mohr's findings hint that the "more intimate connection" between taboo words and their referents may be part of such a device.

Gender Differences in Taboo Speech

If one assumes that both men and women use taboo words, one question which logically follows is whether men and women use taboo words in the same way or with the same frequency. As long ago as 1927, the noted grammarian Otto Jespersen reported that women preferred to use "less coarse" language than men. When they do use "coarse language," however, both men and women appear to have the same motivation. Johnson and Fine (1985) found that both men and women cited expressing anger as the primary reason they used obscenity. Both men and women cited the same secondary reason for using obscenity as well: to emphasize their feelings. Beers Fagersten (2000) found that both men and women will use "swear words" as a linguistic device to affirm in-group membership, and also to establish the social norms and boundaries for language use within their speech communities. Thus, both Beers Fagersten's and Fine and Johnson's findings suggest that both men and women use obscenity to emphasize the emotive function of language over the referential function. (See Jakobson 1960; Hymes 1962; Austin 1962; Searle 1969; and Silverstein 1976.) These findings do not necessarily mean that men and women use taboo speech in the same way, even if they may do so for the same reasons. As noted below, other scholars have found that there are gender differences in use of taboo speech.

Ginsburg *et al.* (2003) found that men used quantitatively and qualitatively "coarser language" than did women. According to Ginsburg *et al.*, the differences they observed in men and women's use of taboo speech have also been observed cross-culturally and historically. (Citing

Jespersen 1927, Steadman 1935, and Gregersen 1979.) Ginsburg *et al.* emphasize that they found no studies in their literature search in which the author reported that women used more "vulgar" language than men. Despite these legitimate differences, Ginsburg argues that gender stereotypes relating to use of taboo speech are misplaced and unwarranted. For example, Ginsburg *et al.* found that if use of taboo speech is viewed on a continuum, men and women overlap in both their use and variation in their use.

Lakoff (1975) addressed the topic of gender differences in language use in *Language and Women's Place*. Lakoff's essential premise is that women are socialized to use language in less "powerful" ways than men. One aspect of that differential in social power is reflected in how people perceive taboo speech. Thus, people in our culture are more apt to classify "Oh, dear" as part of powerless women's language. Similarly, they would classify "Oh, shit" as belonging to powerful men's language. Despite methodological and epistemological shortcomings, Lakoff does make a valid point in her observation of how men and women classify taboo speech. Suzanne Moore, a British journalist, has noted the increasing acceptance of words such as Fuck which were formerly strictly tabooed. Her observations bear directly on Lakoff's point.

> [I]f fuck has become common parlance, what happens to other taboo words? The C word, I note, is making a big comeback. . . .
>
> . . . [T]his word has the power to make people flinch in a way that fuck no longer has. During the excitement of election night I drunkenly applied this word to a certain Michael Portillo, and was lectured long and hard by a righteous Blairite who told me that "there was really no need for that sort of thing." Men, it seems, still own certain words and ladies don't. Even if the word applies to what women have and men don't. (Moore 1999:15.)

Scholars have noted intriguing gender differences in their use or perception of descriptive and derogatory terms for the opposite sex. At the time of Lakoff's study (and somewhat to this day as well), people believed that men used taboo speech, but women confined themselves to a narrower range of registers, one that largely excluded taboo speech. Risch (1987:357) did not agree with the

received wisdom that women confined themselves to "standard" forms of speech. In her study, she found that in private discourse middle-class college women did use taboo words to refer to men. Some of Risch's findings are especially interesting when read with another study investigating gender differences in use of taboo language.

Preston and Stanley (1987:209.) asked a group of men and a group of women to answer the following questions:

> What is the worst thing a woman can call a man?
> What is the worst thing a man can call a woman?
> What is the worst thing a man can call a man?
> What is the worst thing a woman can call a woman?

Preston and Stanley found that men were not very good at understanding what the opposite sex perceived to be a deep insult. For example, men believed that terms which imputed homosexuality were the most offensive. Therefore, they believed that "lesbian" was the worst thing a man could call a woman. Women believed, however, that bitch or "cunt" were more offensive. Risch found that women used many terms to describe men that fell in line with what men considered taboo. For example, the women in Risch's study used such terms as "dickless," "cocksucker," or "penis-breath" to refer to men. Thus, either the women Risch studied correctly perceived that men believed being called gay was the ultimate insult; or, the women Risch studied used those terms in a manner they did not intend.

Not all researchers have approached gender differences in taboo words in the same way. While many researchers have investigated the differences between men and women in their use of taboo language, Schulz (1975) traced the histories of certain words which became gender epithets. Schulz examined the process of pejoration in several words which originally had neutral connotations, but over time became gender epithets. According to Schulz, formerly neutral terms for women gradually acquired negative implications that made use of a term "abusive," and turned

it into a sexual slur. (Schulz 1975:65.) For example, use of "tart" was originally confined to the pastry, but was then used to refer to a young woman as a term of endearment, one imagines much like current use of "honey." Over time, however, "tart" underwent a semantic shift as it was used to refer to first sexually attractive women, and then "to women who were careless in their morals, and finally-more recently-to women of the street." (Schulz 1975:66.)

It seems clear that men and women do use taboo language differently from one another, a difference that seems to be both quantitative and qualitative. Ginsburg *et. al*. (2003) have speculated that the cross-cultural universality of greater use of taboo language by men suggests that there may be a biological or genetic factor involved. (Ginsburg *et al.* 2003:112.) The authors are careful to note, however, that exactly what accounts for the gender difference is open to speculation. Even though men do exhibit a greater use of taboo language, as numerous researchers have documented, women also use taboo speech for the same reasons men do, if not to the same degree. As Ginsburg *et al.* (2003:112) observe, males and females "of most species possess more shared traits than non-shared ones. Profanity use is no exception."

Cognitive and Emotional Aspects of Taboo Speech

Ann Sevcik (1997) and a team of fellow researchers studied the use of obscene language at a high school in suburban northern Virginia. Her team consisted of two graduate students, several teachers at the high school, and six high school students who had been sentenced to In-School Suspension (I.S.S.) for using obscenity. The title of Sevcik's study (*The Deep Structure of Obscene Language*) is somewhat misleading because she and her team do not use "deep structure" in the Chomskyan sense of an abstract, underlying syntactic representation of an utterance.

> We conceived of this deep structure as unacknowledged rather than unconscious, that is, as a question of epistemology, not psychology. The deep structure as we imagine it is not hidden in the psyche awaiting discovery; its unarticulated status does not

> represent a deficit nor suggest remediation. It does not claim to account for obscene language. The structure is simply a dimension of self awareness or consciousness not yet constructed. In terms of doing research, it is a way to open the possibility of an analysis which attends to the substance of obscene language. (Sevcik, *et al.* 1997:457.)

Sevcik and her team were intrigued by the cultural distinction between profanity (in its original sense of blasphemous language) on one hand, and obscenity (language that is "repulsive and offensive" but not blasphemous) on the other hand. They studied three different issues dealing with how high school students used obscene language: (1) the relationships between or among people in particular events; (2) the participants' dispositions to act in particular contexts; and (3) the participants' epistemic stances toward one another, *i.e.*, "who knows and how, during those events." (Sevcik *et al.* 1997:457.)

As each student entered I.S.S., one of Sevcik's graduate students handed him or her a questionnaire asking why that student was sent to I.S.S., and whether he or she thought the referral was fair. Many students had been sentenced to I.S.S. for using obscene language, *e.g.*, "I was arguing with my teacher and called her a bitch." (Sevcik *et al.* 1997:459.) It was this group that Sevcik and her team targeted for study.

Sevcik and her team invited their I.S.S. students to take part in a field trip during which the group which accepted the invitation watched a slightly edited version of John Singleton's film *Boyz N the Hood*. Sevcik chose that film because it distinguishes between "obscenity intended to incite physical violence from that which is intended to oppress or to show affection." (Sevcik *et al.* 1997:456.) The film then served as a catalyst for discussion about the students' use of, and attitudes toward, obscenity.

Sevcik and her team found that students' perspectives toward obscene language reflected seven "predicaments" (Sevcik *et al.* 1997:464-466) which she labels: (1) The Egregious Contract Predicament; (2) The Public Predicament; (3) The Caring Predicament; (4) The What I Say Is Not

What I Think I Mean Predicament; (5) The Who Gets Punished for What Predicament; (6) The Blindness Predicament; and (7) The Generative Predicament.

According to Sevcik, the "Egregious Contract" predicament describes students' belief that they rely on a social contract to treat people respectfully, breaking that contract only for justifiable reasons. Sevcik believes that the students' social contract is more correctly described as "rules of engagement . . . in an ongoing battle for power and, by extension, for respect." Sevcik argues that the "Public" predicament describes the students' emotionally conflicted outside of school where there are no specific rules or punishments for using obscene language. Sevcik argues that students believe that punishments and contracts do not exist in public, therefore they see no reason to refrain from using obscenity. (Sevcik *et al.* 1997:464-465.)

Sevcik *et al.* observed that many students drew a distinction between obscenity and the irreverent or blasphemous language of profanity. Sevcik labels students' reluctance to use profanity because it might offend listeners, the "Caring" predicament. According to Sevcik *et al.*, the Caring predicament often conflicts with students' ongoing social negotiation and battle for respect. Thus, even though students espouse a disposition toward caring for another's religious sensibilities, their actions sometimes reflect their "primary rationale . . . [that] does not legitimize caring." (Sevcik *et al.* 1997:465.)

Sevcik and her team observed that the demeaning elements of certain obscenities were lessened when used in a "friendly" manner. However, in class discussions the students came to see that others could misinterpret their intended "friendly" use of a term such as "bitch" because of varying interpretations or inconsistencies between the two interlocutors. Sevcik *et al.* call the cognitive tension between the prevailing denotation of an obscene term and the student's intended use of that term the "What I Say Is Not What I Think I Mean" predicament.

Students' abiding concern with equity and consistency falls within Sevcik's "Who Gets Punished for What" predicament. Sevcik labels student's "friendly" use of terms such as Nigger or Bitch the "Blindness" predicament. She argues that "the hegemony in the 'friendly' use of 'Nigger' remains invisible to these students." Lastly, according to Sevcik's team, the "Generative" predicament describes the contradiction between students' stated desire to care about others, and to be honest and fair with their unwillingness to identify those interests as "legitimized concerns in the context of school." Instead, students interact within a "legalistic" framework in school that emphasizes rules, punishments and the ongoing, negotiated battle for social power and respect. (Sevcik *et al.* 1997:466.)

The shortcomings of Sevcik's study are plentiful. First, the study resembles a teenager's rambling, chatty, diary entry more than a journal article. Do we really need to know that Sevcik's students ate pizza and played ping-pong before engaging in discussions about obscenity? Perhaps the informal chattiness stems from the "collaborative" approach she adopted and the inclusion of several high school students in the process. Whatever her motivations, the result is that her study follows numerous irrelevant tangents to half-developed thoughts which are dropped as quickly as they are picked up.

The second, and more serious, fault with the study is how Sevcik and her team push students toward their preconceived standards of acceptability rather than investigate how those students use obscenity and profanity. For example, Sevcik steadfastly refuses to accept her students' "friendly" use of Nigger and Bitch. Despite numerous cultural exemplars of Nigger and Bitch used as in-group slang, and numerous activists' attempts to "reclaim" those words, Sevcik adopts (and tries to instill) a moralistic stance toward those words. Two such examples:

> [D]uring the collaborative critique, what students had complacently passed over as banal in "bitch" was successfully made remarkable, ambiguous and questionable. (465)

> [T]he hegemony in the "friendly" use of "nigger" remains invisible to these students. Even with . . . direct and repeated probing, the students resist the word's inherent contradiction of their disposition to be "friendly." This, in spite of their expressed knowledge, again drawn from the dictionary, that "nigger" means any "uneducated, ignorant person" or "stupid fool." (Sevcik *et al.* 1997:466.)

Sevcik's prescriptivist attitude handicaps her investigation of the very attribute she claims she wants to study: students' perspectives vis-à-vis obscenity and profanity. Further, her use of "these students" militates against the collaborative approach she wants to take with her students. The passages above point to a person who is trying to win another over to her point of view rather than gather social science data. However, one experiment in social psychology may lend some support to Sevcik's position.

Greenberg and Pyszczynki (1985) examined whether listeners opinions about third parties when they racial slurs directed at those people. They asked groups of white college students to judge debates between white and black contestants. Immediately after the debates, confederates of Greenberg and Pyszczynki either remained silent or referred to the black debaters in one of two ways: (1) referred to the African American debaters as Niggers; or (2) criticized them, but without using racist speech. Greenberg and Pyszczynki found that observers who overheard the insult graded the African American students far lower than subjects who did not overhear the insults. Greenberg and Pyszczynki argue that their findings suggest that racial epithets can elicit prejudiced behavior in people who hear those epithets.

To give Sevcik's study its due, it does make a contribution to the study of obscene language. Her study chronicles how contemporary U.S. teenagers are socialized with respect to taboo language. Also, any of Sevcik's findings that deviate from social norms (such as her students' easy acceptance of in-group slang in contrast to her own perspectivist stance on terms such as Bitch and Nigger) suggest a generational shift in underlying linguistic taboos in the U.S.

Whereas Greenberg and Pyszczynki examined how people reacted to hearing an epithet that was directed against a third person, Leets (2002) studied how people experienced hate speech when it was directed toward them. More specifically, she studied what it feels like to be the target of anti-Semitic or anti-gay hate speech. As used in her study, hate speech was defined as "that denigrates persons on the basis of their race or ethnic origin, religion, gender, age, physical condition, disability, [or] sexual orientation." (Leets 2002:342.)

Drawing upon research which had been done on victims' perceptions of other traumatic events, Leets examined people's perceptions as they related to hate speech. Leets notes that all victims of trauma appear to experience a similar set of stress reactions, regardless of the degree of that trauma. She is quick to point out, however, that the fact all trauma victims exhibit certain commonalities does not mean that "people experience different traumatic events (e.g., rape, death, physical abuse, stigmatization) with the same degree of intensity, but merely that the same elements are present." (Leets 2002:3434-344.) Thus, if one accepts the easily defensible position that hate speech can inflict psychological pain, then it is not unreasonable to expect that the victims of hate speech might react in the same way as people do in other traumatic events.

In addition to the literature on victims of trauma which Leets cites, there are additional studies which may suggest she is on the right track. Manning (1975) conducted recall studies using lists of words. She found that recall was higher with the emotional (*i.e.* taboo speech) stimuli than it was for the neutral stimuli. In an interesting finding that may serve as counterpoint to Leets study, Manning found that recall of the verbal stimuli relating to violence was actually closer to the group of neutral words than the group of expressions relating to the sex, the body, and bodily functions. Manning's study appears to suggest that as a culture we have become somewhat desensitized to violence.

Leets's sample consisted of 120 university students who read a list of statements containing epithets. The list consisted of excerpts from an anti-Semitic speech by Louis Farrakhan, several samples culled from hate mail received by the Gay and Lesbian Alliance Against Defamation, and two samples taken from the personal experience of the study participants. Portions of the stimulus material are set forth below.

> I don't give a damn what you say about me, you bagel eating, hook nose, lox eating . . . Jew.
>
> You're Jewish? Show me your horns, kosher boy.
>
> Homosexuality is biologically incorrect and morally wrong! Homosexuality is a threat to our environment and a threat to our innocent children! Damn you sick fucking bastards and bitches. Damn you.
>
> To hell with you and your way of life you butt screwers and pussy lickers. (Leets 2002:347.)

After reading the stimulus list, participants were asked to put themselves in the position of the Addressee of the hate speech, and to fill out a questionnaire which asked them what short and long term consequences they would expect to feel as a result of the incident. The questionnaire also asked the participants to speculate on the Addressor's motive behind the message, and what they thought their response to the Addressor might be. Lastly, participants were asked whether they would seek social support after such an incident. Leets tested three hypotheses:

> H1: The perceived short term effects of anti Semitic and antigay slurs will be more emotional and less attitudinal or behavioral, whereas the estimated long term effects of anti Semitic and antigay messages will be more attitudinal or behavioral and less emotional.
>
> H2: Jews will report more assertive response strategies than homosexuals.
>
> H3: Homosexuals will solicit support from others when they are confronted with hate speech more than Jews. (Leets 2002:345-346.)

Leets found some support for her first hypothesis. Study participants estimated that the short-term effects they would suffer as a result of the hate speech would be more emotional than

attitudinal or behavioral in nature. That is, respondents believed they would be more likely to be in a bad mood or angry for a while rather than alter their perception of the speaker or confront the speaker.

Leets was forced to reject her second hypothesis. She found no significant difference between how Jews and gays would respond to the hate speech. She noted that both groups of participants slightly favored a passive response such as ignoring the remarks to an assertive response such as demanding an apology. A small group of respondents reported that they would respond aggressively, *e.g.* "Might have to whoop his/her ass for being so stupid." (Leets 2002:350.) The data supported Leets's third and final hypothesis. She found that Jewish respondents were fairly evenly divided on whether they would seek social support. The vast majority of gay respondents (84%), however, indicated they would seek social support.

Leets argues that her findings suggest that the consequences of hate speech might be similar in form, if not intensity, to the effects suffered by the victims of other kinds of trauma. According to Leets, her findings suggest that there is not a type of "bullseye" within the addressee of hate speech "with the degree of hurt varying inversely with distance" from the bullseye. Rather, Leets argues, "there seems to be a narrow mark that delineates damage, with all the slurs outside it having no effect." (Leets 2002:354.)

Kindred Studies

The final contributions to the literature to be addressed in this chapter, are those which provide more than background to the present study; they bear directly upon it.

Qualifying the Taboo

In a controversial 176-page volume subtitled, *The Strange Career of a Troublesome Word*, African American law professor Randall Kennedy sought to provide an overview of the word Nigger. Like Dick Gregory before him who titled his autobiography *Nigger*, Kennedy employs the word as his title as well, a move which has been criticized as insensitive use of "a brazen, eye-catching title." (Garcia 2003.) Kennedy's book is broken into four chapters, *The Protean N-Word*, *Nigger in Court*, *Pitfalls in Fighting Nigger*, and *How Are We Doing With Nigger?*

In his first chapter, Kennedy outlines the many ways in which Nigger has been used. He notes that although the word is usually thought of as a racial slur and nothing more, some Blacks use the term in other ways as well. For example, Kennedy claims that African Americans use the term to signal their membership in, and acceptance by, their social network. He notes that when Blacks use the term in this manner, they do so with "a tragicomic sensibility that is aware of black history." (Kennedy 2002:36-37.)

For the moment, I will jump ahead to Kennedy's third and fourth chapters before addressing his second. Kennedy's third chapter deals with complaints about the speech codes enacted on some campuses and in some municipalities. Kennedy believes that "[n]igger has been belatedly but effectively stigmatized," but with that progress in American culture come also problems. Among the problems he cites are attacks against people who are not the enemies of Blacks, indeed, who may work for the advancement of African Americans. Kennedy cites the treatment of David Howard, the Washington D.C. bureaucrat who used the word "niggardly" in a budget discussion as one such example. (Kennedy 2002:117, 120.)

Kennedy's closing chapter examines how Americans have handled the shifting uses of Nigger. Kennedy claims that the "major institutions of American life are handling this combustible word about right." (Kennedy 2002:172.) He observes that "Nigger-as-insult" has been stigmatized

to the point where the prudent will strictly avoid the word. He also argues that "Nigger is being renovated" as young African Americans embrace and reclaim the word. Kennedy argues that there "is much to be gained by allowing people . . . to yank nigger away from white supremacists, to subvert its ugliest denotation, and to convert the N-word from a negative into a positive appellation." (Kennedy 2002:174-175.)

Of all Kennedy's chapters, however, it is his second, *Nigger in Court*, which is most germane to this dissertation. In his second chapter, Kennedy examines cases in which the word Nigger appeared. Kennedy (2002:58, *et seq.*) notes that there is a distinctive jurisprudence which addresses the word Nigger in a substantive manner. Kennedy divides that jurisprudence into four types of cases.

Kennedy claims that the first type of case in which Nigger appears are cases in which a party seeks relief after that party finds out that jurors, lawyers, or judges have referred to Blacks as Niggers. In one such case, a state court in New York removed a judge for using the word Nigger. In a disciplinary proceeding against that judge, the reviewing court recounted a particularly appalling instance of the judge's racial bias.

> In one case, Judge Mulroy had attempted to persuade a prosecutor to accept a plea bargain from four men indicted for murdering and robbing a sixty-seven-year-old African American woman. The judge told the prosecutor that he should not worry about the case since the victim had been just "some old nigger bitch." (Kennedy 2002:63.)

In the disciplinary proceeding against the judge, the reviewing panel wrote that Mulroy "devalued the life of the victim in a most non-professional, disturbing, and inappropriate way." It noted that the judge's language evinced a level of prejudice and bias that militated against Mulroy remaining on the bench. (Kennedy 2002:63.)

The second type of case identified by Kennedy, is that in which an African American who has killed someone seeks to have his culpability diminished on the grounds that he was provoked

when the other party called him a Nigger. (Kennedy 2002:72, *et seq*.) The law allows a defendant to argue that while he may have killed the victim, something or someone provoked him to the point where he could not control himself and he killed in the heat of passion. Therefore, the defense goes, he should be found guilty of the lesser crime of manslaughter rather than murder. It is not a very successful defense. The "mere words" doctrine holds that

> [w]ords and gestures alone . . . regardless of how insulting or inflammatory those words or gestures may be, do not constitute adequate provocation for the taking of human life. (Kennedy 2002:76.)

The third type of case Kennedy identifies are suits in which targets of racial invective bring a claim under tort law or antidiscrimination statutes. This type of case is both self-explanatory and straightforward. The fourth and final type of case Kennedy identifies are situations in which a judge must decide whether or not to permit jurors to be told about the linguistic habits of witnesses or litigants. (Kennedy 2002:58.) The most famous example of this type of case is, of course, the O.J. Simpson murder trial. When the Simpson defense team learned that Mark Fuhrman had lied when he said he had not used he word Nigger, Simpson's lawyers filed motions with the presiding judge, Lance Ito, to allow them to introduce evidence of Fuhrman's use of the word. Evidence of Fuhrman's use of the word was clearly relevant. Under the rules of evidence, however, Judge Ito had to determine if the probative value of the proffered evidence was substantially outweighed by unfair prejudice or would result in needless presentation of cumulative evidence. Applying the probative value vs. unfair prejudice standard, Ito determined that the Simpson jury could hear about some, but not all, of the instances Mark Fuhrman used the word Nigger.

Kennedy's contribution to our understanding of how Nigger has been used in certain settings is complemented by work done by other scholars who have examined how accurately dictionary definitions reflect current usage of various taboo terms. A study by Wachal (2002) addresses the topic of shifting linguistic taboos. As was I, Wachal (2002) was struck by Dooling's (1996) premise

that our culture was undergoing a shift in taboo words from "vulgar sexual terms" to racial and ethnic epithets. Wachal undertook his study to answer two questions:

> (1) Given the increasing use of taboo words for body parts and functions in the mass media, are dictionary status labels keeping up with apparent community standards regarding such words?
>
> (2) Given the political correctness movement, have dictionaries reflected the heavier taboo status of slur terms for ethnic groups? (Wachal 2002:195.)

Wachal established the list of taboo words for his study by surveying 75 undergraduates at the University of Iowa in 1996 for taboo words they used. He supplemented this list with his own observations of "four letter words" in the mass media. He then added another list of ethnic terms, yielding a combined total of 67 taboo terms—40 for body parts and functions and 27 for ethnic groups. (Wachal 2002:195.)

In addition to his own observations of mass media, Wachal drew upon previous studies to document a dramatic increase in use of taboo speech on television. One such study was conducted by the Media Research Center, and documented the difference between use of taboo speech on TV in 1989 and taboo speech on TV in 1999. Their findings are below.

> The language used on network television has changed dramatically. The overall use of profane language has skyrocketed over 500 percent since 1989. In 1989, "hell" (56 uses) and "damn" (52) were easily the most commonly used curse words, making up more than two thirds (67.9 percent) of the total. In 1999, though each was used far more often ("hell" 298 times; "damn" 220), together they constituted under half (44.2 percent) of the total.
>
> The use of "shit" on CBS's Chicago Hope was a sensational, extreme example of a widespread trend. "Ass," used only 12 times in '89, was the second most frequently used word in '99 (265 times). "Bitch" went from two uses to 60; "son of a bitch" from twelve to 54; "bastard" from fifteen to 43; "crap" from five to 41; "sucks" from zero to 40; and various obscured and euphemistic forms of "f**k" from one to twenty nine. (Media Research Center 2000, cited in Wachal 2002:196, use of asterisks in original.)

Wachal then took his compendium of taboo words and checked the entries for each in several successive editions of well-known, authoritative dictionaries. Wachal states that lexicographers use

a variety of markers in their entries to indicate the undesirability of tabooed words for body parts and functions. For example, he notes that the entry for "fart" is marked with one of several different labels in dictionaries: "vulgar," "coarse slang," "rude," "taboo," or "not in decent use." (Wachal 2002:197.) Wachal documented the following changes, or lack of thereof, over time.

> [The 1933 edition of the *O.E.D.*] glosses cock as "penis" but gives it no label. [The 1989 edition of the *O.E.D.*] labels it "not permissible in polite speech or literature." Cunt, fuck, and shit are labeled "vulgar" in [the 1969 *American Heritage Dictionary*], "obscene" in [the 1992 edition], and "vulgar slang" in [the 2000 edition]. Pee is labeled "vulgar" in [the 1969 *American Heritage Dictionary*], but merely as "slang" in [the 1992 edition]. Piss is labeled vulgar in [*Webster's Third New International Dictionary* (1961)], but as "sometimes considered vulgar" in [*Merriam-Webster's New Collegiate Dictionary* (1993)]. Finally, tit has no label in [the 1967 *Random House Dictionary*], but is called "vulgar" in [the 1987 edition]. These are the only terms and dictionaries that show any change across time. (Wachal 2003:197.)

Overall, Wachal found that dictionary entries did not reflect the increased use of taboo terms for body parts and bodily functions. He notes that lexicographers have been especially slow to include commonly used and lightly tabooed terms such as butthead or dickhead. (Wachal 2002:201.)

Wachal notes that, like obscenities, epithets are also inconsistently marked as taboo from dictionary to dictionary. Wachal found that epithets might be labeled with one or more of the following markers: a common appellation, substandard, colloquial, informal, not the preferred term, vulgar, offensive, racially offensive, derisive, contemptuous, derogatory, disparaging, or taboo. (Wachal 2002:198.) In contrast to his findings with respect to the profane taboo words in his study, Wachal found that dictionaries do seem to reflect the increased taboo of racial and ethnic slurs. For example, he found that most of the epithets he studied did not appear in the 1933 edition of the *O.E.D.* or the 1906 *Webster's International Dictionary*. Of those epithets that were included, however, the most strongly worded label was simply "slang."

Wachal found that not all epithets carried the same degree of taboo. He found that the most tabooed terms were epithets "referring to African Americans, Jews, and Asians. These terms are

labeled 'racially offensive' and 'viciously hostile,' among others." (Wachal 2002:201.) For example, "Nigger" was labeled as "taboo and viciously hostile" (2002:198) in one dictionary, yet epithets such as "Mick" are labeled simply "jocular, sometimes derogatory" in the 1989 *O.E.D.* "Canuck" and "Limey" are marked as less opprobrious still, with some dictionaries labeling them simply "slang."

Wachal argues that because most dictionaries are revised each time they are reprinted, and that most publishers go through that process every one to four years, dictionaries should reflect changing social mores as to what constitutes a taboo word. Himma (2002) has also addressed the problem of how accurately dictionary definitions for racial epithets reflect actual use, or, more precisely, how accurately the definition for Nigger in the *Merriam-Webster's Dictionary* reflects actual use. And, like Wachal, he found the entry fell short.

Shortly before I began gathering data for this dissertation, the N.A.A.C.P. and other advocacy organizations waged a public relations campaign against Merriam-Webster for its definition of the word Nigger. In fact, some people considered the term so racist and so taboo they believed it should not be included in the dictionary at all. The dictionary's definition of Nigger does appear to be somewhat wanting, with one signification stating simply "a black person."

Himma approached the problem as a logician and examined the logical implications of Merriam-Webster's definition of Nigger. According to Himma, to the extent that one term is synonymous with another, they "have the same extension (*i.e.*, refer to or pick out the same object or class of objects)." (Himma 2002:513-514.) If two words are extensionally equivalent, they may be substituted for one another without changing the truth value of a sentence. Thus, Himma notes, "bachelor" could be substituted for "unmarried man" without changing the truth value of a sentence. If one says "John is a bachelor," it has the same truth value as "John is an unmarried man." It is

logically impossible for a man to be a bachelor and not also be unmarried. And hence the problem, according to Himma.

> Just as the definition of "bachelor" as "unmarried male" implies that it is conceptually impossible for there to be an unmarried male who isn't also a bachelor, Merriam-Webster's definition of "nigger" as "black person" implies that it is conceptually impossible for there to be a black person who isn't also a nigger. . . . Since these reprehensible claims constitute the very foundation [of racism], Merriam-Webster must revise its [definition] of [this] term to avoid committing itself to such views. (Himma 2002:512.)

The President of Merriam-Webster argued that its entry was a faithful reflection of how Americans used the term. Yet, if one accepts Wachal's findings, there is room for viewing Merriam-Webster's claim with skepticism

Van Dijk (1987, 1993) and Wetherell and Potter (1993) would likely agree with Himma rather than Merriam-Webster. According to Wetherell and Potter, everyday discourse fosters racism and reinforces the social structure which ensures the perpetuation of that racism. Wetherell and Potter examined the discourse of white New Zealanders and found that even liberal, well-meaning discourse promote the dominance of Whites over the native Maoris. For example, ever since the 1970s in New Zealand, the government has considered Maori culture a "precious natural heritage" and favors preserving Maori customs. Wetherell and Potter argue that to the extent "preserving" culture means preserving the "pure" Maori culture of the past, it ensures that the government does not have to address the contemporary concerns of exclusion and domination. (Wetherell and Potter 1993:128-131.) Van Dijk (1993) advances a similar argument. According to van Dijk, the influential and powerful strata in society manufacture the consent they need to legitimize their own power and to maintain their social dominance over other ethnic groups.

Often, a change in standards of social acceptability is generational in nature. The generational difference in linguistic taboos is discussed by Nunnally (1995) in a searching, first-person essay. Nunnally is a white male who grew up during the 1950s in the southeastern U.S.

The views of a middle aged professor from Auburn serve as a nice benchmark against which to measure the attitudes of younger generations toward the linguistic taboos he discusses. Although his examination of the "social vicissitudes" of the taboo words shit and Nigger is anecdotal, it is still worth reviewing.

Nunnally, like Wachal and myself, observed that our culture was undergoing a shift in linguistic taboos. Nunnally (1995:37) argues "that the basis of taboo has shifted from the physical body and the sacred to the body politic and conceptions of social justice." He observes that the same sense of outrage and defilement that "filthy language" elicited in his youth was now elicited by "politically incorrect speech, that is, language lacking sensitivity toward different ethnicities, enablements, and orientations."

Unlike many pundits, however, Nunnally does not long for a return to the linguistic restrictions and socially acceptable racism of his youth. Nor does Nunnally use the phrase "politically correct" in the mocking manner of many cultural conservatives. In contrast to the reactionary critics of movements such as Critical Race Theory, Nunnally believes "it is a good thing to be made aware of the power of words to hurt and exclude." (Nunnally 1995:40.) In his essay, Nunnally comes across as the quintessential southern gentleman, a man who embodies Goffman's (1955) concept of "positive face." For example, in his essay he employs euphemisms to explore his experience with one taboo word from his "filthy language" list, and one taboo word from his "politically incorrect" list.

> Over the course of my life one word has become much more socially acceptable while the other has become much more proscribed. For the words themselves I will substitute the nonsense words bleeper and blop. Bleeper stands for the "N word," the highly objectionable term for African Americans. . . . Blop is my euphemism for the S word, the venerable Anglo Saxon term for the act of defecation and its product.

For the sake of clarity in the remainder of this overview, however, I have replaced Nunnally's euphemisms with their underlying taboo terms.

Nunnally observes that use of Nigger has recently become so taboo that it constitutes "a firing offense" when used by a white person who is in a position of authority or public trust. According to Nunnally, the taboo against use of Nigger was formerly much weaker. He relates that when he was growing up in the 1950s, Nigger was the unmarked term for Blacks among many Whites in the south, even if the word was prohibited in his own household. Nigger, Nunnally recalls, was "a word, my parents said, 'we didn't use.'" Yet even though the term was taboo in his own household, the prohibition against it was relatively mild. Nunnally was taught that it was a "rude word" that carried "a mild taboo on a par with terms such as crap, snot, and pee." In contrast, Nunnally's use of Shit as a child taught him "that lather and taste buds do not mix." The taboo on use of the word Shit since the 1950s, however, has lessened to the point that now "it even rides easily on bumper stickers." (Nunnally 1995:37.)

As a child, Nunnally was confused by the taboo against the word Nigger when he observed many African Americans using the term, often in a disparaging manner. He recounts one episode in which a black woman was impatient with him. One of his baby-sitters, an African American woman, pointed to the impatient woman and asked Nunnally if "that nigger" had been mean to him. It was not until he was an adult that he was able to untangle why the word was taboo for him even though African Americans used the word about one another.

> Though some of the intricacies of this question still elude me, the answer, of course, concerns intent and the presumption of associated meaning.

African Americans could use the term as insult because they had withstood it when used that way. As a white person, Nunnally did not belong to the group of people who had borne the brunt of the epithet; he belonged to the group of people that hurled Nigger as insult, as a means to reflect and preserve their position in the social hierarchy. Thus, the "presumption of associated meaning" was different when Nigger was used by a white person rather than a black person.

Nunnally's common-sense insight remains lost on many contemporary Americans. It was not long ago when one of my own (white) co-workers commented on how freely African Americans used the word Nigger, even though the taboo against his own use of the word was monumental. He described the discrepancy as "one more example of P.C. hypocrisy." What Nunnally understood and my co-worker failed to understand was the difference in associated meaning between the two uses. My co-worker could not use the word because of a politically correct taboo; he could not use Nigger as in-group slang because he was not in the group. The same difference in "intent" was shown Sevcik *et al.* in high school students' use of epithets such as Bitch or Nigger in a "friendly" rather than "serious" way.

Quantifying the Taboo

Lester (1996) argues that "there are few words that are so controversial that they are taboo within most social situations—Nigger and Fuck, however, are two of them." (Lester 1996). At the 1996 Mass Communication and Society Division of the Association for Educators in Journalism and Mass Communication (A.E.J.M.C.) conference, Lester presented a paper entitled *On the N– and F-Words: Quantifying the Taboo*. Lester's study attempted to quantify and compare the use of Nigger and the use of Fuck in the print and broadcast media in the U.S.

The trial of O.J. Simpson for the murder of his ex-wife, Nicole Brown Simpson, and her friend, Ron Goldman, provided Lester the perfect environment in which to research how taboo the American media considered the words Nigger and Fuck. Lester noted that before the trial Americans were leery of using the word Nigger. Mark Fuhrman's use of the word, however, and his repeated denials that he had ever done so suddenly made the word Nigger integral to news stories about the so-called Trial of the Century. Despite the sudden and dramatic increase in use of the word Nigger on air and in print because of the coverage the O.J. Simpson trial generated, "there was

no analysis on the media's reporting of one of the most controversial and disturbing words in the English language." (Lester 1996).

Lester's research addressed four hypotheses comparing the use of the words Nigger and Fuck and the euphemisms "N-word" and "F-word" by the U.S. media:

> H1: All media represented in this study will use the word Nigger more than the word Fuck.
>
> H2: All media represented in this study will use the N-word phrase more than the F-word phrase.
>
> H3: Use of all the keywords analyzed in this study will increase from 1985 figures.
>
> H4: Print publications will use the words Nigger and Fuck more often than broadcast entities.

In order to test his hypotheses, Lester examined the Lexis/Nexis database versions of seven newspapers, two news magazines, three television news programs, and one radio news program. Lester examined these sources for any story that used the words Nigger or Fuck or either of the euphemisms "N-word" or "F-word" for the years 1985, 1994, and 1995. Lester chose the three different years in order to establish base-line usage figures to compare against use of his search terms before and after the O.J. Simpson trial. Lester found a total of 2,419 stories that contained at least one of the search terms. Lester then attempted to remove all stories dealing with the O.J. Simpson trial and deleted any story which contained the search terms "Simpson" and "Fuhrman." After removing stories referencing the double-murder trial, the total number of stories remaining was 1,109.

According to Lester, two of his four hypotheses were supported. The first hypothesis supported by the data was "H1: All media represented in this study will use the word Nigger more than the word Fuck." Lester found that the word Nigger was used in 1,539 stories, but the word Fuck was used only 11 times when the Simpson trial references were included. If references to the

Simpson murder trial were excluded, Lester found the word Nigger was used in 742 stories whereas the word Fuck was used only three times.

Lester's second hypothesis supported by the data was "H2: All media represented in this study will use the N-word phrase more than the F-word phrase." Lester found that the "N-word" euphemism for Nigger was used a total of 583 times while the "F-word" euphemism for Fuck was found in far fewer stories, 286 to be exact. Lester found an interesting difference between the print and broadcast media in their use of euphemisms. The print media used both the "N-word" and "F-word" euphemisms almost equally, but the broadcast media were more willing to use the "N-word" euphemism than the"F-word" euphemism. "However, when the Simpson double-murder case is factored out of the analysis, all the media dramatically favor the F-word over the N-word phrase." (Lester 1996).

Lester found mixed support in the data for his third and fourth hypotheses: "H3: Use of all the keywords analyzed in this study will increase from 1985 figures;" and "H4: Print publications will use the words Nigger and Fuck more often than broadcast entities." He assumed that the increasing use of the word "Fuck" in popular culture would have resulted in its widespread use in the news media as well. He found, however, that the use of Fuck was virtually nonexistent among the seven media organizations he studied. This finding runs counter to Lester's findings that all other terms used in his study show dramatic increases in their use.

The data also provided limited support for Lester's final hypothesis that print publications would use the words Nigger and Fuck more often than broadcast entities. When stories referencing the O.J. Simpson trial were removed from the data set, Lester found that Fuck was used just three times: once each by the Los Angeles Times, CNN and NPR. The word Nigger, however, appeared in 605 stories by the print media and 137 stories by the broadcast media. Thus, Lester's data

strongly suggest that it is more acceptable to print or air the word Nigger than the word Fuck, and that the print media are more willing to do so than their broadcast media counterparts.

The data left Lester wondering, “”if the words Nigger and Fuck are two of the worst words the English language has to offer, with Nigger arguably topping this short list, why are the news media overwhelmingly willing to use Nigger over Fuck?” (Lester 1996.) He conjectured that the relatively low numbers of African American reporters, editors, and news managers could be a factor. Lester thought that cultural insensitivity or racism might have accounted for use of the word Nigger. Lester rejected that possibility, however, as overt racism would never be tolerated by professional organizations. Lester ultimately concluded that reporters and editors do not operate in a vacuum; they belong to the society and culture on which they report. If taboo words appear in the media more frequently now than in the past, “it is because society stereotypes and tolerates a relaxation of taboo words.” (Lester 1996.)

Lester also cites journalistic objectivity and a change in community standards as reasons for the increased use of Nigger. Much of the reason for the increased use of Nigger comes from the journalistic practice of objectivity and the concept of community standards. Journalistic objectivity requires reporters to use direct quotes from sources that are accurate and complete. Thus, if more people use the word Nigger, there will be more stories that include it.

> Furthermore, sensitivity to community (and personal) standards by journalists prevents many editors from using the words for paraphrased, descriptive, or analytical passages. The n-word phrase is then employed when the voice of the reporter—either in print or broadcast—is intended rather than the direct voice of a source. (Lester 1996.)

Lester’s reference to “community standards” recalls the obscenity which held that obscenity could only be determined by examining the prevailing standard of cultural acceptance of allegedly obscene material.

Stories which include the word Nigger are valuable, Lester argues, because when the word Nigger is included in a story, the story often deals with issues larger than the single use of an epithet. Stories which include the word Nigger frequently start a discussion about "what the word means within our multicultural society." (Lester 1996.) The value of the word Nigger to act as a catalyst for examining society's institutions and the treatment of its members, however, is lost if a euphemism is used in its place. Lester notes that

> when the word nigger is altered to a more socially acceptable n-word phrase within a direct quotation so as not to offend—not African Americans—but the large majority of Anglo readers and viewers, the word's power to shock and then teach is lost. (Lester 1996.)

Lester made some valuable contributions to the literature with his study. First, he was among the first to address the issue of euphemisms and their underlying taboo words in a quantitative way. Second, Lester cleverly addressed the issue of the impact of the O.J. Simpson trial on use of the word Nigger and its attendant euphemism "the N-word." By deleting stories which also contained "Simpson" and "Furhman," he likely got a more accurate measure of how the trial affected the media. If he hadn't deleted stories containing "Simpson" and "Fuhrman," it would have been easy (although erroneous) to conclude that an increasing number of news stories containing the word Nigger meant a change in the degree of taboo-ness accorded to the word. By excluding the hundreds of news stories referencing the O.J. Simpson trial, Lester probably attained a truer measure of whether the media's increased use of the word Nigger during the trial of O.J. Simpson became generalized as an increased willingness to include the word in other news stories as well.

Lester's study is not beyond criticism, however. For example, Lester's finding that all media dramatically favored the F-word euphemism over the N-word euphemism should be expected, though not for nefarious reasons of racism among news directors. Lester likely found a far greater number of stories which included the F-word euphemism because there are far more contexts in

which the underlying taboo word Fuck will appear. A story which includes the underlying taboo word Nigger almost certainly limits the subject matter of that article. Even Lester himself admits that "when the word nigger is included in a story, the story deals with larger issues of racial intolerance by societal institutions." (Lester 1996.) The potential number of subjects for stories which could include the word Fuck are almost limitless. As countless scholars and comedians have observed, the word Fuck and its morphemic variants function as nouns, verbs, adjectives, adverbs, and even particles. As such, the greater number of environments in which the word Fuck is used virtually guarantees it will appear more frequently than Nigger. Therefore, an editorial attempt to euphemize the utterance will result in far greater use of the F-word than the N-word.

A larger potential area of weakness, however, is Lester's failure to determine—or even attempt to determine—the *rate* with which any of the terms in his studies were used. Lester simply uses the raw number of stories to determine increased or decreased usage of his search terms. I raise the point because the time period involved in Lester's study roughly corresponds to the meteoric increase in Internet use. In response to the business opportunities that publishers such as Lexis/Nexis and Westlaw believed existed, they began putting increasing amounts of data online. These facts lead to an important criticism of Lester's study, because it is possible that Lester found increasing numbers of stories containing the word Nigger simply because the database Lester used for his corpus after the O.J. Simpson trial was dramatically larger than the one he used before the trial. Thus, if there were a lot more stories online, one would expect Lester to find a lot more stories containing the word Nigger—or any word for that matter—simply because there was a bigger corpus of news stories from which to draw.

It is also possible that Lester foresaw this potential difficulty and attempted to control for it. In his study, he did confine his inquiry to a handful of news publications and broadcasts. Because Lester did not address the issues of rates of use or database size in his presentation, however, we do

not know the relative sizes of the databases he searched. I was conducting similar studies using a keyword search methodology in online corpora in the mid 1990s, and I know from personal experience that sources on Lexis/Nexis and Westlaw between 1994 and 1996 were frustratingly incomplete. Thus, the criticism remains: How complete were the online versions of the newspapers Lester searched for each of the three years included in his study? To be fair to Lester, it is possible that the databases were comparably sized, but because he failed to address this issue in his presentation and used raw totals rather than rates of usage, readers cannot know.

Summary

This chapter was a review and analysis of the supporting literature relevant to the study's stated purpose of examining the use of racial and gender epithets in 20th century judicial opinions. It provided an overview of how anthropology, linguistics, and the law have each approached taboo language in general, and epithet use specifically.

The material in this chapter was divided into eight sections. The first two sections provided an introduction and background to the current study. The third and fourth sections discussed the current state of First Amendment law with respect to taboo words, and provided background on how courts analyze laws which restrict freedom of expression. *The Whorfian Hypothesis Meets the First Amendment* discussed two ideologically based views on whether certain types of speech were so harmful they do not warrant First Amendment protection.

The sixth section, *The Academy's Approach to the Unspeakable*, discussed the historical, ethnological, and gender difference approaches to taboo speech that previous scholars have taken. The final two subsections within this section examined studies into the cognitive and emotional aspects of taboo speech and hate speech. The final substantive section examined the most relevant kindred studies to this dissertation.

The literature provides support for the thesis of this dissertation, namely that our culture is undergoing a shift in linguistic taboos away from profane terms and toward racial and gender epithets. The literature which has covered the use of taboo language—and specifically profanity or racial and gender epithets—within the law is quite thin, however. For all of its recognized and self-professed importance, the legal system has not been studied very extensively by sociolinguists and anthropologists. And most lawyers are either too close to the system to observe it or simply too busy practicing law to care about the theory of law or discourse. Thus, the connection, if any, between taboo word usage and usage of racial and gender epithets in judicial opinions has not been established in the literature, and demonstrates a need for the current study.

I set forth my methodology for the diachronic portion of this study in the following chapter. My methodology is informed by the literature presented in this chapter, and seeks to quantify and compare the use of racial and gender epithets with use of profanity. In the diachronic analysis, I seek to quantify and compare the use of racial and gender epithets with the use of profanity within judicial opinions. The reason for studying taboo speech within the legal system is the same as it is for studying any other system or artifact within a culture: to gain a better understanding of how the system fits within the culture, and by better understanding culture, to understand better what it means to be human.

DIACHRONIC METHODS AND PROCEDURES

This chapter presents the methods and procedures used for the diachronic, quantitative analysis portion of this dissertation. This chapter is divided into eight sections: Study Design and Rationale, Description of the Variables, Statement of the Hypotheses, Description of the Corpus, Data Collection and Tabulation, Treatment of the Data, Reliability and Validity, and a Summary.

Study Design and Rationale

As set forth in the preceding chapters, how frequently an epithet appears within judicial opinions can be seen as a relative measure of how taboo that word is. In other words, if a particular judge feels he or she should not use an epithet within an opinion, the judge might choose circumlocutions or euphemisms to avoid using an epithet. This is the same rationale which underlay the study discussed in Chapter 2 which was most similar to this dissertation, *On the N- and F-Words: Quantifying the Taboo* by Paul Martin Lester (1996). How this rationale is exhibited can be seen in the following case exemplar. In Commonwealth v. Babbitt, a case in which two white defendants beat a black man to death, the judge wrote:

> Racial slurs of various sorts were uttered [and] the doctrine of white supremacy was vigorously asserted. (Babbitt, 723 N.E.2d 17, 19 (2002).)

Thus, for the judge in Babbitt, the epithets the assailants uttered as they beat the victim to death were taboo. Compare the above language to an opinion written by a second judge for whom including epithets in judicial opinions is not taboo:

> [The co-defendant] hit the victim in the face with a gun and yelled, "Bitch you are getting ready to give my nigger some pussy." (State v. Mason, 480 S.E.2d 708, 711 (1997).)

The rationale behind the design of the study is that as a term becomes increasingly taboo, judges should feel a stronger inhibition against including it in their opinions, and the epithets would then appear in fewer judicial opinions. The specific study design used in the diachronic analysis portion of this dissertation is a retrospective review of judicial opinions in order to determine the frequency rates of epithet usage over the course of the 20th century. Although the specific methodology used in this study had not been applied previously (Kretzschmar, personal communication, 1998), analogous designs have been used. (See Lester 1996; Kennedy 2002.)

Because a substantial portion of this dissertation makes use of *descriptive statistics*—and perhaps more importantly does not make use of *inferential statistics*—a few paragraphs are devoted to defining necessary terms and describing the methodological approach used herein and the rationale therefore. It is hoped this brief overview will clarify the quantitative methods employed in this dissertation and will make this study accessible to greater numbers of researchers, legal practitioners, and others who are more comfortable dealing with words rather than numbers. There is a danger in attempting to cover in such a short space a subject to which lengthy tomes have been devoted. The jurist Oliver Wendell Holmes is reputed to have said, "I wouldn't give a fig for the simplicity on this side of complexity, [but] I would give my right arm for the simplicity on the far side of complexity." At the risk falling on *this* side of complexity, a brief exegesis of the quantitative methods employed in the diachronic analysis is below.

The methods of descriptive statistics are simply means for collecting, organizing, summarizing, and presenting data. (Weiss and Hassett 1982:2.) The tools and jargon of descriptive statistics are used to describe a collection of data in numbers rather than words. The essence of descriptive statistics can be captured in the linked questions: "Is there a difference between two values" and, "if so, does that difference make a difference?" Similarly, inferential statistics bears on the straightforward question: "What can be predicted about future data from the differences in

the current sample?" While descriptive statistics deals with collecting and presenting data, inferential statistics deals with making inferences, testing hypotheses, determining relationships between samples, and making predictions about future samples based upon current data. (Weiss and Hassett 1982:3.)

Social science studies which utilize inferential statistics do so because those studies draw from a *sample* rather than a *population*. The present study, however, draws from a population not a sample. It is essential to understand the distinction between a sample and a population and why such a distinction is important. A population is the set of all elements that are being studied. (Weiss and Hassett 1982:3.) A sample, on the other hand, is a subset of the larger population which is chosen in order to study some attribute of the population as a whole. (Weiss and Hassett 1982:3.) As a corollary, a *census* is the correct term for a "sample" which utilizes the entire population. (Weiss and Hassett 1982:3.) The distinction between a sample and a census is significant because inferential statistical tests[1] are used to determine whether a difference between values for two samples is due to one of the variables under study or is simply due to chance.

The corpus which was searched for the epithets under study contains the entire population of judicial opinions within the state appellate court databases utilized for this study. The results of those searches constitute a census, *i.e.*, *all* opinions in the corpus which contain an epithet. All quantitative data within this study reflect the actual levels of epithet use rather than an approximation of that use.[2] Thus, there is no need to make inferences about the difference between samples because there are no samples in the present study. The tests of inferential statistics are

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[1] For example, t tests, F tests, z scores, and Chi squares, etc.

[2] As detailed in the *Data Collection and Tabulation* section, the totals for two epithets were adjusted to control for polysemy, and may not reflect the actual use for those two epithets.

unnecessary for this study; frequency of epithet use and other quantitative measures may simply be described, compared, and ranked.

Frequency distributions, or an organizing raw data into tabular form, is one tool to organize and present data. The *relative frequency* for any specific member of a data set may then be computed. The relative frequency for any member of the data set, or class, is obtained by dividing the number of times that member of the data set occurs by the total number of observations. (Weiss and Hassett 1982:16-17.) For example, if the epithet "Bitch" appeared in 137 opinions between 1900 and 1909 inclusive, and there were a total of 892 opinions containing at least one epithet for that period, the relative frequency for "Bitch" can be expressed as .15. In other words, the epithet "Bitch" accounts for 15% of all epithets used during the first decade of the 20th century.

The measures of descriptive statistics utilized in this dissertation include *measures of central tendency* and *measures of variability*. A measure of central tendency for a collection of data quantitatively describes the "centralness" for the data set. (Jaisingh 2000:27.) The measures of central tendency used in this dissertation are the mean and median. The mean, of course, is the average for any given set of data, and is obtained by summing all values in the study and dividing by the number of values. The median is the center point in the data set, the value at which half the members of the data set are greater and half are lower. (Weiss and Hassett 1982:44.)

A measure of variability for a collection of data values quantitatively describes the "spread" for the data set, *i.e.* how the data vary about the mean, whether there is a large range among data values. (Jaisingh 2000:43.) Three measures of variability are utilized in this study, the variance, the standard deviation, and standard deviations from the mean. These measures provide information about how the data vary about the mean.

> If the data are clustered around the mean, then the variance and the standard deviation will be somewhat small. . . . If, however, the data are widely scattered

about the mean, the variance and the standard deviation will be somewhat large." (Jaisingh 2000:48.)

Both the standard deviation and the population variance are calculated using the number of *deviations* each data value varies from the mean. The deviation for a given data value is the amount that it differs (or deviates) from the mean. The deviation for a data value can easily be calculated using simple addition and subtraction, and is expressed in the same unit of measure as the value itself. For example, if the national mean for epithet usage for one decade is 230 opinions per 10,000 opinions, and two particular regions exhibit frequency rates of 200 opinions per 10,000 and 250 opinions per 10,000, the first region's frequency rate is 30 opinions (or deviations) from the mean. The second region's frequency rate is 20 opinions (or deviations) from the mean. The fact that one region's frequency rate is below the mean and the second region's frequency rate is above the mean is secondary in significance to how many deviations (or opinions) each region's frequency rates differ from that mean.

The mean and the standard deviation convey a great deal of information about a data set. For example, given a large enough sample (or population, as here) one can generalize some properties of the distribution. One such generalization is called the Empirical Rule. (Jaisingh 2000:12.) The Empirical Rule relates the mean to the standard deviation, and predicts that one can expect that approximately 68 percent of the data values to lie within one standard deviation of the mean; approximately 95 percent of the data values should lie within two standard deviations of the mean for the data set, and nearly all data values (approximately 99.7 percent) should lie within three standard deviations of the mean. (Jaisingh 2000:52.) Because the diachronic portion of this dissertation utilizes a census of the entire population, the data values observed should fall within the dispersion predicted by the Empirical Rule. A *histogram*—a graphical display of a frequency distribution which is similar in appearance to a standard bar chart (Weiss and Hassett

1982:23)—will be used to give estimates of the shape of the population distribution for the data in this study.

The last two statistical measures used in the quantitative analysis phase of this study are the *coefficient of variation* and the *correlation coefficient*. The coefficient of variation compares the variation of two (or more) different variables, *i.e.* is there more variation for Variable A or Variable B? The population coefficient of variation is defined as the population standard deviation divided by the population mean. (Jaisingh 2000:51.) The result is expressed as a percentage. As applied to this dissertation, the coefficient of variation will be used to determine the relative degrees of variation among the lexical, geographic, and time variables. The correlation coefficient describes the strength of the relationship between two variables, and is expressed as a decimal between -1 and +1. A perfect positive relationship between two variables would equal 1. A perfect negative linear relationship between two values would equal -1. For example, if the number of opinions containing profanity increases over time at the same rate as the number of opinions containing epithets decreases, the coefficient of correlation would equal 1.

While this brief overview of the quantitative analysis tools used herein falls far short of an exhaustive treatment of descriptive statistics, it is hoped the outline above will increase understanding of the quantitative results presented in Chapter 4.

Description of the Variables

The corpus used for this study was examined for meaningful patterns in the distribution of three categorical variables: a geographic variable, a time variable, and a lexical variable.

Geography

The geographic variable initially consisted of 50 separate categories, one for each state within the U.S. It was determined that comparison of epithet use for all 50 states would be tedious, yet not lead to any significant insights into geographic variation in epithet use. Furthermore, in terms of statistical methodology, categorical variables drawn from large samples (or populations, as here) should ideally be limited to between five and 20 classes. (Jaisingh 2000:9.) Therefore, the total number of categories within the geographic variable needed to be reduced from 50 to a more manageable number.

The U.S. Bureau of the Census divides the country into four *Regions* which are then subdivided into a total of nine *Divisions*. While the Census Divisions are certainly not the only way in which to segment the U.S. (and may not even be the best way of doing so), the Census Divisions do establish recognized and objective criteria for regional divisions of the U.S. Accordingly, this scheme was deemed less subjective and more reliable than a regional division determined exclusively by the author. Therefore, the Census Bureau's Divisions were chosen as the categories for the geographic variable in this study. Substituting Census Divisions for states reduced the number of categories for the geographic variable from 50 to nine.

In alphabetical order, the nine Census Divisions are:

1. East North Central ("ENC") (Indiana, Illinois, Michigan, Ohio, and Wisconsin),
2. East South Central ("ESC") (Alabama, Kentucky, Mississippi, and Tennessee),
3. Middle Atlantic ("MA") (New Jersey, New York, and Pennsylvania),
4. Mountain ("Mtn") (Arizona, Colorado, Idaho, New Mexico, Montana, Utah, Nevada, and Wyoming),
5. New England ("NE") (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont),
6. Pacific ("Pac") (Alaska, California, Hawaii, Oregon, and Washington),

7. South Atlantic ("SA") (Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, and West Virginia),

8. West North Central ("WNC") (Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota), and

9. West South Central ("WSC") (Arkansas, Louisiana, Oklahoma, and Texas).

The map in Fig. 3.1 on page 128 shows the Regions and Divisions of the U.S. Census Bureau.

Lexicon

The lexical variable initially chosen for this study consisted of 25 categories, namely 25 specific epithets. These epithets were the same epithets which were chosen for the 1998 pilot study for this dissertation. The epithets were chosen so that epithets for each major racial group in the United States were included. This group of epithets comprised derogatory references to blacks, whites, Hispanics, and Asians. Epithets relating to an individual's biological sex, gender identity, and sexual preference were also included for study.

The epithets for Asians which were initially chosen were: Chink, Jap, Gook, Nip, and Slant. The epithets for blacks were Coon, Darkie (and its alternate spelling, "Darky"), Jungle Bunny, and Nigger. The epithets for Hispanics included in the pilot study were Beaner, Cholo, Spick (and its alternate spelling "Spic"), and Wetback. The epithets for whites were Cracker, Gringo, Honky (and its alternate spelling, "Honkie"), Haole, Redneck, and Poor White Trash. Epithets relating to sex or gender were not included in the pilot study. The gender epithets initially chosen for this study, however, were Bitch, Dyke, Fag (as well as "Faggot), Sissy, Slut, and Chauvinist (including the longer "Male Chauvinist Pig").

As readers will recognize, many racial and gender epithets are excluded from this study. Among the excluded epithets are epithets referring more specifically to ethnicity rather than race, *e.g.* "Mick," "Guinea," or "Frog." Another group of excluded epithets exist in the grey area between

insults based on ethnicity or race and insults based on religion. "Kike" and "Raghead" are but two examples of this particular group of epithets. Methodological considerations such as, "Is kike a racial or religious epithet?" militated for the exclusion of religious epithets and epithets based on ethnicity.

Epithets that are geographically limited to very small areas of use are also excluded from this study. The epithet "haole" used in Hawaiian to refer to whites is a good example of an epithet restricted to an extremely small geographic region. Cholo and Poor White Trash were also excluded from the lexical variable in this dissertation even though those terms were part of the data set for the pilot study for this dissertation. The epithet Cholo was initially included because in the geographic region where the researcher was raised, that term is used as a derogatory reference for Hispanics. In the course of research, however, it was discovered that the term does not carry a derogatory meaning outside of the small region of southern California. The collocation Poor White Trash was excluded because strictly speaking it is not usually used as a racial epithet. That is, the phrase is often used by whites to refer to other whites to disparage the people to whom the epithet is directed on the basis of low levels of income and/or education. As such, despite the adjective "white" within the collocation, Poor White Trash was excluded as an epithet based on class rather than race.

The following epithets were chosen for data collection: Beaner, Bitch, Darky/ie, Chink, Cholo, Coon, Cracker, Dyke, Fag/Faggot, Gook, Gringo, Honky/ie, Jap, Jungle Bunny, (Male) Chauvinist (Pig), Nigger, Nip, Redneck, Slant, Slut, Spade, Spic/Spick, and Wetback. These epithets are also set forth in Table 3.1.

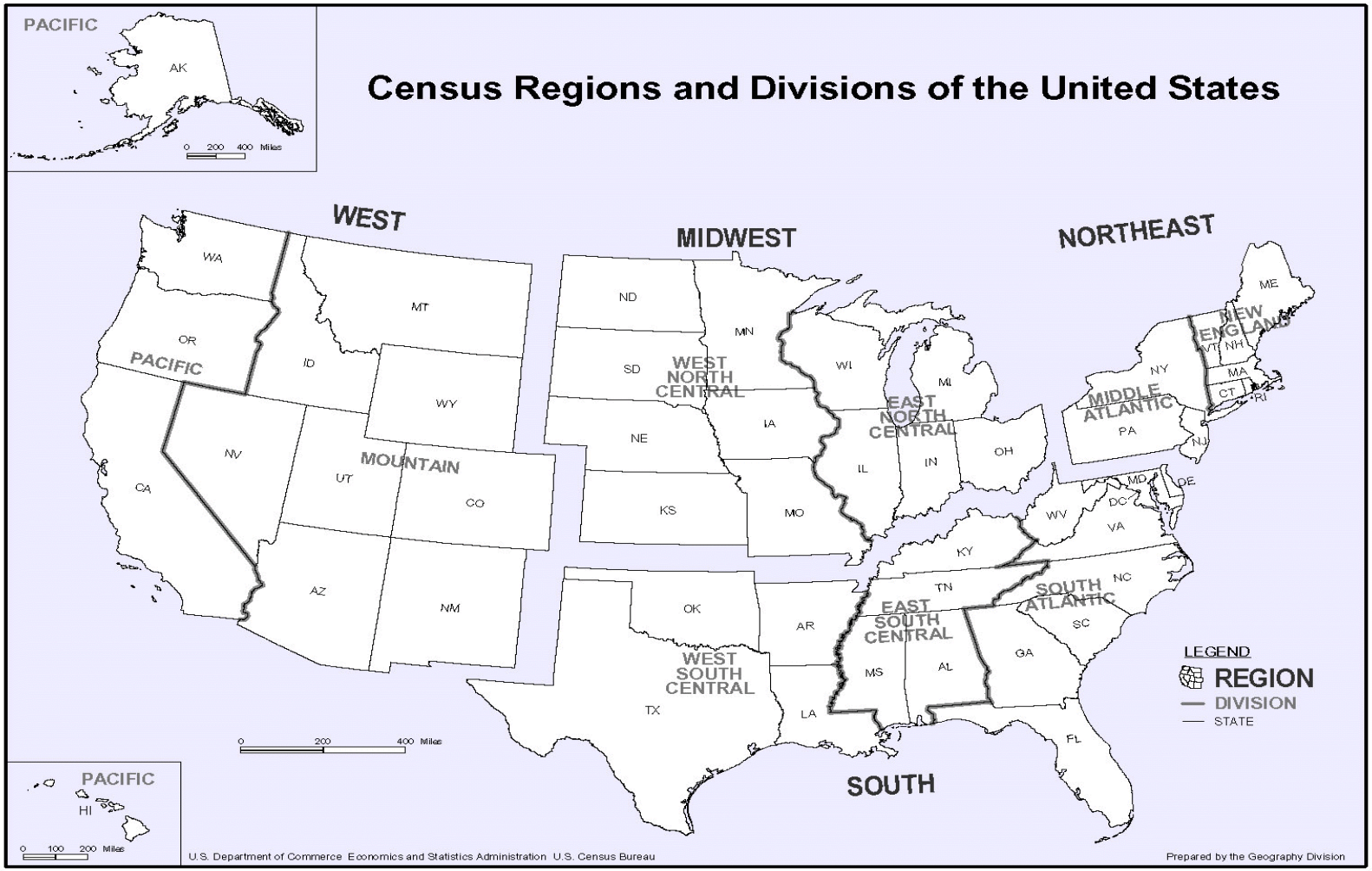

Fig. 3.1. (U.S. Census Bureau 2000.)

Time

The final variable in this study design is time. Variation in the frequency of epithet use within judicial opinions was tracked over nearly a century. The time variable initially consisted of 97 categories, one for each year encompassed in this study. Comparison of 97 individual years, however, would have been extremely time-consuming. Because of the relatively small number of opinions for each year, however, the relatively small population of opinions would not have resulted in very meaningful comparisons between years. Additionally, in terms of descriptive statistics, categorical variables drawn from populations should ideally be limited to between five and 20 classes. (Jaisingh 2000:9.) Therefore, the number of categories for the time variable were reduced. The most obvious and widely recognized time division for the span of years encompassed in this study is that of decades. Accordingly, the 97 individual years were aggregated into ten decades, 1900 through 1909, 1910 through 1919, and so on. The data for this study were initially collected in 1998, so data for the 1990s are limited to the years 1990 through 1997.

Statement of the Hypotheses

Each of the variables chosen for analysis in this dissertation—the lexical variable of the 19 racial or gender epithets ultimately included for study, the geographic variable of each of the nine regions encompassed in this study, and the time variable of the ten separate decades encompassed in this study—has a corresponding null hypothesis. There is an additional null hypothesis relating to the comparison of the profane taboo words chosen for the earlier studies (Breon, 1996; Breon, 1997; Breon, 1998) and epithets chosen for this dissertation.

Null Hypothesis 1.0 tests for geographic variation in epithet use. Null Hypothesis 2.0 tests for lexical variation in the choice of epithets which were used, and Null Hypothesis 3.0 tests for variation in epithet use over time. Null Hypothesis 4.0 tests the theory that racial and gender

epithets are replacing profanity as the culture's new linguistic taboos. The null hypotheses posited for quantitative testing in the diachronic portion of this study are set forth below:

1.0 For each of the decades encompassed in this study, there will be no significant difference in the rate of epithet usage among the nine regions.

2.0 For each of the decades encompassed in this study, there will be no significant difference in usage among the epithets.

3.0 For the sum total of all epithets and all regions, there will be no significant difference in the rate of epithet usage among the ten decades encompassed in this study.

4.0 There will be no correlation between the usage of profanity and the usage of epithets over the ten decades encompassed in this study.

Description of the Corpus

The corpus for the diachronic analysis portion of this dissertation is comprised of 4,040,888 judicial opinions. This national corpus is in turn comprised of nine regional corpora. The regional corpora are comprised of 50 state corpora. All opinions within the corpus were maintained in databases created by Westlaw, a commercial information services broker. Westlaw is one of the leading online legal research services, and provides a broad collection of information resources, including news, governmental administrative materials, federal and state statutes, and case law. Westlaw has organized state appellate court judicial opinions into 50 separate databases, one for each state. Each of these individual databases is identified by a state's two-letter postal abbreviation followed by the suffix, "-CS." The opinions which comprise the corpus for this study were drawn from all 50 states, and cover a span of nearly a century, 1900 to 1997.

The size of the each state court database (*i.e.*, state corpus) was established by performing a keyword search on the word "court." The keyword "court" was chosen because that word appears

in the heading of every opinion, e.g. "Phipps v. State, Court of Criminal Appeals of Texas." Although the reasoning may appear somewhat circular, since all opinions in the database include the word "court" in their headings, then the number of opinions containing the word "court" equals the number of opinions in that particular database.

The states of Alaska, Arizona, Hawaii, and Oklahoma were not members of the United States for the entire period under study in this dissertation, 1900-1997. Oklahoma was admitted to statehood in 1907 (The World Almanac and Book of Facts, 2001 ("2001 World Almanac")); Arizona was admitted to statehood in 1912 (2001 World Almanac); and both Alaska and Hawaii were admitted to statehood in 1959 (2001 World Almanac) There are no cases from Alaska within the corpus until the decade of the 1960s.[3] There are, however, cases within the databases for Arizona, Oklahoma and Hawaii for each of the 97 years of this study. All cases which predate Arizona's, Oklahoma's and Hawaii's admissions to statehood were adjudicated within their respective Territorial Courts.

The Regional Corpora by Decade

As stated above, the national corpus for the 20th century is comprised of several smaller corpora. Information about the regional corpora for each decade is set forth below.

1900 through 1909

The total size of the national corpus for the years 1900 through 1909 was 205,865 opinions. The median number of opinions among the regional corpora was 19,863, and the mean number of opinions per region was 22,874. The East North Central region contributed 21,247 opinions to the

[3] There was one case in the Alaska state database from the 1950s, but a search in such an exceptionally small database would have been futile.

national corpus, while the East South Central region contributed 19,863 opinions. There were 64,257 cases from Middle Atlantic region within the national corpus for this decade.

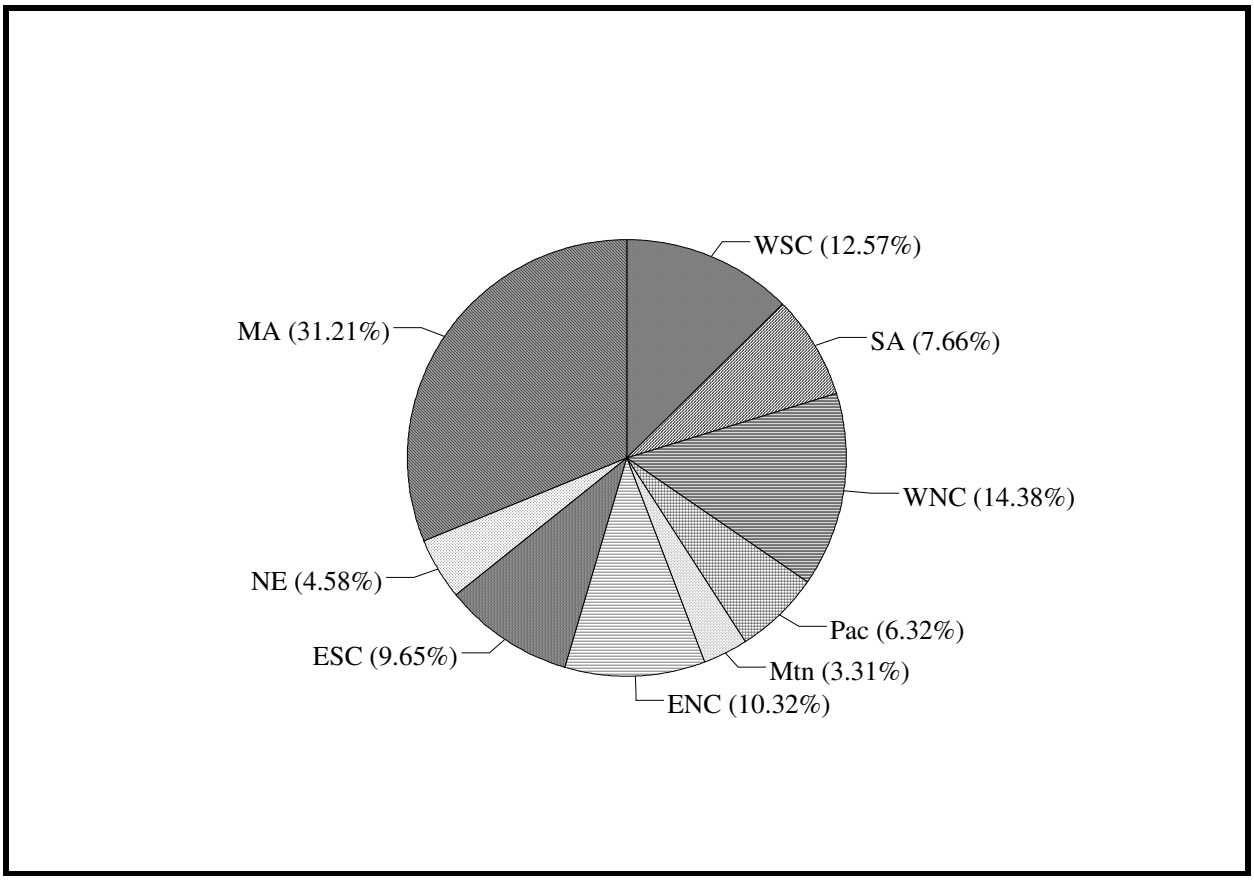

Fig. 3.2. Percentage of the National Corpus Comprised by Regional Corpora, 1900 Through 1909.

The number of cases in the national corpus from the Mountain, New England, and Pacific regions were 6,820 and 9,433 and 13,012, respectively. The South Atlantic region contributed 15,761 opinions to the national corpus for this decade. The final two regions, West North Central and West South Central contributed 29,597 and 25,875 opinions to the national corpus, respectively. The chart in Fig. 3.2, depicts the percentage of the national corpus comprised by each of the regional corpora for this decade.

1910 through 1919

The total size of the national corpus for the decade 1910 through 1919 was 254,732 opinions. The median for this decade was 25,399 opinions, and the mean among the regional corpora was 28,304 opinions.

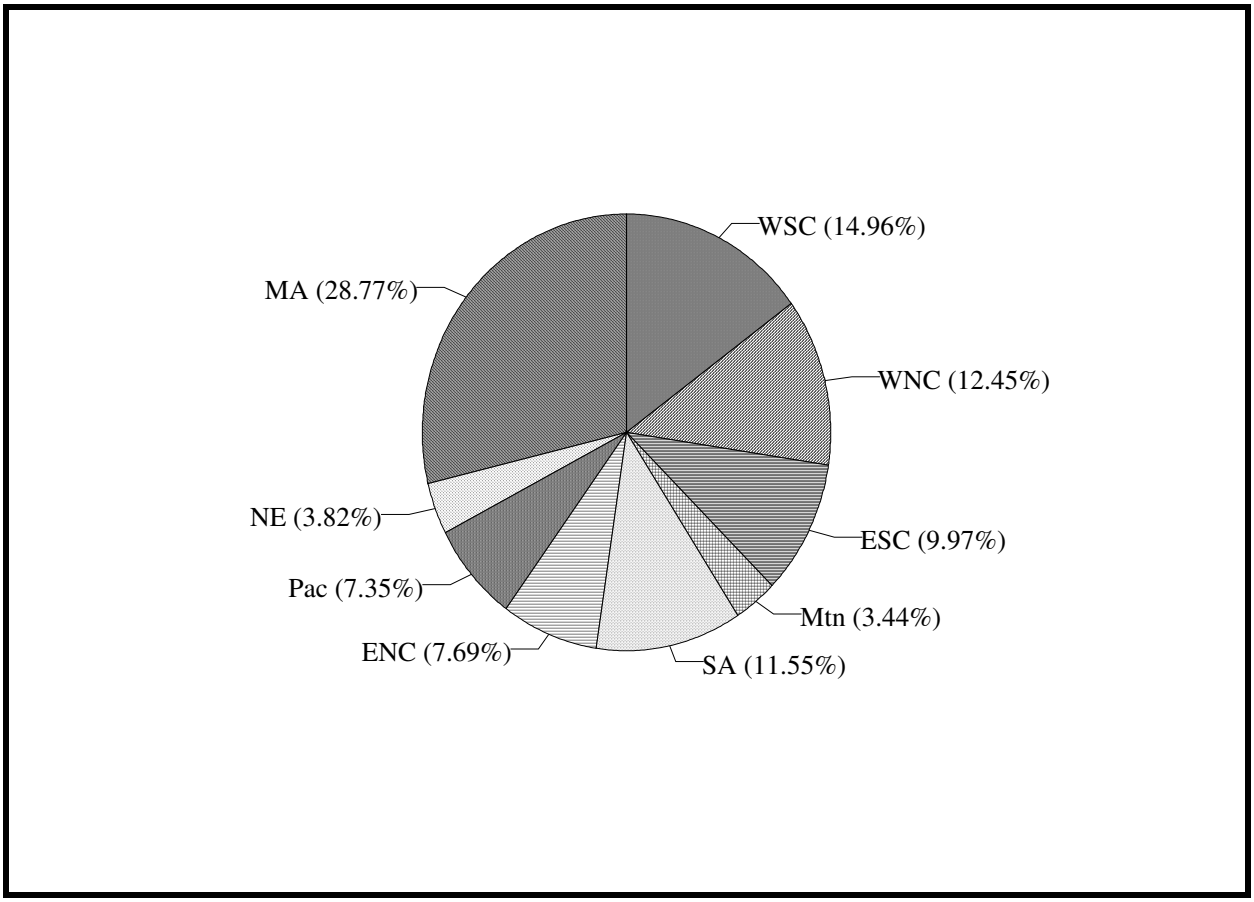

Fig. 3.3. Percentage of the National Corpus Comprised by Regional Corpora, 1910 Through 1919.

There were 19,579 cases from the East North Central region in the national corpus for 1910 through 1919. The East South Central region contributed 25,399 opinions, and the Middle Atlantic region contributed 73,299 cases. The Mountain region and New England region had 8,774 cases

and 9,722 cases, respectively. The Pacific region had 18,722 within the national corpus for this decade. There were 29,431 cases from the South Atlantic region, and 31,706 cases from the West North Central region in the national corpus. The West South Central region contributed 38,100 opinions to the national corpus.

The chart in Fig. 3.3 depicts the percentage of the national corpus comprised by each of the regional corpora for this decade.

1920 through 1929

There were a total of 272,014 cases in the national corpus for the decade 1920 through 1929. The median for this decade was 27,778 opinions, and the mean among the regional corpora was 30,224 opinions.

The East North Central region had 19,836 opinions within the national corpus for this decade, and the East South Central region had 27,778 opinions. The Middle Atlantic region contributed 76,997 opinions to the national corpus; the Mountain region contributed 10,700 opinions; and New England contributed 9,963 cases. The Pacific and South Atlantic regions contributed 19,987 cases and 30,548 cases, respectively to the national corpus. There were 31,551 opinions from the West North Central region and 44,654 opinions from the West South Central region for this decade.

The chart in Fig. 3.4, depicts the percentage of the national corpus comprised by each of the regional corpora for this decade.

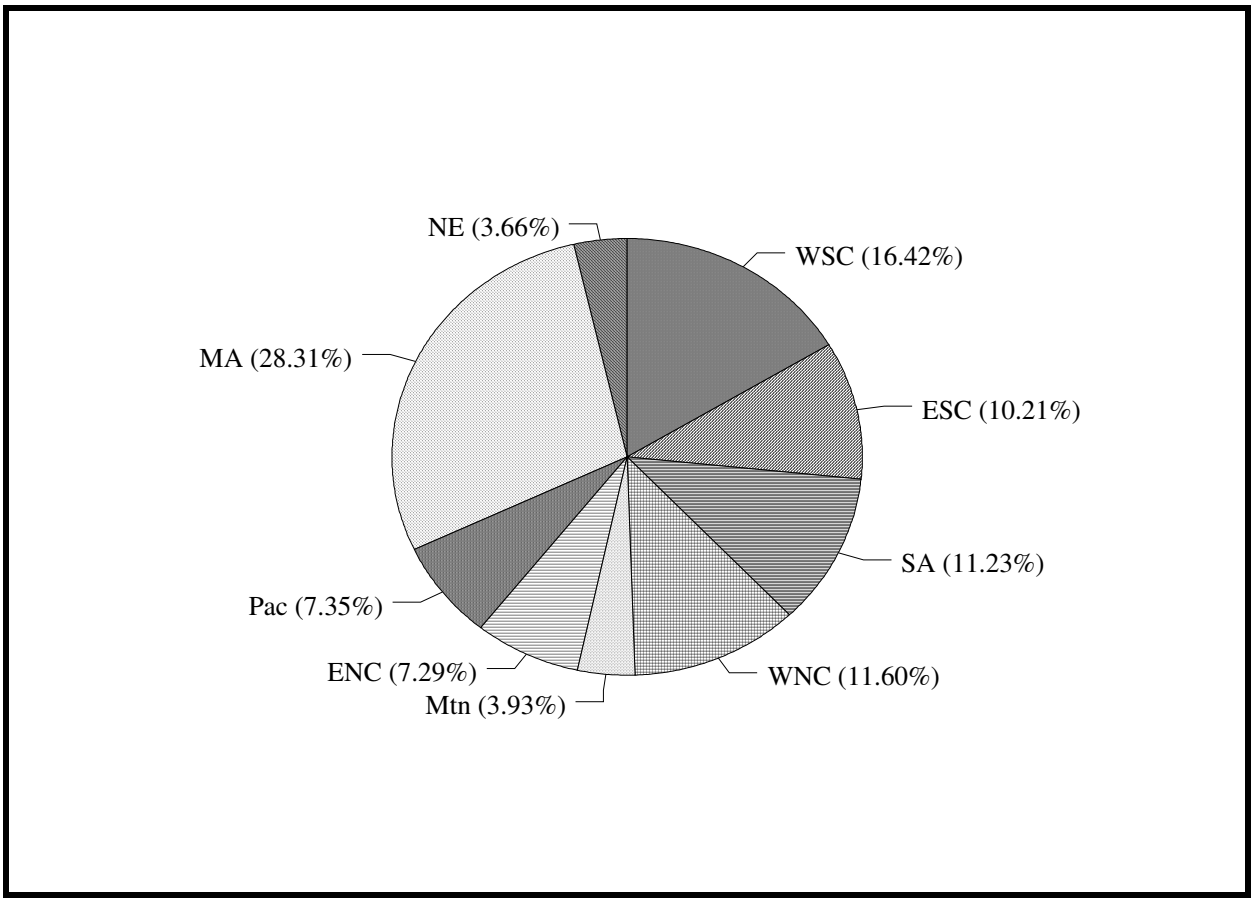

Fig. 3.4. Percentage of National Corpus Comprised by Regional Corpora, 1920 through 1929.

1930 through 1939

There were a total of 285,427 opinions within the national corpus for the decade 1930 through 1939. The median for this decade was 24,368 opinions, and the mean was 31,714 opinions.

There were 26,565 opinions from the East South Central region in the national corpus for this decade. The East North Central region contributed 22,560 opinions, and the Middle Atlantic region contributed 90,389 opinions. There were 8,713 cases from the Mountain region in the corpus for the 1930s, and New England contributed 9,737 cases to the corpus. The Pacific region sent 22,497 cases into the national corpus, and the South Atlantic region 33,359 opinions. The West

North Central and West South Central regions contributed 24,368 cases and 47,239 cases, respectively, to the national corpus for the 1930s. The chart in Fig. 3.5 depicts the percentage of the national corpus comprised by each of the regional corpora for this decade.

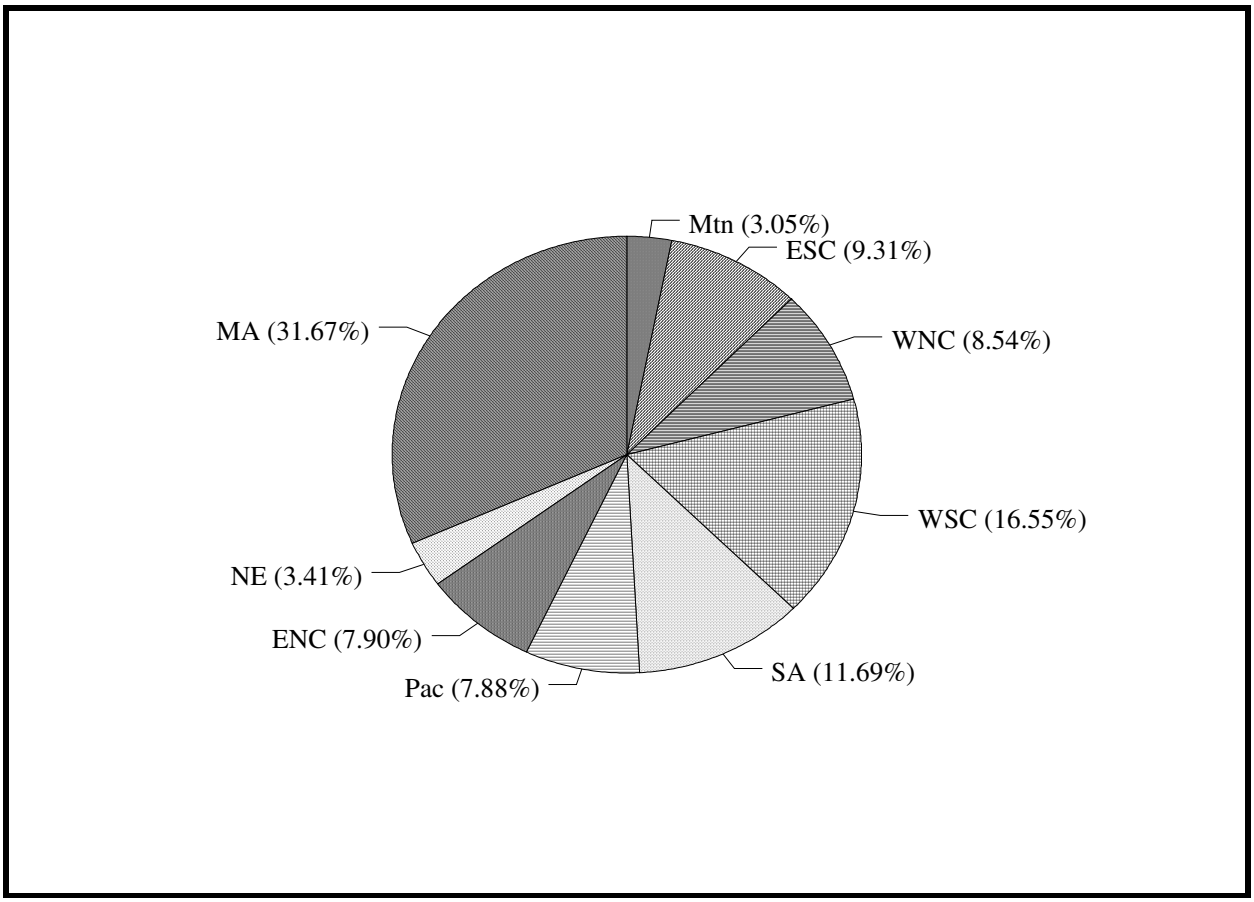

Fig. 3.5. Percentage of the National Corpus Comprised by Regional Corpora, 1930 Through 1939.

1940 through 1949

There were a total of 200,283 opinions in the national corpus for the years 1940 through 1949. The median for this decade was 17,997 opinions, and the mean was 22,254 opinions.

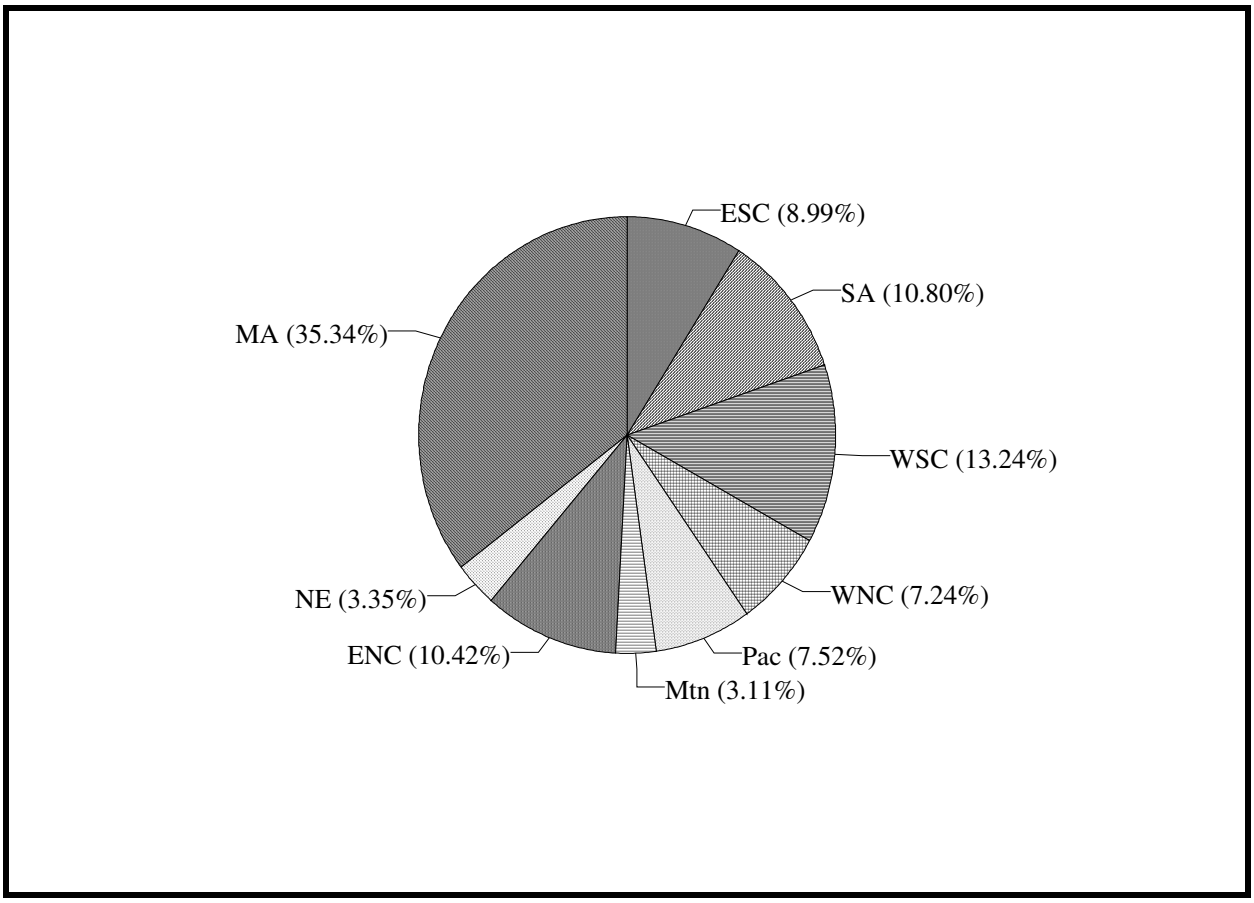

Fig. 3.6. Percentage of the National Corpus Comprised by Regional Corpora, 1940 Through 1949.

The East North Central region reported 20,868, and there were 17,997 opinions in the regional corpus for the East South Central region. The Middle Atlantic region contributed 70,772 opinions to the national corpus. There were 6,230 opinions in the regional corpus for the Mountain region, and New England reported 6,703 opinions for this period. The Pacific regional corpus contained 15,066 opinions for the 1940s. There were 21,631 cases from the South Atlantic region, and the West North Central region contributed 14,494 cases to the national corpus. The final regional corpus, West South Central, contained 26,522 opinions. The chart in Fig. 3.6 depicts the percentage of the national corpus comprised by each of the regional corpora for this decade.

1950 through 1959

There were a total of 219,137 cases in the national corpus for the decade of the 1950s. The median was 18,947 opinions, and the mean was 24,349 opinions.

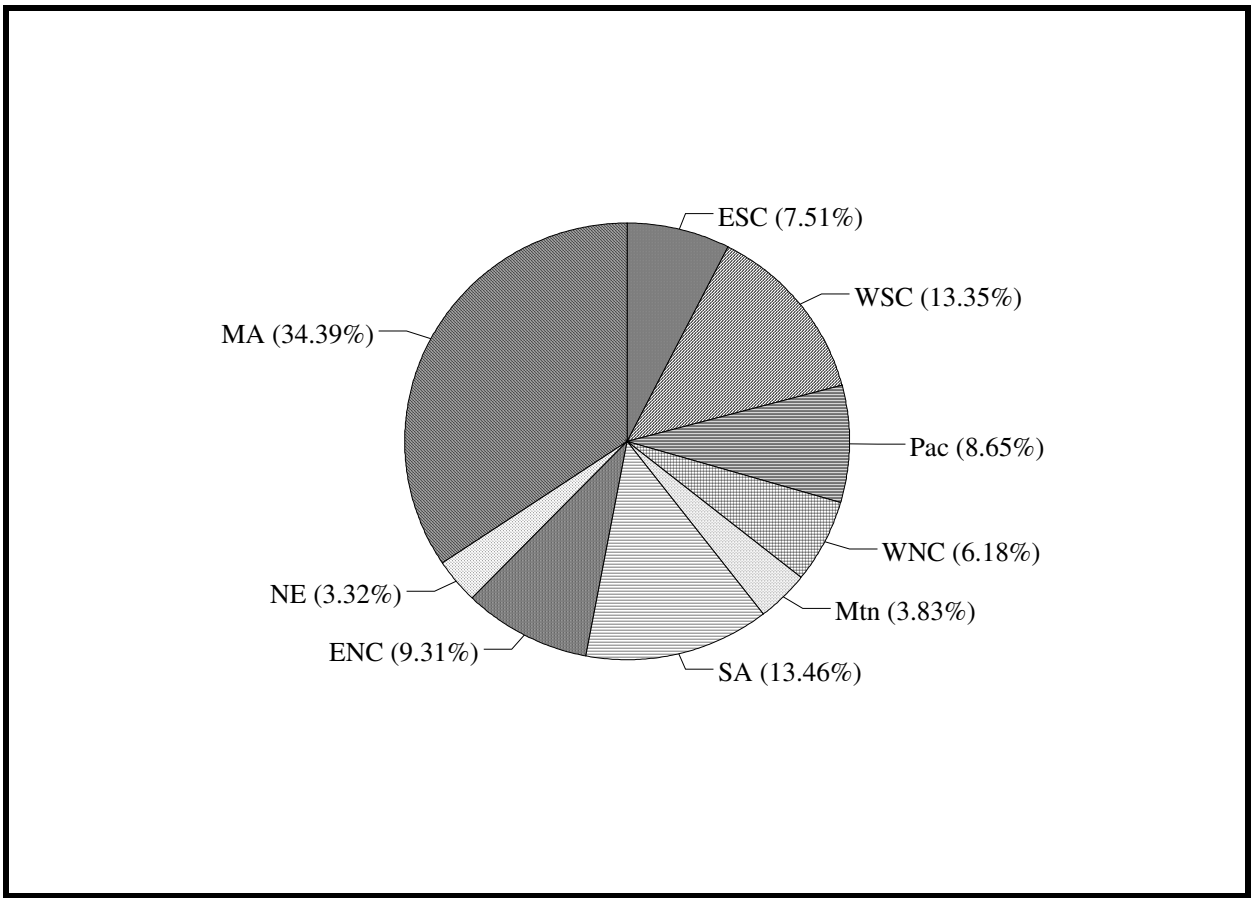

Fig. 3.7. Percentage of the National Corpus Comprised by Regional Corpora, 1950 Through 1959.

There were 20,407 cases from the East North Central regional corpus, and the East South Central region contributed 16,450 opinions to the national corpus. The Middle Atlantic had 75,358 reported cases for the 1950s. The regional corpora for the Mountain region and New England held 8,387 opinions and 7,279 opinions, respectively. The Pacific region reported 18,947 cases for this

time period. The South Atlantic region contributed 29,495 opinions to the national corpus, and the West South Central region sent 29,261 cases into the national corpus. The regional corpus for the final region, West North Central, held 13,553 opinions. The chart in Fig. 3.7 depicts the percentage of the national corpus comprised by each of the regional corpora for this decade.

1960 through 1969

There were a total of 277,451 opinions within the national corpus for the years 1960 through 1969. The median for this period was 21,885 opinions, and the mean was 30,828 opinions.

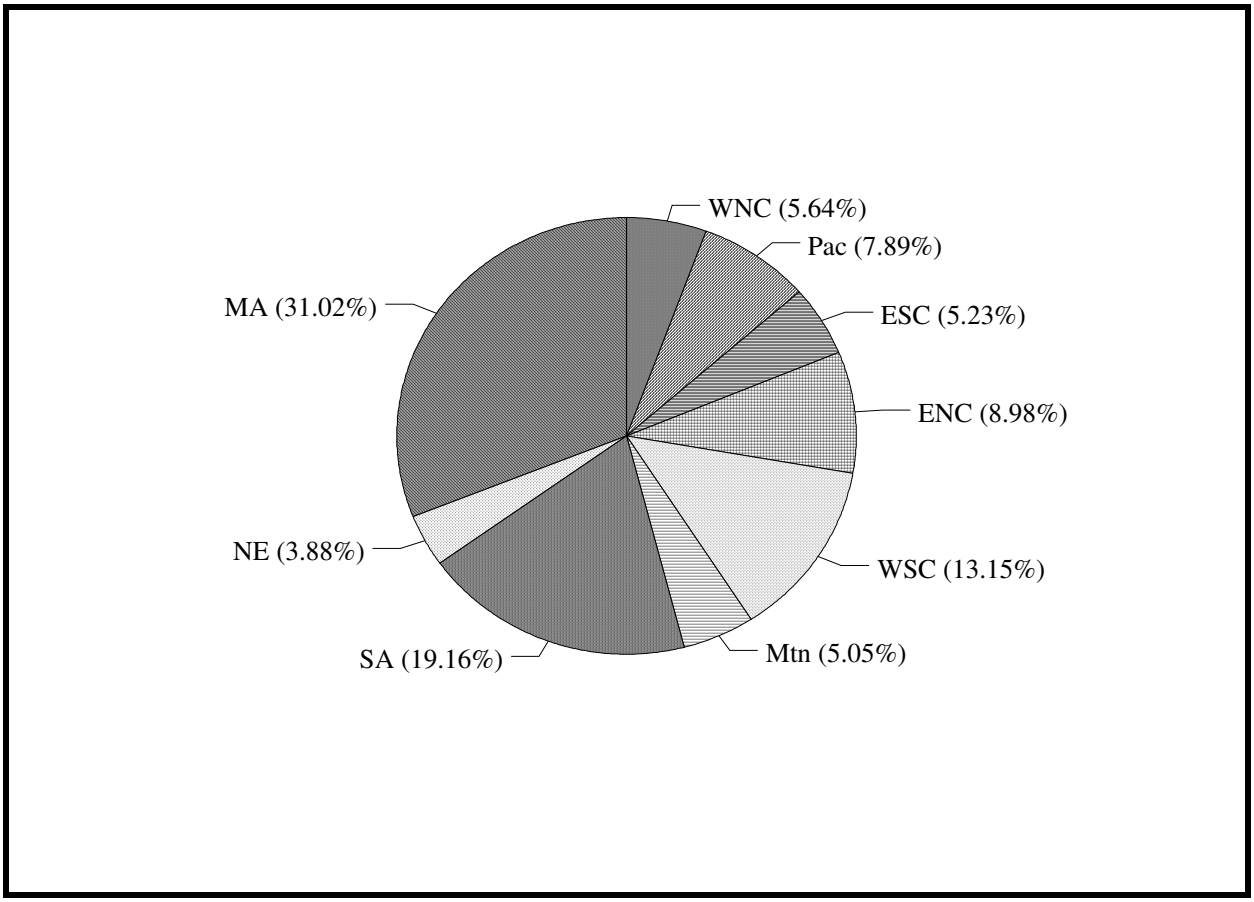

Fig. 3.8. Percentage of the National Corpus Comprised by Regional Corpora, 1960 Through 1969.

There were 14,508 opinions in the East South Central region corpus for the 1960s, and the East North Central regional corpus had 24,913 cases. The Middle Atlantic region sent 86,056 opinions into the national corpus, and the Mountain region 14,023 cases. New England's regional corpus for this decade contained 10,755 cases, while the regional corpus for the Pacific region contained 21,885. The South Atlantic region contributed 53,173 opinions to the national corpus. The West North Central regional corpus contained 15,654 opinions, and the West South Central regional corpus 36,484 opinions.

The chart in Fig. 3.8 depicts the percentage of the national corpus comprised by each of the regional corpora for this decade.

1970 through 1979

There were a total of 489,658 in the national corpus for the years 1970 through 1979. The median and the mean for this period were 31,562 opinions and 54,406 opinions, respectively.

The East North Central regional corpus for the 1970s contained 50,144 opinions, and the East South Central region 25,352 opinions. The Middle Atlantic and Mountain regions contributed 130,156 and 24,690 opinions to the national corpus, respectively. New England's regional corpus for this decade contained 20,397 cases. The regional corpus for the Pacific region contained 31,562 opinions, and South Atlantic's regional corpus contained 113,064. The West North Central region sent 26,921 opinions into the national corpus, and the West South Central region contributed 67,372 cases for the same period.

The chart in Fig. 3.9 depicts the percentage of the national corpus comprised by each of the regional corpora for this decade.

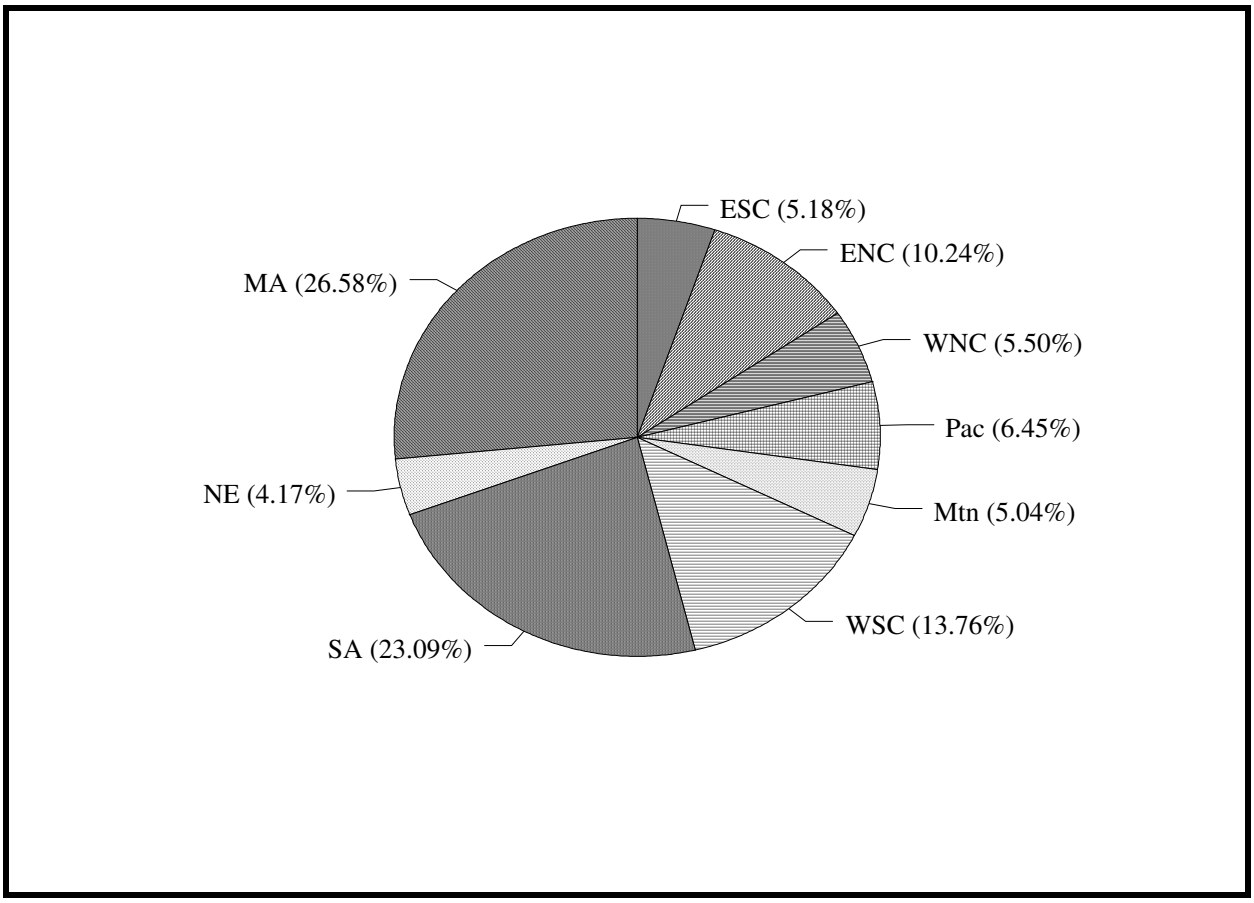

Fig. 3.9. Percentage of the National Corpus Comprised by Regional Corpora, 1970 Through 1979.

1980 through 1989

There were a total of 876,528 cases in the national corpus for this decade. The median was 59,672 cases, and the mean was 97,392 cases for the same period.

The East North Central region's corpus for this decade contained 151,216 opinions, and the regional corpus for the East South Central region held 50,059 judicial opinions. The Middle Atlantic region sent 216,731opinions into the national corpus for this decade, and the Mountain region contributed 32,409 for the 1980s. There were 29,357 opinions from New England, and the Pacific regional corpus held 59,672 cases. The South Atlantic regional corpus for this decade held

181,232 opinions. There were 100,024 and 55,828 opinions in the regional corpora for the West South Central and West North Central regions, respectively.

The chart in Fig. 3.10 depicts the percentage of the national corpus comprised by each of the regional corpora for this decade.

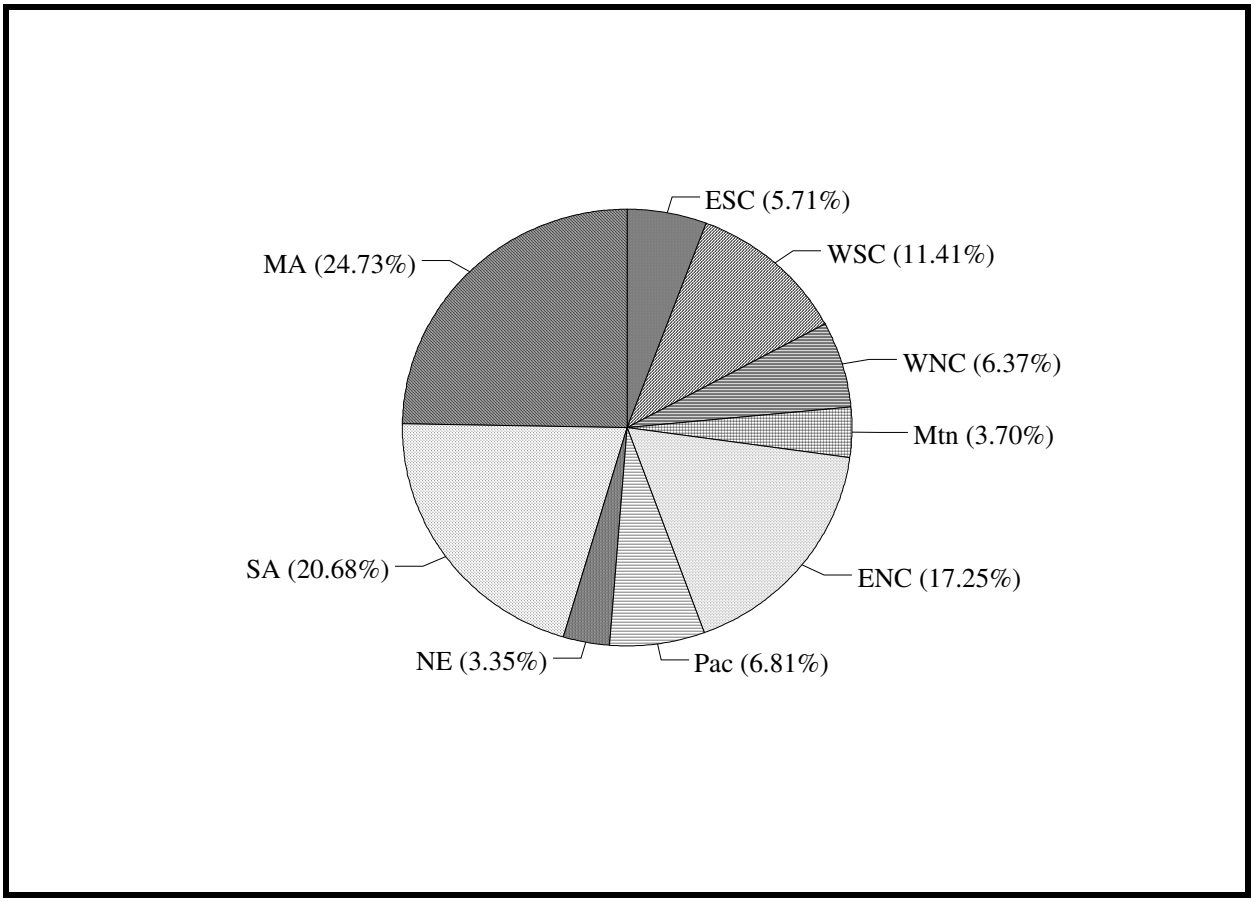

Fig. 3.10. Percentage of the National Corpus Comprised by Regional Corpora, 1980 Through 1989.

1990 through 1997

There were a total of 959,793 opinions in the national corpus for the years 1990 through 1997. The median for the same period was 60,463 opinions, and the mean was 106,644 opinions.

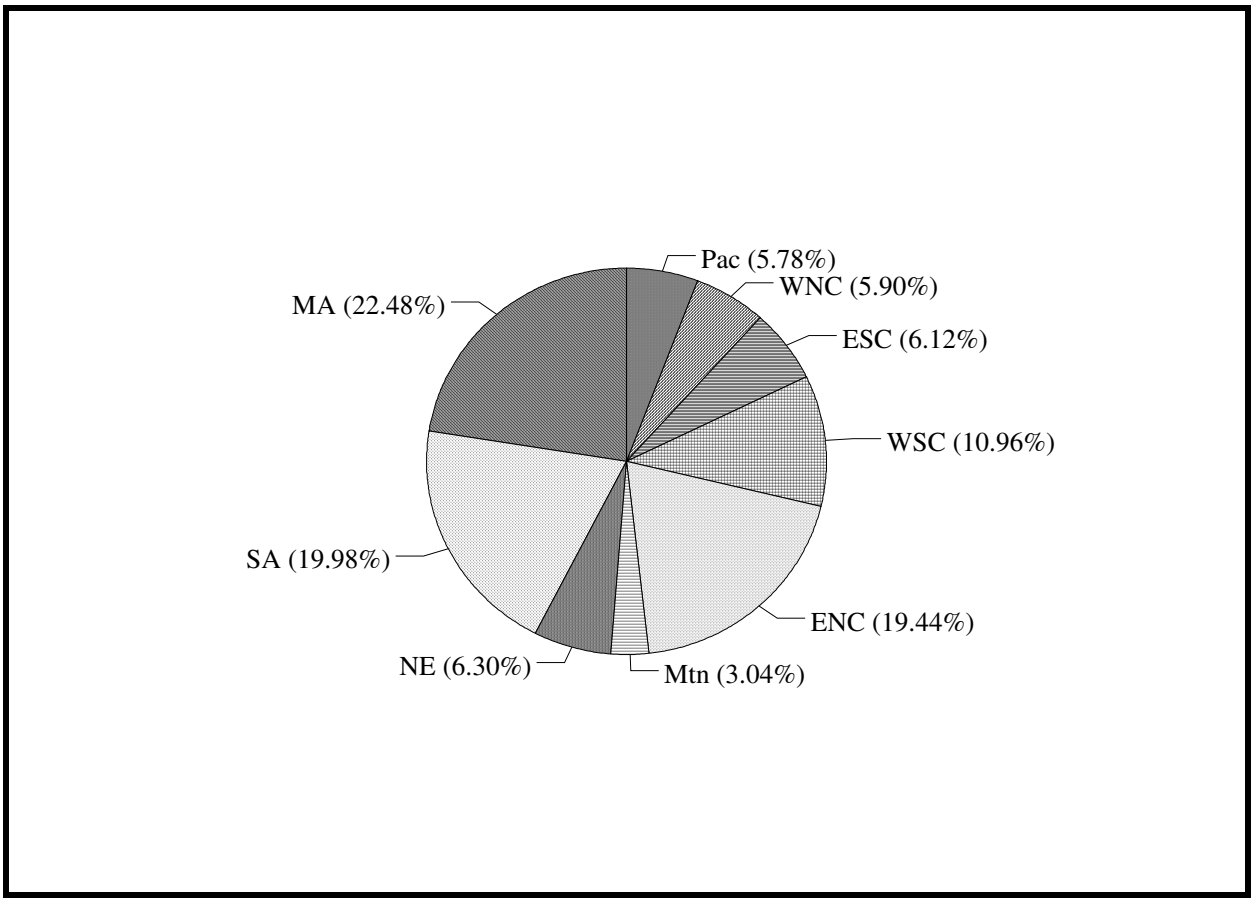

Fig. 3.11. Percentage of the National Corpus Comprised by Regional Corpora, 1990 Through 1997.

There were 58,750 opinions in the East South Central regional corpus for the years 1990 through 1997. The East North Central region had 186,580 cases for this same period. The Middle Atlantic region contributed 215,766 opinions to the national corpus for this decade, and the Mountain region sent 29,174 into the national corpus. New England cases numbered 60,463 for this decade, and the Pacific region's corpus held 55,454 cases. The South Atlantic region contributed 191,764 opinions to the national corpus. There were 105,212 and 56,630 opinions for the West South Central and West North Central regions, respectively. The chart in Fig. 3.11 depicts the percentage of the national corpus comprised by each of the regional corpora for this decade.

Data Collection and Tabulation

Computer searches were performed using the epithets listed in the *Description of the Variables* section above as keywords. From August 1998 to December 1998, computer searches were conducted in each appellate state court database described above. Additional follow-up searches were conducted in February 2000 and February 2002. The corpus was searched for opinions containing at least one of the epithets included in this study. The unit of analysis was the judicial opinion, and a single token of any of the linguistic types used for the keyword searches of the full-text databases satisfied the criterion for including that opinion in the data set. These keyword searches determined the total number of opinions containing each of the linguistic types chosen for study.

Readers will note that many of the terms are not exclusively racial or gender epithets. For example, the word "Spade" may be used as an epithet or it may simply refer to a garden tool or suit of cards. Similarly, the word "Bitch" may be used as an insult or may simply refer to a female dog. Additionally, when used as a verb rather than as a noun, "Bitch" means "to complain." A "Cracker" may be a snack or its use may constitute an insult. In other words, some attempt had to be made to control for polysemy, the fact that most terms in a natural language have more than one meaning. (D'Andrade 1995:36.) Therefore, after the initial keyword searches were performed, the data were reviewed in order to discard any "false positives," *i.e.* cases which contain a word chosen for study, yet did not use that word as an epithet.

Every attempt was made to exclude the "most slippery" (Atchison: 1994), *i.e.*, the most polysemous, words from the study. Thus, "Dyke" was excluded from the study because the keyword search for "Dyke" discovered many thousand opinions, yet the number of references to lesbians was *far* outweighed by the number of cases in which the plaintiff, defendant, or a witness

was named van Dyke. Similarly, "Cracker" was excluded because of the overwhelmingly large percentage of cases in which Nabisco or Cracker Barrel was a party.

Some epithets appeared in so few opinions there was no risk of false positives skewing the results of the searches. No attempt to adjust totals for these infrequently used terms was made. Of the remaining words which also carry frequently used nonepithet meanings, "Bitch" and "Spade" were reviewed in order to discard from the census all uses of those terms that were not used as epithets.

The word "Bitch" appeared in 7,525 opinions, and "Spade" appeared in 940 opinions. The raw totals stated above are far too numerous to examine every opinion to determine whether "Bitch" (or "Spade") was used as an epithet. Therefore, a random sample of opinions for "Bitch" (and "Spade," respectively) was examined in order to determine the percentage of cases which was "on point," *i.e.*, those cases that contained the word "Bitch" (or "Spade") *and* used that term as an epithet.[4]

The recommended sample size for the population of 7,525 opinions in which Bitch occurred is 95 cases. This sample size assumes a confidence level of .05 and a 10% margin of error, *i.e.*, one can expect with 95% certainty that the results found will be within 10% of the actual figures. (Weiss and Hassett 1982:229.) The recommended sample size for the population of 940 cases in which "Spade" appeared is 87 cases for the same confidence level and margin of error.

The random sample was determined by first placing the citation lists for the "Bitch" keyword searches in alphabetical order by state. The cases which appear on each state's citation list are listed in reverse chronological order. The individual cases within the lists were then assigned a number.

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[4] Even though the collocation "Son of a Bitch" is directed at men rather than women, it was not discarded as a false positive for the epithet "Bitch." The rationale for including Son of a Bitch is that the phrase is typically used to insult a man by denigrating his mother. Thus, the gender insult is still directed toward the woman.

In other words, the first case listed on the Alabama citation list for "Bitch" was assigned number 1. The remaining 287 Alabama cases containing "Bitch" were numbered 2 through 288. The 27 cases from Alaska which contained "Bitch" were numbered 289 through 216, and so on until all cases containing "Bitch" had been assigned a sequential number. The same process was repeated for "Spade."

After all opinions on the citation lists were assigned a sequential number, the random number generator function of Corel Quattro Pro 9.0 was used to generate a number between 1and 7,525 for "Bitch" and between 1 and 940 for "Spade." The sequentially numbered opinions which matched the number chosen by the random number generator were included in the random sample. The procedure was repeated until the required number of opinions for each respective sample size was reached. The opinions randomly chosen by computer were then examined to determine whether "Bitch" (or "Spade") was used as an epithet. Once the required number of opinions had been examined, the resulting percentage of false positives was used to adjust all raw totals for these two epithets.

While examining cases which contained "Spade," one case was *not* discarded as a false positive even though strictly speaking "Spade" was not used as an epithet. In that case, the defendant on trial was an African American man. The judge wrote in the opinion, "[Defendant and his family] had been at home playing a card game called 'Spades' continuously . . . on the night of the robbery . . ." (Goode v. Com., 234 S.E.2d 239, 240 (1977).) The case was not discarded as a false positive because the most plausible reason for the judge inserting quotation marks around the word Spade and making it explicit that Spades was a card game is that the judge was aware that "Spade" could be interpreted as an epithet when used in the context of a black defendant.

One particularly ironic case did contain epithets but was nonetheless rejected as a false positive for the epithet "Spade." In Ware v. State, 217 S.W. 946 (1920), a white man used a spade

handle to assault a black man. According to one witness, the white man brandished the spade handle at the black man, and threatened to hit him. As the witness recounted the assault:

> Mr. Lawson [the white man] said, 'You black son of a bitch, I will just kill you now' . . . Mr. Lawson started to hit him again [but] . . . did not hit him because . . . the nigger shot him in the hand. (Ware, 947.)

Attempts to control for polysemy reduced the total number of epithets ultimately chosen for study to 19. The terms "Poor White Trash", "Cracker", "Dyke", "Cholo" and "Haole" were all excluded from the study.

The raw scores of opinions containing"Bitch" and "Spade" were adjusted by examining a random sample of opinions to determine what percentage of cases in that sample contained the lexical item which was to be included in the data set (Bitch or Spade as epithet), and what percentage contained of cases contained the non-offensive, homophones (bitch as dog or spade as garden tool) to the lexical items above. Examination of the random sample of cases containing "Bitch" indicated that the word was used in its pejorative sense as an epithet in slightly more than 95% of the cases. Examination of the random sample of cases containing "Spade" indicated that the word was used in its pejorative sense far less frequently, a total of just under 5% of the time. The other 95% of cases containing "Spade" referred to the garden tool or was used as a surname. Therefore, the raw scores of opinions containing"Bitch" were multiplied by .95 in order to adjust for cases which included that word, but not the lexical item included for study in this dissertation. Similarly, the raw score totals for "Spade" were multiplied by .05 to adjust for cases which were not on point for that epithet.

The total number of opinions containing "Chink", "Nip", "Spic(k)"and "Slant" were so small that no attempt to adjust for polysemy was deemed necessary. Despite attempts to control for polysemy, it is probable that some false positives remain within the data for the study. It is likely, however, that the extremely large size of the corpus and examination of randomly chosen opinions

ameliorated problems due to polysemy even if all false positives could not be eliminated. Table 3.1 lists all epithets finally included in this study.

Table 3.1

Alphabetical Listing of All Linguistic Types Within the Lexical Variable.

Beaner	Cracker	Gringo	Nip	Spic/Spick
Bitch	Darky/ie	Honky/ie	Nigger	Slut
Coon	Dyke	Jap	Redneck	Wetback
Chink	Fag/Faggot	Jungle Bunny	Slant	
Cholo	Gook	(Male) Chauvinist (Pig)	Spade	

Treatment of the Data

This section details the methods used to analyze the data which are presented in Chapter 4. This section is divided into 4 subsections, one for each null hypothesis.

NH 1.0: Assessing Geographic Variation

The first null hypothesis assessed geographic variation in epithet use. The dependent variable was the geographic region, and the independent variables were time and lexical choice. The lexical variable was controlled by summing totals for all opinions within each region which contained at least one of the 19 epithets under study, giving one total for overall epithet use. The time variable was controlled by examining only one decade at a time.

After regional scores for the total number of opinions containing at least one epithet had been determined for each decade, the frequency of epithet use was then computed and expressed as a proportion, rounded to four decimal places. The proportion was determined by dividing the total

number of opinions within a region which contained at least one epithet by the size of the corpus. For example, if a regional corpus for a given decade contained 16,280 opinions, and there were 212 opinions in which at least one epithet appeared, then frequency of epithet use can be expressed as .0130 for that decade and region. In other words, at least one epithet is used in approximately 130 opinions per ten thousand opinions for the region and decade studied.

Once the regional rates of epithet usage were computed, standard measures of descriptive statistics were then used to describe the data set. Frequency rates for epithet use were compared by region, and results were sorted by rank from high to low for each region. The software program Corel Quattro Pro 9.0 was used for all quantitative descriptions and analyses.

NH 2.0: Assessing Lexical Variation

The second null hypothesis assessed lexical variation in epithet use, *i.e.*, do one or more specific epithets appear more frequently than others? The dependent variable was lexical choice, and the independent variables were time and geographic region. The time variable was controlled by examining epithet use only one decade at a time. The geographic variable was controlled by summing the regional totals for epithet use to obtain one national total for each of the 19 individual epithets in this study.

Once the total number of opinions containing each of the 19 epithets had been compiled, standard measures of descriptive statistics were used to describe the data set. Preference for one epithet over another was determined by comparing the relative frequencies of the epithets.

NH 3.0: Assessing Variation Over Time

Null Hypothesis 3.0 assessed variation in epithet use over time. The dependent variable was time, the 10 decades encompassed in this study. The independent variables were geographic region

and lexical choice. The lexical variable was controlled by summing totals for all opinions in the national corpus which contained at least one of the 19 epithets in this study. The geographic variable was controlled by summing regional totals for overall epithet use to obtain one figure for the nation.

After the national score for the total number of opinions containing at least one epithet had been determined for each of the 10 decades, frequency of epithet use for each decade was computed and expressed as a proportion, rounded to four decimal places. The proportion was determined by the same method described in the "*Assessing Geographic Variation*" subsection above. Once the national rates of epithet usage were computed for each decade, standard measures of descriptive statistics were used to describe the data set. Frequency rates for epithet use were compared by decade, and results were plotted on a line graph.

NH 4.0: Comparing Use of Profanity and Use of Epithets

The final null hypothesis tested the theory that racial and gender epithets are becoming increasingly taboo at the same time that profanity is becoming less taboo. Nearly three times as many linguistic types were included for study in this dissertation than in the earlier taboo studies on profanity (19 versus 7 linguistic types, respectively). Comparison of the overall frequency rates for profanity and for epithets would not have resulted in an accurate assessment of the relationship between the two data sets. Therefore, it was determined to compare the mean of the frequency rates for the two most prevalent linguistic types from each data set. Limiting comparison to the two most numerous exemplars of profane taboo words and the two most numerous exemplars of epithets serves a minimum of four purposes.

First, the linguistic types which appear most frequently are likely to be the most "prototypical" members of each data set. As used herein, the prototypical members of a data set are

"the clearest cases of membership [within a category] defined operationally by people's judgments of goodness of membership in the category." (Rosch 1978:35-36, quoted in D'Andrade 1995:118.) In other words, when asked to give an example of an epithet, speakers with communicative competence will think of and offer the prototypical members of the category before the fringe members of that category. Speakers might differ on whether some linguistic types in Table 3.1 should be considered epithets, but few speakers would contend that a prototypical member of the "epithet" category was not an epithet.[5]

Second, the two linguistic types chose for each data set—"Shit" and "Fuck" for the profane terms, and "Nigger" and "Bitch" for epithets—include terms which many speakers with communicative competence would consider a "maximally taboo" (Crystal 1987:61) representative for each data set. Third, in addition to the maximally taboo representative for each data set, there is a more prevalent linguistic type which many speakers with communicative competence would regard as considerably less taboo, yet nonetheless representative of their respective classes. Lastly, limiting the comparison to the same number of members for each data set ensures a more accurate comparison of the frequency rates for the two data sets. Mean frequency rates for epithet use and mean frequency rates for use of profanity were compared by decade, and results were plotted on a line graph. Finally, the correlation coefficient was computed for the two sets of scores to determine the strength and direction of relationship, if any, between the two.

Reliability and Validity

Reliability and validity establish the credibility, and hence the usefulness, of research. Validity relates to the accuracy of the researcher's measurements, *i.e.*, did the researcher really

[5] Prototype theory plays a greater role in the qualitative analysis portion of this study. For a more extensive discussion of prototypicality, see Chapter 5.

measure what he purports to have measured? Reliability, on the other hand, focuses on how accurately the study can be replicated. (See generally, Creswell 1994; Trochim 2000.) There are several potential threats to both reliability and validity in social science research. The steps taken to minimize the threats to reliability and validity of this dissertation are detailed below.

Reliability

The reliability of a study is determined by the degree to which the research findings can be replicated. Reliability is related to True Score Theory which states that every measurement is the sum of two components: the true score for a specific measure plus random error. (Trochim 2000.) A study which utilizes measurements without random error would be perfectly reliable. In other words, the study could be replicated 100 percent of the time. A study which utilizes measures which consist solely of random error has no reliability, and could not be replicated except through random error. Broadly speaking, there are two types of reliability, internal and external. Internal reliability relates to the extent that data collection, analysis, and interpretations are consistent given the same conditions. In contrast, external reliability relates to whether or not independent researchers can replicate the study.

The research design of this dissertation and the utilization of a census rather than a sample reduced or eliminated the need for most of the traditional measures used to estimate reliability.[6] One traditional estimate of reliability was germane here, inter-rater reliability. Inter-rater reliability stresses the importance of consistency in data collection, ensuring that all researchers gather data in the same manner. Although the author performed the majority of data collection (*i.e.* keyword searches) himself, others did provide valuable assistance. Because search results from Westlaw are

[6] *E.g.*, Test-Retest, Equivalent or Alternate-Form, Split-Halves, Cronbach's alpha.

accompanied by a copy of the query entered for the search, inter-rater reliability was easily met by reviewing the queries the research assistants had entered.

The principal source of random error in this dissertation—*i.e.* the greatest threat to reliability—was in data entry. Possibilities for operator error existed both in the keyword searches which form the basis for this dissertation, and again when entering the results of those searches into spreadsheets to analyze the data. Previous studies of the accuracy of data entry operators have established error rates of less than 1% for keypunch operators or other workers utilizing numeric key pads (Klemmer 1962, 1964; Bradley & Longman 1973) and from 1% to 4% for typists. (Grudin 1983; Mathias, MacKenzie & Buxton 1996.)

Polysemy also may impact reliability. To the extent that opinions were included in the data set of opinions containing epithets even though those opinions contained a nonepithet use of the words under study, reliability may be impaired. The extensive attempts to control for polysemy described above, however, likely ameliorated this prospective threat to reliability.

One final factor which may have a negative impact on reliability is the problem of "double counting" opinions. For example, when assessing the number of opinions containing the epithet "Spade," a case might be counted once. Then, if that same opinion also contained the epithet "Bitch," that case would once again be included in the total number of opinions containing an epithet. That is, one opinion containing many epithets could increase a regional score by two, three, or even more. This distinction does not matter insofar as comparisons of the epithets themselves are concerned, but double counting may have negatively impacted the comparisons between regional scores for total epithet use. To the extent that double counting affected the results of this study, the reliability may be impaired. Reading and close examination of many judicial opinions indicated that the problem of double counting did not appear to be prevalent enough to vitiate the results of this study, however.

Based on the methods and estimates above, it is not unreasonable to conclude that the results of this study have an acceptable degree of reliability.

Validity

Research methodologists typically identify several types validity. The various types of validity are divided into two broad categories, internal validity and external validity. External validity relates to whether the results of a study can be generalized from a sample to the population from which the sample was taken. Because the diachronic analysis portion of this dissertation utilizes a census rather than a sample, sampling bias, non-response bias, and other issues of external validity are rendered moot.

Internal validity addresses the question of whether the results of the study are due a manipulation of the variables in the study or are simply a result of measurement error. In short, internal validity asks the question, "Does the research instrument really measure what it is supposed to measure?" The types of internal validity most frequently identified are: face validity, content validity, criterion validity, and construct validity. (Creswell 1994; Trochim 2000; Weedman 1975.)

As its name implies, face validity relates to whether the methodology appears valid on its face. Content validity is similarly subjective, and checks "the operationalization against the relevant content domain for the construct." (Trochim 2000.) In other words, content validity relates to the accuracy with which the instrument measures the content being studied. Both face validity and content validity were established via peer and faculty review. A pilot study on the use of racial epithets in judicial opinions, and a series of studies using the same methodology to establish rates for the usage of profanity for the same genre were conducted at the University of Georgia. The pilot study and previous studies were reviewed by both fellow graduate students in the Linguistics

Program at the University of Georgia, members of the graduate faculty at that institution, and additional graduate students outside the discipline of linguistics.

Criterion Validity is determined by the degree that the research methodology can predict (predictive validity) or agree with (convergent validity) similar constructs. The essential component is reliable and valid external criteria. The final type of validity, construct validity, is concerned with the degree that the construct is measured. As applied to this dissertation, construct validity asks the question, "Did the keyword searches performed and the rates of epithet usage resulting from those searches accurately reflect the construct of 'taboo-ness' of the linguistic types in this dissertation?"

Although the specific methodology and constructs used in this study had not been applied previously, analogous "keyword search" designs have been used. (Lester 1996; Kennedy 2002.) Unfortunately, despite widespread use of the term "taboo," empirical data regarding the construct of "taboo-ness" is nonexistent.

Based on the steps taken to ensure rigor in the methodology to the greatest degree possible, it is not unreasonable to conclude that the methodology used herein is a valid measure of the relative taboo-ness of each of the epithets included for study.

Summary

This chapter presented the methods and procedures used for the diachronic, quantitative analysis portion of this dissertation. The specific study design used for the diachronic analysis is a retrospective review of judicial opinions. The basic premise of the study design is that how frequently an epithet appears within judicial opinions may be used as a measure of how taboo that epithet is. As an epithet becomes increasingly taboo, judges will use circumlocutions or euphemisms to avoid using that epithet, and it will appear in fewer judicial opinions.

In the following chapter, a corpus of over four million opinions will be searched for opinions containing at least one of 19 specific epithets. The tools and methods of descriptive statistics described in this chapter will be used to analyze the data collected, and determine whether there are any lexical, geographical, or temporal patterns of distribution. Lastly, the frequency of usage for racial epithets will be compared to the rate of usage of profanity to test the theory that epithets are replacing profanity as the new linguistic taboos.

DIACHRONIC RESULTS AND ANALYSIS

As set forth in Chapter 1 and Chapter 3, the purpose of the first, diachronic phase of this study is to use quantitative analyses to test the theory that our culture is undergoing a shift in linguistic taboos from traditional taboo words dealing with sex, the body, or bodily functions to newer taboos of racial and gender epithets. This chapter contains the results of the quantitative analyses which were described n the preceding chapter. These quantitative analyses will test the hypothesis that U.S. culture is currently undergoing a shift in linguistic taboos from earlier taboos dealing with sex, the body, and bodily functions to newer taboos of racial and gender epithets. This chapter has been divided into seven sections, corresponding to each of the null-hypotheses, plus an analysis, and a final summary.

Geographic Variation: Presentation of Results

NH 1.0 ***For each of the decades encompassed in this study, there will be no significant difference in the rate of epithet usage among the nine regions.***

The first null hypothesis assessed geographic variation in epithet use. The dependent variable was the geographic region, and the independent variables were time and lexical choice. The lexical variable was controlled by summing totals for all opinions within each region which contained at least one of the 19 epithets under study, giving one total for overall epithet use. The time variable was controlled by examining only one decade at a time.

After regional scores for the total number of opinions containing at least one epithet had been determined for each decade, the frequency of epithet use was then computed and expressed as a proportion, rounded to four decimal places. The proportion is the number of opinions per 10,000

opinions which contained at least one epithet. Frequency rates for epithet use were compared by region, and the results were sorted by rank from high to low for each region.

The remainder of this section is subdivided into ten sub-sections, one sub-section for each decade of the twentieth century.

1900 Through 1909

The national corpus for the years 1900 through 1909 contained 205,865 opinions. Within this corpus, there were a total of 643 judicial opinions which contained at least one racial or gender epithet. Among all nine regions, the median number of opinions which contained at least one epithet was 44; the mean number of opinions which contained at least one epithet was just over 71 (71.44). These raw totals of opinions containing epithets translate to the following frequency rates of epithet usage: the median frequency rate of epithet usage was 25 judicial opinions per 10,000 opinions. The mean frequency rate among the nine regions for the years 1900 through 1909 was 33 opinions per 10,000. The highest rate of epithet usage among the regions for this decade was 105 opinions per 10,000, and the lowest rate of epithet usage was 7 per 10,000 opinions.

As can be seen in Table 4.1, the West South Central region[1] had the highest rate of epithet usage. Judges in the West South Central region included at least one epithet in 105 of every 10,000 judicial opinions published. This rate is over two and a half standard deviations from the mean (2.589) frequency rate for this decade. This is dramatically higher than any other region. In fact, all regions other than West South Central had rates of epithet usage which were within one standard deviation from the mean (SDM). The rate of epithet usage for the West South Central was so much higher than the other regions that the West South Central's rate was nearly two and a half times that

[1] The states of Arkansas, Louisiana, Oklahoma, and Texas.

of the second-highest region, the South Atlantic.[2] The difference between the West South Central region and the other eight regions can be easily seen in the chart in Fig. 4.1.

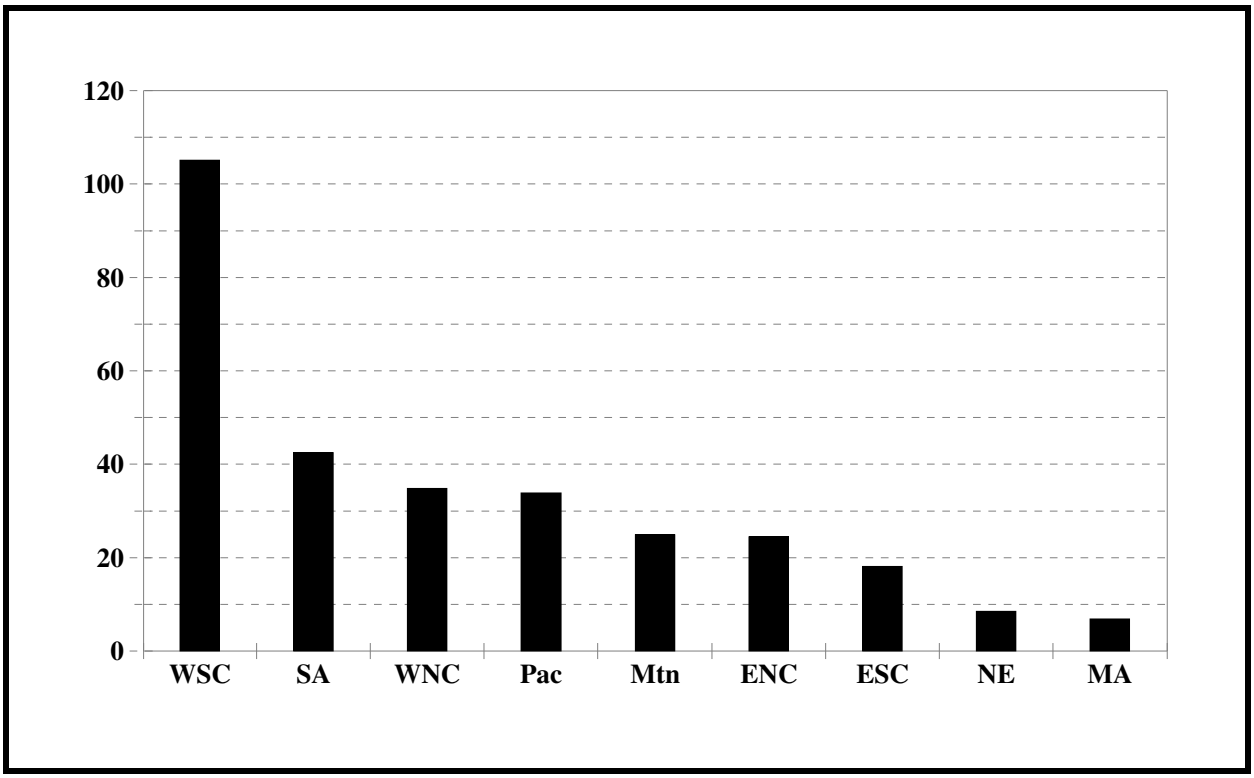

Fig. 4.1. Regional Rates of Epithet Use per 10,000 Opinions, 1900 - 1909.

The differences among the eight regions other than the West South Central was not as stark. All eight regions were within one SDM, and five of those regions—the South Atlantic, West North

[2] The states of Delaware, Florida, Georgia, Maryland, North and South Carolina, Virginia, and West Virginia.

Central,[3] Pacific,[4] Mountain,[5] and East North Central[6] regions—were even within .5 SDM. Even though the rate of epithet usage was close for all eight regions, there was nonetheless a grouping among the eight. New England[7] and the Middle Atlantic region[8] each had a rate of epithet usage markedly lower than the other regions. The rates for New England (8 opinions per 10,000 which contained an epithet) and for the Middle Atlantic (7 opinions per 10,000) were less than half that of the next-lowest region.

Null Hypothesis 1.0 (NH 1.0) posited that there would be no significant difference in the rate of epithet usage among the nine regions. As set forth above, however, there clearly were differences in the rates of epithet usage for the nine regional divisions in the U.S. Therefore, for the decade of 1900 through 1909, NH 1.0 was rejected.

1910 Through 1919

The national corpus for the years 1910 through 1919 contained 254,732 opinions. Within this corpus, there were 827 judicial opinions which contained at least one racial or gender epithet. Among all nine regions, the median number of opinions which contained at least one epithet was 43; the mean number of opinions which contained at least one epithet was 91.89. These raw totals

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[3] The states of Iowa, Kansas, Minnesota, Missouri, Nebraska, and North and South Dakota.

[4] The states of Alaska, California, Hawaii, Oregon, and Washington.

[5] The states of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming.

[6] The states of Indiana, Illinois, Michigan, Ohio, and Wisconsin.

[7] The states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

[8] The states of New Jersey, New York, and Pennsylvania.

of opinions containing epithets translate to the following frequency rates of epithet usage: the median frequency rate of epithet usage was 28 judicial opinions per 10,000 opinions. The mean frequency rate among the nine regions for the years 1910 through 1919 was 32 opinions per 10,000. The highest rate of epithet usage among the regions for this decade was 103 opinions per 10,000, and the lowest rate of epithet usage was 5 per 10,000 opinions.

The results for the second decade of the twentieth century largely recapitulates the results from 1900 through 1909. (See Fig. 4.2.) Once again, the West South Central region had the highest rate of epithet usage, while New England and the Middle Atlantic regions had the lowest rates of usage. The usage rates for the remaining regions were all clustered relatively close to the mean.

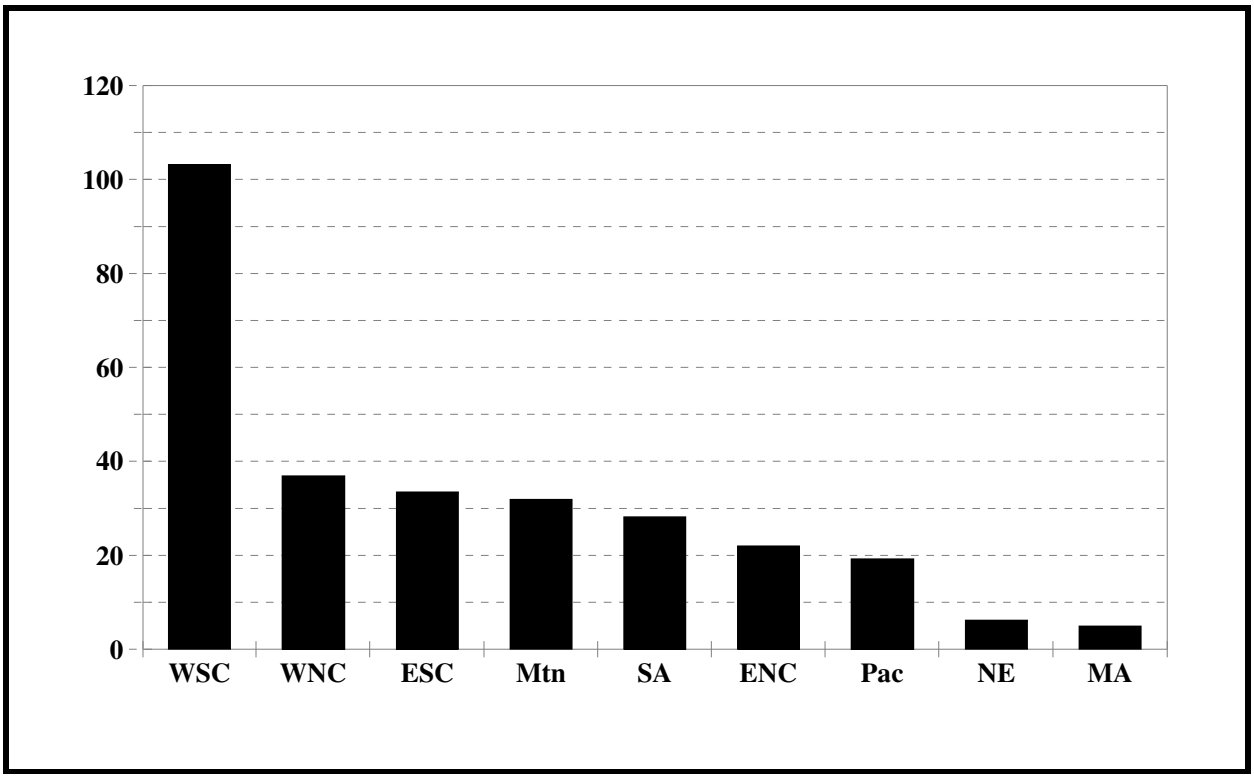

Fig. 4.2. Regional Rates of Epithet Use per 10,000 Opinions, 1910 - 1919.

Judges in the West South Central region included at least one epithet in 103 of every 10,000 judicial opinions published. This rate is once again well over two and a half SDM (2.603) for this decade. For the second decade in a row, the rate of epithet usage for the West South Central region was considerably higher than any other region. The West South Central region's usage rate of 103 opinions per 10,000 is nearly 2.8 times higher than the rate for the West North Central region, the region with the next-highest rate of epithet usage. The West North Central region exhibited a rate of 37 opinions per 10,000. The difference between the West South Central region and the other eight regions is starkly apparent in the chart in Fig. 4.2.

As with the first decade, New England and the Middle Atlantic both had rates of epithet usage noticeably below all other regions. Although both of these regions exhibit frequency rates within one standard deviation from the mean (.933 and .979 SDM, respectively), the usage rates for these two regions were appreciably lower than for the five regions clustered more tightly about the mean. The rates of epithet usage for the East South Central, Mountain, South Atlantic, East North Central, and Pacific regions were 33, 32, 28, 22, and 19 opinions per 10,000, respectively.

Once again, due to the clear differences in the rates of epithet usage among the nine regional divisions in the U.S., NH 1.0 was rejected for the decade of 1910 through 1919.

1920 Through 1929

The national corpus for the years 1920 through 1929 contained 272,014 opinions. Within this corpus, there were a total of 750 judicial opinions which contained at least one racial or gender epithet. Among all nine regions, the median number of opinions which contained at least one epithet was 47; the mean number of opinions which contained at least one epithet was 83.33. These raw totals of opinions containing epithets translate to the following frequency rates of epithet usage: the median frequency rate of epithet usage was 29 judicial opinions per 10,000 opinions. The mean

frequency rate among the nine regions for the years 1920 through 1929 was 28 opinions per 10,000. The highest rate of epithet usage among the regions for this decade was 64 opinions per 10,000, and the lowest rate of epithet usage was 3 per 10,000 opinions.

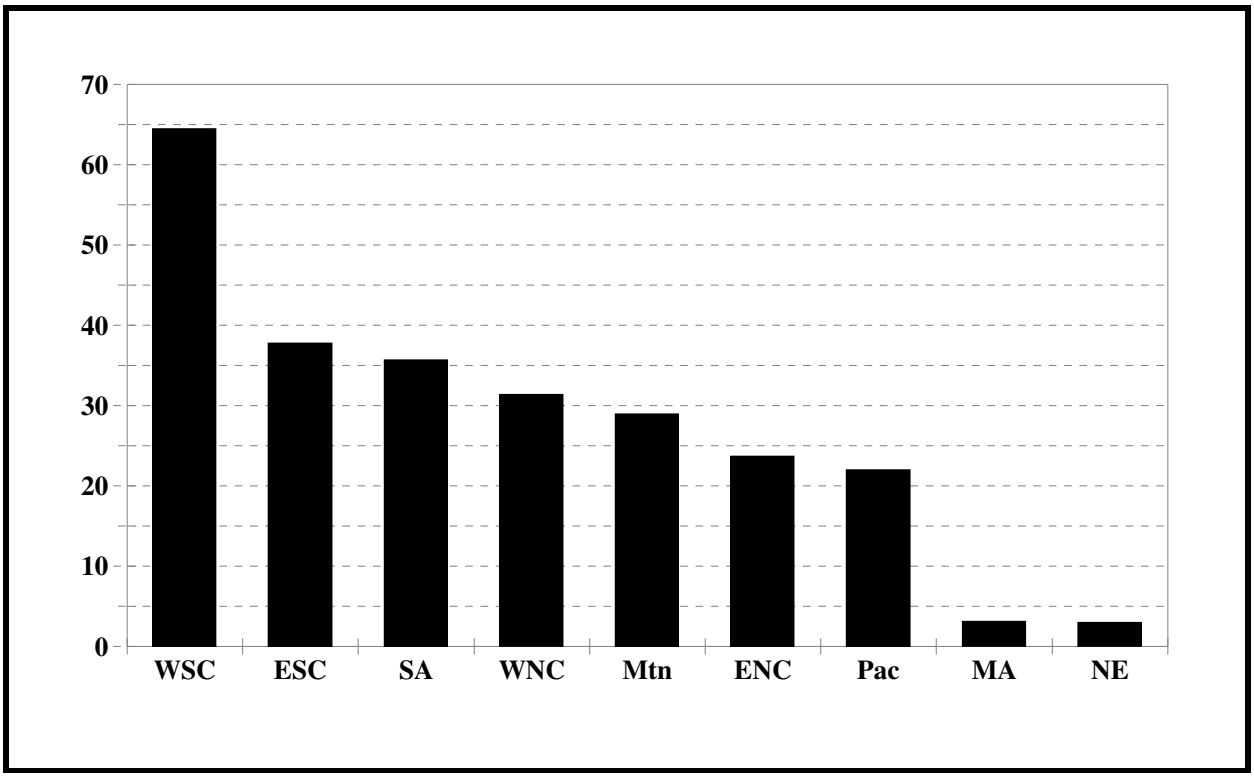

Fig. 4.3. Regional Rates of Epithet Use per 10,000 Opinions, 1920 - 1929.

For the third decade in a row, the West South Central region led all other regions in the frequency of epithet use. The West South Central's frequency rate dropped from its earlier highs in the 1900s and 1910s, but at 64 opinions per 10,000, the West South Central's rate was still nearly 1.7 times higher than the next-highest region, the East South Central region. The East South Central region had a frequency rate of 38 opinions per 10,000, closely followed by the South Atlantic region with a rate of 36 opinions per 10,000.

As was the case for the first two decades of the century, New England and the Middle Atlantic regions had the lowest frequency rates, both at 3 opinions per 10,000. Their scores mark the third decade in a row in which they exhibited the lowest frequency rates. The 1920s mark the first time that the frequency rates for both the Middle Atlantic region and New England fell outside one SDM, however. The frequency rates for the Middle Atlantic region and New England were 1.400 and 1.406 SDM respectively. Owing in a large part to the tremendous difference in the size of the corpus for each region, however, there were eight times the total number of opinions which contained at least one epithet for the Middle Atlantic region than for New England.[9]

Once again, all regions save the West South Central, New England and Middle Atlantic had frequency rates which were well within one SDM. In fact, the five regions clustered about the mean had frequency rates which ranged from only .067 SDM for the Mountain region to .567 SDM for the East South Central region. The scores for all regions are in graph form in Fig. 4.3.

For the third decade in a row, the frequency rates for the West South Central, Middle Atlantic, and New England regions necessitated that NH 1.0 be rejected.

1930 Through 1939

The national corpus for the years 1930 through 1939 contained 285,427 opinions. Within this corpus, there were a total of 570 judicial opinions which contained at least one racial or gender epithet. Among all nine regions, the median number of opinions which contained at least one epithet was 48; the mean number of opinions which contained at least one epithet was 63.33. These raw totals of opinions containing epithets translate to the following frequency rates of epithet usage: the

[9] The size of the corpus for the Middle Atlantic region was over 76,000 opinions, while the size of the corpus for New England was just under 10,000 opinions.

median frequency rate of epithet usage was 27 judicial opinions per 10,000 opinions. The mean frequency rate among the nine regions for the years 1930 through 1939 was 24 opinions per 10,000. The highest rate of epithet usage among the regions for this decade was 45 opinions per 10,000, and the lowest rate of epithet usage was 4 per 10,000 opinions.

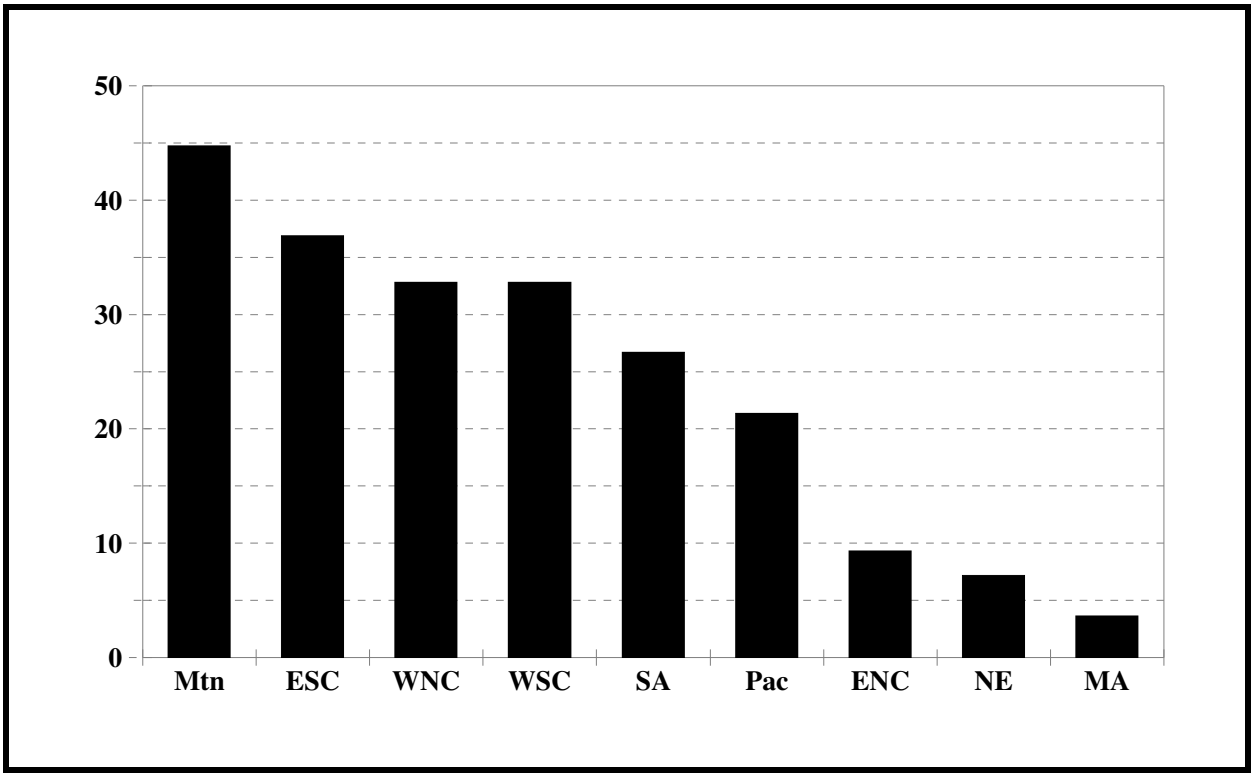

Fig. 4.4. Regional Rates of Epithet Use per 10,000 Opinions, 1930 - 1939.

The results for the 1930s mark the first time that the West South Central region did not exhibit the highest rate of epithet use. The Mountain region had the highest rate of epithet usage for this decade, at a rate of 45 opinions per 10,000. The 1930s also marks the first decade in which the highest frequency rate fell *within* 2 SDM; the Mountain region's frequency rate was 1.524 SDM. The Mountain region was the only region to have a frequency rate which was greater than one SDM

for this decade. The East South Central region's frequency rate of 37 opinions per 10,000 was not far removed from this number at .948 SDM, however.

The West North Central region, West South Central, South Atlantic, and Pacific regions all had frequency rates relatively close to the mean. (See Fig. 4.4). Their frequency rates were 33 opinions per 10,000 for both the West North Central region and West South Central, while the South Atlantic region and Pacific region exhibited frequency rates of 27 and 21 opinions per 10,000, respectively. These scores represent a low of .191 SDM for the Pacific region to a high of .651 SDM for the West North Central region.

For the fourth decade in a row, the regions of New England and the Middle Atlantic exhibited the lowest rates of epithet usage. New England had a frequency rate of 7 opinions per 10,000, while the Middle Atlantic's rate was 4 opinions per 10,000. This decade also marks the fourth decade in a row in which the Middle Atlantic region had the lowest overall rate of epithet usage.[10] At 9 opinions per 10,000, the East North Central region was the only other region with a frequency rate which was more than one SDM (1.071).

The first null hypothesis, which posited there would be no significant difference in the rate of epithet usage among the nine regions, had to be rejected for the years 1930 through 1939.

1940 Through 1949

The national corpus for the years 1940 through 1949 contained 200,283 opinions. Within this corpus, there were a total of 580 judicial opinions which contained at least one racial or gender epithet. Among all nine regions, the median number of opinions which contained at least one epithet

[10] Although New England and the Middle Atlantic regions both had the same frequency rate for the 1920s, New England's score was .006 standard deviations further from the mean than the score for the Middle Atlantic.

was 51; the mean number of opinions which contained at least one epithet was 64.44. These raw totals of opinions containing epithets translate to the following frequency rates of epithet usage: both the median frequency rate and the mean rate of epithet usage was 34 judicial opinions per 10,000 opinions for this decade. The highest rate of epithet usage among the regions for this decade was 57 opinions per 10,000, and the lowest rate of epithet usage was 5 per 10,000 opinions.

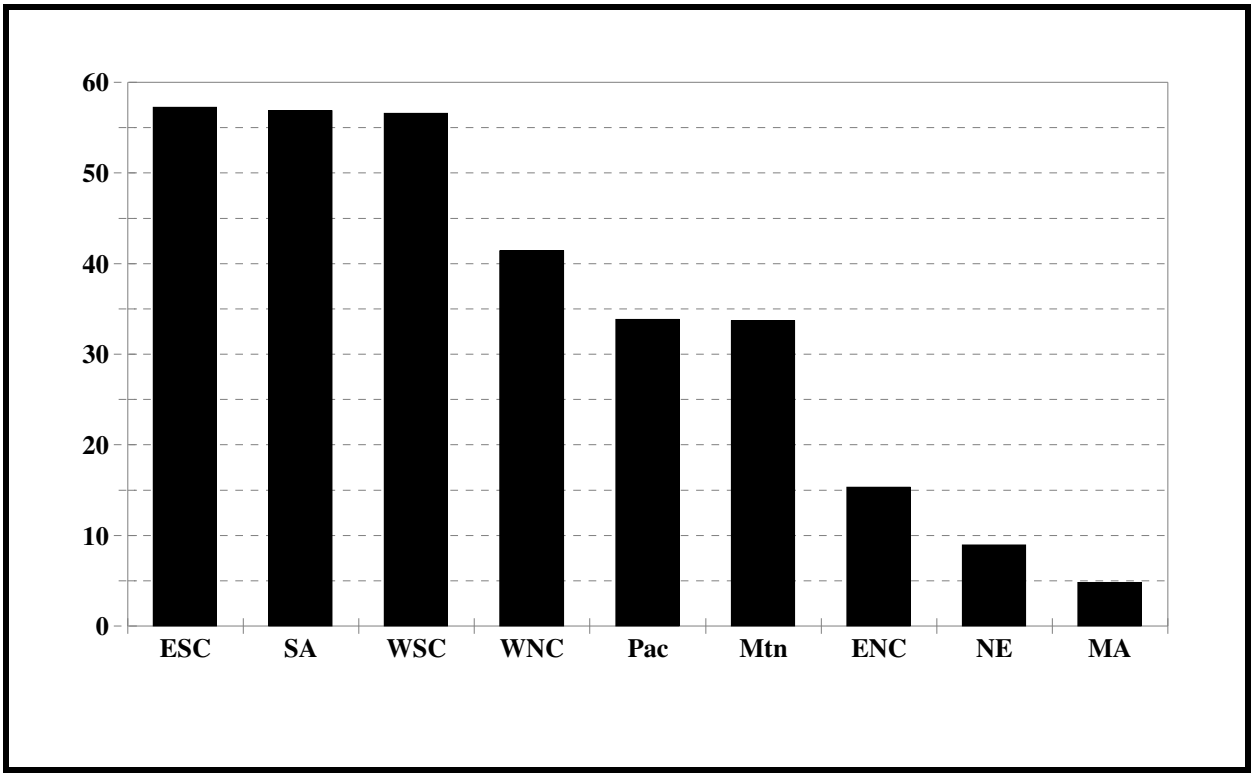

Fig. 4.5. Regional Rates of Epithet Use per 10,000 Opinions, 1940 - 1949.

As Fig. 4.5 illustrates, three regions had rates of epithet usage which was significantly higher than other regions. The East South Central, South Atlantic, and West South Central regions all had a frequency rate of 57 opinions per 10,000 which contained at least one epithet. Owing to the different sizes of the corpora which were searched for each region, the frequency rates for all three lay a different number of standard deviations from the mean. The frequency rates for all three

regions, however, lay more than one SDM. The rate for the East South Central region was 1.171 SDM, while the rates for the South Atlantic and West South Central regions were 1.152 and 1.136 SDM, respectively.

As with every preceding decade of the twentieth century, the regions of New England and Middle Atlantic were significantly lower than all other regions. New England had a frequency rate of 9 opinions per 10,000 which contained at least one epithet, a rate which was 1.294 SDM. The lowest rate of epithet usage among the regions once again belonged to the Middle Atlantic, which had a rate of 5 opinions per 10,000. The frequency rate for the Middle Atlantic was 1.506 SDM. Though the frequency rate for the East North Central region was within one SDM (.968), its usage rate of only 15 opinions per 10,000 was markedly lower than the frequency rates of all regions save New England and the Middle Atlantic.

Three regions which were clustered relatively tightly about the mean: West North Central, Pacific, and Mountain. A frequency rate of 34 opinions per 10,000 for both the Pacific and Mountain regions lay .023 and .030 SDM, respectively. The West North Central region's frequency rate of 41 opinions per 10,000 was .362 SDM. As with every previous decade, NH 1.0 was rejected for the years 1940 through 1949.

1950 Through1959

The national corpus for the years 1950 through 1959 contained 219,137 opinions. Within this corpus, there were a total of 486 judicial opinions which contained at least one racial or gender epithet. Among all nine regions, the median number of opinions which contained at least one epithet was 44; the mean number of opinions which contained at least one epithet was 54. These raw totals of opinions containing epithets translate to the following frequency rates of epithet usage: the median frequency rate of epithet usage was 26 judicial opinions per 10,000 opinions. The mean

frequency rate among the nine regions for the years 1950 through 1959 was also 26 opinions per 10,000. The highest rate of epithet usage among the regions for this decade was 60 per 10,000, and the lowest rate was 6 per 10,000.

Once again the East South Central region's frequency rate (60 per 10,000) was the highest among the nine regions. Although this frequency rate is only slightly higher than East South Central's frequency rate for the 1940s when it also had the highest frequency rate, its rate for the 1950s lies further from the mean than did its rate for the 1940s. The highest frequency rate for this decade once again lies more than 2 SDM; the rate for the East South Central was 2.047 SDM.

As was the case with every preceding decade, New England and Middle Atlantic regions once again exhibited the lowest frequency rates in the nation. The frequency rate for New England (7 per 10,000) lay 1.204 SDM, and the rate for the Middle Atlantic region (6 per 10,000) was even further from the mean, at 1.268 SDM.

The frequency rates for the remaining six regions all fell within 1 SDM, though the frequency rates for four of these regions did cluster into one loose grouping. (See Fig. 4.6.) The frequency rates for the Pacific (31 opinions per 10,000), West North Central (30 opinions per 10,000), Mountain (26 opinions per 10,000), and South Atlantic (24 opinions per 10,000) regions were the third through six-highest in the nation, respectively. The frequency rate for the Pacific region was .260 SDM, and the rates for the West North Central, Mountain, and South Atlantic regions lay .238 SDM, .010 SDM, and .164 SDM, respectively.

As can be seen in Fig. 4.6, the rates for the West South Central (42 opinions per 10,000) and East North Central regions (13 opinions per 10,000) were both within one SDM, though each lay at opposite ends of the distribution. The rate for the West South Central was .944 SDM above the mean, and the rate for the East North Central region was .842 SDM below the mean.

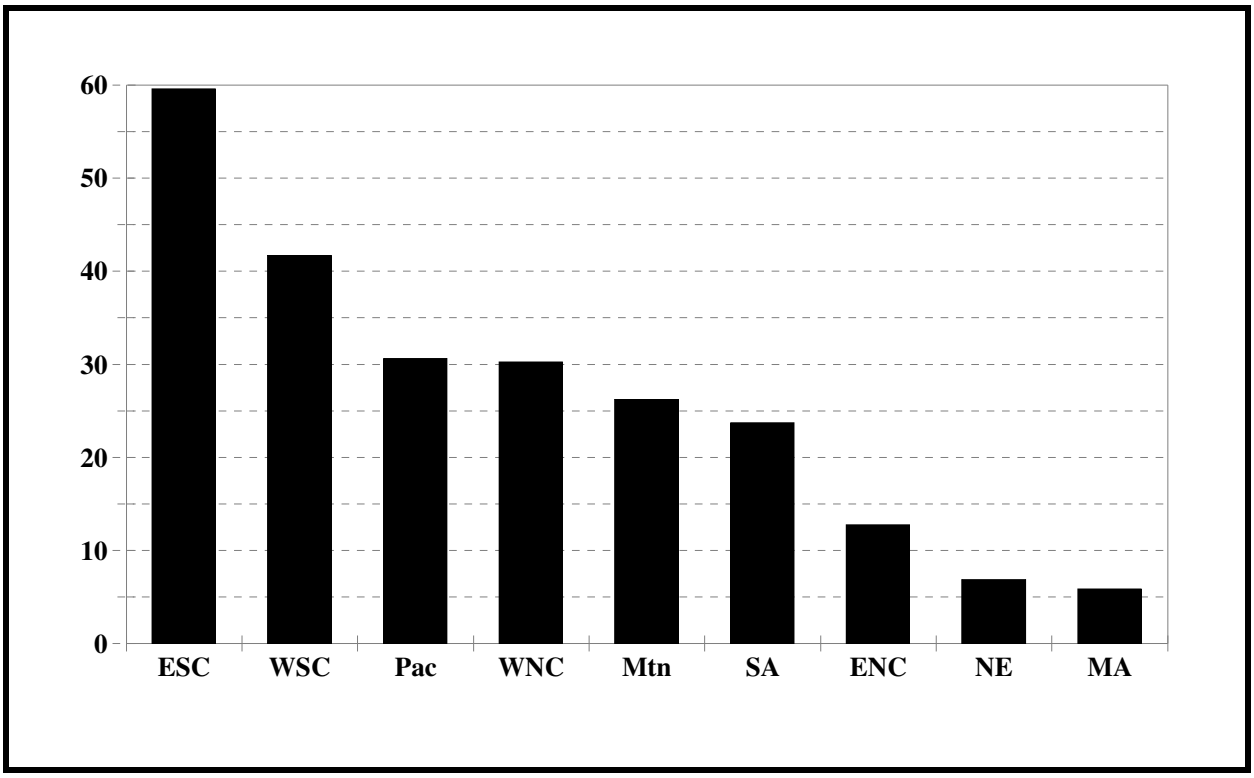

Fig. 4.6. Regional Rates of Epithet Use per 10,000 Opinions, 1950 - 1959.

Once again, the first null hypothesis, which posited there would be no significant difference in the rate of epithet usage among the nine regions, had to be rejected for the years 1950 through 1959.

1960 Through 1969

The national corpus for the years 1960 through 1969 contained 277,451 opinions. Within this corpus, there were a total of 499 judicial opinions which contained at least one racial or gender epithet. Among all nine regions, the median number of opinions which contained at least one epithet was 64; the mean number of opinions which contained at least one epithet was 55.44. These raw totals of opinions containing epithets translate to the following frequency rates of epithet usage: the median frequency rate of epithet usage was 22 judicial opinions per 10,000 opinions. The mean

frequency rate among the nine regions for the years 1960 through 1969 was 23 opinions per 10,000. The highest rate of epithet usage among the regions for this decade was 42 opinions per 10,000, and the lowest rate of epithet usage was 6 per 10,000 opinions.

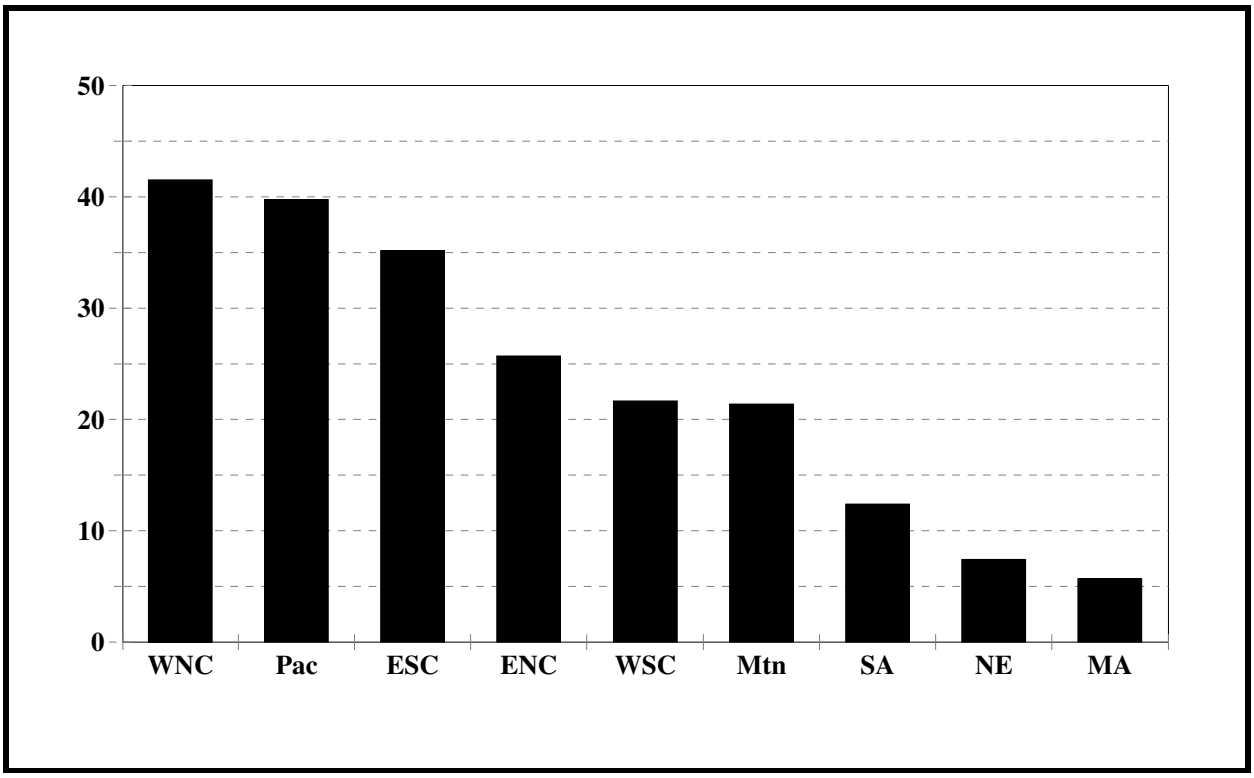

Fig. 4.7. Regional Rates of Epithet Use per 10,000 Opinions, 1960 - 1969.

For the first time in the seven decades surveyed so far in this diachronic analysis, the regions of West North Central and Pacific had the highest frequency rates of epithet usage at 42 and 40 opinions per 10,000, respectively. The West North Central's frequency rate was 1.434 SDM and the Pacific's rate was 1.294 SDM. The frequency rate for the East South Central region (35 opinions per 10,000) was nearly as high as the rates for the West North Central region and the Pacific, though the East South Central's rate lay just within 1 SDM at .930 SDM. For the seventh decade in a row, New England and the Middle Atlantic regions had the lowest rates of epithet usage

among the nine regions at 7 and 6 opinions per 10,000, respectively. The frequency rate for New England was 1.265 SDM, while the Middle Atlantic's rate was 1.403 SDM.

As can be seen in Fig. 4.7, the East North Central, West South Central, and Mountain regions were tightly grouped around the mean with frequency rates of 26, 22, and 21 opinions per 10,000, respectively. These frequency rates all lay within .200 SDM. The frequency rate for the one remaining region, the South Atlantic (12 opinions per 10,000), also lay within 1 SDM (.871), though the frequency rate for the South Atlantic was markedly lower than the rates for the three more tightly clustered regions.

As was the case every preceding decade, NH 1.0 was rejected for the 1960s because of the disparity among the regional frequency rates.

1970 Through 1979

The national corpus for the years 1970 through 1979 contained 489,658 opinions. Within this corpus, there were a total of 1,271 judicial opinions which contained at least one racial or gender epithet. Among all nine regions, the median number of opinions which contained at least one epithet was 147; the mean number of opinions which contained at least one epithet was 141.22. These raw totals of opinions containing epithets translate to the following frequency rates of epithet usage: the median frequency rate of epithet usage was 29 judicial opinions per 10,000 opinions. The mean frequency rate among the nine regions for the years 1970 through 1979 was 34 opinions per 10,000. The highest rate of epithet usage among the regions for this decade was 60 opinions per 10,000, and the lowest rate of epithet usage was 8 per 10,000 opinions.

The East South Central region was the only region among the nine in the nation to have a frequency rate (60 opinions per 10,000) which was more than one standard deviation above the mean (1.523). As can be seen in Fig. 4.8, three regions had frequency rates that were tightly

clustered, approximately 10 opinions per 10,000 lower than the rate for the East South Central. The rate for the East North Central region (50 opinions per 10,000) was .977 SDM, and the rates for the West North Central region (49 opinions per 10,000) and the Pacific (47 opinions per 10,000) lay .883 and .761 SDM, respectively.

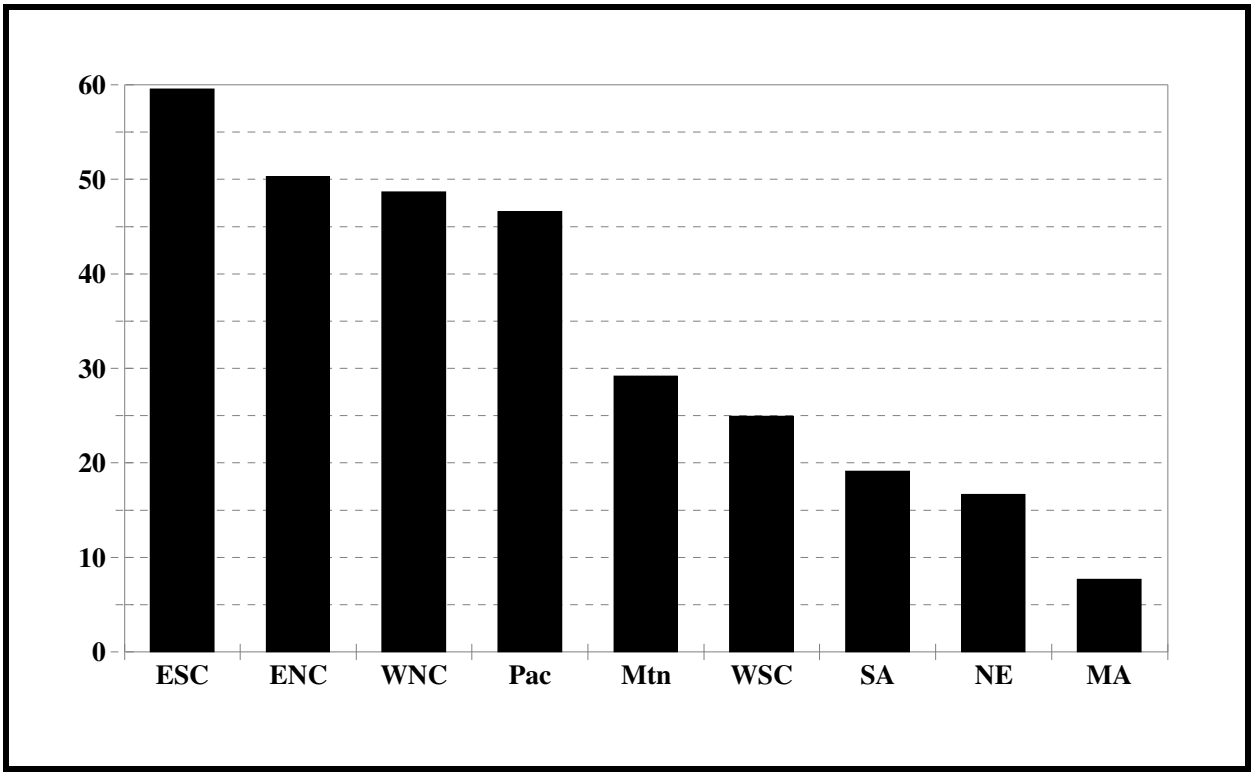

Fig. 4.8. Regional Rates of Epithet Use per 10,000 Opinions, 1970 - 1979.

The 1970s marks the first time in the century that the frequency rate for New England lay *within* 1 SDM. While the frequency rate for New England (17 opinions per 10,000) was the second-lowest in the country and was noticeably below the mean (.996), the rate was nevertheless within one standard deviation for the first time in the twentieth century. Once again, the Middle Atlantic region had the lowest frequency rate (8 opinions per 10,000), and was also the only region in the

country which had a frequency rate which lay more than one standard deviation below the mean (1.523 SDM).

The frequency rate for the South Atlantic (19 opinions per 10,000) was only slightly higher than the rate for New England, and slightly below the for rates for the two remaining regions, the Mountain region (29 opinions per 10,000) and the West South Central region (25 opinions per 10,000). The rate for the South Atlantic lay .853 SDM, while the rates for the Mountain and West South Central regions were .262 SDM and .510 SDM, respectively.

As it was for the decades of 1900s, 1910s, 1920s, 1930s, 1940s, 1950s, and 1960s, NH 1.0 was rejected for the 1970s.

1980 Through 1989

The national corpus for the years 1980 through 1989 contained 876,5258 opinions. Within this corpus, there were a total of 2,589 judicial opinions which contained at least one racial or gender epithet. Among all nine regions, the median number of opinions which contained at least one epithet was 268, and the mean number of opinions which contained at least one epithet was 287.67. These raw totals of opinions containing epithets translate to the following frequency rates of epithet usage: the median frequency rate of epithet usage was 42 judicial opinions per 10,000 opinions. The mean frequency rate among the nine regions for the years 1980 through 1989 was 36 opinions per 10,000. The highest rate of epithet usage among the regions for this decade was 54 opinions per 10,000, and the lowest rate of epithet usage was 7 per 10,000 opinions.

Although the total number of opinions containing epithets is significantly higher in this decade than for the preceding decade, the size of the corpus once again dramatically increased. The size of the national corpus grew from 489,658 opinions during the 1970s to 876,528 opinions during

the 1980s, an increase of nearly 56%. At least part of the increase is to be expected from the increased size of the national corpus.

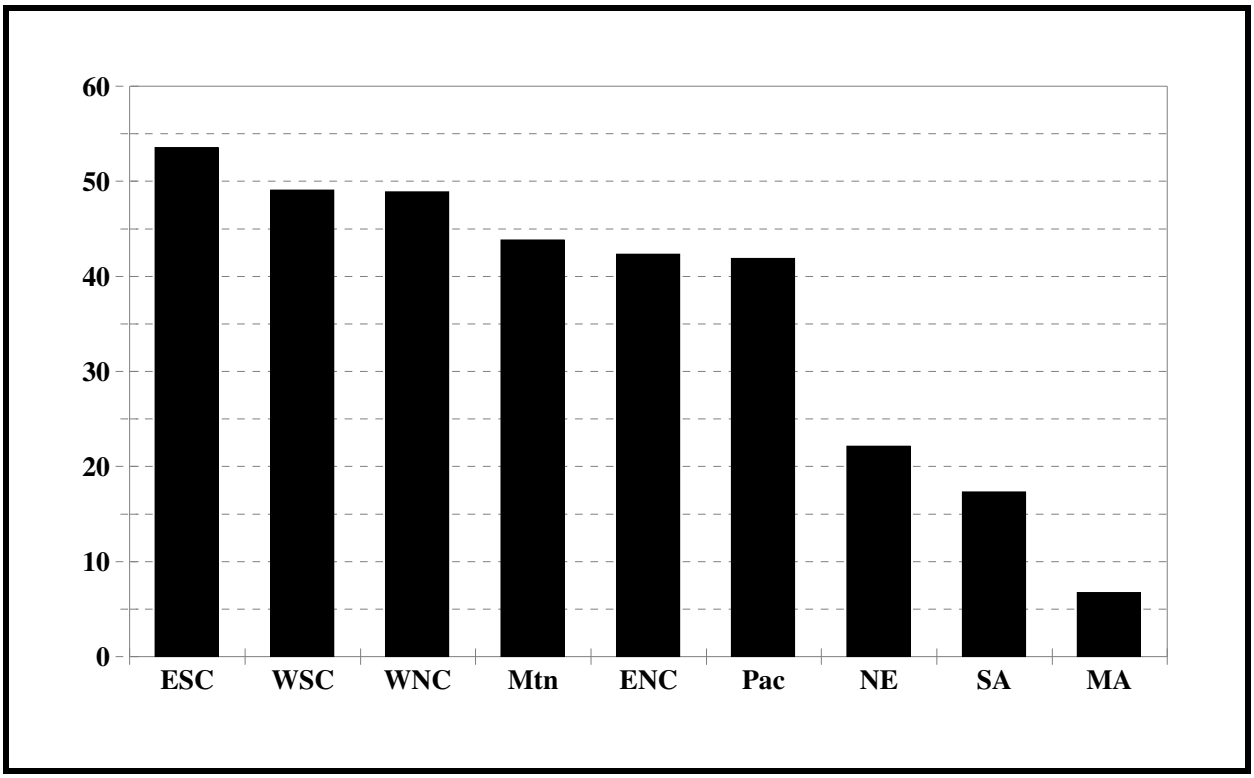

Fig. 4.9. Regional Rates of Epithet Use per 10,000 Opinions, 1980 - 1989.

As Fig. 4.9 shows, the frequency rates for the nine regions were grouped more closely about the mean this decade than any preceding decade. Frequency rates for six of the nine regions fell within 1 SDM. The two regions with the second-highest frequency rate, the West South Central and the West North Central regions (both 49 opinions per 10,000), lay .829 SDM and .817 SDM, respectively. At 42 opinions per 10,000, the frequency rate for the Pacific region, the sixth-highest in the nation for the 1980s, was only 7 opinions per 10,000 lower than the two second-highest scores. The frequency rate for the Pacific lay .366 SDM.

The highest frequency rate, that of the East South Central region (54 opinions per 10,000), was closer to the frequency rates of other regions than during previous decades. The frequency rate for the East South Central region was just 1.115 SDM. This was the only region this decade which had a frequency rate more than one standard deviation above the mean.

The penultimate decade of the twentieth century saw the first change in the ranking among regions with the lowest frequency rates. For the first time, New England was not one of the two regions with the lowest frequency rates. The Middle Atlantic region did once again have the absolute lowest frequency rate (7 opinions per 10,000); its rate was not quite two standard deviations below the mean (1.894 SDM). The region with the next-lowest rate of epithet usage was the South Atlantic (17 opinions per 10,000), and its rate was also more than one standard deviation below the mean (1.213 SDM). New England once again had a low rate of epithet usage (22 opinions per 10,000), however, the rate still lay within a single standard deviation below the mean (.903 SDM).

Despite the fact that more scores for this decade were clustered more tightly about the mean than previous decades, the difference between the highest and lowest regional frequency rates necessitated rejection of NH 1.0 for the 1980s.

1990 Through 1997

The national corpus for the years 1990 through 1997 contained 959,793 opinions. Within this corpus, there were a total of 3,136 judicial opinions which contained at least one racial or gender epithet. Among all nine regions, the median number of opinions which contained at least one epithet was 319; the mean number of opinions which contained at least one epithet was 348.44. These raw totals of opinions containing epithets translate to the following frequency rates of epithet usage: the median frequency rate of epithet usage was 46 judicial opinions per 10,000 opinions. The mean frequency rate among the nine regions for the years 1990 through 1997 was 39 opinions per 10,000.

The highest rate of epithet usage among the regions for this decade was 58 opinions per 10,000, and the lowest rate of epithet usage was 9 per 10,000 opinions.

The last decade of the twentieth century saw the frequency rates for two regions more than one standard deviation above the mean, and the frequency rates for two regions more than one standard deviation below the mean. All five other regions were within 1 SDM.

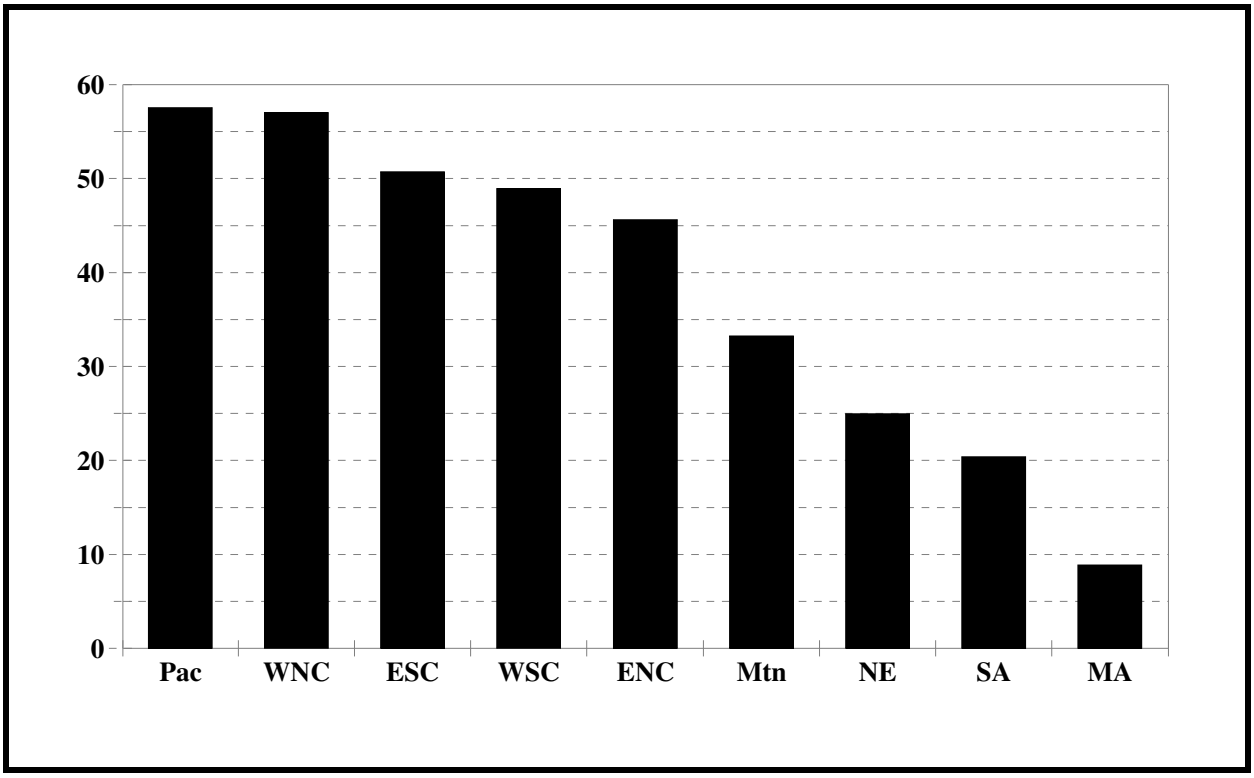

Fig. 4.10. Regional Rates of Epithet Use per 10,000 Opinions, 1990 - 1997.

As Fig. 4.10 shows, the highest frequency rates for the 1990s fall into two groups. Two regions had similar frequency rates: the regions with the two highest frequency rates were the Pacific (58 opinions per 10,000) and the West North Central regions (57 opinions per 10,000). These frequency rates were 1.152 SDM and 1.122 SDM, respectively. The size of the corpora for each region were similar (55,454 vs. 56,630 opinions, respectively), so the raw totals of opinions

containing at least one epithet were also similar: 319 for the Pacific region and 323 for the West North Central region.

The East South Central and East North Central regions had results which were closely related, though with lower frequency rates than those of the Pacific or West North Central regions. The frequency rates for the East South Central region was .0051 and the East North Central's rate was .0049. These frequency rates are .738 SDM and .630 SDM, respectively. The frequency rate for the East North Central (46 opinions per 10,000) was not much lower than for the other regions; the rate for the 1990s fell .427 SDM.

The bottom of the rankings for the 1990s recapitulates the rankings of the 1980s. the South Atlantic and Middle Atlantic regions once again had the two lowest rates of epithet usage in the country. The South Atlantic region had a rate of 20 opinions per 10,000 (which was 1.107 SDM), and the Middle Atlantic once again had the lowest rate of epithet usage at only 9 opinions per 10,000 (which was 1.809 SDM).

Among the remaining regions, the Mountain and New England had the sixth and seventh highest frequency rates. The frequency of epithet usage in the Mountain region was 33 judicial opinions per 10,000, a frequency rate which was .325 SDM. The frequency of epithet usage in New England was 25 opinions per 10,000 which was .828 SDM.

Because the frequency rates for four of the nine regions were more than one standard deviation from the mean, NH 1.0 was rejected for the years 1990 through 1997.

Lexical Variation: Presentation of Results

NH 2.0 For each of the decades encompassed in this study, there will be no significant difference in usage among the epithets.

The second null hypothesis assessed lexical variation in epithet use, *i.e.*, do one or more specific epithets appear more frequently than others? The dependent variable was lexical choice, and the independent variables were time and geographic region. The time variable was controlled by examining epithet use only one decade at a time. The geographic variable was controlled by summing the regional totals for epithet use for each decade to obtain one national total for each of the 19 individual epithets in this study.

Once the total number of opinions containing each of the 19 epithets had been compiled, standard measures of descriptive statistics were used to describe the data set. Preference for one epithet over another was determined by comparing the relative frequencies of the epithets.

This section is sub-divided into 11 sub-sections, one for each of the 10 decades of the twentieth century plus one additional sub-section describing overall lexical trends.

1900 Through 1909

The total number of judicial opinions which contained at least one of the 19 epithets included in this study during the decade of 1900 to 1909 was 643. Within this corpus of 643 judicial opinions, the mean number of opinions in which an epithet appeared was 34. The median score among the epithets was 3. As shown in Table 4.1, the rank among epithets for frequency of use was: Bitch, Nigger, Darkie, Jap, Fag, Spade, Nip, Chink, Slut, Spick, Beaner, Honkie, Gringo, Redneck, Wetback, Gook, Jungle Bunny, Sissy, and Male Chauvinist Pig.

For the years 1900 through 1909, 643 judicial opinions contained at least one of the 19 epithets included in this study. As can be seen in Table 4.1, two epithets accounted for over 88%

of all epithets used. The epithet Nigger was used in 109 judicial opinions, a total which accounts for 17% of all epithets used during the first decade of the twentieth century. The most prevalent epithet, Bitch, appeared in 460 of the 643 judicial opinions which contained an epithet.

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Table 4.1

Total Number of Opinions Containing Each Racial and Gender Epithet, and the Relative Frequency of Each Epithet, 1900 Through 1909.

Epithet	Opinions	Rel. Freq.	Epithet	Opinions	Rel. Freq.
Bitch	460	71.5%	Beaner	2	0.3%
Nigger	109	17.0%	Honkie	1	0.2%
Darkie	23	3.6%	Gringo	0	0.0%
Jap	15	2.3%	Redneck	0	0.0%
Fag	8	1.2%	Wetback	0	0.0%
Spade	7	1.1%	Gook	0	0.0%
Nip	7	1.1%	Jungle Bunny	0	0.0%
Chink	4	0.6%	Sissy	0	0.0%
Slut	4	0.6%	Male Chauvinist Pig	0	0.0%
Spick	3	0.5%			
			Total:	**643**	**100.0%**
			Median:	**3**	
			Mean:	**34**	

The epithet Bitch appeared more frequently than all other epithets combined. By itself, "Bitch" accounts for over 71% of all reported epithets for the years 1900 through 1909. There were no reported instances for seven of the 19 epithets during the first decade of the 20th century. Those seven epithets were: Gringo, Redneck, Wetback, Gook, Jungle Bunny, Sissy, and Male Chauvinist Pig. Of the remaining dozen epithets, eight epithets each comprised less than 2% of all opinions which contained any of the 19 epithets. The eight epithets were: Fag, Spade, Nip, Chink, Slut, Spick, Beaner, and Honkie. Two epithets—Darkie and Jap—comprised 3.6% and 2.3% of epithets used, respectively.

Because of the widely-varying lexical distribution among the epithets, Null Hypothesis 2.0, which posited that there would be no significant difference in usage among the epithets for each of the decades encompassed in this study, was rejected for the years 1900 through 1909.

1910 Through 1919

The total number of judicial opinions which contained at least one of the 19 epithets included in this study during the decade of 1910 to 1919 was 827. Within this corpus of 827 judicial opinions, the mean number of opinions in which an epithet appeared was 44. The median score among the epithets was 4. As shown in Table 4.2, the rank among epithets for frequency of use was: Bitch, Nigger, Darkie, Jap, Fag, Slut, Nip, Spade, Chink, Beaner, Sissy, Gringo, Honkie, Gook, Spick, Wetback, Redneck, Jungle Bunny, and Male Chauvinist Pig.

As shown in Table 4.2, two epithets one again overwhelmingly comprised the majority of all epithets used. Once again, those two epithets were Bitch and Nigger. The epithet Nigger was used in 136 judicial opinions, a total which accounts for 16.4% of all epithets used between 1910 and 1919. The most prevalent epithet, Bitch, appeared in 573 of the 827 judicial opinions which contained an epithet. As with the preceding decade, the epithet Bitch appeared more frequently than

all other epithets combined. Although the percentage of opinions containing Bitch account for a slightly smaller percentage of all opinions which contained an epithet than did the epithet last decade, Bitch still accounted for 69.4% of all epithet use between 1910 and 1919.

Table 4.2

Total Number of Opinions Containing Each Racial and Gender Epithet, and the Relative Frequency of Each Epithet, 1910 Through 1919.

Epithet	Opinions	Rel. Freq.	Epithet	Opinions	Rel. Freq.
Bitch	573	69.3%	Sissy	4	0.5%
Nigger	136	16.4%	Gringo	3	0.4%
Darkie	29	3.5%	Honkie	2	0.2%
Jap	24	2.9%	Gook	2	0.2%
Fag	16	1.9%	Spick	1	0.1%
Slut	11	1.3%	Wetback	0	0.0%
Nip	9	1.1%	Redneck	0	0.0%
Spade	7	0.8%	Jungle Bunny	0	0.0%
Chink	6	0.7%	Male Chauvinist Pig	0	0.0%
Beaner	4	0.5%			
			Total:	**827**	**100.0%**
			Median:	**4**	
			Mean:	**44**	

The distribution pattern of epithet use for the years 1910 through 1919 replicates the distribution pattern of epithet use in the first decade of the twentieth century. As with the preceding decade, a significant number of epithets appeared in only a few judicial opinions. Indeed, four epithets did not appear in *any* judicial opinions this decade. Those four epithets were: Wetback, Redneck, Jungle Bunny, and Male Chauvinist Pig. The 1910s mark the second decade that the

epithets Redneck, Wetback, Jungle Bunny, and Male Chauvinist Pig did not appear in any opinions. Additionally, eight epithets each account for less than 1% of all reported opinions which contained an epithet. These eight epithets were: Spade, Chink, Beaner, Sissy, Gringo, Honkie, Gook, and Spick. Another three epithets—Fag, Slut, and Nip—each accounted for less than 2% of all epithet use.

The four most prevalent epithets for the years 1910 through 1919 were once again Bitch, Nigger, Darkie, and Jap. The figures for Bitch and Nigger are reported above. The epithet Darkie appeared in 29 judicial opinions and Jap appeared in 24 opinions. The figures for Darkie and Jap each account for approximately 3% of all epithets used.

As with the previous decade, widely-varying totals among the epithets necessitated rejection of NH 2.0 for the years 1910 through 1919.

1920 Through 1929

The total number of judicial opinions which contained at least one of the 19 epithets included in this study during the decade of 1920 to 1929 was 750. Within this corpus of 750 judicial opinions, the mean number of opinions in which an epithet appeared was 39. The median score among the epithets was 4. As shown in Table 4.3, the rank among epithets for frequency of use was: Bitch, Nigger, Darkie, Jap, Nip, Fag, Slut, Sissy, Chink, Spade, Spick, Gringo, Honkie, Beaner, Gook, Redneck, Wetback, Jungle Bunny, and Male Chauvinist Pig.

The distribution pattern of the first two decades is repeated once again for the 1920s. Two lexical items were once again responsible for the majority of epithet use; a handful of terms appear in moderate numbers, and many items account for less than 2% of all epithets used during the 1920s. As with the 1900s, and the 1910s, use of Bitch and Nigger once again dominated all other epithets for the years 1920 through 1929. Although the percentage of opinions in which Bitch appears

decreased for the second successive decade, Bitch still accounts for 63.5% of all epithets used during the 1920s. Bitch appeared in 476 of the 750 judicial opinions which contained at least one epithet. The epithet Nigger appeared in 131 judicial opinions or 17.5% of all opinions which contained an epithet.

Table 4.3

Total Number of Opinions Containing Each Racial and Gender Epithet, and the Relative Frequency of Each Epithet, 1920 Through 1929.

Epithet	Opinions	Rel. Freq.	Epithet	Opinions	Rel. Freq.
Bitch	476	63.5%	Spick	2	0.3%
Nigger	131	17.5%	Gringo	1	0.1%
Darkie	49	6.5%	Honkie	1	0.1%
Jap	31	4.1%	Beaner	1	0.1%
Nip	17	2.3%	Gook	1	0.1%
Fag	14	1.9%	Redneck	0	0.0%
Slut	9	1.2%	Wetback	0	0.0%
Sissy	8	1.1%	Jungle Bunny	0	0.0%
Chink	5	0.7%	Male Chauvinist Pig	0	0.0%
Spade	4	0.5%			
			Total:	**750**	**100.0%**
			Median:	**4**	
			Mean:	**39**	

The only other epithets to account for more than 3% of all opinions containing an epithet were Darkie and Jap. As with the decades 1900 through 1909 and 1910 through 1919, this marks the third decade in a row that Nigger, Bitch, Darkie, and Jap appeared more frequently than all other epithets. The epithet Nip appeared in 17 opinions, or 2.3% of all opinions, and the gender epithet

Fag appeared in 14 opinions, or 1.9% of the total. Additional gender epithets, Slut and Sissy, were the only other terms which appeared in more than 1% of opinions which contained an epithet.

The epithets Chink, Spade, Spade, Gringo, Honkie, Beaner, and Gook each appeared in less than 1% of all opinions which contained an epithet. Chink, the most prevalent of these epithets, appeared in just 5 judicial opinions in the 1920s. As with previous decades, the epithets Redneck, Wetback, Jungle Bunny and Male Chauvinist Pig did not appear in any judicial opinions. This marks the third decade in a row that none of the terms was used.

Because of the disparate numbers of opinions in which each epithet appeared, the second null hypothesis was rejected for the 1920s.

1930 Through 1939

The total number of judicial opinions which contained at least one of the 19 epithets included in this study during the decade of 1930 to 1939 was 570. Within this corpus of 570 judicial opinions, the mean number of opinions in which an epithet appeared was 30. The median score among the epithets was 4. As shown in Table 4.4, the rank among epithets for frequency of use was: Bitch, Nigger, Jap, Darkie, Nip, Fag, Sissy, Spade, Slut, Honkie, Beaner, Spick, Chink, Jungle Bunny, Gringo, Gook, Male Chauvinist Pig, Redneck, and Wetback.

The distribution pattern which was established in the first three decades, almost repeats itself in the 1930s. Moreover, the specific epithets at both ends of the frequency spectrum remain largely the same. The four epithets responsible for the majority of all epithets used are once again Bitch, Nigger, Jap and Darkie in that order. The only difference this decade is that the epithets Jap and Darkie have changed order. Whereas Darkie was the third most common epithet in the 1900s, 1910s, and 1920s, it is the fourth most common epithet in the 1930s. Jap displaced Darkie as the third most frequently used epithet. Of the 570 judicial opinions which contained at least one epithet,

40 opinions contained the epithet Jap (or 7.0% instances of all epithet use), and 36 opinions contained the epithet Darkie (or 6.3% instances of epithet use). Once again, Bitch was by far the most prevalent epithet, appearing in a total of 328 of the 570 opinions, or 57.5% of all opinions which contained an epithet. Nigger was once again the second most frequently used epithet, and appeared in 104 opinions (18.2% of the total).

Table 4.4

Total Number of Opinions Containing Each Racial and Gender Epithet, and the Relative Frequency of Each Epithet, 1930 Through 1939.

Epithet	Opinions	Rel. Freq.	Epithet	Opinions	Rel. Freq.
Bitch	328	57.5%	Beaner	3	0.5%
Nigger	104	18.2%	Spick	3	0.5%
Jap	40	7.0%	Chink	3	0.5%
Darkie	36	6.3%	Jungle Bunny	1	0.2%
Nip	18	3.2%	Gringo	0	0.0%
Fag	16	2.8%	Gook	0	0.0%
Sissy	6	1.1%	Male Chauvinist Pig	0	0.0%
Spade	4	0.7%	Redneck	0	0.0%
Slut	4	0.7%	Wetback	0	0.0%
Honkie	4	0.7%			
			Total:	**570**	**100.0%**
			Median:	**4**	
			Mean:	**30**	

At the low end of the frequency spectrum, Gringo, Gook, Male Chauvinist Pig, Redneck, and Wetback did not appear in a single opinion. This marks the fourth decade in a row that the epithets Redneck, Wetback, and Male Chauvinist Pig did not appear. Although the epithet Jungle Bunny

appeared for the first time in the 1930s, its use was limited to a single judicial opinion (or 0.2% of all opinions which contained an epithet). Other terms which accounted for less than 1% of all opinions which contained an epithet were: Spade, Slut, Honkie, Beaner, Spick, and Chink. Additionally, the two remaining epithets, Nip and Fag, combined accounted for just 6% of all opinions which contained an epithet. The relative frequencies for Nip and Fag were 3.2% and 2.8%, respectively.

Because of the large discrepancy in the relative frequencies among the epithets in this study, NH 2.0 was rejected for the years 1930 through 1939.

1940 Through 1949

The total number of judicial opinions which contained at least one of the 19 epithets included in this study during the decade of 1940 to 1949 was 580. Within this corpus of 580 judicial opinions, the mean number of opinions in which an epithet appeared was 31. The median score among the epithets was 4. As shown in Table 4.5, the rank among epithets for frequency of use was: Bitch, Nigger, Jap, Honkie, Nip, Darkie, Fag, Chink, Spick, Slut, Sissy, Beaner, Gook, Gringo, Jungle Bunny, Wetback, Spade, Redneck, and Male Chauvinist Pig.

The three most frequently used epithets during the 1940s were once again, Bitch, Nigger, and Jap. Bitch appeared in 381 of the 580 judicial opinions which contained an epithet, or 65.7%, a relative frequency consistent with its use in all preceding decades. The epithet Nigger appeared in 68 of the 580 opinions, or 11.7%, which is slightly lower than its use during previous decades. The epithet Jap accounted for 6.0% of all opinions which contained an epithet. Use of Nip decreased slightly from its highest relative frequency in the 1930s to a relative frequency of 2.9% for the 1940s.

Honkie appeared in 31 opinions, a relative frequency of 5.3%. As shown in table 4.5, the terms Wetback, Redneck, and Male Chauvinist Pig did not appear in a single decision during the 1940s. The epithet Jungle Bunny was once again absent from any opinions, and the epithets Gringo and Spade joined the group of epithets which did not appear in a single opinion.

Table 4.5

Total Number of Opinions Containing Each Racial and Gender Epithet, and the Relative Frequency of Each Epithet, 1940 Through 1949.

Epithet	Opinions	Rel. Freq.	Epithet	Opinions	Rel. Freq.
Bitch	381	65.7%	Sissy	4	0.7%
Nigger	68	11.7%	Beaner	2	0.3%
Jap	35	6.0%	Gook	1	0.2%
Honkie	31	5.3%	Gringo	0	0.0%
Nip	17	2.9%	Jungle Bunny	0	0.0%
Darkie	16	2.8%	Wetback	0	0.0%
Fag	9	1.6%	Spade	0	0.0%
Chink	8	1.4%	Redneck	0	0.0%
Spick	4	0.7%	Male Chauvinist Pig	0	0.0%
Slut	4	0.7%			
			Total:	**580**	**100.0%**
			Median:	**4**	
			Mean:	**31**	

The terms Spick, Slut, Sissy, Beaner, and Gook each accounted for less than 1% of all opinions which contained an epithet. The epithets Fag and Chink appeared in just 9 and 8 opinions, respectively, or 1.6% and 1.4% of all opinions which contained an epithet during the 1940s. The term Darkie, which had been among the three or four most common epithets for all other decades,

slipped to the sixth most common epithet for this decade. Darkie was used in 16 of the 580 opinions which contained an epithet, or only 2.8% of the total.

The second null hypothesis posited there would be no significant variation in the relative frequencies of the 19 epithets. As with all preceding decades, NH 2.0 was rejected for the 1940s because of demonstrable differences among the relative frequencies for the 19 epithets.

1950 Through 1959

The total number of judicial opinions which contained at least one of the 19 epithets included in this study during the decade of 1950 to 1959 was 486. Within this corpus of 486 judicial opinions, the mean number of opinions in which an epithet appeared was 26. The median score among the epithets was 6. As shown in Table 4.6, the rank among epithets for frequency of use was: Bitch, Nigger, Honkie, Nip, Fag, Chink, Darkie, Spick, Sissy, Jap, Slut, Wetback, Gook, Spade, Male Chauvinist Pig, Jungle Bunny, Gringo, Beaner, and Redneck.

As shown in Table 4.6, the distribution pattern exhibited in the first five decades of the twentieth century is largely repeated here. The primary variation, is the relatively low percentage of opinions comprised by the third through fifth most prevalent epithets.

As with every preceding decade, the epithets Bitch and Nigger led all others in frequency of use. Bitch appeared in 325 of 486 judicial opinions which contained an epithet. Bitch accounted for 66.9% of all opinions which contained an epithet. The epithet Nigger appeared in 63 decisions, or 13.0% of all opinions which contained an epithet. Honkie was the third most prevalent epithet for the 1950s. Honkie appeared in 18 opinions, or 3.7% of all opinions which contained an epithet.

Among the infrequently-used epithets, once again the epithet Redneck failed to appear in a single decision. Joining Redneck with no reported instances for the 1950s were Gringo and Beaner. The epithets Spick, Sissy, Jap, and Slut each appeared in fewer than 2% of all decisions which

contained an epithet. The epithets Wetback, Gook, Spade, Male Chauvinist Pig, and Jungle Bunny appeared even less frequently; all of these terms appeared in fewer than 1% of all opinions which contained an epithet.

Table 4.6

Total Number of Opinions Containing Each Racial and Gender Epithet, and the Relative Frequency of Each Epithet, 1950 Through 1959.

Epithet	Opinions	Rel. Freq.	Epithet	Opinions	Rel. Freq.
Bitch	325	66.9%	Slut	6	1.2%
Nigger	63	13.0%	Wetback	3	0.6%
Honkie	18	3.7%	Gook	2	0.4%
Nip	14	2.9%	Spade	2	0.4%
Fag	11	2.3%	Male Chauvinist Pig	1	0.2%
Chink	10	2.1%	Jungle Bunny	1	0.2%
Darkie	9	1.9%	Gringo	0	0.0%
Spick	8	1.6%	Beaner	0	0.0%
Sissy	7	1.4%	Redneck	0	0.0%
Jap	6	1.2%			
			Total:	**486**	**100.0%**
			Median:	**6**	
			Mean:	**26**	

There is one surprise among the infrequently-used epithets, and that is the epithet Darkie. Darkie was formerly one of the more frequently used epithets in previous decades. During the 1920s Darkie accounted for 6.5% of all opinions containing an epithet; Darkie had a relative frequency of 6.3% during the 1930s. Here, Darkie appeared in only 9 opinions during the 1950s, or 1.9% of all

opinions which contained an epithet. The three remaining epithets—Nip, Fag, and Chink—respectively appeared in 2.9%, 2.3%, and 2.1% of all opinions which contained an epithet.

As was the case with the preceding decades, the data for the 1950s failed to support NH 2.0. Thus, NH 2.0 was rejected.

1960 Through 1969

The total number of judicial opinions which contained at least one of the 19 epithets included in this study during the decade of 1960 to 1969 was 499. Within this corpus of 499 judicial opinions, the mean number of opinions in which an epithet appeared was 26. The median score among the epithets was 5. As shown in Table 4.7, the rank among epithets for frequency of use was: Bitch, Nigger, Slut, Nip, Fag, Chink, Honkie, Spick, Jap, Gook, Sissy, Wetback, Jungle Bunny, Darkie, Gringo, Beaner, Spade, Redneck, and Male Chauvinist Pig.

Once again, the epithet Bitch was used in over six out of every ten judicial opinions which contained an epithet. Bitch appeared in 310 out of 499 cases which used at least one epithet. The relative frequency of Bitch was 62.1%. Once again, the second-most frequently used epithet was Nigger. Nigger appeared in 88 opinions, or 17.6% of all opinions which contained at least one epithet. The epithets Slut and Nip each appeared in 15 judicial opinions, or 3.0% of all opinions which contained an epithet. These two epithets tied for the third most frequently used epithet during the 1960s.

At the low end of the frequency spectrum, only one epithet failed to appear in a single opinion: Male Chauvinist Pig. All other epithets were included in at least one judicial opinion during the 1960s.

Table 4.7

Total Number of Opinions Containing Each Racial and Gender Epithet, and the Relative Frequency of Each Epithet, 1960 Through 1969.

Epithet	Opinions	Rel. Freq.	Epithet	Opinions	Rel. Freq.
Bitch	310	62.1%	Sissy	5	1.0%
Nigger	88	17.6%	Wetback	4	0.8%
Slut	15	3.0%	Jungle Bunny	3	0.6%
Nip	15	3.0%	Darkie	3	0.6%
Fag	11	2.2%	Gringo	2	0.4%
Chink	10	2.0%	Beaner	2	0.4%
Honkie	9	1.8%	Spade	2	0.4%
Spick	8	1.6%	Redneck	1	0.2%
Jap	6	1.2%	Male Chauvinist Pig	0	0.0%
Gook	5	1.0%			
			Total:	**499**	**100.0%**
			Median:	**5**	
			Mean:	**26**	

The epithets Wetback, Jungle Bunny, Darkie, Gringo, Beaner, Spade, and Redneck each appeared in fewer than 1% of all opinions which contained a racial or gender epithet. Other epithets which were used infrequently were: Honkie, Spick, Jap, Gook, and Sissy. None of these latter terms appeared in more than 2% of all opinions which contained an epithet. The two remaining epithets, Chink and Fag, were used in 10 and 11 judicial opinions, respectively. The relative frequencies for Chink and Fag were 2.0% and 2.2%, respectively.

The data for the 1960s failed to support NH 2.0, and thus the hypothesis was rejected.

1970 Through 1979

The total number of judicial opinions which contained at least one of the 19 epithets included in this study during the decade of 1970 to 1979 was 1,271. Within this corpus of 1,271 judicial opinions, the mean number of opinions in which an epithet appeared was 67. The median score among the epithets was 12. As shown in Table 4.8, the rank among epithets for frequency of use was: Bitch, Nigger, Nip, Fag, Honkie, Sissy, Slut, Wetback, Chink, Spick, Jap, Gook, Gringo, Spade, Beaner, Male Chauvinist Pig, Redneck, Jungle Bunny, and Darkie.

Table 4.8

Total Number of Opinions Containing Each Racial and Gender Epithet, and the Relative Frequency of Each Epithet, 1970 Through 1979.

Epithet	Opinions	Rel. Freq.	Epithet	Opinions	Rel. Freq.
Bitch	765	60.2%	Jap	11	0.9%
Nigger	259	20.4%	Gook	10	0.8%
Nip	42	3.3%	Gringo	6	0.5%
Fag	41	3.2%	Spade	5	0.4%
Honkie	37	2.9%	Beaner	4	0.3%
Sissy	27	2.1%	Male Chauvinist Pig	4	0.3%
Slut	20	1.6%	Redneck	1	0.1%
Wetback	14	1.1%	Jungle Bunny	1	0.1%
Chink	12	0.9%	Darkie	0	0.0%
Spick	12	0.9%			
			Total:	**1,271**	**100.0%**
			Median:	**12**	
			Mean:	**67**	

Once again, the epithets Bitch and Nigger were the first and second most frequently used epithets among the data set for this study. Bitch appeared in 765 of the 1,271 opinions containing an epithet, or a relative frequency of 60.2%. Use of Nigger increased somewhat over previous decades; Nigger appeared in 259 opinions, or a relative frequency of 20.4%. The frequency rate for Nip once again put that epithet at the front of the next group of epithets used most frequently. Nip appeared in 42 opinions, and accounted for a relative frequency of 3.3%. Fag appeared in just one fewer opinion than Nip, 41, and had a relative frequency of 3.2%.

Once again, only a single term did not appear in any epithets. During the years 1970 through 1979, the epithet Darkie did not appear in any judicial opinions. The epithets Chink, Spick, Jap, Gook, Gringo, Spade, Beaner, Male Chauvinist Pig, Redneck, and Jungle Bunny each appeared in fewer than 1% of all opinions which contained an epithet.

As with all preceding decades, NH 2.0 was rejected for the 1970s because the data failed to support it.

1980 Through 1989

The total number of judicial opinions which contained at least one of the 19 epithets included in this study during the decade of 1980 to 1989 was 2,589. Within this corpus of 2,589 judicial opinions, the mean number of opinions in which an epithet appeared was 136. The median score among the epithets was 19. As shown in Table 4.9, the rank among epithets for frequency of use was: Bitch, Nigger, Fag, Nip, Slut, Honkie, Sissy, Chink, Spick, Jap, Wetback, Gringo, Gook, Redneck, Jungle Bunny, Spade, Male Chauvinist Pig, Beaner, and Darkie.

The epithets Bitch and Nigger were once again the two most common epithets among the 19 in the data set. Bitch appeared in 1,586 out of a total of 2,589 opinions which contained at least one epithet. The relative frequency for Bitch was 61.3% for the years 1980 through 1989. The next

most common epithet, Nigger, appeared in 458 opinions, and had a relative frequency of 17.7%. The figures for both Nigger and Bitch are consistent with the previous totals and relative percentages for those epithets for all previous decades.

Table 4.9

Total Number of Opinions Containing Each Racial and Gender Epithet, and the Relative Frequency of Each Epithet, 1980 Through 1989.

Epithet	Opinions	Rel. Freq.	Epithet	Opinions	Rel. Freq.
Bitch	1,586	61.3%	Wetback	16	0.6%
Nigger	458	17.7%	Gringo	12	0.5%
Fag	144	5.6%	Gook	10	0.4%
Nip	96	3.7%	Redneck	9	0.3%
Slut	60	2.3%	Jungle Bunny	8	0.3%
Honkie	57	2.2%	Spade	6	0.2%
Sissy	51	2.0%	Male Chauvinist Pig	5	0.2%
Chink	27	1.0%	Beaner	2	0.1%
Spick	23	0.9%	Darkie	0	0.0%
Jap	19	0.7%			
			Total:	**2,589**	**100.0%**
			Median:	**19**	
			Mean:	**136**	

The totals for Fag continued to be significantly higher than all other epithets. Fag appeared in 144 judicial opinions for a relative frequency of 5.6%. The racial epithet Nip was used less frequently, and accounted for a relative frequency of 3.7%. Nip appeared in a total of 96 cases during the 1980s.

The terms Slut, Honkie, and Sissy each accounted for between 2% and 3% of all opinions which contained an epithet. The most prevalent term among these three was Slut which appeared in 60 decisions (relative frequency 2.3%), whereas Sissy was used the least of these three epithets. Sissy appeared in 51 opinions and had a relative frequency of 2.0%.

The epithets Chink, Spick, Jap, Wetback, Gringo, Gook, Redneck, Jungle Bunny, Spade, Male Chauvinist Pig, and Beaner each had a relative frequency of less than 1%. Only one epithet, Darkie, did not appear in any judicial opinions during the 1980s.

As with all preceding decades, NH 2.0 was rejected for the 1980s due to the demonstrable differences in relative frequencies among the 19 epithets.

1990 Through 1997

The total number of judicial opinions which contained at least one of the 19 epithets included in this study during the decade of 1990 to 1997 was 3,136. Within this corpus of 3,136 judicial opinions, the mean number of opinions in which an epithet appeared was 165. The median score among the epithets was 17. As shown in Table 4.10, the rank among epithets for frequency of use was: Bitch, Nigger, Fag, Slut, Nip, Sissy, Spick, Honkie, Chink, Wetback, Jap, Redneck, Gook, Beaner, Gringo, Male Chauvinist Pig, Darkie, Spade, and Jungle Bunny.

The distribution pattern which was established in the nine previous decades also obtains for the final decade of the twentieth century. And, as with all preceding decades, the epithets Bitch and Nigger were once again the most prevalent among the data set. Also in keeping with the previous quantitative results, Nigger and Bitch together account for approximately 80% of all epithets used in judicial opinions during the 1990s. Bitch appeared in 1,947 opinions, and had a relative frequency of 62.1%. Nigger was used in 563 cases and accounted for 18.0% of all opinions which contained at least one racial or gender epithet.

Table 4.10

Total Number of Opinions Containing Each Racial and Gender Epithet, and the Relative Frequency of Each Epithet, 1990 Through 1997.

Epithet	Opinions	Rel. Freq.	Epithet	Opinions	Rel. Freq.
Bitch	1,947	62.1%	Jap	16	0.5%
Nigger	563	18.0%	Redneck	13	0.4%
Fag	168	5.4%	Gook	12	0.4%
Slut	152	4.8%	Beaner	8	0.3%
Nip	66	2.1%	Gringo	5	0.2%
Sissy	63	2.0%	Male Chauvinist Pig	5	0.2%
Spick	37	1.2%	Darkie	4	0.1%
Honkie	31	1.0%	Spade	4	0.1%
Chink	21	0.7%	Jungle Bunny	4	0.1%
Wetback	17	0.5%			
			Total:	**3,136**	**100.0%**
			Median:	**17**	
			Mean:	**165**	

The epithet Fag was once again the third most common epithet. Fag was used in 168 opinions (relative frequency 5.4%). The only other epithets which accounted for more than 2% of the data set for the 1990s were Slut and Nip. Those two epithets appeared in 152 and 66 judicial opinions, respectively, and had relative frequencies of 4.8% and 2.1%. The epithet Sissy was used in only three fewer opinions than Nip, and had a relative frequency of 2.0%.

The epithets Spick, Honkie, Chink, Wetback, Jap, Redneck, Gook, Beaner, Gringo, Male Chauvinist Pig, Darkie, Spade, and Jungle Bunny each accounted for less than 1.2% of the data set for the years 1990 through 1997. All 19 epithets in the data set appeared in at least four cases. The

epithets Darkie, Spade, and Jungle Bunny were the least common. These three epithets appeared in just four opinions, and had a relative frequency of 0.1% each.

The second null hypothesis predicted that there would be no significant difference in usage among the epithets for each of the decades encompassed in this study. The summary of results set forth above and in Table 4.10 clearly indicates a significant difference among the relative frequencies for the epithets in the data set. Therefore, based on the analysis of this data, Null Hypothesis 2.0 was rejected for the 1990s.

Historical Variation: Presentation of Results

NH 3.0 ***For the sum total of all epithets, there will be no significant difference in the rate of epithet usage among the ten decades for each of the nine regions encompassed in this study.***

Null Hypothesis 3.0 assessed variation in epithet use over time at the regional level. The dependent variable was time, the 10 decades encompassed in this study. The independent variables were geographic region and lexical choice. The lexical variable was controlled by summing totals for all opinions in the national corpus which contained at least one of the epithets in this study. The geographic variable was controlled by examining the overall total for each region one region at a time.

After the total number of opinions which contained at least one epithet had been determined for each of the 10 decades, frequency of epithet use for each decade was computed and expressed as a proportion, rounded to four decimal places. This calculation yielded the number of judicial opinions per 10,000 opinions in which at least one epithet appeared. The proportion was determined by the same method described in the "*Assessing Geographic Variation*" subsection above. Once the rates of epithet usage were computed for each decade, standard measures of descriptive statistics

were used to describe the data set. Frequency rates for epithet use were compared by decade, and results were plotted on a line graph.

East North Central Region

The range among rates of epithet usage for the East North Central region was 41 per 10,000 opinions. The highest rate of epithet usage among the 10 decades was 50, which occurred during the 1970s. The lowest rate of epithet usage was 9 per 10,000 opinions, which occurred during the 1930s. The median rate of epithet usage among the ten decades was 24 per 10,000 opinions. The mean rate of epithet usage was 27.1 per 10,000 opinions. The variance, a measure of variability or "spread" among the data set, was 182.29. The standard deviation, also a measure of spread within the data set, was 13.50.

As can be seen in Fig. 4.11, the rates of epithet usage for the East North Central region remained relatively stable for the first three decades, dipped slightly during the depression, and then began to climb somewhat during the 1940s and 1950s. The rate of epithet usage rose dramatically during the tumultuous decades of the 1960s and 1970s, after which the rate once again decreased slightly. The rate established during the 1980s remained more or less stable into the 1990s. The specific rates of epithet usage per 10,000 judicial opinions for each of the ten decades presented in chronological order were: 24, 22, 24, 9, 15, 13, 26, 50, 42, and 46.

The rates for the 1900s, 1910s, 1920s, 1940s, and 1960s all fell within one standard deviation from the mean. The highest rate of epithet use, 50 per 10,000, which occurred during the 1970s, lay 1.70 SDM. The lowest rate of epithet use, 9 per 10,000, which occurred during the 1930s, was 1.34 standard deviations below the mean. For no decade did the rate of epithet usage fall more than two standard deviations from the mean.

Table 4.11

Statistical Measures of Central Tendency and Variability of Epithet Rates over Time, East North Central Region.

Measures of Centrality		Measures of Variability	
Median	24.0	Range	41.00
Mean	27.1	Variance	182.29
		Standard Deviation	13.50

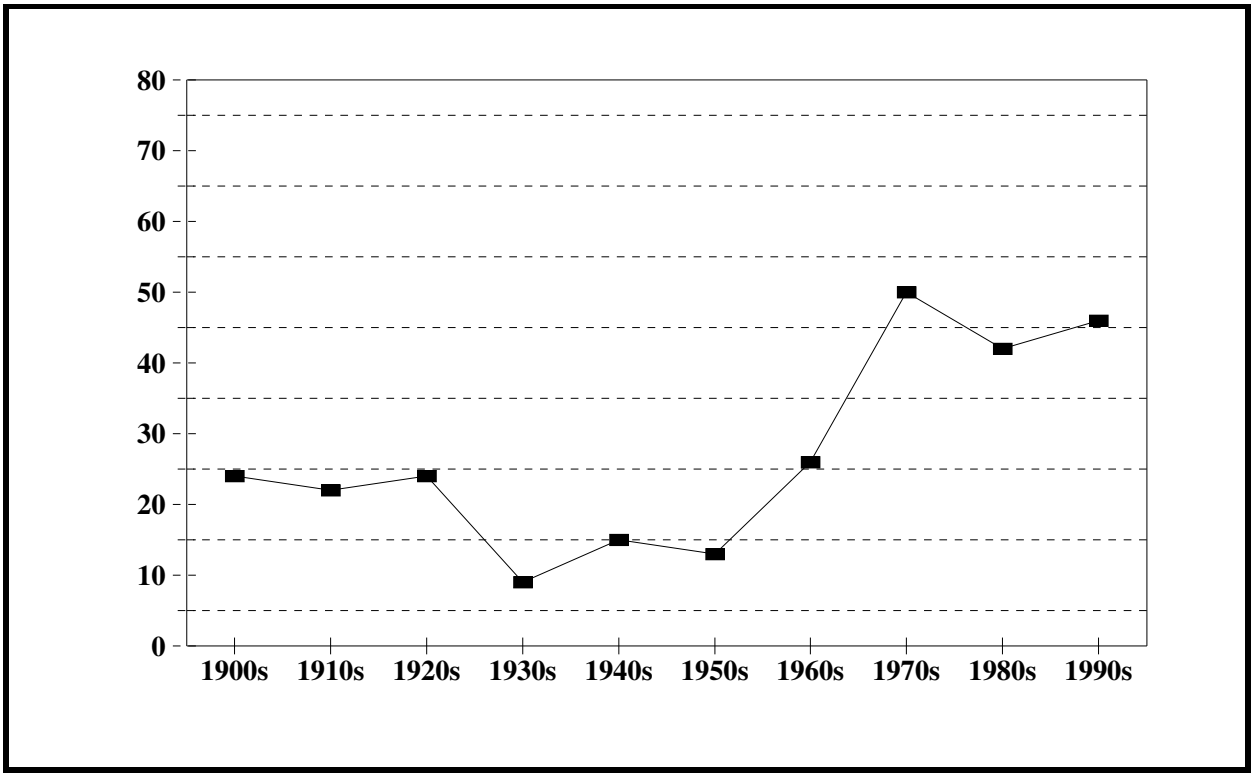

Fig. 4.11. Historical Rates of Epithet Usage per 10,000 Opinions, East North Central Region.

The third null hypothesis predicted that for the sum total of all epithets, there would be no significant difference in the rate of epithet usage among the ten decades. The summary of results set forth above and in Table 4.11 and Fig 4.11 clearly indicates a significant difference among the rates of epithet usage for each decade in this study. Therefore, based on the analysis of this data, Null Hypothesis 3.0 was rejected for the East North Central region.

East South Central Region

The range among rates of epithet usage for the East South Central region was 42 per 10,000 opinions. The highest rate of epithet usage among the ten decades was 60 per 10,000 opinions, which occurred during the 1950s and again during the 1970s. The lowest rate of epithet usage was 18 per 10,000 opinions, during the first decade of the 20th century. The median rate of epithet usage among the ten decades was 44.5 opinions per 10,000. The mean rate of epithet usage was 44.3 opinions per 10,000. The variance for the East South Central region was 179.21. The standard deviation was 13.39.

Table 4.12

Statistical Measures of Central Tendency and Variability of Epithet Rates over Time, East South Central Region.

Measures of Centrality		**Measures of Variability**	
Median	44.5	Range	42.00
Mean	44.3	Variance	179.21
		Standard Deviation	13.39

As can be seen in Fig. 4.12, the rate of epithet usage rose slowly and steadily from the 1900s through the 1930s. There was a dramatic increase in epithet usage through the Depression years of

the 1930s which leveled off at a plateau until the 1950s. The rate of epithet usage plunged sharply during the 1960s, and then immediately climbed just as sharply during the 1970s. From the 1970s through 1997 there was a slight but perceptible decline in rates each decade. The specific rates of epithet usage per 10,000 judicial opinions for each of the ten decades presented in chronological order were: 18, 33, 38, 37, 57, 60, 35, 60, 54, and 51.

The rates for the 1910s, 1920s, 1930s, 1940s, 1960s, 1980s, and 1990s all fell within one standard deviation from the mean. The highest rate of epithet use, 60 cases per 10,000, which occurred during the 1950s and again during the 1970s, lay 1.17 SDM. The lowest rate of epithet use, 18 cases per 10,000, which occurred during the 1900s, was just inside two standard deviations below the mean at 1.96 SDM.

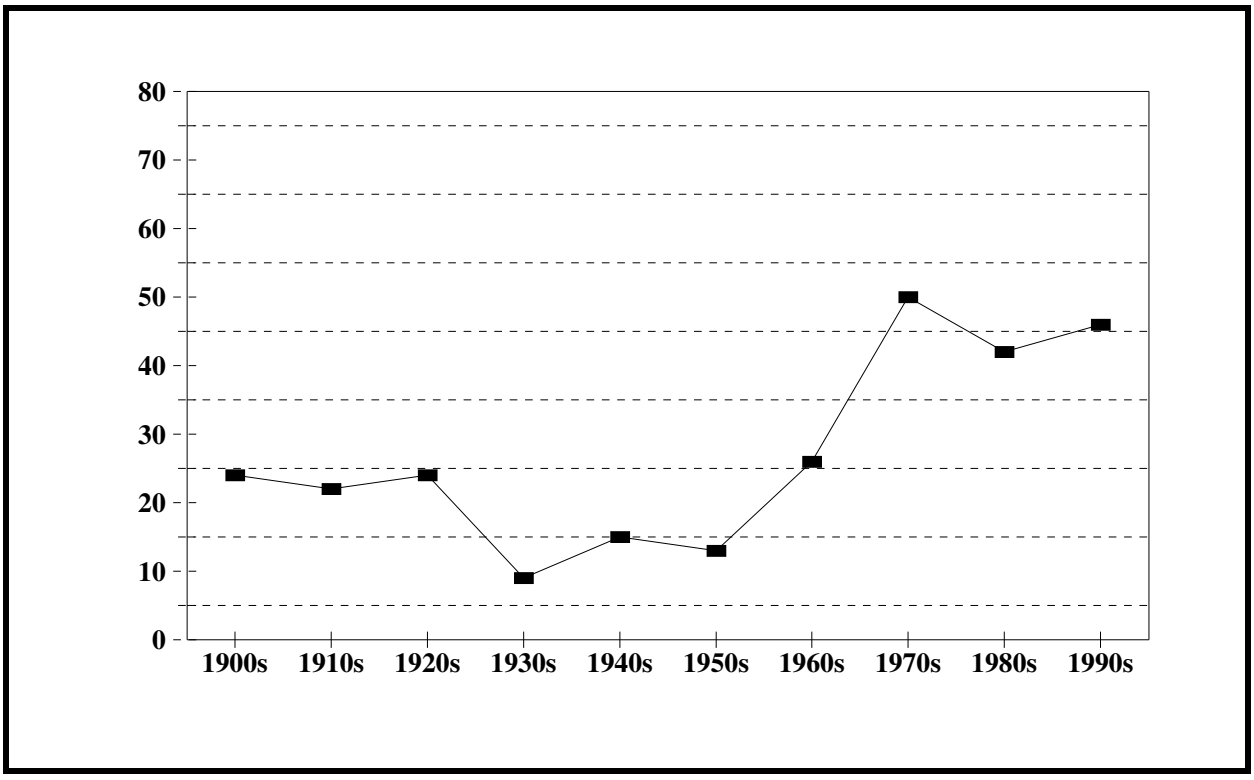

Fig. 4.12. Historical Rates of Epithet Usage per 10,000 Opinions, East South Central Region.

The third null hypothesis predicted that for the sum total of all epithets, there would be no significant difference in the rate of epithet usage among the ten decades. The summary of results set forth above and in Table 4.12 and Fig 4.12 clearly indicates a significant difference among the rates of epithet usage for each decade in this study. Therefore, based on the analysis of this data, Null Hypothesis 3.0 was rejected for the East South Central region.

Middle Atlantic Region

The range among rates of epithet usage for the Middle Atlantic region was only 6 opinions per 10,000. The highest rate of epithet usage among the ten decades was 9 per 10,000 opinions, which occurred in the last decade of the 20th century. The lowest rate of epithet usage was only 3 opinions per 10,000, which occurred during the 1920s. The median rate of epithet usage among the ten decades was 6 per 10,000 opinions, and the mean rate of epithet usage was also 6 per 10,000 opinions. The variance for the Middle Atlantic region was just 3. The standard deviation was similarly small at 1.73.

Table 4.13

Statistical Measures of Central Tendency and Variability of Epithet Rates over Time, Middle Atlantic Region.

Measures of Centrality		**Measures of Variability**	
Median	6.0	Range	6.00
Mean	6.0	Variance	3.00
		Standard Deviation	1.73

The rates for the 1900s, 1910s, 1940s, 1950s, 1960s, and 1980s all fell within one standard deviation from the mean. In fact, the rates for both the 1950s and 1960s did not deviate from the mean at all; both were 0.0 SDM. The highest rate of epithet use, 9 opinions per 10,000, which occurred during the 1990s, lay 1.73 SDM. The lowest rate of epithet use, 3 opinions per 10,000, which occurred during the 1920s, was also 1.73 standard deviations from the mean.

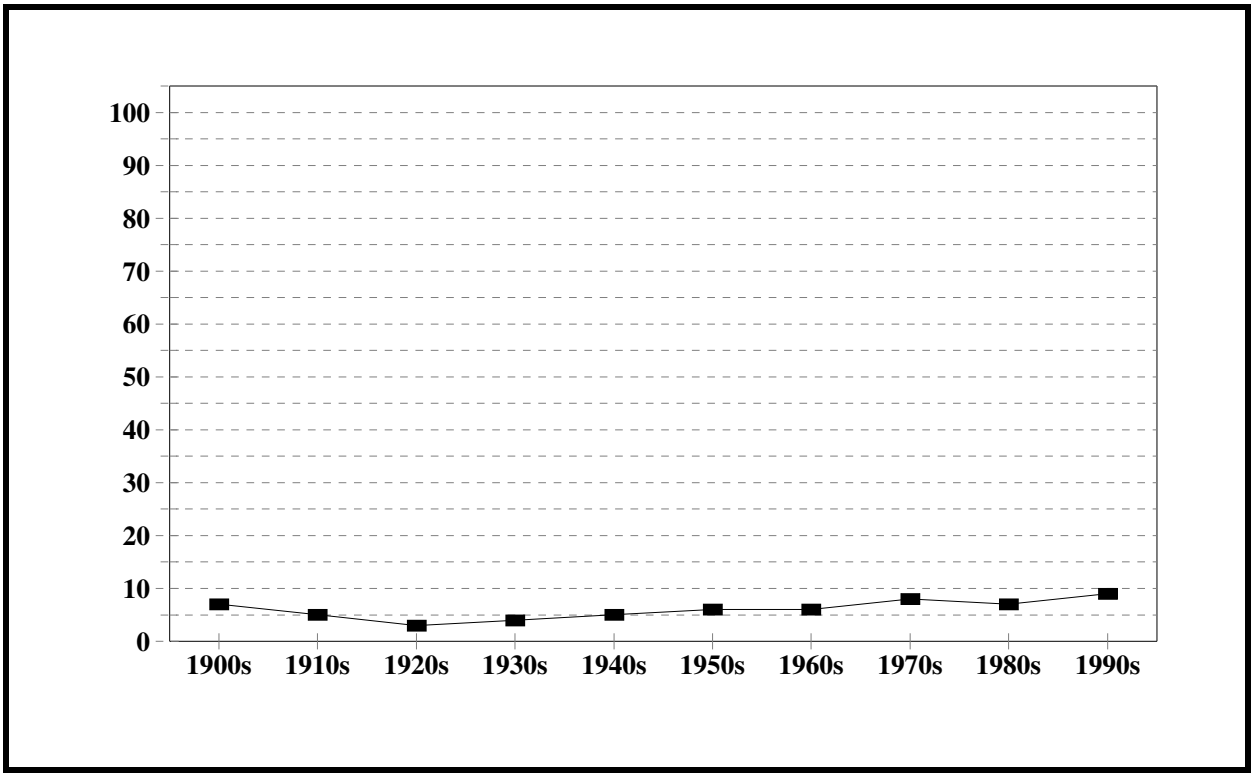

Fig. 4.13. Historical Rates of Epithet Usage per 10,000 Opinions, Middle Atlantic Region.

The third null hypothesis predicted that for the sum total of all epithets, there would be no significant difference in the rate of epithet usage among the ten decades. The summary of results set forth above and in Table 4.13 and Fig 4.13 indicates that even for a data set as uniform as that

of the Middle Atlantic region, statistically significant differences among the rates of epithet usage exist. Therefore, based on the analysis of this data, Null Hypothesis 3.0 was rejected for the Middle Atlantic region.

Mountain Region

The range among rates of epithet usage for the Mountain region was 24 opinions per 10,000. The highest rate of epithet usage among the ten decades was 45, which occurred during the 1930s. The lowest rate of epithet usage was 21 opinions per 10,000, which occurred during the 1960s. The median rate of epithet usage among the ten decades was 30.5 per 10,000 opinions, and the mean rate of epithet usage was 31.8 per 10,000 opinions. The variance was 54.16. The standard deviation was 7.36.

Table 4.14

Statistical Measures of Central Tendency and Variability of Epithet Rates over Time, Mountain Region.

Measures of Centrality		**Measures of Variability**	
Median	30.5	Range	24.00
Mean	31.8	Variance	54.16
		Standard Deviation	7.36

As can be seen in Fig. 4.14, the rate of epithet usage for the Mountain region began the century at a moderate rate, climbed somewhat to a plateau through the 1910s and 1920s, and then rose sharply into the 1930s. The high rate established during the 1930s then dropped noticeably and steadily through the Second World War and the following decades. The rate once again began to

rise in the 1970s and 1980s before declining somewhat in the 1990s. The specific rates of epithet usage per 10,000 judicial opinions for each of the ten decades presented in chronological order were: 25, 32, 29, 45, 34, 26, 21, 29, 44, and 33.

The rates for the 1900s, 1910s, 1920s, 1940s, 1950s, 1970s, and 1990s all fell within one standard deviation from the mean. The highest rate of epithet use, 45 opinions per 10,000, which occurred during the 1930s, lay 1.79 SDM. The lowest rate of epithet use, 21 per 10,000, which occurred during the 1960s, was 1.47 standard deviations below the mean.

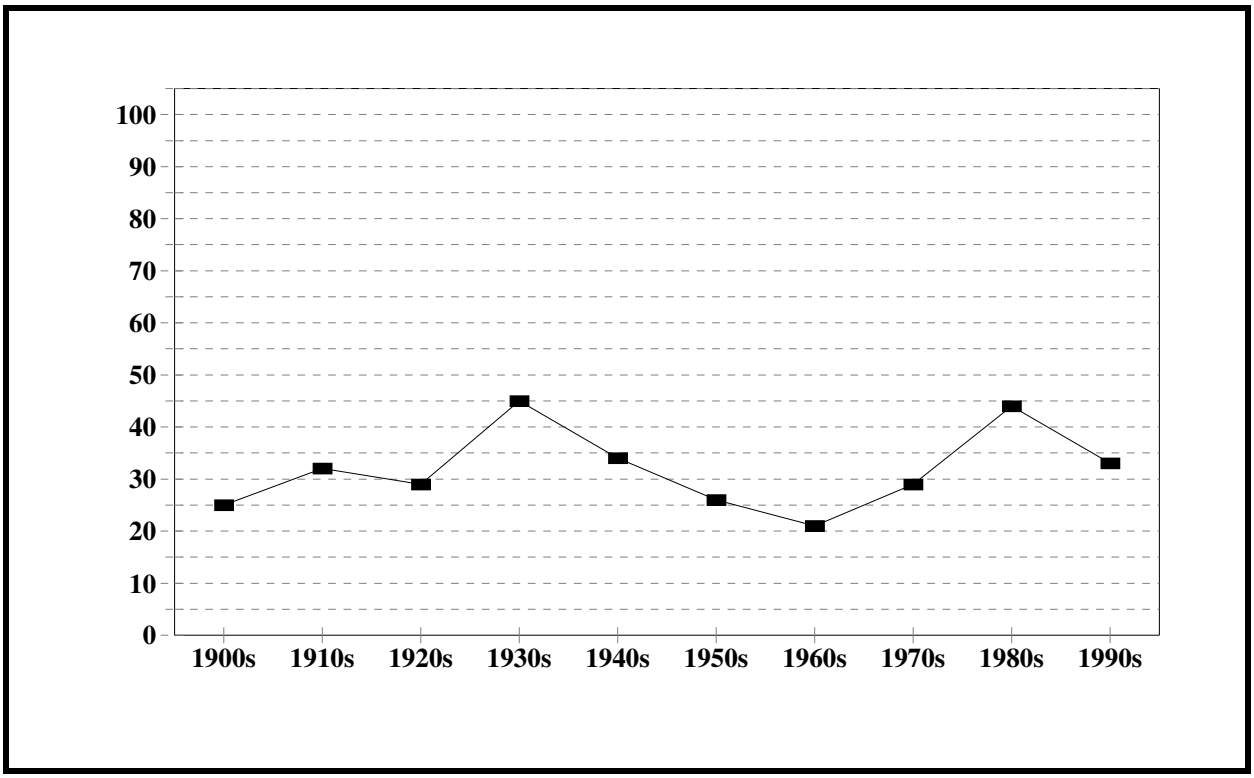

Fig. 4.14. Historical Rates of Epithet Usage per 10,000 Opinions, Mountain Region.

The third null hypothesis predicted that for the sum total of all epithets, there would be no significant difference in the rate of epithet usage among the ten decades. The summary of results set forth above and in Table 4.14 and Fig 4.14 clearly indicates a significant difference among the

rates of epithet usage for each decade in this study. Therefore, based on the analysis of this data, Null Hypothesis 3.0 was rejected for the Mountain region.

New England Region

The range among rates of epithet usage for the New England region was 22 per 10,000 opinions. The highest rate of epithet usage among the ten decades was 25 opinions per 10,000, which occurred during the 1990s. The lowest rate of epithet usage was only 3 per 10,000 opinions which occurred during the 1920s. The median rate of epithet usage among the ten decades was 7.5 per 10,000 opinions. The mean rate of epithet usage was 11.1 per 10,000 opinions. The variance was 50.29. The standard deviation was 7.091.

Table 4.15

Statistical Measures of Central Tendency and Variability of Epithet Rates over Time, New England Region.

Measures of Centrality		**Measures of Variability**	
Median	7.5	Range	22.00
Mean	11.1	Variance	50.29
		Standard Deviation	7.09

As can be seen in Fig. 4.15, the rate of epithet usage in New England were remarkably low through the first four decades of the 20th century. There was a slight rise around the time of World War II, and rates of epithet use remained level until the 1960s. From the 1960s through the 1990s, the rate of epithet usage rose in a steady, linear progression. The specific rates of epithet usage per

10,000 judicial opinions for each of the ten decades presented in chronological order were: 8, 6, 3, 7, 9, 7, 7, 17, 22, and 25.

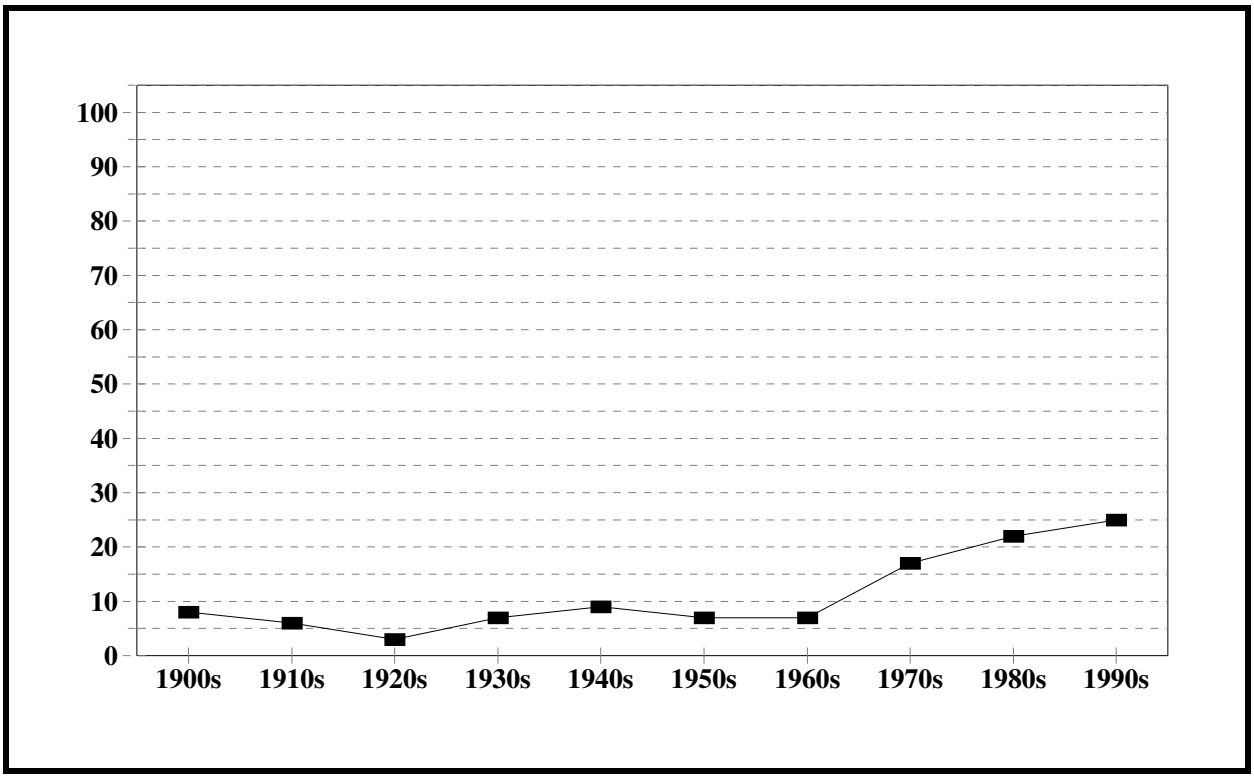

Fig. 4.15. Historical Rates of Epithet Usage per 10,000 Opinions, New England Region.

The rates for the 1900s, 1910s, 1930s, 1940s, 1950s, 1960s, and 1970s all fell within one standard deviation from the mean. The highest rate of epithet use, 25 opinions per 10,000, which occurred during the 1990s, lay almost two standard deviations above the mean at 1.96. The next highest rate of epithet usage, 22 opinions per 10,000 during the 1980s, was more than one and a half standard deviations above the mean at 1.54 SDM. The lowest rate of epithet use, 3 opinions per 10,000, which occurred during the 1920s, was closer to the mean at 1.14 SDM.

The third null hypothesis predicted that for the sum total of all epithets, there would be no significant difference in the rate of epithet usage among the ten decades. The summary of results

set forth above and in Table 4.15 and Fig 4.15 clearly indicates a significant difference among the rates of epithet usage for each decade in this study. Therefore, based on the analysis of this data, Null Hypothesis 3.0 was rejected for the New England region.

Pacific Region

The range among rates of epithet usage for the Pacific region was 39 opinions per 10,000. The highest rate of epithet usage among the ten decades was 58 per 10,000 opinions, which occurred during the 1990s. The lowest rate of epithet usage was 19 opinions per 10,000, which occurred between 1910 and 1919. The median rate of epithet usage among the ten decades was 34 per 10,000 opinions. The mean rate of epithet usage was 34.8 per 10,000 opinions. The variance was 2,138.56. The standard deviation was 11.77.

Table 4.16

Statistical Measures of Central Tendency and Variability of Epithet Rates over Time, Pacific Region.

Measures of Centrality		**Measures of Variability**	
Median	34.0	Range	39.00
Mean	34.8	Variance	138.56
		Standard Deviation	11.77

As can be seen in Fig. 4.16, the rate of epithet usage began the century at a moderately high level, and then dropped sharply in the 1910s. The rate then remained more or less level until the 1940s, at which time the rate rose sharply. The rate of epithet usage established during the War years leveled off through the 1950s, and then continued to rise significantly during the 1960s and

1970s. The rate of epithet usage dipped once again during the 1980s, and then rose to the highest rate among all ten decades in the 1990s. The specific rates of epithet usage per 10,000 judicial opinions for each of the ten decades presented in chronological order were: 34, 19, 22, 21, 34, 31, 40, 47, 42, and 58.

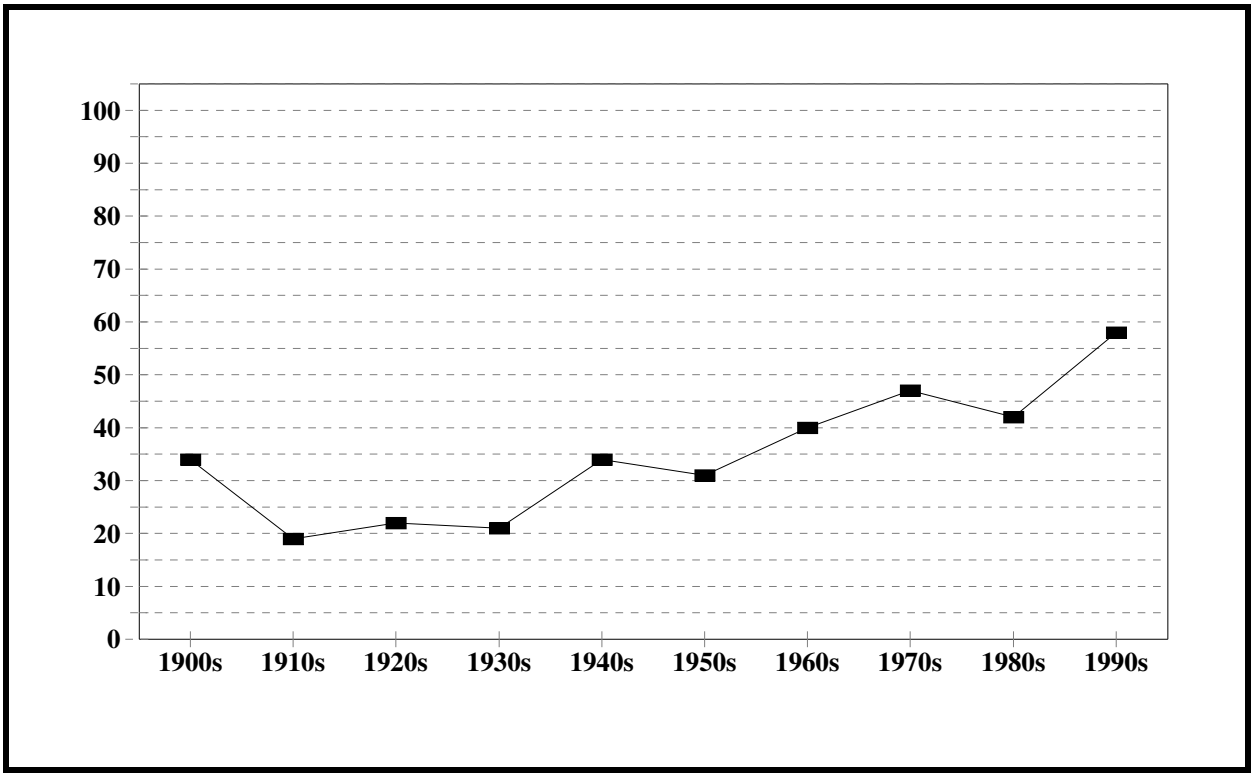

Fig. 4.16. Historical Rates of Epithet Usage per 10,000 Opinions, Pacific Region.

The rates for the 1900s, 1940s, 1950s, 1960s, and 1980s all fell within one standard deviation from the mean. The highest rate of epithet use, 58 cases per 10,000, which occurred during the 1990s, lay not quite two standard deviations above the mean at 1.97 SDM. The lowest rate of epithet use, 19 per 10,000, which occurred during the 1910s, was much closer to the mean at 1.34 standard deviations below the mean.

The third null hypothesis predicted that for the sum total of all epithets, there would be no significant difference in the rate of epithet usage among the ten decades. The summary of results set forth above and in Table 4.16 and Fig 4.16 clearly indicates a significant difference among the rates of epithet usage for each decade in this study. Therefore, based on the analysis of this data, Null Hypothesis 3.0 was rejected for the Pacific region.

South Atlantic Region

The range among rates of epithet usage for the South Atlantic region was 45 opinions per 10,000. The highest rate of epithet usage among the ten decades was 57, which occurred during the 1940s. The lowest rate of epithet usage was 12 per 10,000 opinions, which occurred during the 1960s. The median rate of epithet usage among the ten decades was 25.5 per 10,000 opinions. The mean rate of epithet usage was not much higher at 28.3 per 10,000 opinions. The variance was 166.81, and the standard deviation was 12.92.

Table 4.17

Statistical measures of central tendency and variability of epithet rates over time, South Atlantic region.

Measures of Centrality		**Measures of Variability**	
Median	25.5	Range	45.00
Mean	28.3	Variance	166.81
		Standard Deviation	12.92

As can be seen in Fig. 4.17, the rate of epithet usage for the South Atlantic region were moderately high during the first decade of the 20th century, and then declined into the 1910s and

rose to nearly the same heights during the 1920s. The rate of epithet usage dipped once again during the 1930s. The rate peaked sharply in the 1940s and declined just as sharply in the 1950s. The rate of epithet usage slowly rose from the low established during the 1950s over the final four decades in the 20th century. The specific rates of epithet usage per 10,000 judicial opinions for each of the ten decades presented in chronological order were: 43, 28, 36, 27, 57, 24, 12, 19, 17, and 20.

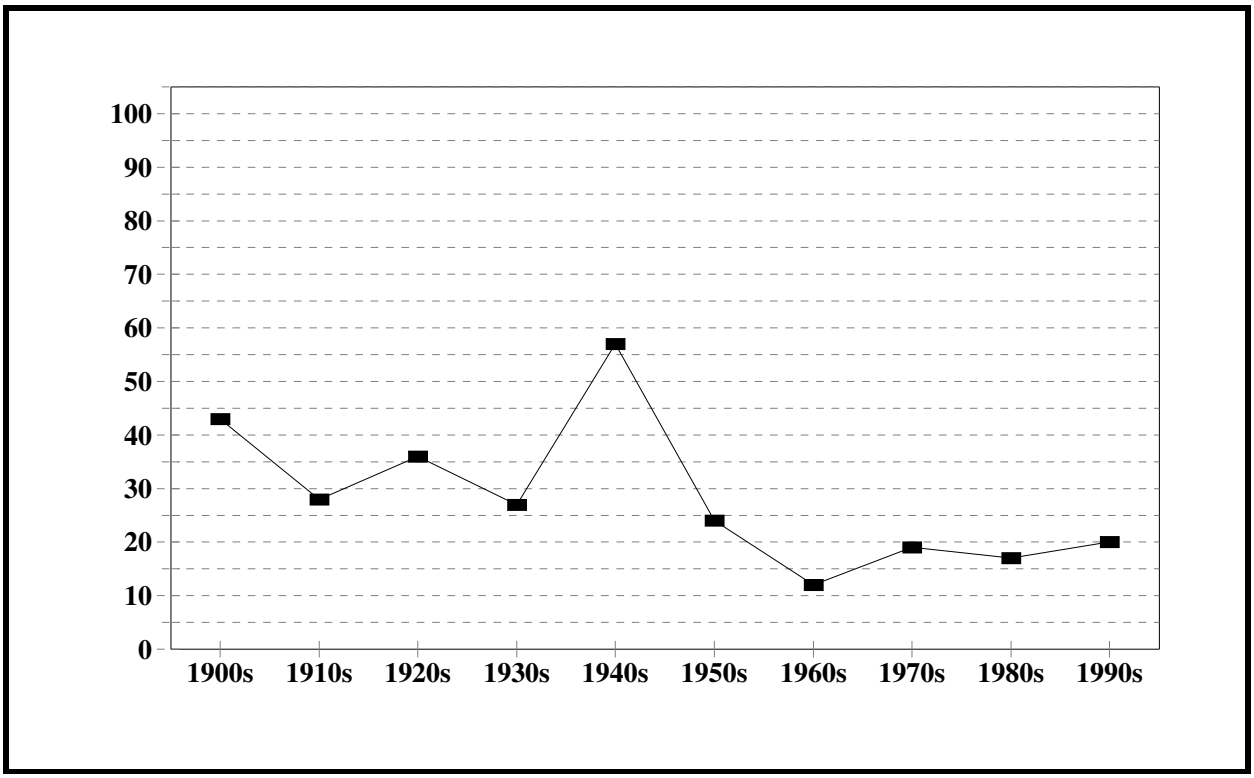

Fig. 4.17. Historical Rates of Epithet Usage per 10,000 Opinions, South Atlantic Region.

The rates for the 1910s, 1920s, 1930s, 1950s, 1970s, 1980s, and 1990s all fell within one standard deviation from the mean. The rates for the 1910s and 1930s fell remarkably close to the mean at 0.02 and 0.10 SDM, respectively. The highest rate of epithet use, 57 cases per 10,000, which occurred during the 1940s, was the first member of a data set to lay more than two standard

deviations from the mean; the rate for the 1940s was 2.22 standard deviations above the mean. The lowest rate of epithet use, 12 cases per 10,000, which occurred during the 1960s, was considerably closer to the mean at only 1.26 standard deviations below the mean.

The third null hypothesis predicted that for the sum total of all epithets, there would be no significant difference in the rate of epithet usage among the ten decades. The summary of results set forth above and in Table 4.17 and Fig 4.17 clearly indicates a significant difference among the rates of epithet usage for each decade in this study. Therefore, based on the analysis of this data, Null Hypothesis 3.0 was rejected for the South Atlantic region.

West North Central Region

The range among rates of epithet usage for the West North Central region was 27 opinions per 10,000. The highest rate of epithet usage among the ten decades was 57 per 10,000 opinions, which occurred during the last decade of the 20th century. The lowest rate of epithet usage was 30 per 10,000 opinions, which occurred during the 1950s. The median rate of epithet usage among the ten decades was 39 per 10,000 opinions. The mean rate of epithet usage was 40.4 per 10,000 opinions. The variance was 71.84, and the standard deviation was 8.48.

Table 4.18

Statistical Measures of Central Tendency and Variability of Epithet Rates over Time, West North Central Region.

Measures of Centrality		**Measures of Variability**	
Median	39.0	Range	27.00
Mean	40.4	Variance	71.84
		Standard Deviation	8.48

As can be seen in Fig. 4.18, the rate of epithet usage in the West North Central region remained relatively stable from the beginning of the century until the 1940s. (Notwithstanding a slight decrease in the 1920s, and a more noticeable increase during the 1940s themselves.) The rate of epithet usage declined during the 1950s, and then continued to rise slowly over the 1960s, 1970s, 1980s, and 1990s. Among the final four decades, the sharpest increases came during the 1960s and, to a lesser extent, the 1990s. The specific rates of epithet usage per 10,000 judicial opinions for each of the ten decades presented in chronological order were: 35, 37, 31, 33, 41, 30, 42, 49, 49, and 57.

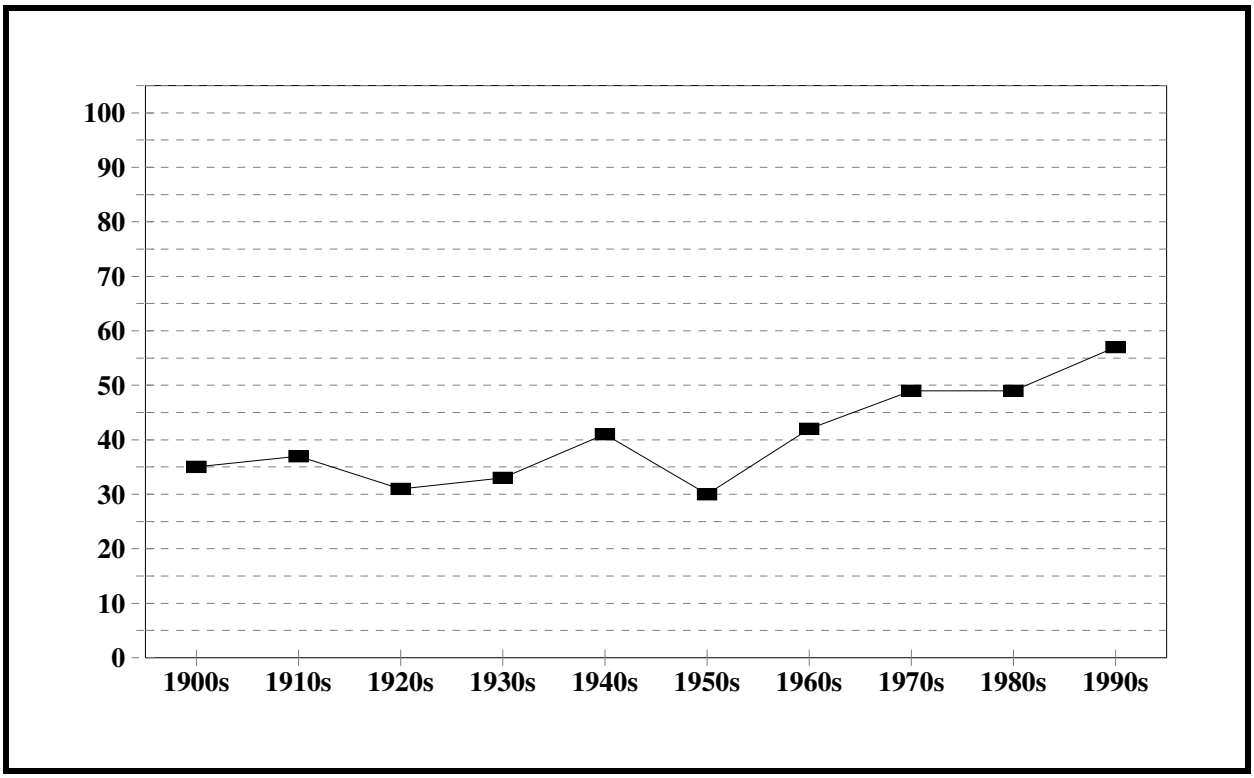

Fig. 4.18. Historical Rates of Epithet Usage per 10,000 Opinions, West North Central Region.

The rates for the 1900s, 1910s, 1930s, 1940s, and 1960s all fell within one standard deviation from the mean. The highest rate of epithet use, 57 cases per 10,000, which occurred during the

1990s, lay almost two standard deviations above the mean at 1.96 SDM. The lowest rate of epithet use, 30 per 10,000, which occurred during the 1950s, was much closer to the mean at 1.23 standard deviations below the mean.

The third null hypothesis predicted that for the sum total of all epithets, there would be no significant difference in the rate of epithet usage among the ten decades. The summary of results set forth above and in Table 4.18 and Fig 4.18 clearly indicates a significant difference among the rates of epithet usage for each decade in this study. Therefore, based on the analysis of this data, Null Hypothesis 3.0 was rejected for the West North Central region.

West South Central Region

The range among rates of epithet usage for the last region, the West South Central region was 83 opinions per 10,000. The highest rate of epithet usage among the ten decades was 105 per 10,000 opinions, which occurred in the first decade of the 20th century. The lowest rate of epithet usage was 22 per 10,000 opinions, which occurred during the 1960s. The median rate of epithet usage among the ten decades was 49 per 10,000 opinions. The mean rate of epithet usage was 54.9 per 10,000 opinions. The variance was 760.29, and the standard deviation was 27.57.

Table 4.19

Statistical Measures of Central Tendency and Variability of Epithet Rates over Time, West South Central Region.

Measures of Centrality		**Measures of Variability**	
Median	49.0	Range	83.00
Mean	54.9	Variance	760.29
		Standard Deviation	27.57

As can be seen in Fig. 4.19, the rate of epithet usage for the West South Central region were dramatically high during the first two decades of the century. The highest rates of usage, in fact, of all rates of epithet usage for all regions and all decades. The rate of epithet usage then decreased precipitously during both the 1920s and 1930s. The rate of epithet usage once again rose sharply in the 1940s, and then steadily slid downward through the 1950s and 1960s. The rate remained relatively stable into the 1970s before rising significantly once again in the 1980s. The rate of epithet usage established during the 1980s remained level during the last decade of the 20th century. The specific rates of epithet usage per 10,000 judicial opinions for each of the ten decades presented in chronological order were: 105, 103, 64, 33, 57, 42, 22, 25, 49, and 49.

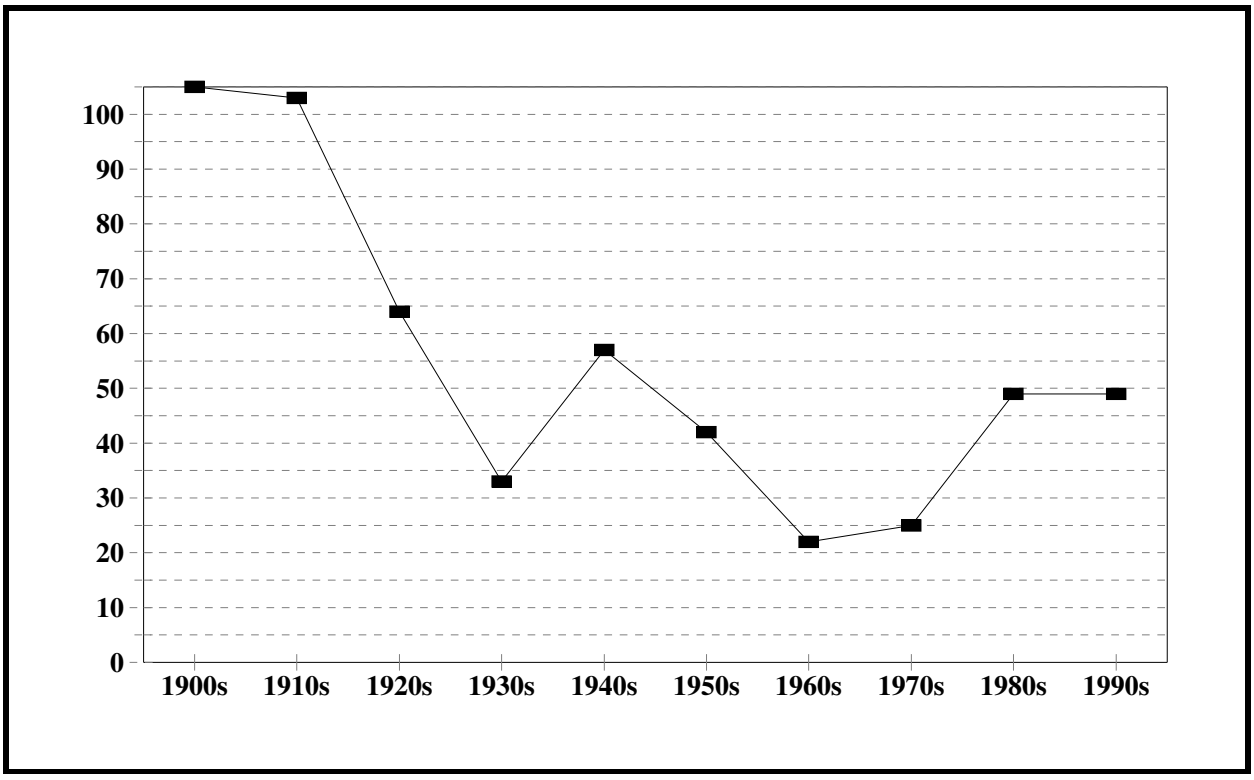

Fig. 4.19. Historical Rates of Epithet Usage per 10,000 Opinions, West South Central Region.

The rates for the 1920s, 1930s, 1940s, 1950s, 1980s, and 1990s all fell within one standard deviation from the mean. The highest rate of epithet use, 105 cases per 10,000, which occurred during the 1900s, lay 1.82 standard deviations above the mean. The next highest rate of epithet usage was the following decade, and that rate of 103 opinions per 10,000 was 1.74 standard deviations above the mean. The lowest rate of epithet use, 22 per 10,000, which occurred during the 1960s, was much closer to the mean at 1.19 SDM.

The third null hypothesis predicted that for the sum total of all epithets, there would be no significant difference in the rate of epithet usage among the ten decades. The summary of results set forth above and in Table 4.19 and Fig 4.19 clearly indicates a significant difference among the rates of epithet usage for each decade in this study. Therefore, based on the analysis of this data, Null Hypothesis 3.0 was rejected for the West South Central region.

An Overview of the National Results

NH 3.1 ***For the sum total of all epithets and all regions, there will be no significant difference in the rate of epithet usage among the ten decades encompassed in this study.***

Null Hypothesis 3.1 assessed variation in epithet use over time at the national level. The dependent variable was time, the 10 decades encompassed in this study. The independent variables were geographic region and lexical choice. The lexical variable was controlled by summing totals for all opinions in the national corpus which contained at least one of the 19 epithets in this study. The geographic variable was controlled by summing regional totals for overall epithet use in order to obtain one figure for the nation.

The proportion, or rate of epithet usage per 10,000 opinions, was determined by the same method described in the "*Assessing Geographic Variation*" subsection above. Once the rates of epithet usage were computed for each decade, standard measures of descriptive statistics were used

to describe the data set. Frequency rates for epithet use were compared by decade, and results were plotted on a line graph.

National Results

The range among rates of epithet usage for the nation (*i.e.* for all regions summed) was 15 opinions per 10,000 opinions. The highest rate of epithet usage among the ten decades was 33 per 10,000 opinions, which occurred during the 1990s. The lowest rate of epithet usage was 18 opinions per 10,000, which occurred during the 1960s.

Table 4.20

Statistical Measures of Central Tendency and Variability of Epithet Rates over Time, National Totals.

Measures of Centrality		**Measures of Variability**	
Median	28.5	Range	15.00
Mean	26.9	Variance	24.69
		Standard Deviation	4.97

The median rate of epithet usage among the ten decades was 28.5 opinions per 10,000. The mean rate of epithet usage was 26.9 per 10,000 opinions. The variance was 24.69. The standard deviation was 4.97.

As can be seen in Fig. 4.20, the national rate of epithet usage was moderate at the beginning of the 20th century and remained stable into the 1910s. The rate then declined somewhat during the 1920s, and then declined again more significantly during the 1930s. The national rate of epithet usage rose into the 1940s, and then began a slow, steady progression downward until the 1970s

when it rose noticeably. The specific rates of epithet usage per 10,000 judicial opinions for each of the ten decades presented in chronological order were: 31, 32, 28, 20, 29, 22, 18, 26, 30, and 33.

The rates for the 1900s, 1920s, 1940s, 1970s, and 1980s all fell within one standard deviation from the mean. The rate of epithet usage for the 1950s also fell within one SDM, though just barely at 0.99 standard deviations below the mean. The highest rate of epithet use, 33 cases per 10,000, which occurred during the 1990s, lay 1.23 SDM., and the lowest rate of epithet use, 18, which occurred during the 1960s, was somewhat further from the mean at 1.79 standard deviations below the mean.

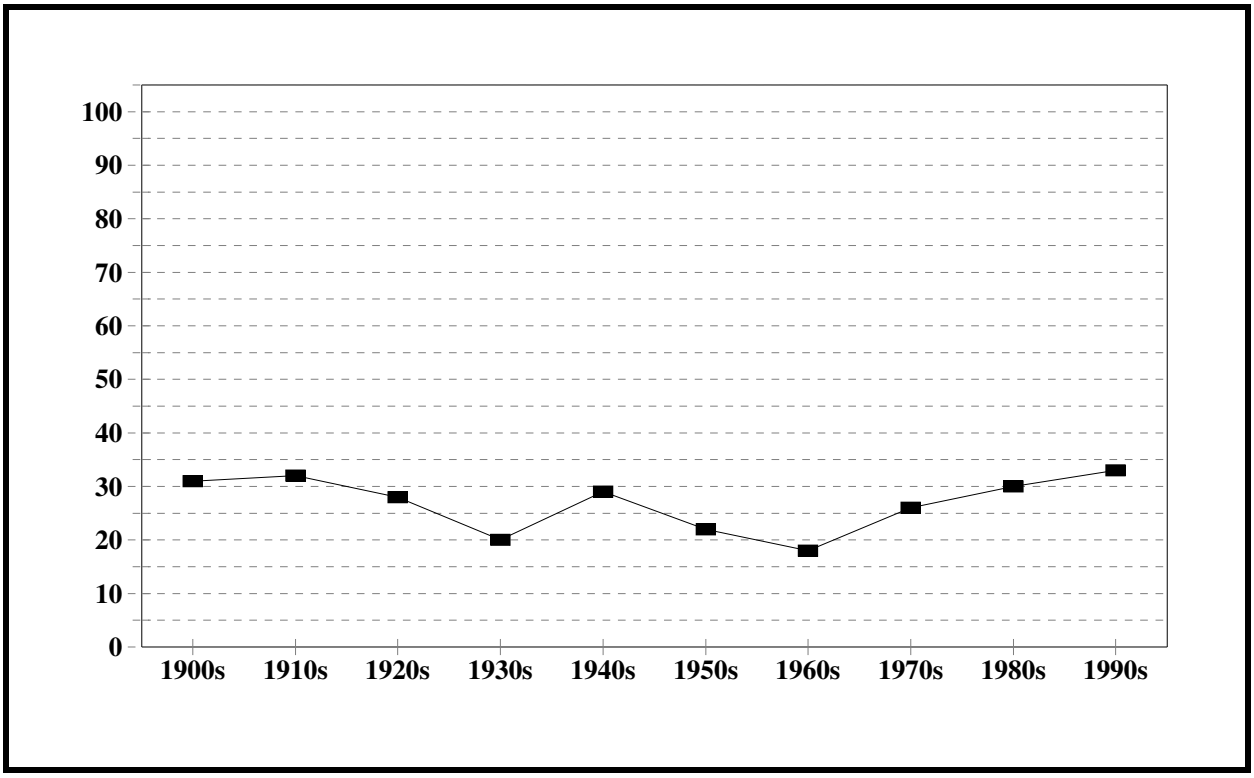

Fig. 4.20. Historical Rates of Epithet Usage per 10,000 Opinions, National Totals.

Null Hypothesis 3.1 predicted that for the sum total of all epithets, there would be no significant difference in the rate of epithet usage among the ten decades. The summary of results

set forth above and in Table 4.20 and Fig 4.20 clearly indicates a significant difference for the nation among the rates of epithet usage for each decade in this study. Therefore, based on the analysis of this data, Null Hypothesis 3.1 was rejected.

The Relationship Between Profanity and Epithets: Background and Results

NH 4.0 There will be no correlation between the usage of profanity and the usage of epithets over the ten decades encompassed in this study.

The final null hypothesis tested the theory that racial and gender epithets are becoming increasingly taboo at the same time that profanity is becoming less taboo.

Background

Nearly three times as many linguistic types were included for study in this dissertation than in the earlier taboo studies on profanity which served as the catalyst for this study (23 versus 7 linguistic types, respectively). Comparison of the overall frequency rates for the 7 linguistic types included in the profanity studies and frequency rates for the 23 linguistic types included in this dissertation would not have resulted in an accurate assessment of the relationship between the two data sets. Therefore, it was decided to compare the mean of the frequency rates for the two most prevalent linguistic types from each data set. Limiting comparison to the two most numerous exemplars of profane taboo words and the two most numerous exemplars of epithets serves a minimum of four purposes.

First, the linguistic types which appear most frequently are likely to be the most "prototypical" members of each data set. As used herein, the prototypical members of a data set are "the clearest cases of membership [within a category] defined operationally by people's judgments of goodness of membership in the category." (Rosch 1978:35-36, quoted in D'Andrade 1995:118.)

In other words, when asked to give an example of an epithet, speakers with communicative competence will think of and offer the prototypical members of the category before the fringe members of that category.[11] Speakers might differ on whether some of the linguistic types listed in Table 3.1 should be considered epithets, but few speakers would contend that a prototypical member of the "epithet" category was not an epithet.

Second, the two linguistic types chosen for each data set—"Shit" and "Fuck" for the profane terms, and "Nigger" and "Bitch" for epithets—include terms which many speakers with communicative competence would consider a "maximally taboo" (Crystal 1987:61) representative for each data set. Third, in addition to the maximally taboo representative for each data set, there is a more prevalent linguistic type which many speakers with communicative competence would regard as considerably less taboo, yet nonetheless representative of their respective classes. Here, most speakers would consider "Fuck" to be a stronger or more taboo term than "Shit." Similarly, most speakers with communicative competence would consider "Nigger" more opprobrious than "Bitch." Indeed, one may now even hear "Bitch" on network television. Lastly, limiting the comparison to the same number of members for each data set ensures a more accurate comparison of the frequency rates for the two data sets than would comparison of the full data sets used for each study.

Mean frequency rates for epithet use and mean frequency rates for use of profanity were compared by decade, and results were plotted on a line graph. As used within this subsection for NH 4.0, "mean frequency rates for use of profanity " means the average of the frequency rate for "Shit" and the frequency rate for "Fuck". As used within this subsection for NH 4.0, "mean

[11] Prototype theory plays a greater role in the qualitative analysis portion of this study. For a more extensive discussion of prototypicality, see Chapter 5.

frequency rates for use of racial epithets" means the average of the frequency rate for "Bitch" and the frequency rate for "Nigger." These frequency rates are expressed as the number of judicial opinions per 10,000 opinions which contained at least one of the target words for this null hypothesis. Unlike previous subsections, the frequency rates for the two data sets used for this subsection are computed to two decimal places. For example, the mean frequency rate for use of profanity during the 1900s is expressed as 13.79 opinions per 10,000 rather than rounded to 14 opinions per 10,000.[12] Finally, the correlation coefficient was computed for the two sets of scores to determine the strength and direction of relationship, if any, between the two.

Presentation of Results

As shown in Fig. 4.21 and Table 4.21, the mean frequency rate for epithet usage of during the 1900s was 13.79 opinions per 10,000. This compares with a mean frequency rate for use of profanity of less than one opinion per 10,000, specifically .24 opinions per 10,000.

Table 4.21

Rates of Usage per 10,000 Opinions for Epithets and Profanity, 1900s-1940s.

	1900s	**1910s**	**1920s**	**1930s**	**1940s**
Epithets	13.79	13.89	11.16	7.56	11.21
Profanity	0.24	0.20	0.07	0.00	0.10

[12] One could also say that these totals were computed to six, rather than the four decimal places of earlier subsections, *i.e.* the rate of 13.79 per 10,000 opinions can also be expressed as .001379 rather than rounded to .0014 as were the results in earlier sections of this dissertation.

The mean frequency rate for epithet usage during the 1910s was slightly higher than the previous decade at 13.89 opinions per 10,000. The mean frequency rate of .20 opinions per 10,000 for profanity is even lower than the remarkably low rate of the previous decade.

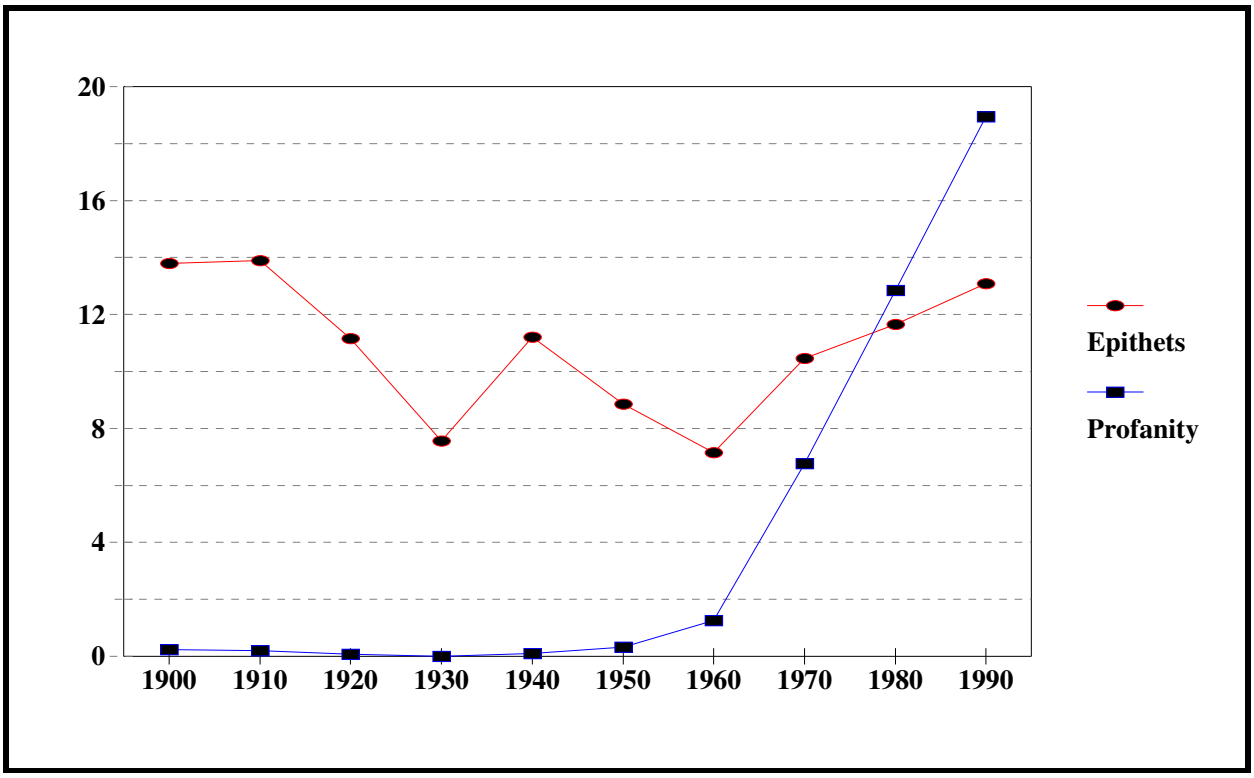

Fig. 4.21. Comparison of Usage Rates for Epithets and Profanity per 10,000 Opinions By Decade.

The mean frequency rate for epithet usage during the 1920s decreased slightly to 11.16 opinions per 10,000. Once again, the mean frequency rate for profanity usage decreased even further to a mere .07 opinions per 10,000.

The mean frequency rate for epithet usage during the 1930s was 7.56 opinions per 10,000. This frequency rate is once again lower than rate of epithet usage during the preceding decade. Furthermore, the decrease from the 1920s to the 1930s was greater than the decrease from the 1910s

to the 1920s. There were no instances of use of profanity that rose to the level required for this NH 4.0 subsection. The mean frequency rate for profanity was 0 opinions per 10,000 for profanity.

The mean frequency rate for epithet usage during the 1940s increased over the rate for the previous decade to 11.21 opinions per 10,000. Once again, this compares with a mean frequency rate for profanity use of less than one opinion per 10,000. The rate of profanity use for the 1940s was .10 opinions per 10,000.

Table 4.22

Rates of Usage per 10,000 Opinions for Epithets and Profanity, 1950s-1990s.

	1950s	1960s	1970s	1980s	1990s
Epithets	8.85	7.15	10.46	11.66	13.08
Profanity	0.32	1.26	6.76	12.85	18.94

The mean frequency rate for epithet usage during the 1950s decreased slightly over the previous decade to 8.85 opinions per 10,000. The mean frequency rate for profanity also increased over the rate for the previous decade, but once again remained remarkably low at .32 opinions per 10,000.

The mean frequency rate for epithet usage during the 1960s decreased about one and a half opinions per 10,000, to 7.15 opinions per 10,000. For the first time in the 20th century, the mean frequency rate for profanity was *greater* than one opinion per 10,000, although the rate for profanity still stood at a low 1.26 opinions per 10,000.

The mean frequency rate for epithet usage during the 1970s was 10.46 opinions per 10,000. This compares with a mean frequency rate of 6.76 opinions per 10,000 for profanity. The increase

in the rate of profanity usage from the 1960s to the 1970s, however, was the largest increase thus far in the 20th century.

The mean frequency rate for epithet usage during the 1980s was a little more than one point higher at 11.66 opinions per 10,000. This compares with a mean frequency rate of 12.85 opinions per 10,000 for profanity. The 1980s marks the first decade that profanity usage is more prevalent than usage of epithets. Moreover, the increase in profanity usage from the 1970s to the 1980s nearly doubled. The mean frequency rate for epithet usage during the 1990s was 13.08 opinions per 10,000. Once again, for only the second time in the 20th century, the mean frequency rate for profanity usage was higher, at 18.94 opinions per 10,000.

The correlation coefficient for profanity and epithet usage is .307, indicating a weak correlation between usage of profanity and epithets over the 20th century. If one divides the century into halves, however, a different picture emerges. The correlation coefficient for profanity and epithet usage from the beginning of the century up to and including 1950 is somewhat higher at .343, again indicating a rather weak correlation between usage of profanity and epithets over the first half of the century. The correlation coefficient for profanity and epithet usage for the time period 1960 through 1990 is considerably higher at .963. This higher correlation coefficient indicates a strong, positive linear association between the variables, *i.e.*, as rates of profanity usage increased, so too did rates of epithet usage. This strong positive correlation between usage of profanity and epithets over the last four decades of the 20th century is illustrated graphically in Fig. 4.21.

Null Hypothesis 4.0 predicted that there would be no correlation between the usage of profanity and the usage of epithets over the ten decades encompassed in this study. Because there was not a strong association between epithet and profanity usage over the entirety of the 20th century, NH 4.0 was not rejected.

Analysis

The objective of this dissertation was to examine the use of racial and gender epithets within 20th century, state appellate court judicial opinions. This dissertation was designed as a two-phase study incorporating both synchronic and diachronic analyses. The purpose of this first, quantitative phase of this study is to use quantitative analyses to test the theory that our culture is undergoing a shift in linguistic taboos from traditional taboo words dealing with sex, the body, or bodily functions to newer taboos of racial and gender epithets.

Four principal research questions guided this first phase of the dissertation: (1) What is the rate of epithet usage within state appellate court judicial opinions for each of the ten decades of the 20th century? (2) Is the use of racial and gender epithets increasing or decreasing? (3) Are there any discernible historical, lexical, or geographical patterns of distribution in the use of racial and gender epithets? And, (4) how does the rate of epithet usage compare to the rate for usage of profanity in within the same genre?

The first of the four research questions was addressed in the pages above with the presentation of results of the quantitative analyses. The remaining three questions and other related issues will be addressed in the following pages.

Delimitation to Significant Results

In order to retain its focus, this analysis will be limited to epithets which exhibited a relative frequency of 2% or greater for at least one decade. In so limiting discussion of lexical distribution patterns, the following epithets are eliminated from the data set: Spick, Spade, Wetback, Gook, Beaner, Gringo, Jungle Bunny, Redneck, and Male Chauvinist Pig. Because the preceding epithets are not being focused on here, does not mean the use of those epithets in judicial opinions is irrelevant. Even if the number of opinions which contain those epithets is somewhat low

numerically speaking, they are nonetheless important. Courts are among the most formal institutions in our society, an linguistic environment in which formal register and hypercorrection predominate (O'Barr 1982:52, 84.) It then logically follows that to utter a taboo word in such a formal environment is a serious breach of a cultural standard which respects the formal register and the authority of the court. Low rates of usage do not vitiate the sociolinguistic import of even one breach of such a normative cultural standard.

Table 4.23

Table of Epithets Which Exhibited a Relative Frequency of 2% or Greater for at Least One Decade, Listed in Order of Highest Average Rank among Epithets.

Epithet	Highest Rank	Lowest Rank	Avg. Rank
Bitch	1	1	1
Nigger	2	2	2
Nip	3	7	5
Fag	3	7	5
Slut	3	10	7
Jap	3	11	7
Honkie	3	13	8
Chink	6	11	8
Sissy	6	11	8
Darkie	3	19	9

All breaches of a taboo can provide insight into the culture at large. In order to glean the insights which those few epithets would yield, however, would require examination of the text of the opinions themselves. As stated previously, the focus of this diachronic portion of the study is

solely quantitative. The qualitative, textual analysis is contained in Chapter 6. A textual analysis of opinions containing Spick, Spade, Wetback, Gook, Beaner, Gringo, Jungle Bunny, Redneck, and Male Chauvinist Pig lies outside the scope of the quantitative analysis. It is for this reason that those members of the data set noted above are excluded from the quantitative analysis.

By eliminating the preceding epithets from the analysis, the remaining epithets are: Bitch, Nigger, Fag, Jap, Nip, Darkie, Honkie, Slut, Sissy, and Chink. This narrowed data set of epithets is presented in Table 4.23.

Trends and Patterns in Epithet Usage

The most striking observation with respect to patterns of epithet use is the rejection of virtually all null hypotheses. The first null hypothesis, which predicted that there would be no significant difference in the rate of epithet usage among the nine regions encompassed in this study, was rejected for all ten decades of the 20th century. The second null hypothesis, which predicted that there would be no significant difference in usage among the epithets, was also rejected for each of the ten decades included in this study. Null Hypothesis 3.0, which predicted that there would be no significant difference in the rate of epithet usage among the ten decades encompassed in this study was likewise rejected for all nine regions. Null Hypothesis 3.1 predicted that there would be no significant difference in the rate of epithet usage at the national level among the ten decades of this study. As with the first three null hypotheses, NH 3.1 was rejected. The final null hypothesis, which predicted that there would be no correlation between the usage of profanity and the usage of epithets over the ten decades encompassed in this study, was the only null hypothesis not to be rejected.

From the results above, one may reasonably conclude there *are* differences in epithet usage. Whether those differences occur randomly or as part of a discernible pattern is addressed in the

following pages. The only null hypothesis not to be rejected shows that there is indeed a correlation between epithet use and use of profanity in judicial opinions. The direction of that association and its possible meaning are addressed below.

In the studies on use of profanity in judicial opinions which gave rise to this dissertation, it was found that there the popular perception regarding profanity usage was correct: there was indeed a growing trend in America toward acceptance of words which were once taboo. (As measured by the frequency with which seven specific taboo words appeared in judicial opinions.) Before the sweeping cultural changes of the mid 1960s and early 1970s the use of profanity within judicial opinions was virtually nonexistent. From the mid 1970s on, however, use of profanity has increased dramatically, as the graph in Fig. 4.21 shows.

In contrast to profanity use which exhibited extremely low rates at the beginning of the 20th century, epithet use for the first two decades of the century were quite high. The rate of epithet usage plunged from the 1920s to the 1930s, and then went back up in the 1940s and 1950s. The rate of epithet use once plunged once again during the 1960s, although the decrease in the rate of usage was not as great as the decrease from 1920 to 1930. The rate of epithet usage during the 1970s and 1980s again returned to about same level as it was during the 1940s and 1950s. By the end of the century, the rate of epithet usage was nearly identical to the high rates of usage in the first two decades of the century. Clearly, there were differences in epithet usage over the course of the 20th century. But does the variation in rates occur randomly, or might there be historical or cultural reasons given for the difference in rates?

First, what can one make of the high rates of epithet usage at the beginning of the century? Although there were no previous studies which quantified epithet use in judicial opinions or within any other genre at the time research was begun for this dissertation, it seemed logical to predict that the diachronic data would indicate that epithet usage early in the century occurred at higher rates

than in the post civil rights era. The rationale behind this prediction was that as epithets became increasingly taboo, judges would feel a stronger inhibition against including them in their opinions, and the epithets would then appear in fewer judicial opinions. The reality of the data is somewhat more complex, however.

As the chart in Fig. 4.20 shows, the national totals for epithet usage did not exhibit a clear and unchecked downward trend over the last half of the century. As is shown in Fig. 4.20, the rate of epithet usage in the last decade of the 20th century was nearly the same as it was in the first decade of the century. Indeed, the national rate of epithet usage in the 1990s was even *higher* than it was during the 1900s. The national rate of epithet usage was 33 opinions per 10,000 during the 1990s and the rate was 31 opinions per 10,000 at the beginning of the century.

Even if one winnows the data set for epithets to Nigger and Bitch, the two epithets chosen for the direct comparison with profanity usage, the figures do not change much. Rounding results to the nearest whole number, the averaged rate of epithet usage for Bitch and Nigger was 14 opinions per 10,000 opinions during the 1900s. The rate was virtually identical in the last decade of the century: 13 opinions per 10,000 judicial opinions. Thus, while it was predicted that the rate of epithet usage would be numerically affected by the civil rights movement and greater participation in society by minorities, this prediction was not supported by the data.

Both the overall national rate of epithet usage and the averaged rate of epithet usage for Bitch and Nigger exhibit the same distribution over the century. Both rates trended downward from the 1900s to the 1930s. Both rates also rose during the 1940s and then trended downward somewhat from the 1940s to the 1960s. This second downward trend does coincide with the rise of the civil rights movement. The decrease in rates of epithet usage for both the overall rate and the averaged rate for Bitch and Nigger were merely transitory, however. Both rates climbed steadily from the 1960s to the end of the century.

The increasing use of epithets after the initial decrease in epithet usage during the first two decades after the rise of the civil rights movement may be due to a backlash effect against minorities. As used here, backlash is defined as a sudden or violent social or political reaction which results from fear or resentment. The fact that the civil rights movement arose at all indicates social disparity among ethnic groups in American society. In other words, if there were no disparity or discrimination, the need for a civil rights movement would be rendered moot. Once the disparity between social and racial groups was ameliorated, however, those groups and individuals which formerly enjoyed a privileged position may find themselves on the receiving end of harsh criticism. Here, the rise in epithet usage from the 1960s onward may be due to resistance to the fuller participation of minorities in society.

There is also an alternative explanation for the current upward trend in epithet usage, however. It may be just as likely that the current rise in epithet use reflects minorities' increased willingness to litigate injustices inflicted upon them. If minorities feel the judicial deck is no longer stacked against them, they will feel freer about bringing suit for harassment or discrimination. Because of a greater number of harassment and discrimination suits, one should expect to see a greater number of epithets because epithet use serves as one or more of the grounds for those very suits. Because epithet use could serve as the grounds for a civil discrimination claim or as the grounds for a penalty enhancement for a hate crime in a criminal case, use of the epithet is material to the case and a judge would have to quote the epithet in the statement of facts. Furthermore, a judge would probably also include the epithet in the analysis section of his or her opinion. Thus, a greater number of epithets appearing in opinions *may* actually be an indication of epithets becoming more taboo, *i.e.*, plaintiffs may increasingly feel empowered to bring suit when confronted with epithet use, thinking "You have transgressed an important social standard, and I am going to hold you accountable."

There is also a third plausible explanation for the current rise in epithet use, and that is the phenomenon of "in- group slang." Sociolinguists have clearly documented a practice among groups of using taboo terms to signal inclusion within a closely-knit social network. (Elbe 1996.) The practice of "in-group slang" signals a person's membership in, and acceptance by, that closely-knit social network. For example, Clarence Major has observed that

> [nigger] used by black people among themselves, is a racial term with undertones of warmth and good will—reflecting . . . a tragicomic sensibility that is aware of black history. (Major 1970, quoted in Kennedy 2002:36-37.)

One may see another example of in-group slang in the academy among those scholars who work in the discipline of Queer Theory. Scholars working within Queer Theory and other gay rights activists have adopted the traditionally derogatory term "queer" in order to reclaim the term and alter both the connotation and denotation traditionally associated with that word. (Stacey 1999:399.) An additional example of "reclaiming" a derogatory term may be found in the case of Lee v. Ventura County Superior Court which was recounted in Chapter 1. In that case, a retired African-American educator wanted to change his name to "Mr. Nigger" in order to steal the degradation from the epithet nigger by reappropriating it from bigots. (Lee v. Ventura County Superior Court, 11 Cal.Rptr. 763 (1992).)

Given the dramatic increase in epithets and the textual analysis of a sample of opinions containing the epithet Nigger (see Chapter 6), the likelihood of a backlash against women and minorities accounting for the entire increase is somewhat small. While a resistance against greater minority participation in society may have accounted for a higher percentage of the initial increase in epithet usage, there are at least two factors which militate against this interpretation much beyond the 1960s. First, although U.S. society has not achieved complete racial and gender equality, American society is considerably more equitable now than it was 40 to 50 years ago. Furthermore, social backlash tends to be a transitory state before the social pendulum once again swings back the

other way. Thus, after initial resistance to minorities, these minorities might be expected to play a fuller role in society without facing the same degree of open hostility.

The second factor militating against backlash was the textual analysis of a sample of opinions during the synchronic analysis for this dissertation. In that analysis, it was found that many of the cases exhibited both in-group slang and there were also a significant number of discrimination and harassment cases. Thus, the more plausible explanation for the current increase in the rate of epithet usage is a combination of in-group slang and an increased willingness among women and minorities to bring suit when harassed or discriminated against.

Although the rate of epithet usage does not exhibit a single, clear-cut directional trend over the entirety of the 20th century, it is clear from the data that the current trend for use of racial and gender epithets is upward.

Highest Frequency Terms

Turning from issues of historical variation to lexical variation, one sees once again that differences in rates of usage exist among the 19 epithets chosen for study in this dissertation. The lexical choices and the possible meanings of those choices follow in the paragraphs below.

At the time research for this dissertation was begun, it was logical to predict that usage of race-specific epithets might correlate with certain historical events and/or the relative acceptance or rejection of a given group at a particular point in history. For example, one would expect use of epithets referring to Asians to increase during World War II and shortly thereafter because of the well-documented animus toward Japanese Americans during that time. Similarly, one might expect increases in epithets referring to Hispanics during the 1980s and other periods of heavy immigration by Hispanics. Simon argues that while the U.S. may be a nation of immigrants, Americans have never been very supportive of immigration. That is, while Americans are proud of the U.S.

immigrant heritage, that pride is limited to those ethnic groups which have been in the U.S. for generations and which have assimilated into the majority culture. Americans are less supportive of more recent waves of immigrants. (Simon 1995.) While there was some support among the data for the above predictions, the lexical data also revealed some interesting and unexpected patterns.

The first surprise among the lexical data was the incredibly high rate for the epithet Bitch across all ten decades. The epithet Bitch exhibited an average relative frequency for the century of 64 per cent. That is, over the entire century Bitch accounted for 64% of all epithets use. The relative frequency for Bitch never dropped below 57.5% and went as high as 71.5%. Given that women could not vote until the passage of the 19th Amendment to the U.S. Constitution in 1920, and that some states prohibited women from owning property in their own name until late in the 19th century (*Compton's* 1995), the use of Bitch in large numbers should not ultimately be surprising. The overwhelming use of Bitch, however, could not have been predicted.

Despite the incredibly high rates of usage for Bitch, however, the other gender epithet in the data set referring to women did not exhibit similarly high rates of use. The epithet Slut never accounted for more than 3% of opinions which contained an epithet. Despite the fact that only one of the gender epithets referring to women exhibited high rates, it is probable that the extremely high rate of usage for Bitch does point to the low status of women in society for most of the 20th century.

A pattern similar to that of Bitch emerged for the second most prevalent epithet in the data set. The epithet Nigger was always the second most common epithet. Nigger never accounted for less than 11.7% of all opinions which contained an epithet, and in one decade Nigger accounted for more than 20% of all epithets which appeared in judicial opinions. As with the epithet Bitch, Nigger also exhibited a remarkably high average relative frequency over the 20th century: 16.8 per cent.

After the exceptionally high rates of use for Bitch and Nigger, the next pattern which emerges is the overall pattern of distribution. For all decades, one epithet accounted for two-thirds

to three-quarters of all epithet use. Furthermore, for all decades a second epithet accounted for one-tenth to one-fifth of all epithet use. The remaining epithets appeared in varying rank according to relative frequency, but the distribution for each decade and over the whole of the century remained the same. After the two most common epithets, several other epithets each accounted for two to five per cent of epithet use, and the remaining epithets in the data set would be used but once or twice. This distribution pattern is presented in tabular form in Tables 4.1 through 4.10.

At first glance this lexical distribution pattern which was established in the first century of the decade and which continued through the subsequent decades may seem curious. Indeed, for people not familiar with the relevant literature, it may seem counterintuitive that one or two lexical items would be responsible for most of the epithet use, with handful of terms appearing in moderate numbers, and many items appearing but once or twice. An examination of the results from dialectology, psycholinguistics, and similar disciplines, however, typically demonstrate similar distribution patterns.

One similar distribution pattern can be found among the data elicited for the Linguistic Atlas of the Middle and South Atlantic States (L.A.M.S.A.S.). For example, when asked how they referred to a large, upholstered piece of furniture on which people sit, "sofa" constituted just over 38% of all valid responses. (L.A.M.S.A.S. 2004.) The next most common response in the L.A.M.S.A.S. data was "lounge" with nearly 19% of all valid responses. Just over 11% of the respondents reported use of the word "settee." "Couch" accounted for over 7% of all valid responses, and "bench" comprised a little more than 3% of the data. The remaining 21 linguistic types elicited in response to this inquiry each accounted for less than two and a half per cent of all valid responses. Indeed, nineteen of the responses to this inquiry appeared only once. (L.A.M.S.A.S. 2004.) Thus, one can easily see the same type of distribution pattern within the LAMSAS data as was found in the distribution of lexical items in the data set for this dissertation.

When viewed in this context, the lexical distribution pattern exhibited among the relative frequencies of the epithets does not seem anomalous. In fact, the distribution pattern here conforms with established patterns of other linguistic studies.

Of the most prevalent epithets used early in the century, two refer to African-Americans, and one refers to women. It should not be too surprising that two of the most prevalent epithets refer to blacks. The years 1900 through 1909 cover a period only three and a half decades removed from slavery and the Civil War. The history of the U.S. is not that far removed from slavery. In one well known works project during the Great Depression of the 1930s, scholars, folklorists, and writers traveled the country gathering oral histories from ordinary Americans in all walks of life. This Federal Writers' Project also collected more than 2,300 first-person accounts of slavery. (Yetman 2001.) That these writers were able to gather so many oral histories from former slaves in the 1930s illustrates just how recent American ties to slavery are.

Although blacks comprised a relatively small percentage of the total U.S. population at the turn of the 20th century, the great degree to which blacks were disenfranchised in American society is well known. Accordingly, it is logical that the epithets Nigger and Darkie would account for a large percentage of all epithets used in the U.S. during these years.

Results in Black and White

One of the theoretical precepts which underlay this study was the sociolinguistic axiom that all natural languages inexorably change over time (Labov 1984:9.) As a culture changes so too does its language. As noted herein, one aspect of a culture which undergoes change is what speakers of communicative competence consider to be taboo. As such, any epithets which exhibited drastic shifts in frequency rates over the century should be a potential indicator of soicolinguistic change. Here, the epithet Darkie did exhibit just such a shift in relative frequency. As Table 4.23 shows, the

epithet Darkie exhibited a huge range in rank among epithet usage rates. In the early part of the century, Darkie was often the third most frequently used epithet, yet by the end of the century, use of Darkie was virtually nonexistent. The vast change in the relative frequency of Darkie can be seen even more dramatically in the line graph of Fig. 4.22.

The term Darkie, which had been among the three or four most common epithets for first four decades of the century, slipped to the sixth most common epithet during the 1940s. By combining the information from Fig. 4.22 and Table 4.24, one can see that Darkie accounted for the largest percentage of the data set in the 1920s and 1930s. Then, despite the dramatic plunge in relative frequency of Darkie in the 1940s, it still ranked sixth among all epithets in terms of relative frequency.

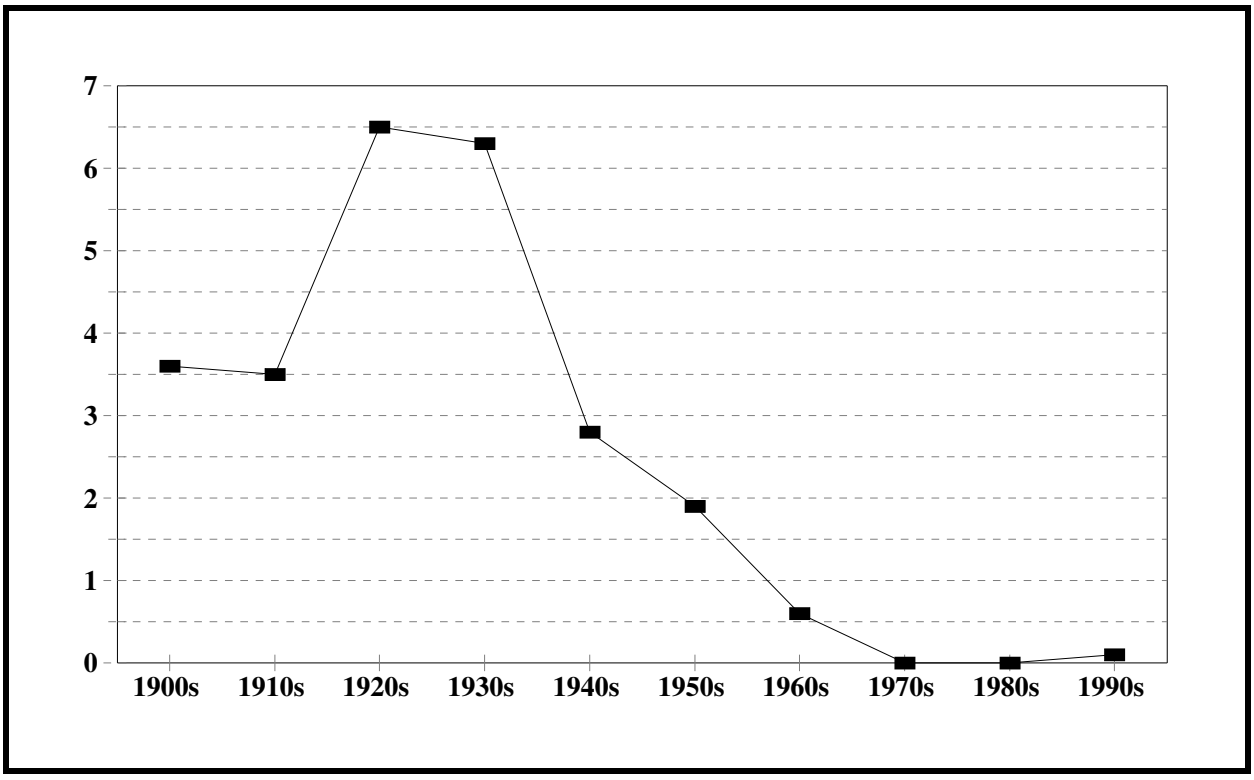

Fig. 4.22. Relative Frequency of Darkie by Decade.

The big shift in use of Darkie occurred from World War II to the end of the century. Whereas Darkie was formerly one of the more frequently used epithets in the first half of the century, it was one of the least used epithets in the last half of the century. Clearly, a change in the acceptability of certain epithets occurred sometime around the time of the Second World War. Darkie appeared in only 9 opinions during the 1950s, or 1.9% of all opinions which contained an epithet. During the years 1970 through 1979, the epithet Darkie did not appear in *any* judicial opinions. This failure to account for a single token is particularly interesting as the epithet Darkie was previously one of the more common epithets. The shift in rank of Darkie from third-highest to dead last is curious. The disappearance of a previously "popular" epithet may signal a change in taboos, a shift in what speakers of communicative competence consider taboo.

Table 4.24

Numerical Rank of Darkie among All Epithets by Decade.

1900s	1910s	1920s	1930s	1940s	1950s	1960s	1970s	1980s	1990s
3	3	3	4	6	7	13	18	19	17

Broadly speaking, there are two ways for a linguist to approach language change. One is to look at the internal factors of language change such as the phonological, morphosyntactic, or psycholinguistic forces for change. The other approach is to look at the sociolinguistic forces of language change. (Atchison 1991:134.) This dissertation proceeds from the latter perspective. As such, this dissertation examines language change as evidence of a change within the culture. Here, the focus is on the external factors of language change, the social elements of language use and concurrent historical developments in the culture at large.

Atchison (1991:134) has suggested three broad categories of the sociolinguistic causes of language change: fashion, foreign influence, and social need. Two of her factors are relevant to this analysis of usage of specific epithets: fashion and social need. Both fashion and social need are manifested in the forces of immigration, civil rights law, and a change in the standard for what the speech community considers prestige speech.

Several judicial and legislative changes in the law reflect changing social needs and are significant for this dissertation. Foremost among these sources of jurisprudential change are those laws establishing and expanding civil rights. The U.S. Supreme Court plays a crucial role in establishing the scope of civil rights. In a single ruling, the Supreme Court can change the nature of a civil right throughout the entire country. Such a change occurred in civil rights law at the same time Darkie underwent a drastic change in rate of usage and its rank among epithets in terms of its relative frequency within the data set.

In 1948 the U.S. Supreme Court decided the case of Shelley vs. Kraemer. Before Shelley, many blacks were prohibited from buying real estate in any area that was not already predominantly black. When the Shelleys found a home owner who was willing to sell their home to them despite a neighborhood covenant prohibiting the sale of properties to blacks, they bought the home. After the neighbors sued to block the sale of the house to the Shelleys, the case was appealed to all the way to the U.S. Supreme Court. The Supreme Court held that racially restrictive covenants could not be enforced by the courts since this would constitute state action and violate the 14th Amendment. In other words, if the Court were to enforce an unconstitutional covenant, it would be analogous to the government committing the same unconstitutional behavior itself. The Shelley case reaffirmed the 14th Amendment and rendered the doctrine of "separate but equal" vulnerable to future legal attack and set the stage for later landmark civil rights legislation.

The change in the willingness of the Supreme Court to strike down restrictive covenants can be seen in the larger societal change in the willingness to use the epithet Darkie. Only 16 years before the Supreme Court decided Shelley, another case used the epithet Darkie in an approving manner. In fact, in that case, the judge *specifically directed* a witness to use the epithet.

> In 1932 a young black Communist named Angelo Herndon found himself on trial for his life in Atlanta, Georgia, for allegedly organizing an insurrection. Testifying against him was a hostile witness who referred to him as a nigger. Herndon's black attorney Benjamin Jefferson Davis requested that the white judge intervene, prompting an ambiguous ruling.
>
> Davis: I object, Your Honor. The term "nigger" is objectionable, prejudicial, and insulting.
>
> Judge: I don't know whether it is or not . . . However, I'll instruct the witness to call [the black defendant] "darky" which is a term of endearment. (Kennedy 2002:17.)

In the space of only a decade and a half, large segments of American society considered certain epithets beyond the pale. The epithet "Darkie" is one such term which appears to have fallen out of favor. It strains credulity to think that a state court judge in this day and age that would profess ignorance as to whether Nigger was prejudicial and insulting or that he would consider Darkie a "term of endearment."

Taken as a whole, civil rights litigation such as the Civil Rights Act and the Supreme Court cases of Shelley and Brown vs. the Board of Education broke down societal barriers between the races. As such, these changes changed the complexion of American communities, schools, and businesses. Thus, civil rights legislation and litigation changed our culture and our language. The sweeping advances in civil rights law in the post World War II era changed the social climate of the U.S., and hence changed what constitutes prestige language. Before the Civil Rights movement, equality before the law was discouraged, segregation was accepted, and expressions of hate were tolerated. In short, while many people in the pre-Civil Rights era (approximately before 1950)

might have been surprised at being censured for using a racial epithet, most people today would not be so surprised. In fact, as pointed out in Chapter 3, at least one academic has observed that the worst thing that can happen to an academic's career now is to be called a racist. (Trout 1995.) The post-war, post-civil-rights shift in the acceptability of certain epithets has rendered the word "racist" itself something of an epithet.

Before the Civil Rights Act, courts routinely held that even though the government could not discriminate on the basis of race, private individuals could. For example, before the Civil Rights Act, many restaurants, hotels, and other public establishments refused service on the basis of race. In order to legislate the actions of private individuals, Congress used its considerable power to regulate interstate commerce to prohibit discrimination based on race, color, religion, or national origin in public establishments that had a connection to interstate commerce. As contemplated by Congress and endorsed by the courts, virtually any activity has *some* connection to interstate commerce. Not only did the Civil Rights Act integrate lunch counters, buses, and night clubs, but its passage signaled Congress's willingness to legislate matters which had previously been left to the states or private individuals.

Another interesting use of a racial epithet which underwent a significant shift in relative frequency over the course of the 20th century is Honkie. The range in relative frequency of Honkie can be seen in Fig. 4.23. Use of the epithet Honkie, traditionally a derogatory reference for whites used by blacks, exhibited low use from the 1900s to the 1920s. Honkie accounted for less than 1% of all epithets used in the 1900-1939, but appeared in 31 opinions (5.3%) during the 1940s. Honkie exhibited the most dramatic increase in relative frequency among all epithets during the 1940s. Frequency rates for Honkie then increased after the gains of the civil rights movement of the 1950s and 1960s had been incorporated into the mainstream.

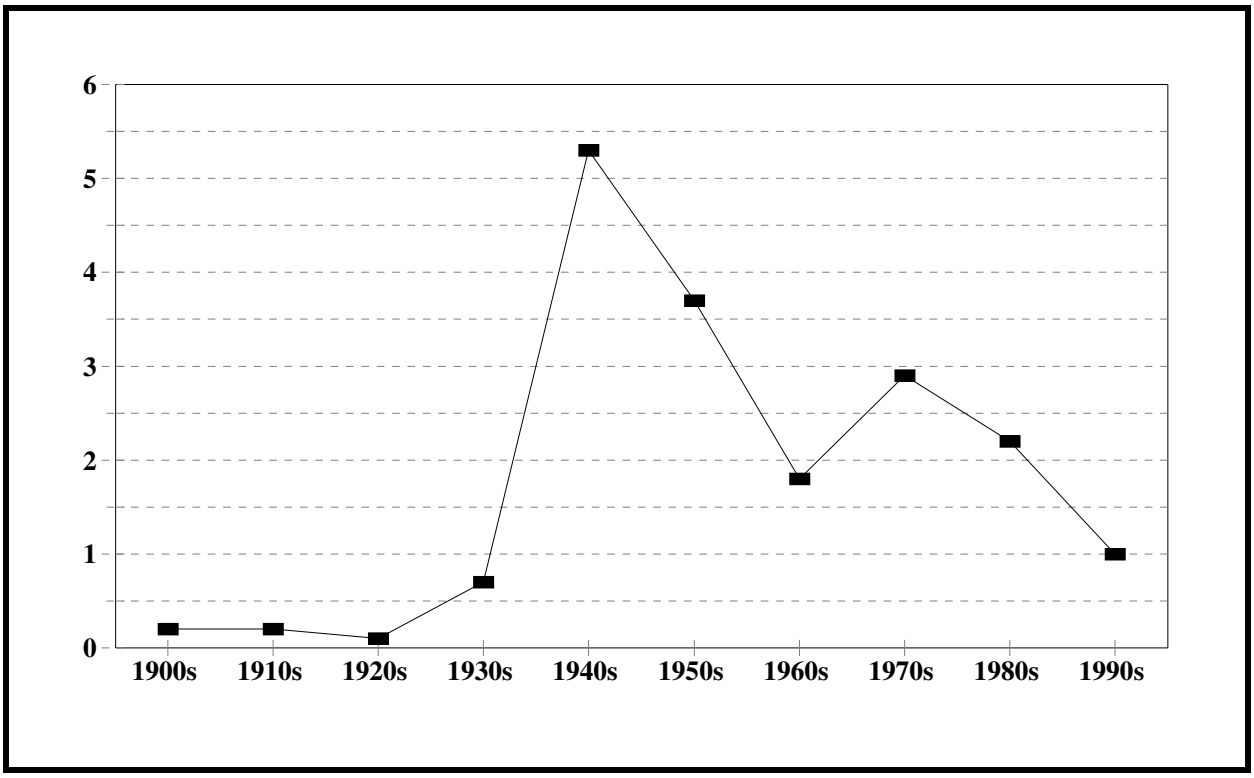

Fig. 4.23. Relative Frequency of Honkie by Decade.

Once again, two of the three broad categories of the sociolinguistic causes of language change which Atchison delineated (1991:134) are relevant to an analysis of Honkie. And, once again, those two factors are fashion and social need. Both fashion and social need are manifested in the social forces acting upon use of Honkie.

One explanation for this unexpected rise in use of Honkie may be that black Americans felt emboldened by greater participation in, and acceptance by, society. The greater acceptance of blacks by mainstream American society can be seen in exemplars of popular culture from the 1960s and 1970s. Television shows such as *Good Times*, *The Jeffersons*, and *Sanford and Son* cast black actors in leading rather than supporting roles. In addition, one phenomenon relevant to a discussion about the increase in the use of Honkie was discussed earlier with respect to the epithet Darkie, namely the phenomenon of increased confidence and social standing on the part of minorities. If

a rise in epithet use reflects minorities' increased willingness to litigate injustices inflicted upon them, then perhaps greater use of epithets referring to the majority white culture reflects a belief that blacks felt safe to express some of the hostility and resentment for prior discriminatory treatment. If such an interpretation is valid, then one would expect to see just such an increase in use of epithets referring to white people.

Los Latinos Ausentes

Turning from issues of epithets for blacks and whites to the results for epithets referring to other groups, one sees other interesting and somewhat surprising results. Foremost among these is the rather surprising result that no epithets referring to Hispanics may be found in the narrowed data set listed in Table 4.23. In other words, no derogatory reference for Hispanics had a relative frequency of greater than or equal to 2% for any of the ten decades included in this study.

What makes the absence of epithets referring to Hispanics surprising is that one might reasonably expect epithets referring to one ethnic group to increase during periods of increased immigration by that group. And immigration by Hispanics did increase significantly during easily definable periods of recent U.S. history. Legal and illegal immigration to the United States increased dramatically during the 1970s. Approximately four million legal immigrants and an additional eight million illegal immigrants arrived in the U.S. between 1970 and 1980. (Lang 1995.) By far, the best represented group among these new immigrants arrived from Latin American countries. The increase in Hispanic immigrants differs from other periods of increased immigration in the U.S. In 1950, approximately half of all immigrants to the U.S. came from Europe. (Crawford 1992.) By 1980, however, over 85% of immigrants came from the developing nations of Latin America and Asia. (U.S. Immigration and Naturalization Service 1994.)

In the face of increased immigration from Latin America, instances of discrimination against Hispanic immigrants also increased. Recent immigrants from Latin America tended to settle in just a few areas of the country, primarily New York, Florida, and the states of the Southwest along the Mexican border. By the early 1980s, communities which had seen the largest influx of recent immigrants began to pass laws either designating English as the official language of the government or laws prohibiting speaking any language but English. The rise of the English Only movement discussed below is but one example of the open hostility toward newly arrived immigrants.

After he retired from the Senate, the former linguist and academic administrator S.I. Hayakawa co-founded an organization called U.S. English in 1983. The express purpose of U.S. English was the passage of a Constitutional amendment which established English as the official language of the United States. U.S. English also sought to influence language policy at the local and regional levels by funding and training activists who wanted to pass Official English regulations in their communities. Despite grassroots opposition, U.S. English did achieve some substantial victories. For example, in California 73% of voters approved a ballot initiative which established English as the official language of the state. (Crawford 1992.) In Dade County Florida—the county in which Miami is located—voters passed a law which forbade posting signs in Spanish, translating official government meetings into Spanish, and generally prohibited the public use of Spanish. (Crawford 1992.)

The overwhelming and fervent opposition to things Hispanic in the latter third of the 20th century makes the extremely low numbers of epithets referring to Hispanics all the more surprising. Perhaps part of the answer may be found in the immigration figures themselves. Despite the tremendous increases in immigration from Latin American countries during the 1970s and 1980s, fewer numbers of immigrants entered the U.S. than around the turn of the 20th century—even if one includes illegal immigrants in the calculation. (Simon 1995.) From 1860 to 1930, the

foreign-born population of the United States never dropped below 13 percent. Yet, the foreign-born population of the U.S. was only 8.5% for the 1990s. (Simon 1995.) The paucity of epithets referring to Hispanics may stem from the fact that immigrants actually accounted for a smaller percentage of the total population than during other periods of increased immigration in U.S. history.

Anime *and Racial Animus*

In contrast to the results relating to Hispanic epithets, epithets referring to other racial groups did exhibit significant and striking rates of usage over the 20th century. The epithets Darkie and Honkie were not the only epithets to exhibit significant shifts in relative frequency over time. As shown in Figures 4.24 and 4.25, the epithets in the data set referring to Asians also showed marked shifts in usage over time. The first such epithet to be examined is Jap.

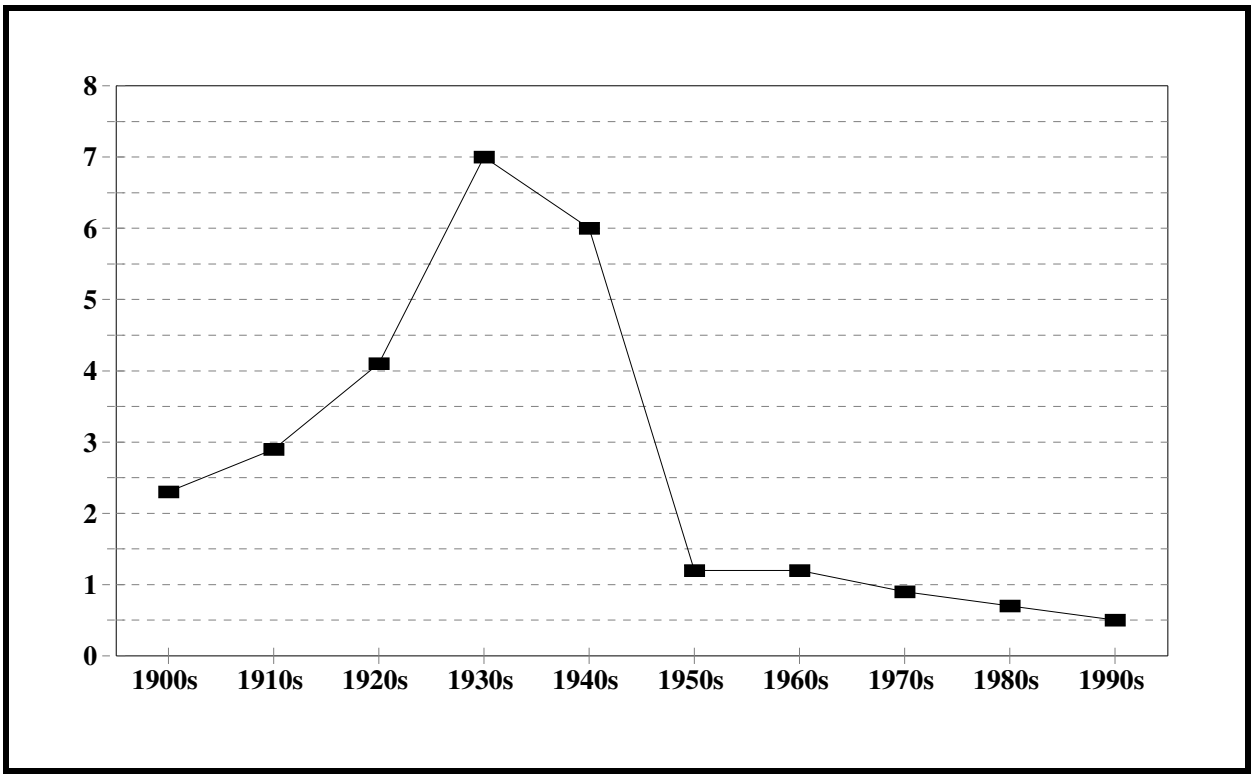

Fig. 4.24. Relative Frequency of Jap by Decade.

In marked contrast to the judicial and legislative restrictions on discrimination against blacks during the Civil Rights movement and the decades thereafter, the law not only failed to outlaw discrimination against Asians, but sometimes the law mandated that racial discrimination, as shown below.

Strictly speaking, the epithet Jap refers to people of Japanese ancestry, though in actual practice the epithet in the U.S. is often used to denigrate Asians of all backgrounds. The epithet Jap accounted for 2.3% of all opinions which contained an epithet in the 1900s, 2.9% in the 1910s, 4.1% in the 1920s, 7.0% in the 1930s, and 6.0% for the 1940s. In other words, aside from a very small decrease in relative frequency from the 1930s to the 1940s, the epithet Jap became more prevalent with each passing decade during the first half of the century. The fact that Jap appeared in more opinions than all but two of the epithets in the 1940s may point to increased animosity toward Asian Americans during the years leading up to, during, and just after World War II. Animosity which gained approval and endorsement from the highest levels of U.S. government.

As was the case with the analyses of Honkie and Darkie, both fashion and social need are relevant to an analysis of the sociolinguistic change in rates for Jap. However, unlike the analyses of Honkie and Darkie, foreign influence is also relevant as a factor when analyzing sociolinguistic change *vis à vis* the epithet Jap.

At the turn of the 20th century, the labor demands of America's industrial economy drove immigration to record levels. Approximately 25 million immigrants arrived in the U.S. between 1860 and 1920. The majority of these new Americans came from Ireland, and southern and eastern Europe, but there were also significant numbers of Chinese and other Asian immigrants. (Simon 1995.) Through the late 19th and early 20th centuries, the Japanese government tried to modernize, and as a result hundreds of thousands of farmers who could not adapt themselves to the modernization attempts suffered financial ruin. (Tamura 1993.) Approximately 400,000 Japanese

emigrated to Hawaii where they worked primarily as laborers. While approximately 50% of these émigrés eventually returned to Japan, the other half stayed in Hawaii. From the middle of the 19th and well into the 20th centuries, Japanese immigrants came to Hawaii along with record numbers of immigrants from China, Korea, and the Philippines. (Tamura 1993.)

The Chinese Exclusion Act, originally enacted in 1882 for a renewable period of ten years, was extended indefinitely in 1902. The Act barred Chinese immigrants from entering the U.S. and was not repealed until 1943. Additionally, according to a 1908 diplomatic agreement with the U.S., Japan agreed to limit emigration to the U.S. in exchange for the U.S. granting admission to the spouses and relatives of those Japanese immigrants who were already in the U.S. (Tamura 1993.) Therefore, it is not surprising that the epithet Jap should appear more frequently at a time when Asians were statutorily disenfranchised. U.S. law not only permitted discrimination against Asians during much of the 20th century, it *mandated* that discrimination.

Other laws in addition to those named above also discriminated against Asians or prohibited their entry into the U.S. For example, the 1917 Immigration Act established a literacy test for reading English or another language. The Immigration Act of 1917 also created an "Asiatic Barred Zone" which excluded immigrants from India, Indochina, the East Indies, Polynesia, and even parts of eastern Europe and the Middle East. Then four years later, Congress enacted the National Origins Act which established quotas for immigrants from each nation. A nation's quota was based on 3% of the total foreign-born population from that nation which resided in the U.S. in 1910. Because there were smaller numbers of Asian immigrants in the U.S. in 1910 than there were European immigrants, the Act effectively excluded immigrants from countries outside Western Europe.

It should come as no surprise that epithets referring to Asians appear so frequently during the early years of the 20th century and in the years leading up to World War II. Japanese immigrants outnumbered other ethnic groups in Hawaii, constituted a significant minority on the

West Coast of the mainland U.S., and they were perceived as a threat not only because they were a large homogeneous block, but also because their mother country had evolved as a strong regional power. The Japanese immigrants themselves wielded considerable influence in areas in which large numbers of Japanese immigrants settled. For example, early in the 20th century, Japanese publications in Hawaii outnumbered those of any other non-English language. In fact, there were nearly as many Japanese publications and there were English language publications: sixteen English language publications versus thirteen publications in Japanese. (Tamura 1993.) As a result of the number and influence of Japanese immigrants in Hawaii, many Americans of Anglo-European descent believed that the Japanese threatened the favored position in society enjoyed by the Anglo-European Americans.

Japanese-language newspapers were an easy target for those who felt threatened by Japanese immigrants. A Territorial governor of Hawaii even proposed a bill that required all non-English language publications to include English translations. The rationale behind this proposed law was not simply the distrust of Japanese immigrants, but also economic coercion. If the bill had become law, the law would have put many small publications out of business as they would not have been able to afford the extra expense of translations. (Tamura 1993.) Given the anti-Asian sentiment which prevailed at the time and the number of laws which sought to limit the number of Asian immigrants, one should expect to see significant rates of epithet usage for those epithets which refer to Asians.

It is easy to dismiss much of the anti-Asian legislation and public opinion as bald-faced racism. And while racism might be the predominant motivating factor for this anti-Asian sentiment and legislation, it was not the only one. An analysis of U.S. - Japanese relations in the 20th century would be incomplete if it did not acknowledge the fact that in the middle of the 20th century there were a number of years when Japan *was* an enemy of the U.S. Even critics of U.S. discriminatory

policies toward Japanese Americans have conceded that "the military and naval situation in the spring of 1942 was such as to generate a very real fear of invasion of the Pacific Coast." (Korematsu vs. U.S., 323 U.S. 214, 235.)

In a case now widely considered "one of the worst betrayals of Americans' constitutional rights in the Supreme Court's history" (Emanuel 1995:264), the U.S. Supreme Court held that laws requiring the imprisonment of Americans of Japanese descent did not offend the Constitution. In Korematsu vs. United States, 323 U.S. 214 (1944) a native-born American citizen of Japanese descent was arrested for violating a military order excluding all persons of Japanese descent from a "Military Area." The specific "Military Area" at issue in the Korematsu case was the city of San Leandro, California, a suburb of San Francisco.

In one of three dissenting opinions, Justice Roberts disagreed with the majority in its assertion that the decision was not motivated by racism. The majority had asserted that it was motivated by a concern for national security and the belief that "[c]itizenship has its responsibilities as well as its privileges" Korematsu, 219,; consent to confinement in concentration camps was simply a responsibility of citizenship of Japanese Americans during wartime.

> This is not a case of keeping people off the streets at night as was Kiyoshi Hirabayashi vs. United States, 320 U.S. 81, 63 S.Ct. 1375, nor a case of temporary exclusion of a citizen from an area for his own safety or that of the community, nor a case of offering him an opportunity to go temporarily out of an area where his presence might cause danger to himself or to his fellows. On the contrary, it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based solely on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition toward the United States. If this be a correct statement of the facts disclosed by the record, and the facts of which we take judicial notice, I need hardly labor the conclusion that Constitutional rights have been violated. Korematsu, 225-226.

Judicial notice, as stated in the final sentence above, is a judicial doctrine that allows a court to recognize the existence and truth of certain facts without proof because those facts are already widely known. (1990 Blacks Law Dictionary, Sixth Ed.) According to Federal Rule of Evidence

201(b), in order for a court to take judicial notice of a fact, it "must be one not subject to reasonable dispute in that is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questions." For example, courts have taken judicial notice of the fact "that the Ohio River is navigable . . . that the *Ledger* is New Jersey's only statewide newspaper . . . [and] that vast amounts of purchases are made by credit card." (Graham 1996:31.) Here, by taking judicial notice of the fact that Mr. Korematsu was imprisoned solely because of his ancestry, Justice Roberts does two things. First, he is ridiculing the majority's claim that its decision rests upon the interests of national security. Second, he is setting up his dissenting opinion such that one must logically conclude that the military orders which gave rise to the Korematsu case are unconstitutional.

For its part, the majority in Korematsu does attempt to refute Justice Roberts's charge of racism, an allegation at which the majority clearly takes umbrage. The majority opinion, authored by Justice Black, states that by casting the case into outlines of racial prejudice without reference to the military dangers involved, Justice Roberts merely confuses the issue presented in the case. However, in so attempting to refute Justice Roberts's charges of racism, the majority writes its way into a corner. Specifically, the majority opinion rests upon a logical fallacy so glaring it is impressive in its circularity:

> Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire [and] the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast. Korematsu, 223.

Though it tried to refute the charges of racism, the majority never had very much factual evidence to bolster its claim that the Korematsu case was decided on issues of national security. One can see the racism in the majority and concurring opinions in small and subtle ways as well, such as the use of honorifics—or rather the lack thereof. Although the use of honorifics is neither

required nor necessarily expected in judicial opinions, the use of honorifics becomes noteworthy if the author of the opinion uses them to refer to some parties involved in the suit but not others. Here, the majority and concurring opinions do not use the honorific "Mr." with Korematsu. Nor do the majority or concurring opinions use the more abstracted "petitioner" as the dissenting opinions do to refer Mr. Korematsu. The majority and concurring opinions refer to Mr. Korematsu by his surname alone: "Korematsu was not excluded . . ." (Korematsu, 223) and "it was an offense for Korematsu to be found in Military Area No. 1 . . ." (Korematsu, 224.)

A second dissenting justice, Justice Murphy, went even further than Justice Roberts in his charges of racism. In a stinging dissent, Justice Murphy wrote that the exclusion of all persons of Japanese ancestry from the Pacific Coast went over the brink of constitutional power and fell "into the ugly abyss of racism." (Korematsu, 233.) Justice Murphy conceded that the military command was justified in adopting all reasonable means to combat the dangers of espionage, sabotage, and invasion of the West Coast of the United States. But in so conceding, he also points out that it was only Americans of Japanese descent who were automatically imprisoned in concentration camps and not Americans whose roots lay in the other Axis powers of Germany or Italy.

> No adequate reason is given for the failure to treat these Japanese Americans on an individual basis by holding investigations and hearings to separate the loyal from the disloyal, as was done in the case of persons of German and Italian ancestry. [Citations omitted.] It is merely asserted that the loyalties of this group "were unknown and time was of the essence." (Korematsu, 241.)

It was Justice Murphy who also brought to light the textual evidence of racism in the original Military Order issued by Lt. General DeWitt, the Military Commander of the Western Defense Command.

> That this forced exclusion was the result in good measure of [an] erroneous assumption of racial guilt rather than bona fide military necessity is evidenced by the Commanding General's Final report on the evacuation from the Pacific Coast area. In it he refers to all individuals of Japanese descent as "subversive," as belonging to

> "an enemy race" whose "racial strains are undiluted [and] as constituting over 112,000 potential enemies . . ." (Korematsu, 235-236.)

Despite the very real danger of invasion by a foreign enemy during wartime, given General DeWitt's own words and the reasoning of the majority and concurring opinions in Korematsu, it is difficult to embrace the notion that the principal motivation in the case was something other than racism. And, given the extent of such racism, it should not come as a surprise that use of the racial epithet Jap would increase at roughly the same time in the years leading up to the Second World War.

But there is a second significant shift in the use of the epithet Jap, and that is the precipitous decline in usage which began during the 1940s and which continued throughout the rest of the 20th century. In fact, given the evidence mustered to advance the claim that racism toward Japanese Americans during the Second World War led to increased usage of epithets referring to Asians in the years leading up to the Second World War, it is curious that the rate for one of the epithets referring to Asians actually declined immediately thereafter. Furthermore, once that rate of epithet usage had decreased why might the rate remain low? A possible explanation emerges once the usage rates for two additional epithets referring to Asians are examined.

As can be seen in Fig. 4.25, as was the case with the epithet Jap, the epithets Nip and Chink also exhibited significant shifts in usage during the 20th century. In fact, during the same period use of the epithet Jap declined, use of the epithet Nip remained stable and use of the epithet Chink increased.[13] Thus, even though use of one epithet referring to Asians decreased during the 1940s, use of two other epithets referring to Asians remained stable or increased during the same time period. As such, it would not be unreasonable to conclude that the racial animosity toward Asians

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[13] Strictly speaking, the epithet Chink is a derogatory reference to Americans of Chinese ancestry. The epithet is frequently used to refer to all Asians regardless of country of origin. This same phenomenon of mistakenly attributing Asians' ethnicity was noted in the use of the epithet Jap.

is not necessarily attributable to a decrease in racial animus toward Japanese Americans and other Asians. Rather, the racial animus toward Asians was expressed using epithets other than Jap.

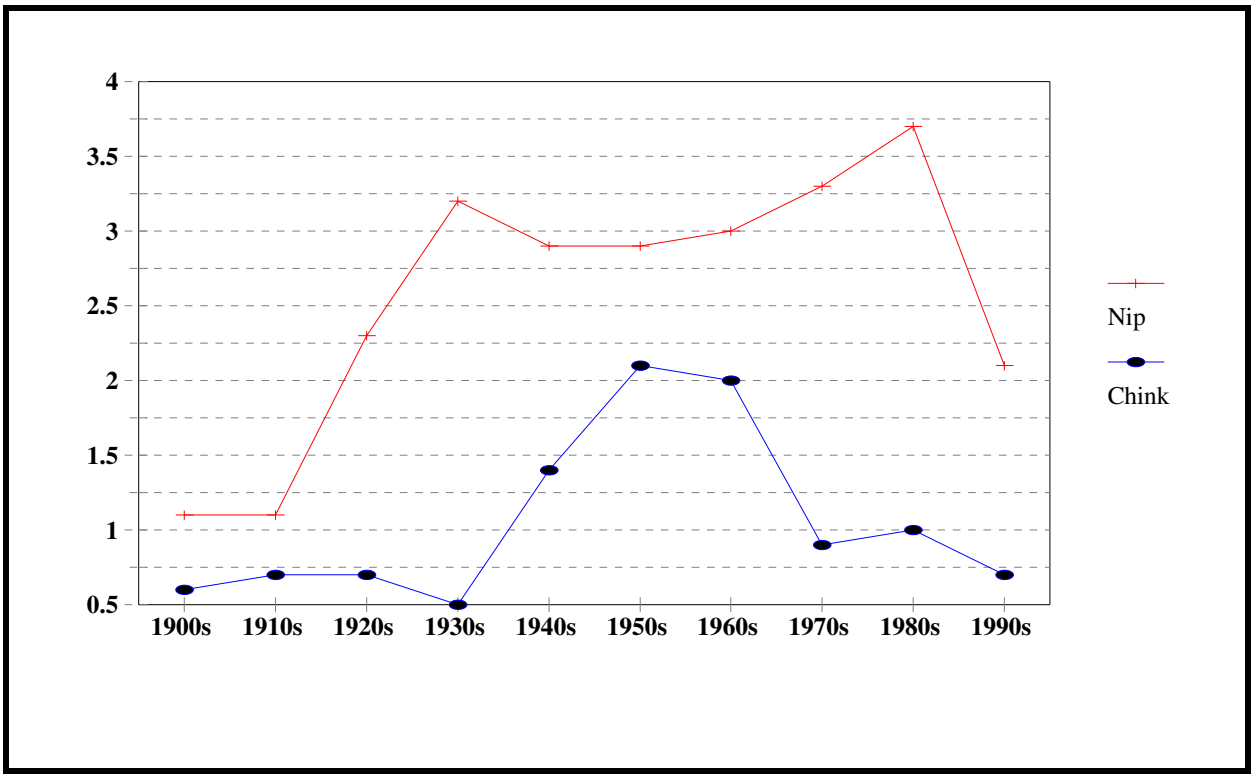

Fig. 4.25. Relative Frequency of Nip and Chink by Decade.

The low rates of usage of epithets referring to Asian Americans during the last half of the 20th century may reflect other phenomena. First, as is inevitable , the inexorable trajectory of history dictates that the generation which fought the Second World War must be replaced by younger generations which did not experience first hand the tumult and fear of World War II. The children and grandchildren of what Tom Brokaw called "the Greatest Generation" (1998) did not share their elders distrust of and prejudice against Asians. The decrease in epithet usage referring to Asians may reflect a decrease in anti-Asian sentiment among younger generations of Americans.

Second, Americans tend to be pragmatic people, and will embrace people, cultures, and technology that advances their goals. Low rates of usage of epithets referring to Asians should not be surprising during a period when Americans were embracing certain aspects of Asian influence. For example, Americans were increasingly willing to purchase Japanese automobiles, cameras, and electronics. An additional example may be found in the popularity of certain Japanese art forms such as the "Japan-imation" cartoons of the 1960s (*e.g. Speed Racer* and *Gigantor*) and the *anime* and *manga* which are currently popular with Americans—especially teens. If one reads the rates of usage for Nip and Chink along with the sales figures for Japanese products, one would easily see a correlation between the declining use of Asian epithets and rising sales figures for Japanese products and technology. And while correlation is not causation, the increased willingness of Americans to purchase products manufactured in Japan and other Asian countries is one measure of a decreased prejudice against Asians. In light of this decreased animosity toward Asians, a decrease in epithets referring to Asians should not be unexpected.

The next epithets addressed in this analysis are two other epithets which underwent a significant shift in relative frequency over the course of the 20th century. Those two epithets are the gender epithets Sissy and Fag.

That's MISTER Faggott to You!

The epithet Sissy accounted for less than 2% of all epithets used during each of the first six decades of the 20th century. During the first decade of the century there were no instances of the epithet Sissy. In the 1910s, 1920s, 1930s, 1940s, and 1960s, Sissy accounted for approximately 1% or less of all opinions which contained an epithet. During the 1950s, however, relative frequency of the epithet Sissy rose slightly and accounted for 1.4% of all epithets used.

The epithet Fag exhibited a similar pattern of use, albeit in greater numbers than Sissy. The epithet Fag accounted for approximately 2% or less of all opinions which contained a racial or gender epithet for each of the first six decades of the 20th century with the exception of the 1930s. During the 1930s, use of Fag increased slightly and the epithet accounted for 2.8% of all opinions which contained an epithet. In contrast to the low relative frequency for the epithet Fag during the first half of the 20th century, the epithet Fag was one of the five most common epithets for every decade from the 1950s through the 1990s. Moreover, Fag had significantly higher relative frequencies for the last two decades of the century than for the 1950s and 1960s. The relative frequency for Fag was 2.3% and 2.2% for the 1950s and 1960s versus 5.6% and 5.4% for the 1980s and 1990s, respectively. It should not be surprising that greater use should accompany greater visibility within society.

As can be seen in Fig. 4.26, both epithets increased significantly between 1960 and 1970. The relative frequency for Sissy more than doubled from 1.0 to 2.1. The relative frequency of the epithet Fag exhibited a similar, though smaller, increase in relative frequency from 2.2 to 3.2. Thereafter, the epithet Sissy remained at approximately the same relative frequency for the rest of the century. The epithet Fag, however, exhibited a dramatic increase from the 1970s to the 1980s when the relative frequency rose from 3.2 to 5.6. During the 1990s, use of Fag remained stable and accounted for approximately the same percentage of opinions containing an epithet as it did during the 1980s.

It is not surprising that use of one gender epithet referring to gays and one gender epithet referring to men who are perceived as being effeminate would increase dramatically during the 1960s and thereafter. Figure 4.26 shows that use of Fag began appearing more frequently at the same time the gay rights movement made gays more visible, and gay men and women began advocating for their full civil and human rights.

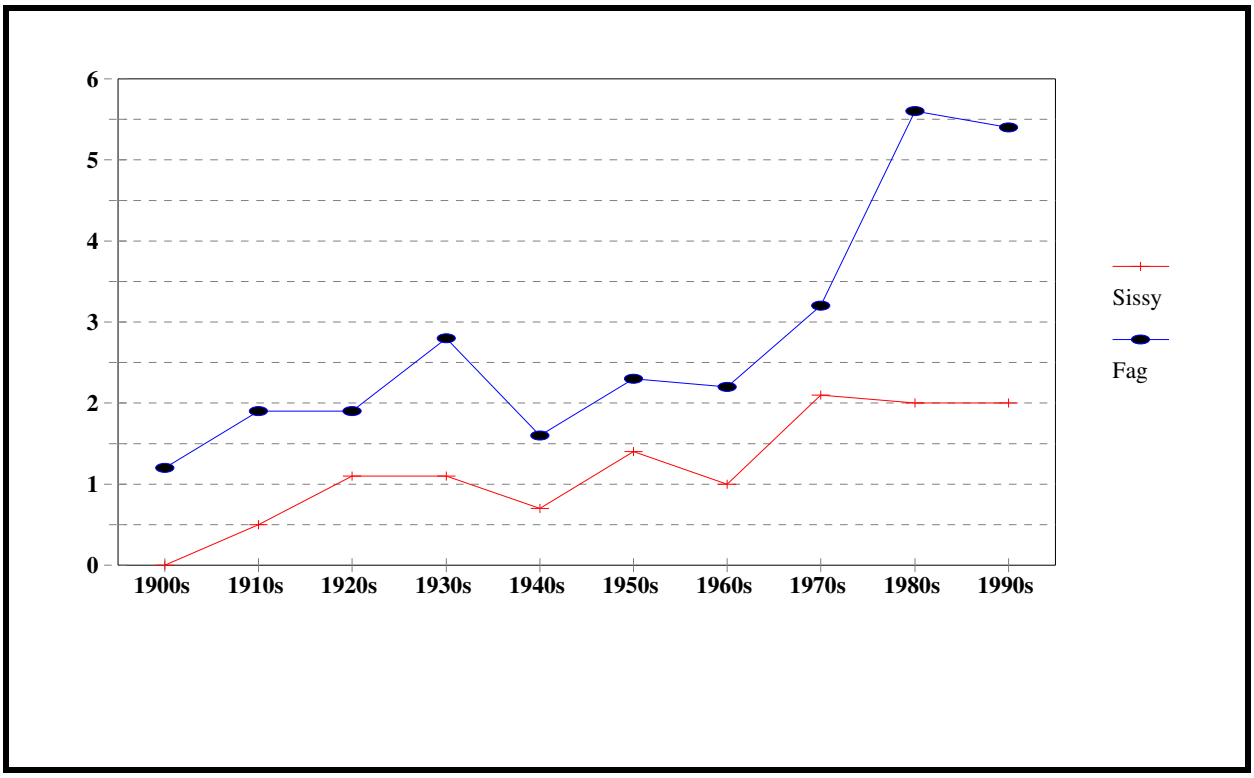

Fig. 4.26. Relative Frequency of Sissy and Fag by Decade.

As was the case with earlier epithets, two of the three broad categories of the sociolinguistic causes of language change which Atchison delineated (1991:134) are relevant to an analysis of Fag and Sissy. And, once again, those two factors are fashion and social need. Both fashion and social need are manifested in the social forces acting upon use of these two gender epithets, one usually used as a derogatory reference to gay men and the other often used to impugn the manhood of effeminate men.

The way in which the gay rights movement began speaks to the marginalization, and violence faced by gays in American society. The beginning of the gay rights movement is usually traced back to the Stonewall Riots which took place at a gay bar called the Stonewall Inn on June 28-30, 1969. At least one chronicler of the gay rights movement has referred to the Stonewall Riots as "Gay Bastille Day" (McCourt 2004:187.)

Prior to the time of the Stonewall riots, police raids on gay bars and nightclubs were a commonplace in gay life in cities throughout the U.S. At that time, simply being present in a gay bar was frequently enough grounds for arrest on indecency charges. (Wikipedia 2003.)

> The Stonewall raid started out just like any other raid on a gay bar. Seven plainclothes policemen entered the bar along with one uniformed policeman, allegedly to investigate improprieties in the liquor license. [The police] cleared the bar whose clientele remained on the sidewalk and street outside. Some of the people outside the bar that night began to toss coins at the police, making fun of the system in which regular raids were part of extorting payoffs from bar owners. . . . [At that time, m]any gay bars were owned by the Mafia . . . and [paid] police to look the other way. . . . [A]t some point the situation took a dramatic turn for the worse, and the police began beating people who resisted with their nightsticks. (Wikipedia 2003.)

In response to the increasing violence by the police, several people in the crowd began to throw rocks and bottles at the police rather than coins. The police took refuge in the Stonewall Inn and vandalized the gay bar and beat the patrons while inside. The crowd outside continued to throw bottles and other projectiles at the police. The crowd outside the Stonewall Inn used a parking meter as a battering ram and someone sprayed lighter fluid through the door and attempted to light it. (Wikipedia 2003.)

The anger, resentment, fear, and exasperation felt by gay men and women before the Stonewall riots were no longer only beneath the surface. The legacy of the days of rioting includes the organizations that came out of it, such as the Gay Liberation Front and other gay rights organizations, as well as a greater visibility of gays and lesbians in contemporary American life.

The increasing use of the epithet Fag in the last half of the 20th century may point to a backlash effect in response to the unwillingness of gays to remain quietly in the closet. The backlash effect was discussed earlier as one plausible explanation for a rise in epithets referring to blacks. Or, as was also discussed earlier in the analysis of the epithet Nigger, the increased use of the epithet Fag may represent an increased willingness of gays to come out and/or to litigate

injustices inflicted upon them. It is true that greater numbers of gay men now seek judicial redress for the assaults committed upon them than before the start of the gay rights movement. Therefore, one should expect to see a greater number of epithets which refer to gay men. Thus, a greater number of epithets appearing in opinions *may* be an indication of epithets becoming more taboo, *i.e.*, plaintiffs may increasingly feel empowered to bring suit when assaulted and to ensure that gay men are accorded the same civil rights as other members of American society.

There is also a third plausible explanation for the current rise in epithet use, and that is the phenomenon of in- group slang which was mentioned earlier. Illustrating this point is the fact that "[m]any gay activist groups and scholars . . . have begun to reclaim the term "queer" as a badge of pride, in much the same way . . . the Black Power movement of the 1960s reclaimed the formerly derogatory term for blacks." (Stacey 1999:399.) As one T-shirt which was popular in San Francisco during the 1980s proclaimed: "That's MISTER Faggott, to You!"

While a resistance against greater participation in society by gays and increased civil rights for gays may have accounted for some of the initial increase in epithet usage, the likelihood of a backlash against gays accounting for the entire increase in use of the epithets Fag and Sissy is somewhat small. Though, admittedly, there is probably a greater likelihood for backlash to be a factor *vis á vis* Fag and Sissy than it was with respect to epithets referring to blacks. As one can easily see in the current acrimonious battle over gay marriage, the pendulum has yet to swing fully in the direction of full civil and human rights for gay men and women.

Despite the likelihood of backlash against gays accounting for some of the increased use of the epithets Fag and Sissy, there are other factors which militate against backlash as the sole or largest explanation for increased usage rates for Fag and Sissy. One such factor is a greater acceptance of gay rights–if not gays themselves–by increasing numbers of Americans. Although U.S. society has never embraced gays or accorded them the same civil rights enjoyed by

heterosexual members of society, American society is nonetheless more tolerant of gays now than it was before the rise of the gay rights movement in the late 1960s. Furthermore, social backlash tends to be a transitory state, and rates for Fag and Sissy have remained much higher than they were in the early decades of the 20th century. As such, backlash cannot be the sole force at work.

There is one final rather prosaic yet plausible explanation for the rise in epithets referring to gay or effeminate men, and that is that increased usage simply reflects the high levels of homophobia present in American culture. American culture has never been very tolerant of homosexuality or of those members of society who stray too far from established gender roles. To paraphrase Sigmund Freud, sometimes homophobia is just homophobia.

Summary of Results of the Diachronic Analysis

Chapter 4 was organized into seven sections; five sections presented the quantitative results of this study; one section analyzed the quantitative results in light of the research objectives which motivated this study, and this final section presents an overview of Chapter 4.

The diachronic analyses focused on the differences in the rate of epithet usage for the three variables in this diachronic phase of the dissertation: lexicon, geography, and time. The analyses indicated significant differences in the rate of epithet usage over time. Specifically, epithet usage increased dramatically from the 1960s onward. The analyses further indicated significant differences in the rate of epithet usage among the epithets in the data set. This macroanalysis provided by these quantitative results provide necessary background and perspective for the more focused microanalysis performed in the synchronic portion of this study.

The most striking observation with respect to patterns of epithet use is the rejection of virtually all null hypotheses. The first null hypothesis, which predicted that there would be no significant difference in the rate of epithet usage among the nine regions encompassed in this study,

was rejected for all ten decades of the 20th century. The second null hypothesis, which predicted that there would be no significant difference in usage among the epithets, was also rejected for each of the ten decades included in this study. One notable result was the overwhelming use of two epithets above all others. Nigger and Bitch accounted for the vast majority of all epithets used in 20th century judicial opinions.

Null Hypothesis 3.0, which predicted that there would be no significant difference in the rate of epithet usage among the ten decades encompassed in this study was likewise rejected for all nine regions. Null Hypothesis 3.1 predicted that there would be no significant difference in the rate of epithet usage at the national level among the ten decades of this study. As with the first three null hypotheses, null hypothesis 3.1 was rejected. The final null hypothesis, which predicted that there would be no correlation between the usage of profanity and the usage of epithets over the ten decades encompassed in this study, was the only null hypothesis not to be rejected.

As has been well documented in other studies by the author, rates of profanity usage suddenly and dramatically increased from the 1960s onward. Here, the rate of epithet usage has also shown a dramatic increase over the same period, but the rate of epithet usage is increasing more slowly than the rate of epithet use. Furthermore, from the 1980s onward, the rate of profanity use has been higher than the rate of epithet use.

The statistical findings did not provide support for one of the objectives of the study, *i.e.*, documenting that rates of epithet usage in contemporary American culture are decreasing This study did, however, provide limited support for the theory that racial and gender epithets are replacing traditional taboo words dealing with sex, the human body, and bodily functions as the nation's new taboo words.

From the results above, one may reasonably conclude there *are* geographic, lexical, and historical differences in epithet usage.

The only null hypothesis which was not rejected, Null Hypothesis 4.0, showed that there was no significant correlation between epithet use and use of profanity in judicial opinions over the entirety of the 20th century. The data also showed, however, that over the last four decades of the century, there was a correlation between epithet use and use of profanity. This higher correlation coefficient from the 1960s through the 1990s indicated a strong, positive linear association between the variables, *i.e.*, as rates of profanity usage increased, so too did rates of epithet usage. Furthermore, the data also documented that from the 1980s onward, the usage rate for epithet use was lower than the usage rate for profanity. This strong correlation between epithet use and profanity use and the fact that judges included profanity in their opinions more frequently than epithets provides limited support for the theory that racial and gender epithets are replacing traditional taboo words. This overview of historical rates of epithet usage will be complemented by the an in-depth textual analysis of a sample of judicial opinions. The methodology for the synchronic portion of this dissertation is set forth in the following chapter, Chapter 5. The results of that more focused analysis are presented in Chapter 6.

SYNCHRONIC METHODS AND PROCEDURES

This chapter presents the methods and procedures used for the synchronic analysis portion of this dissertation. The objective of this second, synchronic phase of the study is to use qualitative methods to discover how one epithet is used within a sample of judicial opinions containing one particular epithet. Whereas the diachronic portion of this study examined epithet use within judicial opinions at the macro level, this synchronic analysis approaches the subject at the micro level. Without this synchronic portion of the dissertation, I would provide only perspective on epithet use within judicial opinions. My synchronic analysis allows me to provide detailed information which add texture, shape and substance to the broad outlines sketched in the diachronic chapters.

This chapter is divided into six sections: Delimitation of the Study, Statement of the Research Questions, Description of the Corpus, Theoretical Background, Reliability and Validity, and a Summary.

Delimitation of the Study

As was shown in Chapter 4, I found 11,351 opinions in which at least one epithet appeared. Obviously, it is impossible to qualitatively analyze every judicial opinion in which an epithet appears. Furthermore, I did not want to perform a second diachronic analysis by examining all judicial opinions containing an epithet. Because I wanted to focus in depth on one slice of epithet usage, I had to reduce the data to a manageable number of cases. The only question, then, was *how* to delimit the synchronic portion of the study.

My objective was to focus on only one epithet from one era. I chose to focus exclusively on opinions from 1997 because that year was the most recent among my data, and I wanted to

examine how judges use epithets in contemporary opinions. When choosing a specific epithet to study, my goal was to choose one epithet which was plentiful yet not polysemous. Furthermore, I wanted to study a linguistic type which was "maximally taboo." (Crystal 1987:61.) I wanted to choose a term that most speakers would agree was undeniably an epithet.

As was shown in Chapter 4, two epithets regularly accounted for the vast majority of all epithet use. Both Nigger and Bitch appeared far more frequently than all other epithets. Bitch was the most frequently used epithet for all of the ten decades encompassed in this dissertation. The epithet Nigger was regularly the second most common epithet. In each decade, use of the word Nigger was eclipsed only by the use of the most frequently used epithet, Bitch. Thus, both Bitch and Nigger were clearly plentiful enough in the data set to consider using as the linguistic type in the synchronic, qualitative analysis.

Frequency of use, however, was not my only criterion for choosing a linguistic type on which to focus my qualitative analysis. I also wanted to choose a term which was universally considered an epithet, a term which would match Crystal's description of being "maximally taboo." Of the two terms Bitch and Nigger, the latter term more closely falls within this parameter. Christopher Darden, the assistant prosecuting attorney in the murder trial of O.J. Simpson, called Nigger the "filthiest, dirtiest, nastiest word in the English language." (Kennedy 2002:28.)

Darden's estimation of the word Nigger persuasively argues for including the word as a "maximally taboo" member of the set of racial epithets. Furthermore, Nigger is almost exclusively used as an insult or perceived as such by the majority of people. That is, Nigger lacks the polysemy of the other linguistic types involved in the study. Even Jesse Helms—historically a staunch opponent of desegregation and civil rights legislation—apparently believes that Nigger is taboo. Or at least he is a shrewd enough politician to know that he must appear to disapprove of the term

Nigger. During a C.N.N. interview show, however, Senator Helms was momentarily caught off guard by one caller:

> CALLER: I know this might not be politically correct to say these days, but I just think that you should get a Nobel Peace Prize for everything you've done to help keep down the niggers."
>
> HOST: Oh, dear.
>
> HELMS: Whoops. Well—
>
> [Laughter]
>
> HOST: That was the bad word. That was politically incorrect. Can you—we really don't condone that kind of language, do we?
>
> HELMS: No, no, no. . . . My father didn't condone it. When I was a little boy, one of the worst spankings I ever got is when I used that word, and I don't think I've used it ever since.

(Lester, 1996.) If a former segregationist and an African American attorney agree that members of society should not use the word Nigger, that lends further support to the proposition that Nigger is maximally taboo.

I looked not only to frequency of epithet usage, degree of "taboo-ness," and lack of polysemy, but I also wanted to find a term which most speakers with communicative competence would agree was an epithet. In short, I wanted to choose one of the best examples of the set of racial epithets, an *Ur*-epithet. First, I will relate anecdotal evidence which helps establish that Nigger meets this criterion, and then will present a more objective academic explanation as to why Nigger fits this definition.

When I began my research and told people that I was studying the use of racial and gender epithets, I would often be greeted with a blank stare. It became clear that many speakers did not understand the term "epithet." People frequently asked, "Epithets? What are those?"

"Racial insults," I would respond.

"Oh!" the speaker would exclaim, exhibiting sudden insight. "You mean like Nigger!"

This example is admittedly anecdotal, but it also illustrates the fact that Nigger is the epithet Americans think of first. That Nigger appears to be the default choice among Americans for epithets lends support to the argument that Nigger is a clear-cut, undeniable member of the racial epithet group. The readiness with which speakers thought of the word Nigger as a racial epithet meshes well with the development of prototype theory from the field of cognitive anthropology. Rosch defines prototypes as, "the clearest cases of membership [within a category] defined operationally by people's judgments of goodness of membership in the category. (D'Andrade 1995:118, quoting Rosch 1978:35-36.) In other words,

> [p]eople are more apt spontaneously to list objects with high prototypicality ratings when asked to give examples of objects in a category. (*Ibid.*)

In the case of my research, more speakers would spontaneously list Nigger as an epithet than any other term in the data set. For most Americans with communicative competence, Nigger appears to be among the clearest cases of membership within the category of racial epithets. Indeed, according to one African American legal scholar, the term Nigger occupies a unique position in the American lexicon.

> The word "nigger" is a key term in American culture. It is a profoundly hurtful racial slur meant to stigmatize African Americans . . . it has been an important feature of many of the worst episodes of bigotry in American history. It has accompanied innumerable lynchings, beats, acts of arson, and other racially motivated attacks upon blacks. It has also been featured in countless jokes and cartoons that both reflect and encourage the disparagement of blacks. It is the signature phrase of racial prejudice. (Kennedy 2000.)

As Professor Kennedy's statement above evinces, no other single epithet carries quite the same weight as Nigger. R.W. Holder (2002) concurs, and notes in his dictionary of euphemisms that "the word nigger is strictly taboo unless used by a black person."

Because Nigger met my requirements for frequency, prototypicality, and did not carry the same problems of polysemy as Bitch, I focused this synchronic analysis on use of the epithet Nigger in a convenience sample of opinions from 1997. Specifically, I delimited the study to one-half of all opinions from 1997 which contained the epithet Nigger.

Statement of the Research Questions

The research questions for this synchronic, qualitative analysis are more impressionistic than the research questions for the more objective quantitative analysis presented in Chapter 4. The reason for this is simple: I am no longer analyzing objective phenomena such as how frequently epithet X appeared between the years of 1910 and 1919. Rather, in this qualitative analysis I am dealing with the more subjective question of how judges have used the epithet Nigger within a sample of judicial opinions. As such, the qualitative analysis must by definition be more subjective, more impressionistic even, than the quantitative analysis.

To be certain, there are certain objective questions to be answered here as well, such as "Are there any discernible patterns in the type of case in which Nigger appears?" For example, how many cases are criminal cases and how many cases are civil suits? Of those, what charges appear most frequently in the criminal cases and what are the most common causes of action in the civil suits? On a more subjective level, the overarching question with which I'm concerned is "How do judges use Nigger in judicial opinions?" For example, is it possible to discern why a judge included the word Nigger rather than any of the euphemisms or editorial deletions such as "N...." or "N-----?" What discourse functions might be served by including Nigger in an opinion that could not be served if the word Nigger did not appear?

Description of the Corpus

The corpus for the synchronic analysis portion of this dissertation is comprised of 41 state appellate court judicial opinions. This is sample is just over half of all opinions from 1997 which contain Nigger. Seventy-eight judicial opinions in 1997 contained the word Nigger, thus the corpus for this qualitative analysis represents 52.5% of all opinions with at least one instance of the term Nigger.

Table 5.1

Number of Cases per State Within the Synchronic Corpus & Percentage of Cases Contributed to the Corpus by Each State.

State	No. of Cases	% of Corpus	State	No. of Cases	% of Corpus
Alaska	1	2.4%	Mississippi	1	2.4%
California	3	7.3%	Missouri	4	9.8%
Florida	1	2.4%	New Jersey	3	7.3%
Illinois	6	14.6%	North Carolina	3	7.3%
Indiana	1	2.4%	Ohio	5	12.2%
Kansas	3	7.3%	Pennsylvania	2	4.9%
Michigan	1	2.4%	Tennessee	4	9.8%
Minnesota	1	2.4%	Wisconsin	2	4.9%
			Total:	**41**	**100.0%**

The regional composition of the corpus for this synchronic analysis is shown in Table 5.1. As can be seen in the table, Illinois provided six cases to the corpus, or 14.6% of all opinions in the corpus. No other state contributed as many cases. The five Ohio cases comprise 12.2% of the synchronic corpus. There are four cases each from Tennessee and Missouri; these cases each comprise 9.8% of the synchronic corpus. The three cases each from California, Kansas, New

Jersey, North Carolina each comprise 7.3% of the synchronic corpus. The two Wisconsin cases constitute 4.9% of the synchronic corpus. One case each from the remaining states of Alaska, Florida, Indiana, Michigan, Minnesota, and Mississippi make up the remainder of the synchronic corpus.

The 41 opinions in the corpus constitute a convenience sample rather than a random sample. The opinions in the corpus were chosen because they were the first 41 opinions which I downloaded. I did not preview any of the opinions, however, and did not base my decision to include or exclude an opinion from the corpus on any factor other than the ability to download the full text of the opinion easily and inexpensively.

The fact that I used a convenience sample is mitigated by the fact that I did not first read the opinions in order to determine their "suitability" for inclusion in the corpus. Rather, an opinion was included for analysis solely on the basis of availability. While this situation is perhaps not ideal, using convenience or judgment samples is common practice within linguistics. (Chambers 2003:44-46.) Thus, my methodology for determining the corpus for the synchronic examination fits within established parameters of sociolinguistic research.

A further mitigating factor for using a convenience sample is the mathematical precept called the Law of Large Numbers. The law of large numbers states that if an experiment is conducted a large number of times, it is extremely likely that the sample proportion found in the experiment is close to the true proportion that is found in the total population from which the sample was chosen. (Weiss & Hassett 1982:162.) As applied to this synchronic analysis, the law of large numbers states that as the number of opinions examined gets large, the probability is high that the proportion of certain types of cases in the sample is close to the true proportion of those same types of cases within the total population. In other words, given a large enough sample, if I find that 70% of the

cases containing Nigger are criminal cases, there is a high probability that the true percentage of all cases containing Nigger is somewhere near 70 percent.

Theoretical Background

Many—though by no means all—of the theoretical perspectives which bear on this synchronic analysis originated within the fields which have come to be known as linguistic anthropology and discourse analysis.

While no preexisting methodology seemed to be directly applicable *in toto*, the combination of several theoretical approaches inform my approach to this quantitative analysis. The lack of a single methodology going into this study should not be seen as a weakness, however. A principal reason for conducting a qualitative study is precisely because it allows an exploratory approach. (Creswell, 1994:21.) Indeed, inductive exploration of a topic is the hallmark of a qualitative study.

> The intent of qualitative research is to understand a particular social situation, event, role, group, or interaction. . . . It is largely an investigative process where the researcher gradually makes sense of a social phenomenon by contrasting, comparing, replicating, cataloguing and classifying the object of study. (Miller 1992, quoted in Creswell, 1994: 161. Internal citations omitted.)

Here, a flexible, qualitative framework allows me to explore the topic of epithet use in ways that a single method would not allow.

Language is a human behavior. As such, language is best analyzed within its social matrices. Language is both personal and social. Even Saussure recognized that language has an individual aspect and a social aspect. One is not conceivable without the other. (Saussure 1916:9) Ward Goodenough has said that "culture consists of whatever one has to know or believe in order to operate in a manner acceptable to its members." (1964:36.) Four decades earlier, Sapir opined that culture was "the socially inherited assemblage of practices and beliefs that determines the texture of our lives." (Sapir 1921.) Culture, then, is the sum of the social matrices in which we live, and

it serves many different functions. According to Edward Hall, "[o]ne of the functions of culture is to provide a highly selective screen between man and the outside world. In its many forms, culture therefore designates what we pay attention to and what we ignore." (Hall 1981:84.) The sociolinguistic significance of what a judge pays attention to in his opinion and what he ignores forms the very basis for the textual analysis presented in Chapter 6.

One of the principal hypotheses for this dissertation is that racial and gender epithets are replacing profanity as the taboo words of our culture. This hypothesis contains certain theoretical and philosophical presuppositions which in turn implicate corresponding sociolinguistic theories. The presuppositions inherent in the hypothesis are:

(1) our culture recognizes certain words or topics as taboo;

(2) speakers know what words or topics are taboo; and

(3) speakers will not lightly breach a taboo.

The *sine qua non* of a taboo is that members of a culture feel an inhibition against breaching some established cultural standard. The very notion of a taboo, of course, presupposes that there *is* a cultural standard for linguistic behavior, which, in turn, prompts the question "How do speakers know about the standard?" The issue of how speakers understand and respect cultural standards implicates the sociolinguistic theory of communicative competence.

Dell Hymes was the seminal proponent of the theory of communicative competence which was a natural outgrowth of the "ethnography of communication" approach Hymes advocated. (Saville-Troike 1989:20-21.) Hymes and others were not persuaded by the generativists' insistence that the study of linguistics should be abstracted from the actual use of language, an abstraction Chomsky argued for in his distinction between competence and performance. (Chomsky 1965:3-15.) Hymes argued that speakers of a language must possess more than grammatical competence to be able to communicate effectively. In order to use language effectively speakers must also know

how language is used by members of a speech community, and whether a particular use of language is appropriate for a given setting. (Hymes 1972.)

Speakers manifest communicative competence by mastery of two sets of skills, one linguistic and the other pragmatic. (Orwig 1999.) The linguistic aspects of communicative competence pertain to how speakers internalize the elements and structures of their language. The pragmatic aspects of communicative competence deal with how speakers use language in social interactions. The linguistic elements of communicative competence (*e.g.*, the attainment of phonological competence) are irrelevant to this synchronic analysis so I will not address those elements here. The essential aspect of communicative competence addressed in this study is the element of cultural competence.

Cultural competence is the bedrock skill upon which all other aspects of communicative competence rest. (Saville-Troike 1989:22.) Cultural competence is the ability to understand behavior from the standpoint of the members of a culture and to behave in a way that would be understood by the members of the culture in the intended way. (Orwig 1999.) As used here, culture is defined in Goodenough's (1964:36) well-known formulation that "culture consists of whatever one has to know or believe in order to operate in a manner acceptable to its members." In other words, cultural competence entails that members of a society understand the social matrices within which we all live and act appropriately.

In sum, I proceed from the assumption that the appellate judges who wrote the opinions in the corpus possess communicative competence. Therefore, if a judge includes a word which speakers possessing communicative competence would recognize as taboo, then that judge must be aware that he or she is breaching a cultural taboo and is consciously choosing to do so. What the judge may be trying to do by breaching that standard is the subject of the synchronic analysis in Chapter 6.

Hymes's contributions to my theoretical perspective are not limited to his ideas about cultural competence and communicative competence. Hymes has also proposed a methodology which serves as the principal framework for the qualitative analysis. Specifically, I draw upon Hymes's development of his approach called the Ethnography of Speaking to a greater degree than other pre-existing methodologies.

When Hymes proposed that ethnography of speaking was a worthy avenue of study, anthropologists were still focused on structure. Some of the questions Hymes was concerned about were: "What is the range of how people communicate through speaking?" and "How is speech used in the community?" In short, Hymes was concerned with precisely the same types of questions that concerned me as I approached my synchronic analysis: how and why do judges include racial epithets in their opinions?

When Hymes first presented his proposal for a new approach and methodology (1962), he knew there was no organized method for gathering the material he was talking about. Hymes proposed systematizing the collection of material on how people use language, and compiling enough descriptions in the form of ethnographies so that scholars would have some basis for comparing linguistic behavior. (Hymes 1962:250.) Hymes's motivation to do ethnographies of speaking was his desire to understand the relationship between language and culture better. (Hymes 1962:250.) Hymes's ultimate goal was a taxonomy of sociolinguistic systems. Toward that end, Hymes proposed a typology which he largely borrowed from Roman Jakobson (1960).

Jakobson (1960) believed that human communication could be broken down into six elements or factors: (1) Context, (2) Message, (3) Addresser (4)Addressee, (5) Contact, and (6) Code. To go with the six elements above, Jakobson proposed an equal number of functions in the communicative act. Those six functions are: (1) the Referential function, (2) the Poetic function, (3) the Emotive function, (4) the Phatic function, (5) the Conative function, and, finally, (6) a

Metalingual function. (Jakobson 1960.) For example, when the focus is on the Addresser (sender) of a message, the Emotive function reveals the Addresser's attitude toward the topic of his or her message.

Hymes likewise proposed a prescriptive framework for an ethnography of speaking in order to look at how language is used across societies. One can easily see Hymes's debt to Jakobson's idea that speech serves many different functions in language. (Hymes 1962:266.) Hymes's initial typology dealt principally with the referential function of language. The speech factors Hymes identified were: (1) Sender/Addressor, (2) Receiver/Addressee, (3) Message Form (the packaging of speech units), (4) Channel (the mode of transmission), (5) Code (the different ways the message is packaged, *e.g.* Morse Code), (6) Topic, and (7) Setting. Table 5.2 shows the similarity and differences of Jakobson's and Hymes's proposed typologies. One can easily see that the principal difference is that Hymes proposed one additional factor of "Topic." Jakobson's typology dealt with Topic by instead focusing on the corresponding function of the message, *e.g.*, the referential function of communication is served by focus on the information content of the message.

As with Jakobson, Hymes linked certain factors with specific speech functions.[1] Among these functions are: (1) Expressive / Emotive (the focus is on the sender/addresser); (2) Directive/ Persuasive (the focus is on the receiver/addressee); (3) Poetic (the focus is on the message form); (4) Contact (the focus is on the channel); (5) Metalinguistic (the focus is on the code—*i.e.*, talk about talk or talk about language); (6) Referential (the focus is on the topic); and finally (7) Contextual/ Situational (the focus is on the setting).

[1] Austin (1962), Searle (1969), Silverstein (1976) and others have also attributed certain delineated factors with multiple speech functions.

Table 5.2

A Comparison of the Communicative Factors Proposed by Roman Jakobson (1960) and Dell Hymes (1962).

Jakobson	Context	Message	Addressor	Addressee	Contact	Code	- - -
Hymes	Setting	Message form	Addressor	Addressee	Channel	Code	Topic

For the purposes of this synchronic analysis, the expressive/emotive factor and the directive/persuasive factor will be the most important during the analysis. When examining the text of a judicial opinion, I anticipate focusing most strongly (though not exclusively) on how the directive or persuasive factor as what a judge does in an opinion is persuade higher courts that he or she has reached the correct conclusions. Similarly, the first factor in the typology, the emotive or expressive factor will probably be the most important factor to consider when examining the original use of an epithet, *i.e.*, during the crime or tort which gave rise to the case.

There isn't necessarily only one function associated with each factor, but one function tends to be of primary importance. Reference is the most fundamental level of speech, and is the baseline of talk. There is virtually always a reference function in speech, but referentiality may be rendered inconsequential through being ritualized, as in phatic communication (Malinowski 1923.) For example, in our culture if one passes a coworker in the hall when arriving at work, both parties would offer a greeting such as "Good morning!" or "How're you doing?" In terms of referentiality, the surface function of the first greeting above is to make an observation about the time of day and its quality, and the surface function of the second is to inquire as to the status of a coworker's life. But this is not the function the above greetings truly serve. The greetings serve the contact function primarily, and are a ritualized form of speech. Reference is not paramount. In fact, the last thing

an interlocutor wants to hear when asking, "How're you doing?" is a lengthy exegesis on the trials and tribulations of her coworker's life.

Michael Silverstein (1976) addresses this same function of referentiality, and calls it the semantico-referential function. Silverstein calls this function semantico-referential, because it talks about meaning, and hence semantics. Referentiality must always be present, but it needn't be primary, in fact it usually is not primary. We rarely say something dispassionately, thus there are always at least two levels of function, a referential function and emotive function. Whenever the referential function and the emotive function are in conflict, then the emotive function typically carries the meaning of the utterance. An example of the tension between the referential and emotive functions may be found in the case People v. Marsh, 11 Cal. Rptr. 768 (1992) examined in Chapter 1. In that case, a driver who had stopped at a red light in a left-turn lane executed a left turn before traffic traveling in the opposite direction could move once the light had turned green. The driver argued that the citation he received should not be allowed to stand because there was no oncoming traffic when he turned. The court did not respond favorably to the defendant's

> argument that drivers stopped at a signal can turn left in front of opposing traffic when the signal changes *if they can do it quickly enough*.
>
> Simply stating the proposition in plain language seems to refute it. No one can seriously argue allocation of right-of-way should be reduced to a contest of reaction times. (Marsh, 11 Cal. Rptr. 768, 769-770.)

In this example, the emotive function is carried in the use of italics which conveys a sarcastic tone. The court uses that sarcastic tone to ridicule not just the content of the defendant's argument, but that fact that he would make such an argument at all. In short, the emotive function in the example above overrides the referential function of the utterance.

Hymes later revised his initial list of speech factors to fit within his well-known mnemonic S.P.E.A.K.I.N.G. (1974). The mnemonic gives shape to how one would look at how each of the

factors are organized. Each letter in S.P.E.A.K.I.N.G. corresponds to a factor which begins with that letter.

The letter S stands for "scene" or "setting." Setting refers to the time and place of the interaction. The scene may also be thought of in a psychological sense, however, as in whether a setting is formal or informal, serious or festive, exciting or boring, etc. Additionally, a scene may shift over time, perhaps beginning informally and then becoming formal. For example, before court is in session attorneys, bailiffs, the parties to a law suit, and spectators in a court room may all freely talk amongst themselves. One could say that the scene is relatively informal in such a setting. Once the bailiff says, "All rise! The Court is now in session!" however, the setting would immediately become more formal.

The letter P stands for Participants. A participant need not be limited to the sender or receiver of a message. Indeed, it is possible for a speaker to make a comment to one listener when the message is actually made for the benefit of a third party who appears to be nothing more than a bystander. For example, in the courtroom drama *A Civil Action*, a attorney played by John Travolta questioned a hostile witness during a deposition. In the course of the deposition, the witness illustrated how hides were tanned by contemptuously pouring water all over the attorney's very expensive conference table. (Zaillian 1998.) Several months later at trial, the same witness was called to the stand. Before cross-examining the witness, the lawyer asks the witness, "Can I get you anything? A glass of water?" (Zaillian 1998.)

From the surface of the interaction it would appear that there are only two participants to this exchange, the attorney and the witness. In actuality, there are several additional participants: the jury, opposing counsel, the judge, and any spectators close enough to hear. A message can have a very different meaning and serve a very different function if the sender or receiver is varied. In the example above, by focusing on the receiver a researcher might say that the attorney's function is to

convey “I haven’t forgotten your behavior at the deposition” to the witness. But if one focuses on the jury as receiver, the same researcher may just as easily conclude that the sender’s intent is to convey “I’m not a heartless lawyer; I’m just a nice guy who is concerned about other people’s welfare” to the jury.

The letter E stands for Ends, or the desired outcome or goals for an interaction. The desired ends of an interaction can be radically different for different participants in the same interaction. For example, by definition the plaintiff and defendant in a legal proceeding intend and envision very different outcomes. The letter A stands for Act Sequence, *i.e.*, the specific expectations for speaking behavior. Both the Ends of an interaction and the act sequence of an interaction may be further elucidated by Speech Act theory.

Speech act theory was developed by J.L. Austin, and was first presented in a series of lectures given at Harvard University in 1955. The lectures were published posthumously as *How to Do Things With Words*. The central premise of Austin's speech act theory is that words accomplish acts. Austin posited four facets for all utterances: (1) a Happiness/unhappiness dimension, (2) an illocutionary force,, (3) a Truth/ falsehood dimension, and (4) a locutionary meaning (sense and reference). (Austin 1962:148.) For purposes of the synchronic analysis of this dissertation, only Austin’s concepts of locutionary meaning and illocutionary force are important.

One example of the important role speech acts play are greetings. In American society, if we greet someone and they do not respond, we interpret the other's actions as “Something's wrong; why is this person ignoring me.” If, on the other hand, we receive the correct response to our greeting, it means, “Everything is OK; things are normal.” If that person is simply lost in thought, and catches himself, he will then most likely apologize and try to repair the social damage: “I'm sorry. I didn't see you. How’s it going?”

Sociolinguists traditionally focused more on speech events rather than speech acts. Speech act can be thought of as the smaller, included component of the speech event. In other words, speech events are made up of speech acts. Speech acts include greetings, promises, joking, punning, the act of arguing (*cf.* speech events), reporting, etc. Speech acts are formulaic, culturally defined and have social consequences. They are circumscribed by social expectations and social rules. One level of social rules may seem trivial, but they are not; those rules are actually very important. Speech events, on the other hand are larger than speech acts. Thus, one would study the speech act of "preaching" as a part of the speech event of a sermon or church service. Studying the speech event helps to understand the speech act and *vice-versa.* When the social rules for a speech act or speech event have become so thoroughly ritualized that they have become codified within the law, transgressing the standards for those ritualized acts may bring serious consequences.

There is not complete agreement within the field as to terminology. Erving Goffman, one of the most well-known scholars to come out of the Chicago School, has offered alternative terminology. Goffman (1974) believed that people came together to commingle in *occasions* not events or acts or activities. Activities happen in occasions, not events or acts. Goffman's terminology, however, never gained the same widespread use as the more common "speech act" and "speech event." In order to use the terms which have greater methodological currency, I use "speech act" and "speech event" in my qualitative analysis. However, Goffman does provide valuable guidance with respect to methodology.

According to Goffman (1974), the proper methodology for studying an "occasion" is two-fold. First, a scholar should look at *presentation*, *i.e.* (how individuals present themselves.) Second, a scholar should look at how interactions are defined, or framed. Goffman's concept of framing is important to my approach to qualitative analysis. A frame is essentially a "structure of expectation" (Tannen 1993:59) that allows participants to have a sense of what activity is being engaged in and

how to interpret what speakers say. (Tannen 1993:60.) Goffman (1981) also contributed the idea that participants could change their "footing" to denote a change in frame during speech events.

Austin's ideas about Speech Act theory were later developed by his protégé, John Searle. Searle studied under J.L. Austin at Oxford, and further articulated Austin's theory of speech acts. Searle elaborated the framework which Austin first offered, and added the element of intentionality, *i.e.*, a speaker's and receiver's intentions *vis-à-vis* the speech act. (Searle 1969.)

Searle postulated four categories of speech acts: utterances, propositional utterances, illocutionary utterances, and perlocutionary utterances. Searle (1969) used the term utterance simply to mean any spoken word or sequence of words. At base, an utterance need not be associated with any forethought or intention. For example, if a man were to hit his thumb with a hammer and exclaim, "Ouch!" that man still has made an utterance—even though his reaction was governed by reflex rather than intention.

A propositional utterance identifies or specifies something. As with a simple utterance, a propositional utterance need not intend anything. For example, in the movie *Citizen Kane* the character Charles Foster Kane played by Orson Welles utters a single word from his death bed, "Rosebud." (Welles 1941.) The dying man did not intend to interact with anyone else when he made this utterance, but the utterance nonetheless had a specific reference. The fact that no other character in the movie was ever able to discern the meaning of the utterance does not diminish the propositional nature of the utterance. Indeed, even the audience does not learn the significance of "Rosebud" until the very end of the movie.[2]

[2] In the same spirit that audiences brought to *The Crying Game*, I will refrain from explicitly stating the significance of Kane's propositional utterance here.

In contrast to the utterance and propositional utterance, a speaker *does* make an illocutionary utterance with an intention, namely that of making contact with the receiver. In fact, the intention which motivates the illocutionary utterance is its most important characteristic. An illocutionary utterance is made with the intention of asking or answering questions, making propositions or observations, and so forth.

A speaker's intention in making an illocutionary utterance is not to effect a change in the receiver's behavior or to solicit an action. A perlocutionary utterance, however, is made with the intention to change some external circumstance. Listeners must be able to understand the speaker's intention behind an utterance in order to decipher that utterance. For example, a weather strip salesperson, a house guest, and a political satirist might intend very different meanings for the utterance "Do you feel a draft?" Knowing the speaker's intention lets a receiver know whether to interpret that utterance as an opening to a sales pitch, an indirect request to close a window, or as a barbed comment on military conscription.

Searle's model is hierarchical, that is, *a fortiori* a perlocutionary utterance entails an illocutionary utterance, a propositional utterance, and an utterance as well. A speaker cannot intend to influence a listener's thoughts or behavior (perlocutionary utterance) without also intending to interact with that person (illocutionary utterance) by identifying or specifying some tangible or abstract objects (propositional utterance) via a sequence of articulated sounds (utterance).

The next factor in Hymes's typology of speech factors is Key, as in Speech Key. The speech key is analogous to a musical key. It allows the participants to interpret the speech message, *i.e.*, is it serious or a joke? Is it truthful? The key may override referentiality. Referentiality is always present, but referentiality may be overridden or not primary. Hymes believed that multiple functions were present whenever anyone was speaking. The first thing a listener (receiver/addressee) needs to know in order to understand a conversation is the key. Is the utterance serious, sarcastic, or

instructional? The speaker may provide direct signals for how to interpret his utterance or the addressee can tell from context. The listener must make a series of decisions about how to interpret the speaker's utterances, and understanding the key is a prerequisite for that interpretation. For purposes of this qualitative analysis, knowing the key is important for understanding initial use of an epithet during crime or tort which gave rise to the trial.

The letter I in Hymes's S.P.E.A.K.I.N.G mnemonic stands for Instrumentalities. There are two items to consider under instrumentalities: (1) Channels, and (2) Forms. Channels are any medium for "speech," while forms include code, languages, dialects, styles, varieties, or registers. Here, the instrumentality of the initial utterance of an epithet will likely be more important than the instrumentality of the judicial opinion itself. For example, black men may use Nigger amongst themselves within the instrumentality of A.A.V.E., African American Vernacular English.

The letter N stands for Norms of Interaction, *i.e.*, how and when to speak in a particular context. For example, in contemporary American society, we don't talk much in elevators. Even people in the midst of a conversation while in the lobby while waiting for the elevator will usually interrupt their conversation once the doors open and they step inside the elevator. It should come as no surprise that the norms of interaction within the law are quite constrained. In fact, judicial opinions are themselves normative texts which define what is, and what is not, acceptable in our society. (Dernbach, *et al.* 1994.) Here, the opinions in the corpus may even specify how taboo a given term is, for example as in employment discrimination cases.

The final factor in Hymes's typology of speech factors is Genre. A genre is a "prepackaged" even formulaic way of speaking. Examples of genres include proverbs, poems, curses, and, of course, judicial opinions. People create genres to create a level playing field for participants so that we all agree that speech means certain things within the context of that genre. Accordingly genres

instantiate understanding. Here, the principal genre with which this qualitative analysis is concerned is always a judicial opinion.

According to Hymes (1962:251), the steps of analysis for conducting an ethnography of speaking study are: (1) Discover a relevant frame or context by gathering data by studying the above factors in a speech community; (2) identify the items which contrast within that frame and look for patterns among the data. Hymes's idea was that as one gathered data, he should work with only one factor at a time in order to understand the features associated with each factor. In this qualitative analysis, I have tried to remain true to Hymes's guidelines wherever practicable. Here, I try to examine only one factor, or variable, at a time in order to investigate epithet usage in judicial opinions.

To synthesize the several theoretical influences, then, from speech act theory I draw upon its strength of focusing on the acts which are performed through speech. As applied to my dissertation, speech act theory provides a useful framework for examining the acts a judge is completing when drafting his opinion. Furthermore, speech act theory as developed by Searle may help shed light on a judge's possible intention for committing a given speech act.

Remaining mindful of the bedrock principles of ethnography of communication ensures that I will not forget that language and communication are cultural behavior which must be understood within a set of beliefs and values which extend beyond linguistic competence. Ethnography of communication requires extensive work within, and familiarity with, a community. The untold hours I have spent gaining familiarity with the language and culture of the law fulfills this requirement. I read literally hundreds—if not thousands—of cases in law school. Further, I have worked within the law while completing this dissertation. I believe my legal background and training allow me to bring an insider's perspective to this genre. I believe this background provides

me with a stronger claim to an "emic" perspective than many other sociolinguists who lack a legal education and experience.

Throughout this dissertation, I use the term "emic" in the same sense as Pike (1954). Pike borrowed the morphemes etic and emic from the field of phonology. By analogy with phonology, an etic perspective in anthropological linguistics is that of a trained observer's (*i.e.*, an outsider) approach to linguistic phenomena within a culture. An etic approach begins an analysis by looking for certain preset categories in the linguistic data. An emic perspective in anthropological linguistics, on the other hand, refers to how a member of a culture (*i.e.*, an insider) would interpret the same linguistic phenomena. An emic perspective allows meaning to emerge rather than trying to neatly fit it within certain pre-existing categories of linguistic classes.

Though it is more traditional in some social sciences to work within a single set of theoretical precepts and a single methodology, it is not uncommon in Discourse Analysis to draw upon whatever sources help elucidate cultural and linguistic behavior. As Deborah Schiffrin has observed,

> it is difficult to always know how to separate (and relate) structure and function, text and context, discourse and communication. But what I am really saying is that it is difficult to separate language from the rest of the world. It is this ultimate inability to separate language from how it is used in the world in which we live that provides the most basic reason for the interdisciplinary basis of discourse analysis. To understand the language of discourse, then, we need to understand the world in which it resides; and to understand the world in which language resides, we need to go outside of linguistics. (Schiffrin, 1994:419.)

It is because I want to understand the world of racial and gender epithets within judicial opinions that I sometimes go outside of the world of "*langue*" and draw upon the many sources outside of linguistics which may help shed light on "*parole.*"

Reliability and Validity

Reliability and validity establish the credibility, and hence the usefulness, of research. Validity relates to the accuracy of the researcher's measurements, *i.e.*, did the researcher really measure what he purports to have measured? Reliability, on the other hand, focuses on how accurately the study can be replicated. (See generally, Creswell 1994; Trochim 2000.) There are several potential threats to both reliability and validity in social science research. The steps I took to minimize the threats to reliability and validity of this dissertation are detailed below.

The reliability of a study is determined by the degree to which the research findings can be replicated. A study which utilizes measurements without random error would be perfectly reliable. In other words, the study could be replicated 100 percent of the time. A study which utilizes measures which consist solely of random error has no reliability, and could not be replicated except through random error.

Here, the internal reliability of this study relates to the extent that data collection, analysis, and interpretations may be consistently repeated given the same conditions. Because I have published the list of utterances and cases which comprise the corpus for this qualitative analysis in an Appendix, other researchers may easily repeat the data collection. The texts of all opinions within the corpus are a matter of public record and are not subject to copyright restriction. I have also tried to openly acknowledge my theoretical and methodological biases so that others may choose to follow the path I have taken or they may just as readily critique my methods and theoretical precepts and strike out on their own.

The very design of this synchronic, qualitative phase of the dissertation is subjective. That is, the ability to repeat the study and arrive at the exact same conclusions is not likely given that each scholar will approach such a study somewhat differently. Therefore, attempting to quantify the external reliability of this dissertation—whether other independent researchers can replicate this

study—is largely nonsensical. A more valid measure of reliability, then, may be whether any conclusions I draw fit within the somewhat flexible existing parameters within discourse analysis.

One of the greatest threats to reliability during the diachronic, quantitative phase of this study has largely been obviated by the design of the qualitative phase of this study. Whereas the polysemy of many of the linguistic types in the diachronic study may have impacted reliability during the quantitative analysis, focusing on a single linguistic type not prone to polysemy has limited the threat to reliability polysemy poses.

Three principal strategies help ensure external validity (*i.e.*, whether the results of this study can be generalized from the sample to the population from which the sample was taken). The first of these strategies to help ensure external validity is the large size of the sample of opinions which I analyzed. As stated, above in the Description of the Corpus section, the sample utilized for the synchronic analysis is ample enough to generalize about some of the properties of the population from which the sample was taken. Next, as stated above, the judicial opinions I analyzed are readily available public documents. Lastly, in Appendix B to this dissertation I have published the citation list of cases included in the corpus for the synchronic analysis. Thus, other scholars who are interested in repeating this study will full access to the exact same data I used, and they will also have the matrix which I used to classify the opinions.

Based on the steps taken to ensure rigor in the methodology to the greatest degree possible, it is not unreasonable to conclude that the methodology used herein is a valid measure of how the epithet Nigger is used in contemporary judicial opinions.

Summary

In this chapter, I presented the methods and procedures used for the synchronic analysis portion of this dissertation. The methods from discourse analysis which I outlined here will be used

to discover how the epithet Nigger is used within a convenience sample of judicial opinions from 1997 which contain that epithet. Additionally, I set forth the theoretical bases which inform my approach to this qualitative, synchronic phase of the dissertation. As will be seen in the following chapter, not all theoretical approaches and schools of thought described in this chapter provide a step-by-step methodology which I follow in the synchronic analysis. Instead, some of the theoretical approaches described in this chapter are analogous to the operating system of a computer: always present and operating in the background even if the tools those approaches provide are not readily apparent.

SYNCHRONIC RESULTS AND ANALYSIS

Whereas the diachronic portion of this study examined epithet use within judicial opinions at the macro level, this synchronic analysis approaches the subject at the micro level. The objective of the synchronic phase of this study is to use qualitative methods to discover how one epithet is used within a sample of judicial opinions containing one particular epithet. In this chapter, I examine a sample of judicial opinions from 1997 and discuss how the epithet Nigger appears in those opinions.

The research questions for this synchronic, qualitative analysis are more impressionistic than the research questions for the objective quantitative analysis presented in Chapter 4. The reason for this is simple: I am no longer analyzing objective phenomena such as how frequently epithet X appeared between the years of 1910 and 1919. The rationale and design of the diachronic analysis was to provide a large framework onto which I add the details provided by my synchronic analysis. In this qualitative analysis I am dealing with more subjective questions than those in the diachronic portion of the dissertation. Here, I try to discover how judges have used the epithet Nigger within a sample of judicial opinions. As such, this qualitative analysis must by definition be more subjective, more impressionistic even, than the quantitative analysis. To be certain, there are certain objective questions to be answered here as well, such as "Are there any discernible patterns in the type of case in which Nigger appears?" For example, how many cases are criminal cases and how many cases are civil suits? Of those, what charges appear most frequently in the criminal cases and what are the most common causes of action in the civil suits? On a more subjective level, however, the overarching question with which I'm concerned is "How do judges use the epithet Nigger in judicial opinions?"

This chapter is divided into nine sections. I provide background material in the first section below. In the *Overview of Synchronic Results* section, I provide a big-picture view of the synchronic analysis. The section titled *Setting / Scene* discusses the types of legal settings in which the epithet Niger is used. I analyze the various types of Addressors and Addressees in the next section, *Participants*. The section titled *Key and Instrumentalities* is divided into two subsections: *A.A.V.E.* and *White Varieties of Non-Standard English*. There are three separate sections devoted to *The Ends and Acts of Judicial Language*: *Characterizing*, *Ordering*, and *Indexing*. The penultimate section in this chapter, *Norms*, provides an overview of a possible shift in our society's linguistic taboos. The final section is a conclusion.

Background

The corpus for the synchronic analysis portion of this dissertation contains 41 state appellate court judicial opinions. This is sample is just over half of all opinions from 1997 which contain the epithet Nigger. There were a total of 99 utterances containing Nigger within the 41 opinions in the synchronic corpus. The synchronic corpus contains only those utterances which were directly attributable to one of the parties in the case under study. I excluded all utterances that contained Nigger, but did so only within a synopsis of a cited case's holding. For example, a court may state a rule, and then cite a previous case and include a brief parenthetical synopsis of the holding in that case.

> Some courts have found that a particularly offensive remark, if not repeated, will not be sufficient to establish a hostile work environment. E.g.,. . . Bivins v. Jeffers Vet Supply, 873 F. Supp. 1500, 1508 (M.D. Ala. 1994) (holding a co-worker once calling the plaintiff a 'nigger' insufficiently severe to establish a hostile work environment). (Taylor v. Metzger.)

All utterances like the example above were excluded from the synchronic data set as such utterances do not arise from the facts of the underlying case.

I analyzed the utterances in the synchronic corpus according to the methods described in Chapter 5. In Chapter 5, I described a framework proposed by Dell Hymes (1962:266) that included eight factors: (1) scene (or setting) of an interaction; (2) the participants involved in the interaction; (3) the desired ends or goals of the participants; (4) the speech acts of an interaction; (5) the key in which the interaction is conducted; (6) the instrumentalities used during the interaction; (7) the norms for that type of interaction; and (8) the genre within which the interaction fits.

According to Hymes (1962:251), the steps of analysis for conducting an ethnography of speaking study are: (1) Discover a relevant frame or context by gathering data by studying the above factors in a speech community; (2) identify the items which contrast within that frame and look for patterns among the data. I have tried to remain true to Hymes's guidelines wherever practicable. Thus, I analyze setting and participants within separate sections devoted to those factors. I have chosen to analyze certain factors jointly, however, because it helps elucidate how the epithet Nigger is used in judicial opinions. For example, I have analyzed ends and acts jointly because those two factors are often two sides to the same coin. Whereas the ends are a person's desired goal, the acts are the steps which an individual takes to reach that goal. Similarly, I address key and instrumentalities jointly as well because those factors both describe the form of an utterance itself. Finally, I have not included a section analyzing genre as the genre was already determined by my choice of topic, corpus, and method: the genre is the judicial opinion.

Overview of Synchronic Results

When I first began research for this dissertation, a law school classmate asked me about my topic. When I told him that I was examining judicial opinions for how judges used racial and gender epithets in their opinions, this acerbic Bostonian from a blue-collar background replied, "In quotation mah-ks, I imagine." As it turns out, my friend was right. All but six of the 99 utterances

in the synchronic corpus appeared within quotation marks or indented block quotations. Judges used quotation marks to punctuate direct quotations, as one would expect. For example:

> Colella [the defendant] acknowledged telling the arresting officer, "I don't believe you are going to take that nigger's word over mine. (State v. Colella, 690 A.2d 156 (1997).)

However, judges also used quotation marks around Nigger, even if that was the only word within the sentence within quotation marks. For example:

> Edwards [the defendant] used racial epithets during the encounter with Anderson, twice referring to her as a "nigger." (City of Wichita v. Edwards, 939 P.2d 942 (1997).)

Judges use quotation marks around Nigger not only in direct quotations, but also to index[1] themselves as non-racists, distancing themselves from the epithet and marking "Nigger" as something apart from their own speech. Further examples are of indexicality and utterances containing Nigger without quotation marks are considered below in *The Ends and Acts of Judicial Language* and *Norms* sections.

In addition to the 99 utterances containing Nigger in the data set, the synchronic corpus also included 93 euphemistic references to the utterance containing Nigger, *e.g.* "Defendant's remark . . ." or "the racial epithet used by defendant . . ." and so forth. Seventy-one utterances in the synchronic corpus used "racial epithet" or "racial slur," to refer to the class of words to which Nigger belongs rather than as a euphemistic reference to the utterance containing Nigger. Such circumlocutions often appear in employment discrimination or harassment cases. In addition to the results set forth above, 32 utterances in the synchronic corpus contained other racial or gender

[1] As used in this dissertation, "indexing" refers to the linguistic and paralinguistic devices by which a person reveals his or her own identity as a language user. A person may index membership in regional, social, or occupational networks, or may also index his or her non-participation in those networks. (See generally, Silverstein (1976), Hanks (2001), and Chambers (2003:40-139).

epithets or other taboo words, *e.g.* "Coon" "Fuck." I include several of these utterances in the *Norms* section below when discussing personal and societal norms for what a judge considers taboo.

Setting / Scene

The letter S stands for "scene" or "setting." In this section, I provide an overview of the types of cases in which Nigger appears. Thus, in this section, "Setting" refers to the legal setting involved in the case rather than the setting or scene of the original utterance. By initially focusing on the types of cases presented and the criminal charges and civil causes of action that are presented, I do not mean to diminish the importance of the setting of the time and place of the original utterance. Obviously, whether Nigger was originally used in a deserted field at night during the commission of a rape and murder (State v. Mason, 125 N.C.App. 216, 480 S.E.2d 708 (1997), or in the workplace (Glover v. Boehm Pressed Steel Co., 122 Ohio App. 3d 702, 702 N.E.2d 929 (1997) is extremely important. I address those aspects of Scene more fully in *The Ends and Acts of Judicial Language* sections. The rationale for providing an overview on legal setting here, and dealing with setting more fully in another section devoted to other speech factors, is that a thorough understanding of how, where, and by whom the original utterance is used is essential in discerning a judge's motives for including the epithet Nigger in his or her opinion.

Of the 41 cases in the synchronic sample, only nine were civil suits, and the remaining 32 cases were criminal prosecutions. Four of the civil suits were brought for employment discrimination. The four employment discrimination cases included claims for discrimination based on race, sex (brought by an African American woman), retaliatory discharge, and fraudulent inducement to leave prior employment. One of the employment cases also included a claim by the

plaintiff's wife for loss of consortium.[2] Two of the employment cases included claims for the negligent or intentional infliction of emotional distress in addition to the underlying discrimination or harassment claims.

Two of the civil suits were appeals of disciplinary actions that had been taken against public employees for using the word Nigger. One of the civil suits was a personal injury action brought by white plaintiffs who had belligerently picked a fight for racist reasons while they were drunk. The African American security guard who was the victim of the attack shot one of his assailants, and the other family members sued the security guard's employer.

Lastly, two of the nine civil cases which included the word Nigger were procedural appeals. One of these two cases appealed from an order granting a motion for change of venue in a wrongful death suit. The parties that brought the wrongful death suit were the interracial parents of a child who had died. The other procedural appeal weighed a newspaper's rights under a state's Journalists' Shield Law and the qualified privilege of the First Amendment against a subpoena issued by plaintiffs in a defamation suit. In that case, the plaintiffs were suing for defamation because the defendant of the defamation suit had referred to the plaintiffs as racists in a story which was later published by the newspaper.

The causes of action presented in all civil cases which included the word Nigger is presented in table form in Table 6.1. The causes of action which were presented in the civil cases are greater than the number of civil cases because it is possible for a plaintiff to assert more than one cause of action in his or her suit.

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[2] Loss of consortium is a separate cause of action that belongs to the spouse of the injured party. Loss of consortium consists of several elements, encompassing the loss of sexual relations in a marriage, and also intangible qualities of society, guidance, and companionship. (*Black's Law Dictionary* 1990.)

Table 6.1

Causes of Action Asserted in Civil Cases Containing Nigger.

Cause of Action	**Cases**
Employment discrimination	4
Appeals of disciplinary action taken against a public employee for using nigger	2
Negligent and/or intentional infliction of emotional distress.	2
Personal injury	1
Loss of consortium	1
Other procedural appeals	2

Of the 41 cases in the synchronic sample, 32 cases were criminal prosecutions. Within these 32 cases, there were a total of 21 different offenses. By far the most common offense was murder which was charged in 20 of the 32 criminal cases in the sample.[3] In other words, nearly two-thirds of all criminal cases were murder cases. Including the two additional manslaughter cases, 68.7% of all criminal cases in which the word Nigger appears involved the death of a human being.

The next most common charges were firearms violations. There were five cases involving firearms violations. These charges included armed criminal action, use of firearm in the commission of a felony, unlawful use of a weapon by a felon, and aggravated discharge of a firearm. Four cases included charges for assault, including aggravated assault and armed assault. Four cases included charges for battery, including aggravated battery. In two cases each, the defendant was charged with kidnapping, disorderly conduct, and robbery. The following criminal charges were present in

[3] This total includes all statutory distinctions in type of murder, *e.g.*, first degree murder, second degree murder, felony murder, and criminal facilitation of murder.

only one case each: arson, attempted murder, burglary, escape, ethnic intimidation, grand theft auto, interference with an official proceeding, involuntary manslaughter, voluntary manslaughter, obstructing legal process with force, possession of a stolen vehicle, and sexual assault. One case involved a sentence enhancement because the crime (aggravated assault) was racially based.

The criminal charges presented in all criminal cases which included the word Nigger is presented in table form in Table 6.2. The number of criminal charges are greater than the number of criminal cases because the defendants were usually charged with more than one offense. A glance at Table 6.2 should recall a similar distribution pattern, *i.e.*, the lexical distribution pattern in the quantitative analysis. In the quantitative analysis, one epithet (Bitch) accounted for two-thirds to three-quarters of all epithet use for each decade in the study. Here, murder accounts for 62.5% of all criminal cases in which the judge included the word Nigger. Furthermore, I showed in my diachronic analysis that for all decades a second epithet (Nigger) accounted for one-tenth to one-fifth of all epithet use. Here, firearms violations accounted for 15.6% of all criminal charges. In my lexical analysis, I showed that after the two most common epithets, several other epithets each accounted for two to five per cent of epithet use, and the remaining epithets in the data set would be used but once or twice.[4] The distribution pattern is the same here.

It seems counterintuitive that one or two charges would account for most of the cases in which Nigger appears. But studies in many academic disciplines have demonstrated similar distribution patterns. If one looks more closely at the cases involving charges of manslaughter, arson, or other offenses which appear only once in Table 6.2, the situation becomes clearer.

[4] This distribution pattern is presented in Tables 4.1 through 4.10.

Table 6.2

Table 6.2. Charges Presented in Criminal Cases Containing Nigger.

Charges	Cases
Murder	20
Firearms violations	5
Assault,	4
Battery	4
Disorderly conduct	2
Kidnapping	2
Robbery	2
Arson	1
Attempted murder	1
Burglary	1
Escape	1
Ethnic intimidation	1
Grand theft auto	1
Interference with an official proceeding	1
Manslaughter, involuntary	1
Manslaughter, voluntary	1
Obstructing legal process with force	1
Possession of a stolen vehicle	1
Sentence enhancement for racially based crime	1
Sexual assault	1
Witness tampering	1

Of all the charges listed only once in Table 6.2, only three of those criminal charges were the most serious charge in that case: escape, obstructing legal process with force, and voluntary manslaughter. Of all remaining cases, the defendant was charged with more serious offenses as well. For example, the defendant who was charged with possession of a stolen vehicle was also charged with murder. The defendant who was charged with interference with an official proceeding (four counts) was also charged with witness tampering (four counts), arson, assault, and four counts of sexual assault. Thus, the similarity between the distribution pattern here and the distribution pattern presented in Tables 4.1 through 4.10 may simply be coincidence. Whether that, in fact, is the case I will have to leave to researchers in mathematics rather than sociolinguistics.

Participants

The letter P stands for Participants. A participant need not be limited to the obvious senders or receivers of a message. Indeed, it is possible for a speaker to make a comment to one listener when the message is actually made for the benefit of a third party who appears to be nothing more than a bystander. It is also possible for a participant to be so fully integrated into an interaction as to be invisible. For the purposes of this synchronic analysis, the participants are not limited to the obvious Addressor of the epithet "Nigger" and the Addressee who ultimately heard that epithet directed toward him or her. The judge who drafted the judicial opinion is also a participant to the interaction because he or she had to make a conscious choice at some point to include the epithet Nigger. Therefore, I attempted to discern the race of all judges who wrote the opinions used for the synchronic analysis. As will be seen below, such a goal is easier said than done. Before progressing to the discussion of judge as participant, I provide an overview who the Addressors and Addressees of the original utterances were and the types of utterances which result from various pairings of Addressors and Addressees.

Addressors and Addressees

In this section, I discuss only the original utterance containing Nigger, and leave discussion of the court's use of Nigger for *The Ends and Acts of Judicial Language* sections below. My examination revealed that there are only six main types of utterances containing Nigger, and the type of utterance is usually determined by the Addressee and Addressor. The types of utterances containing Nigger and/or types of Addressors who used Nigger were: (1) the paradigmatic racist; (2) in-group slang; (3) in-group insult; (4) attributed utterance; and (5) a restatement of Nigger in the court's reasoning. I was unable to determine race of the Addressee and/or Addressor in a couple of cases, and I have also included a final category "Other" into which I have placed the few cases that did not fit within one of the five types listed above.

The first type of utterance, "Nigger" as used by a paradigmatic racist, is fairly straightforward and self-explanatory. This type of utterance is said by a white Addressor to a black Addressee, or to another white Addressee for the "benefit" of a nearby black person within hearing distance of the utterance. The paradigmatic racist can also address his utterance to another white Addressee about a black person, even if there are no African American listeners within hearing distance of the utterance. A paradigmatic racist is usually a private citizen, but, unfortunately, it is sometimes a member of law enforcement or the judiciary as well.

The most infamous defendant in the synchronic corpus, Byron de la Beckwith, killed civil rights leader Medgar Evers in 1963 and managed to evade conviction for three decades. The case of De la Beckwith v. State is so rich in racist utterances, I discuss it in several sections of this chapter. For example, when an African American prison nurse became offended when de la Beckwith asked for a white nurse, it sparked it fight. He yelled at her, "If I could get rid of an uppity nigger like nigger Evers, I would have no problem with a no-account nigger like you." (De la Beckwith v. State, 707 So. 2d 547 (1997).) One paradigmatic racist who was a member of law

enforcement was the Sheriff in Lauderdale County Tennessee. That Sheriff referred to a black detainee's white girlfriend as "that yeller-headed nigger lover." (State v. Culp, 1997 WL 97870 (1997).) That Sheriff also physically assaulted the detainee and his girlfriend. The Sheriff and his son (who was a deputy) became the subject of an F.B.I. investigation stemming from civil rights violations in the Lauderdale County Jail. Both the Sheriff and his son were later indicted by a federal grand jury and removed from office.

The second and third types of utterances are both in-group uses of the word Nigger[5]. The second type of utterance, "Nigger" used as in-group slang, is said by a black Addressor to a black Addressee as a statement of solidarity. A black Addressor can also use in-group slang to a non-black Addressee about a black person in a manner that conveys the Addressor's solidarity with the person who is the object of the utterance. For example, one of several black men to gang rape and murder a white woman yelled at her, "Bitch you are getting ready to give my Nigger some pussy." (State v. Mason, 480 S.E.2d 708 (1997).) In-group slang uses of Nigger also include matter-of-fact uses of the term which index membership within the group, but do not overtly express solidarity with the object. For example, several cases contain utterances such as "What's up now nigger?" (State v. Williams, 568 N.W.2d 785 (1997).)

Lastly, Blacks can also use Nigger as in-group slang to signal the inclusion of a non-Black within their social network. Before relating the following personal story, I should note that I am a middle-aged, white American of Anglo-Irish ancestry. I was speaking with an educated, middle-aged African American man and told a story that prompted him to use in-group slang toward me.

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[5] I also address in-group uses of Nigger in the *Key and Instrumentalities* section when discussing African American Vernacular English (A.A.V.E.), and in the *Ends and Acts of Judicial Language* section to illustrate how a judge can use a defendant's own words to characterize that person in a manner that suits the judge.

I told the man that one time while I was riding a public commuter ferry across the San Francisco Bay, a passenger was generously sharing the sound of his electronic entertainment. I politely asked the passenger to decrease the volume. After two polite requests failed, I turned the unit off myself. The African American man who had been speaking standard American English up to this point immediately code shifted to A.A.V.E.: "Shee-it, Nigga! You shut th' mutha fucka down!" Here, the African American man's use of A.A.V.E. and calling me "Nigga" signaled that he was amused by, and approved of, my actions.

The third type of utterance, "Nigger" used as in-group insult, is a hybrid of the first two types of utterance. When an African American Addressor uses "Nigger," it is not always to express solidarity. Blacks can, and do, use Nigger as an insult. For example, in his book, *Makes Me Wanna Holler* (1994), African American journalist Nathan MacCall recounts the following childhood memory.

> Whenever we were going to restaurants or other public places where a lot of white folks would be around, my mother insisted that we get meticulously groomed and pressed before hand . . . if one of us dared to cut up in public, Mama would yank him firmly by one arm, pull him to within an inch of her face, and whisper through clenched teeth, "Stop showing your color. Stop acting like a *nigger*!" (MacCall 1994:12.)

As shown above, an in-group insult is the use of Nigger by black Addressor to a black Addressee when the Addressor intends to insult or belittle the Addressee. An in-group insult can also be said by the black Addressor about a black person who is not the Addressee. For example, one African American Addressor told her black friend who was in jail: "[Y]ou're in this situation because you're hanging around with those losing niggers who ain't got nothing going for them." (People v. Mayfield, 928 P.2d 485 (1997).) That same defendant was also physically and verbally abused by his stepfather who would use Nigger as an in-group insult toward him.

The fourth type of utterance, an attributed utterance, is the use of "Nigger" which is attributed to a white Addressor by the black Addressee of the utterance, often where the facts of the case do not lend a great deal of weight to the purported Addressee's claim. Attributed utterances appear in cases where a black Addressee is seeking to diminish or escape criminal liability by claiming either (1) the black Addressee was provoked by the white Addressor; or (2) the white Addressor was the real perpetrator of the crime for which the black defendant has been charged. Occasionally, a prosecuting attorney will anticipate a provocation defense and preempt it. In State v. Hill, 1997 WL 406651 (1997), the defendant argued that it was prosecutorial misconduct for the prosecutor to ask three of its police officer witnesses about their thoughts on racism when the defendant had not raised any issues of police misconduct or racism. The court rejected the defendant's argument.

> The state correctly argues that the record shows the prosecutor anticipated Hill's defense of racism. Hill testified that one of the officers said, "Nigger, didn't I already tell you to leave?" The officers also testified the crowd was unruly and yelled "pig," "Nazi," and "racist" at the officers. (Hill, 1997 WL 406651.)

The most egregious example of an attributed utterance was a case in which a 15-year old boy killed his grandfather because the grandfather was going to tell the boy's father that he had borrowed the car without permission. In a statement the defendant gave to the police, he claimed that he discovered his grandfather's body when he returned home from a friend's house. When he got home, he said "he found a white man, wearing a tie and carrying a brief case, who knocked [him] down and stated "Mmm, mmm, two niggers in one day." (State v. Perry, 954 S.W.2d 554 (1997).)

The final type of utterance is the use of Nigger without an Addressee or Addressor, *i.e.*, where the court restates the epithet in its reasoning. If a court recounted an utterance that was already classified in one of the above categories based upon its original use, I placed the restated utterance in this category. If, on the other hand, the recounting was the only inclusion of Nigger in

that opinion, then I classified the utterance according to how the original Addressor intended the utterance. For example, if the only time the epithet Nigger appeared in an opinion was a court's statement, "Testimony was heard that white defendant called black victim a nigger," that utterance would be classified under the paradigmatic racist category rather than the court's reasoning category.

The "Other" category includes all utterances that could not be placed into one of the above categories. This category encompasses utterances which were not plentiful enough to group with like utterances. For example, only one case contained use of Nigger by a Hispanic Addressor to a black Addressee, and the context did not make it clear whether the utterance was a racist insult or was simply a statement made by one racial minority to another. (People v. Groves, 677 N.E.2d 1351 (1997).) Another case contained an utterance by a white Addressor, but the facts regarding the Addressee(s) of the utterance as well as the Addressor's motives were ambiguous. (Los Angeles County Office of the Dist. Attorney v. Civil Service Com., 55 Cal. App. 4th 187, 63 Cal. Rptr. 2d 661 (1997).) Three of the utterances in the data set were said by the title character in the film *Malcolm X* which was shown to jurors during a recess in a trial (People v. Budzyn, 566 N.W.2d 229 (1997). One utterance was attributed to a defendant who was schizophrenic, and his motives were completely unclear. (Robertson v. State, 699 So. 2d 1343 (1997).)

I was not able to definitively identify the race of the Addressor and/or Addressee for two utterances. As the above analysis indicates, often it is possible to determine the race of Addressee and Addressor. A court may make explicit statements about the race of the parties involved; this is often the case in racial discrimination cases or criminal cases involving hate crimes or racial bias. Other times it is possible to determine the race of an Addressee and Addressor through context such as a transcript that is clearly in African American Vernacular English. Occasionally, however, it was impossible to determine the race of an Addressee and/or Addressor definitively, and academic prudence requires not classifying those utterances.

Table 6.3 shows the number of each type of utterances which are included in the synchronic data set. The total number of cases in Table 6.3 is greater than the number of cases in the synchronic corpus because a single case could contain more than one category of utterance, *e.g.* People v. Mayfield, 928 P.2d 485 (1997) contains several paradigmatic racist utterances as well as in-group utterances.

Table 6.3

Types of Utterances Containing the Epithet Nigger.

Category of Utterance	**Number of Utterances in Data Set (of 99)**	**Number of Cases (of 41)**
Paradigmatic Racist	62	15
In-Group Slang	11	10
In-Group Insult	3	2
Attributed Utterance	6	6
Court Restates Epithet in Its Reasoning.	7	5
Other	8	5
Unable to Determine Race of Addressor / Addressee	2	2
Total:	**99**	**45**

The grossly disproportionate number of paradigmatic racist insults does not necessarily mean there were far more paradigmatic racist cases. As Table 6.3 shows, 15 cases contained utterances by a paradigmatic racist, and nearly as many (12) contained in-group uses of Nigger. It is true that paradigmatic racists are usually more voluble than are Blacks who use Nigger as in-group slang or insult, but that is as it should be. If Nigger is an unmarked term for another in-group member, it is probable that a black Addressor would not belabor the point and keep repeating "Nigger" as a white

racist would. Furthermore, when black parties use in-group utterances containing the epithet Nigger, a court often quotes only that single in-group utterance, and the utterance is usually not germane to the issues presented in the case. None of the original 14 in-group utterances bore on any material issue presented to the trial or appellate court. Paradigmatic racist insults, on the other hand, often appear in employment cases or criminal cases involving race-based crimes. Thus, where a paradigmatic racist utters "Nigger" to a black Addressee, the utterance is germane to the issues of the case and the court must address the utterance(s) when applying the facts to the law.

The Judge as Participant

As stated in the introduction to the *Participants* section, I also attempted to determine the race of the judges who wrote the opinions in the synchronic corpus. To determine the race of the judges, I consulted news articles, demographic studies of the judiciary, biographies posted on court websites (where available), and any photographs on the Internet which I could find using a Google search. I was able to determine the race of the judge in all but 13 of the 41 cases in the synchronic corpus. Of the 28 cases where I was able to document the race of the judge, the overwhelming majority of the judges were white: 25 of the 28 judges were white. Five of the white judges were female; the remaining 20 white judges were male. Two opinions in the synchronic corpus were authored by black males, and one opinion was written by an Asian male. I could not determine the race of the judge who wrote the opinion in 13 cases. I could not determine the race of a judge for one of two reasons: (1) the information was not easily available publicly; or (2) the opinion was

credited "*per curiam*[6]." The race of judges who wrote the opinions in the synchronic corpus is set forth in Table 6.4.

Table 6.4

Demographics of Judges Who Wrote the Opinions in the Synchronic Corpus.

Race of Judge	**Cases**
White male	20
White female	5
Black male	2
Asian male	1
Unable to determine	13
Total:	**41**

Because so few of the opinions were written by non-Whites, it is worth discussing those cases briefly. Of the two cases written by black males, one was a criminal case and the other was an appeal of disciplinary action that had been taken against a municipal employee. The criminal case, People v. Groves, 677 N.E.2d 1351 (1997), was an appeal from a conviction for first degree murder and possession of stolen car. The conviction was affirmed. The single instance of "Nigger" in the opinion is quoted below.

> At the jury trial, Deborah Spraggs (Spraggs) testified that, at approximately 2 a.m., on August 3, 1993, she was sitting on the trunk of a parked car in the vicinity of 5538 West Congress in Chicago, talking to a friend, Kareem Williams (Williams). . . . While Williams and Spraggs talked, Spraggs noticed a car pull up and park. . . . Spraggs made an in-court identification of the defendant as the driver of the car. . . .

[6] A *per curiam* opinion (literally "by the court") is an opinion which announces the result and reasoning of the case, but which does not identify the author of the opinion. (*Black's Law Dictionary* 1990.)

> Defendant called to Williams, "Hey, man." Williams responded, "What's up?" Defendant then walked towards Williams and said, "Ain't you the nigger that chased me the other day?" After Williams responded "No," defendant, standing approximately three feet away, drew a shot gun, cocked it back and said, "Yeah, you was" and shot Williams in the head. Defendant then walked back to the car and entered the driver's side. (Groves, 677 N.E.2d 1351.)

In the altercation described above, the Addressor who said Nigger was a Latino male, and the Addressee was a black male. Both were alleged to have gang affiliations.

The defendant in Groves did not raise any issues in his appeal that turned on the use of the epithet, and the judge did not stress the word in his opinion. Though it is jumping ahead somewhat, it is worthwhile to note a few things the judge does in this short passage. First, Chicago, like many cities in America, is racially and socially stratified. The judge places the crime squarely within gang territory for anyone who is familiar with that city by including the address of the crime. In short, it would be as if a judge in Los Angeles or New York were to include an address which was in Watts or Harlem. Second, by including the direct quotation of the Defendant's non-standard use of the verb to be ("Yeah, you was"), he portrays the defendant as uneducated. Third, the final sentence in the passage above portrays someone for whom killing is no big deal: the Defendant "walked" back to his car after shooting a man in the head at point blank range with a shotgun.

The other opinion written by a black male was an appeal of disciplinary action that had been taken against a white, off-duty firefighter for using the word Nigger toward an on-duty African American police officer. (Karins v. City of Atlantic City (A-6-97).)

The final opinion not written by a white judge was People v. Fairbank, 947 P.2d 1321 (1997). Justice Chin, an Asian male, wrote the opinion in this capital murder case for the Supreme Court of California. As with the Groves case above, Justice Chin does not include the epithet Nigger or use it in his opinion in a way that is markedly different from other opinions in the

synchronic corpus. Though it is jumping ahead somewhat to the next section, Fairbank serves as an appropriate segue to that section.

In Fairbank, the epithet Nigger appears only twice; both were direct quotations of the defendant. The defendant in Fairbank, as in many of the capital cases in the synchronic corpus, qualifies as a sociopath[7]. Justice Chin starts his characterization of the defendant in the very first paragraph of the opinion. As far as death penalty appeals go, Fairbank is quite short at only 33 pages (in electronic copy text). In the first five sentences of those 33 pages, Justice Chin provides the entire framework for his characterization of defendant, and the ultimate disposition of the case.

> Defendant tortured Wendy Cheek and then killed her. A week earlier, he had sexually assaulted a different woman. Defendant pleaded guilty to first degree murder and admitted the special circumstances of attempted oral copulation and torture. After a penalty trial, the jury returned a verdict of death. We affirm. (Fairbank, 947 P.2d 1321.)

One of the issues the Defendant in Fairbank raised on appeal was that the prosecutor committed misconduct by introducing evidence of a racial slur the defendant had made to a clinical psychologist who administered an intelligence test while the defendant was in jail. During the course of that test, the psychologist asked the defendant a series of factual questions such as, "At what temperature does water boil?" One of the questions on the test was: "Who was Martin Luther King?" to which the Defendant responded: "A dead nigger, don't like black people." (Fairbank, 947 P.2d 1321.) The inclusion of the Defendant's matter-of-fact dismissal of one of the preeminent civil rights leaders of the 20th century and the almost Hemingway-esque prose of the introductory paragraph of the opinion portray the Defendant as a sociopath.

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[7] I use sociopath here as that term is ordinarily used and understood. I am not making a claim that the defendant in Fairbank or any other case fulfills the clinical definition of a sociopath.

Key and Instrumentalities

The first thing an Addressee needs to know in order to understand an Addressor's utterance is the key. The speech key is analogous to a musical key. It allows participants to interpret an utterance, *i.e.*, is it serious or a joke? Is it truthful? For example, in Chapter 2, I discussed a study in which high school students used "Bitch" or "Nigger" to one another in a "friendly" rather than "serious" way. (Sevcik *et al.* 1997). An Addressor may provide direct signals for how to interpret an utterance or the Addressee may be able to tell from context. For purposes of this qualitative analysis, knowing the key is important for understanding the initial use of Nigger.

The letter I in Hymes's S.P.E.A.K.I.N.G. mnemonic stands for Instrumentalities. There are two items to consider under instrumentalities: (1) Channels, and (2) Forms. Channels are any medium for "speech," while forms include code, languages, dialects, styles, varieties, or registers. Here, a judge expresses the results of a case in his or her opinion, so in one sense the form is fixed by choice of methodology and topic. With respect to the registers involved in the synchronic corpus, it should be obvious that the most prevalent is the elevated diction, formal register, and often Latinate syntax of the judge's language in the opinion. Less obviously, non-standard varieties of English appear in judicial opinions, and it is usually within these informal registers and non-standard varieties of speech where one finds the epithets which are the subject of this dissertation. I discuss two of those instrumentalities below, African American Vernacular English and the non-standard speech of Whites who lack extensive formal education.

A.A.V.E.

African American Vernacular English (A.A.V.E.) is a variety of English spoken by many (though by no means all) African Americans in the U.S. (See generally, Whatley 1981:92-107.) Although the most salient feature associated with A.A.V.E. is race, several other sociolinguistic

variables such as socioeconomic class and education play important roles as well. A.A.V.E. exhibits several linguistic features which differ from standard American English. Copula deletion, as in "He my friend" is one such feature. Other common structural features of A.A.V.E. include multiple negation, absence of the third person singular -s in present tense verb conjugations, reduction of word-final consonant clusters, and use of habitual "be" as in "Death penalty cases always be long." The most relevant feature of A.A.V.E. for this dissertation is not structural, however, it is sociolinguistic, and that is the use of Nigger by Blacks. I discuss the different types of in-group utterances of Nigger within the *Participants* section, but provide a brief excerpt from a statement in A.A.V.E. below as well. In this excerpt, an accomplice provides a statement to the police which describes the assailants' actions before a murder.

> On the 24th I got up and went out of the house and went up to the Arab store on East 144th and seen one of my dudes name[d] Rico. Went into the Arab store and got me a gin and juice and me and Rico was drinking it. Terrence was coming out of Big D's house. . . . And I asked him where is T, where is T at. And he said he was over at Big D's house earlier. Went over Big D's house.
>
> . . . Tyson wanted me to come on up into the Big D's house. Me and Big T, TJ, Tyson, were in the house and we went in the den and few were talking. Tyson said, I'm about to hit the nigger Mo up. TJ left out of the house. Me, Big D and Tyson were just talking for a minute, just tripping out. (Dixon, 1997 WL 113756.)

In addition to the in-group use of Nigger above, the defendant uses several non-standard features of English that are characteristic of A.A.V.E. For example, in the first sentence, the speaker deleted the word-final consonant in "named" which the police transcriber then reinserted editorially. The speaker also states that he and his "dudes" were "just tripping out" at a friend's house. The passage above also includes copious use of "Street names." As with the example of non-standard English below, a court will often employ a defendant's own words in order to characterize that person in a negative way. Thus, a court often exhibits and exploits the prevailing cultural prejudice against non-standard varieties of English.

White Varieties of Non-Standard English

A.A.V.E. is not the only non-standard variety of English that appears in the cases of the synchronic corpus. Courts will often include the non-standard speech of working class Whites who do not have much formal education. The reason for doing so is often to characterize a party in a certain way, as will be seen below in the *Ends and Acts of Judicial Language* sections. As with A.A.V.E., there is, of course, nothing intrinsically or linguistically inferior with this non-standard variety of English. But as a linguist and long-time resident of the South, I am well acquainted with the prejudices that many people hold toward this variety of English and its speakers.

Byron de la Beckwith exhibits several features of the non-standard English of rural southern Whites in his speech. The prosecution introduced the letter below into evidence to show de la Beckwith's views on race and politics which were relevant to the trial. The non-standard features within it (and other exemplars in the opinion) allow the court to characterize de la Beckwith in a negative way. De la Beckwith wrote the letter to his son on November 22, 1963, the day President Kennedy was assassinated in Dallas.

> My dear son:
>
> Thank you for the two post cards about tests, and that you'll take off on Thursday. And it looks like the country's politics are gradually going to get straight now pretty soon since Kennedy was assassinated.
>
> Whoever shot Kennedy 'sho did some fancy shootin—to be sure.
>
> No need for us to make much fuss over it except that I'll say to me it came as no surprise". [*sic*]
>
> I've had my head stuck up in T.V. all afternoon, and finally had to shut it off so I could write you.
>
> Well, I guess when a few more of our enemies are gone then this will be a real fine world to live in—Wonder who will be next?
>
> I bet ole Medgar Evers told Kennedy when he got down there—I thought you'd be along pretty soon—Haw, Haw, Haw.

> Now, it's best to keep this letter out of sight and don't let anyone see it, and—I'm sorry.
>
> Ah, what a load off the country's back—What a relief. When a few more reds bite the dust, we can live in peace once more.
>
> All my love.
>
> Your very happy father, Byron De La Beckwith. (De la Beckwith, 707 So. 2d 547.)

In this case, virtually every time the defendant opens his mouth, he makes the appellate court's job easier. Although it is jumping ahead a bit to the next section, it is worth noting how some of the non-standard features above allow the Supreme Court of Mississippi to characterize de la Beckwith as an uneducated racist more easily. De la Beckwith's use of eye-dialect "sho" and "shootin" and "ole" provide a hint at how de la Beckwith pronounces these words, and, as discussed in the following section, helps the reviewing court exploit the prejudices against non-standard speech. Another non-standard feature is the idiom "stuck up in T.V." The phrasal verb "stuck up" and awkward choice of preposition marks his speech as uneducated. Also, he uses a closing quotation mark without a corresponding opening quotation mark. Furthermore, he violates the majority rule requiring punctuation to be enclosed within quotation marks. Lastly, there is the text of the letter itself. De la Beckwith conveys his beliefs that Kennedy and Evers are in hell ("down there") and the country is better for it. And, probably because he knows that Evers is dead because of him, he punctuates his sentence with non-standard eye dialect for laughter: "Haw, Haw, Haw" rather than "Ha, Ha, Ha." It is easy to see why the Supreme Court of Mississippi later called de la Beckwith a "miscreant" in its opinion.

The Ends and Acts of Judicial Language: Characterizing

One legal practitioner has noted: "Only in the law do words carry both a declaratory and performative force potent enough to do a deal or undo a man." (Malmo 2001.) This section discusses the declaratory and performative functions of language as revealed in a judge's use of language. Judge's use taboo words, including racial epithets, in their opinions because judges stress how the law applies to specific facts. A judge may write, "The defendant threatened the police officer," and that would convey the facts of the case. However, if the judge instead writes, "The appellant . . . pointed a weapon in [the officer's] face and said, 'What did you say, you mother fucker?'" (Dilworth v. Oklahoma, 611 P.2d 258 (1980)), the less abstract, more forceful statement bolsters the judge's desired end of affirming the conviction of a man who threatened a police officer. I discuss two of Hymes's speech factors in this section, ends and acts. A court can have more than one end or commit more than one act within an opinion; in fact, the court usually does.

The letter E stands for ends, or the desired outcome or goals for an interaction. The desired ends of an interaction can be radically different for different participants in the same interaction. For example, by definition the plaintiff and defendant in a legal proceeding intend and envision very different outcomes. All parties to the cases in the synchronic corpus have the same goal: win on appeal. Depending upon the ideological bent of the judge writing the opinion and the amount of authority that court wields, a judge's goal is usually either (1) don't get reversed by a higher court; or if the court has sufficient authority such as a state supreme court, (2) shape the law into what that judge would like it to be. The second of these two motivations is sometimes pejoratively referred to as "judicial activism."

The letter A stands for act sequence, *i.e.*, the specific expectations for speaking behavior and "what the words do" (Austin 1962.) In this section, I examine the acts accomplished by a judge's choice of words in his or her opinion. I also discuss the judge's intentions (Searle 1969) *vis-à-vis*

the speech act where they may be discerned from the text of the opinion. According to my analysis of the opinions in the synchronic corpus, judge's typically accomplish one or more of three speech acts: (1) characterization of a person or court; (2) order or directive to a lower court to take certain steps; and (3) index social distance between the judge and the parties who have used the epithet Nigger. I will briefly elaborate upon each type of act, noting the subtypes (if any) under that category.

The first type of judicial speech act, characterization of a party, contains five specific varieties. When a court characterizes a party or lower court in a certain way, it typically does so in one or more of the following ways: (1) characterizes a party as a paradigmatic racist; (2) characterizes a party as a gangbanger; (3) characterizes a party as dishonest or unintelligent; (4) characterizes a party as an archetypal sociopath; or (5) unconsciously evinces its own racism. The types of judicial speech acts and their subtypes are set forth in Table 6.5.

Table 6.5

Judicial Speech Acts in Cases Which Include the Epithet "Nigger."

Characterizing	**Ordering**	**Indexing**
Unconscious Admission of Racism	Take a certain action.	Court linguistically distances itself from Addressor.
Paradigmatic Racist	Refrain from a certain action.	
Gangbanger		
Dishonest and/or Unintelligent		
Archetypal Sociopath		

The first type of characterization, characterization of a party as a paradigmatic racist, may be either explicit or implicit. The second subtype of characterization, characterization of a party as a gangbanger, incorporates a term a court likely would not use. Although a court would not explicitly say someone was a "gangbanger," it is the characterization nonetheless. "Gangbanger" is used here in its urban vernacular sense to refer to a person who is (usually) a member of a gang and who engages in violent and remorseless criminal activity such as killing someone in order to steal the wheels from their car, *e.g.*, State v. Claiborne, 940 P.2d 27 (1997). The difference between the gangbanger and the paradigmatic racist and/or the sociopath is one of race and degree. As used in the urban vernacular, a gangbanger is not white. Therefore, if a court uses a defendant's statement in A.A.V.E. to negatively characterize him, that characterization would fall into this subcategory of speech act. There is also a considerable amount of overlap between this subcategory and the archetypal sociopath. Essentially, the difference is one of degree. Archetypal sociopaths truly do stand out, even among other violent felons. The final category of judicial speech act is an unconscious act; occasionally a court will reveal its own racism through its choice of words. A representative case of each class is presented below.

Characterization of a Party as a Paradigmatic Racist.

The paradigmatic racist helps the court do its job. As Lester (1996) pointed out: "There is no quicker method a journalist can do to discount the opinions of an under-educated racist than by quoting the person accurately." If one substitutes "judge" for "reporter" in Lester's line above, it serves as a fair summation of this type of characterization. One court managed to express its disgust and exasperation with a defendant and set the tone for its characterization of him in the very first line of its opinion:

> Once again we must deal with the tragic effects of a senseless killing related to alcohol, drugs, and racial tensions. (State v. Novak, 949 S.W.2d 168 (1997).)

The defendant in State v. Novak appealed convictions for first-degree murder, armed criminal action, and ethnic intimidation. Novak was sentenced to life without possibility of probation or parole. The appellate court affirmed his conviction. How the appellate court characterized the defendant allowed it to affirm the conviction more easily. The court characterized the defendant as a paradigmatic racist beginning with its very first line. The opening line quoted above manages to accomplish two things with one short sentence: (1) it implies that the problem of racial violence is frequent, and that we as a society need to take steps to ensure it does not happen again; and (2) the clause "senseless killing related to alcohol, drugs, and racial tensions" implicitly portrays the defendant as a senseless and violent racist who abuses drugs and alcohol.

The court introduces its statement of facts section of the opinion with the line: "We state the essential facts that the jury could have found in support of the verdict without mention of contrary testimony." This introduction acknowledges that witnesses provided contrary versions of events during the trial, but that the appellate court has reviewed the record and deemed the other versions unreliable. In essence, what the court is doing is lending its imprimatur to the prosecution's version of events. A portion of the statement of facts surrounding the killing is below, and includes the paradigmatic racist utterance of Nigger:

> Isaias Loza hosted a late-night party on August 6, 1993 at his apartment in South St. Louis, where beer flowed freely and drugs were used by some. Most of the guests were white, but one of Loza's friends brought an African-American man, Danny Gillespie, to the party. Loza saw Gillespie talking to a white woman and, after some words, ordered both of them to leave. They accepted the suggestion, but Loza ran after them and "sucker punched" Gillespie. The two then fought on the sidewalk and into the street. When Loza seemed to be having the worst of the fight, some of his friends jumped in to help. Loza then beat Gillespie's head on the sidewalk. The evidence does not show that the defendant was one of the helpers, but the jury could infer that he was aware of the fight.

> Some guests flagged down a car in which two African-American men were riding, and sought help for Gillespie. The men got out of the car and asked what was going on. Loza called for a gun. The defendant and David Been then ran back to Loza's apartment. Been took a loaded shotgun from a closet shelf and the two returned to the scene of the fight. When the men who had been riding in the car saw the shotgun they got back in the car and drove off. Gillespie started running across a parking lot. Been handed the gun to the defendant who handed it to Loza, saying "kill that nigger." Loza fired a shot at the departing car. He then turned and fired at the fleeing Gillespie. Two pellets struck Gillespie in the back of the head, inflicting fatal wounds. (Novak, 949 S.W.2d 168.)

The judge's choice of verbs and use of understatement when describing the victim's initial interaction with the assailants underscores the difference in temperament between the defendants and victims. The judge characterizes the assailants as unreasonable and violent (the assailants "ordered" the victim and his friend to leave the party) and also characterizes the victim and his friend as reasonable and non-confrontational (they "accepted the suggestion" to leave).

One of the defendant's arguments on appeal was that the trial judge had committed reversible error by failing to recuse himself after making certain statements about the defendant. The defendant's argument and trial judge's admission here lend support to my argument that judges do engage in characterization of parties to a case. The defendant based his motion on remarks the trial judge made to counsel in chambers. The defendant argued that the trial judge had said he "did not like the defendant; that the defendant was a liar or incompetent or both; and that [he] would do everything possible to convict the defendant without breaking the law." Although the trial judge expressed doubt that he had made the last statement, he acknowledged that he might have made the other two. The appellate court rejected defendant's argument on appeal, and noted:

> The trial judge should have been more careful in his comments. We conclude, however, that the words allegedly used, in the setting in which they were uttered, are not such as to compel recusal . . . (Novak, 949 S.W.2d 168.)

The appellate court lessens the lower court's conduct and refutes defendant's argument by writing "the words allegedly used" to describe lower court's misconduct—even when the trial judge had admitted such misconduct.

One of the other arguments the defendant raised on appeal was that he was unfairly prejudiced when he was forced to display a "white pride" tattoo to the jury. As with his other arguments, the appellate court rejects this claim as well. In rejecting this argument, the appellate court characterizes the defendant as a paradigmatic racist more explicitly than anywhere else in its opinion.

> The evidence shows a senseless killing, accompanied by racial epithets. There is evidence that the defendant participated in the killing and made racist remarks. Evidence of motive is appropriate in a case of this kind. . . . The [trial] judge could properly conclude that the evidentiary value [of the tattoo] outweighed the possible prejudicial effect. (Novak, 949 S.W.2d 168.)

The appellate court also disposed of the defendant's final argument, that there was insufficient proof of deliberation to support a conviction for first degree murder. The court rejected the defendant's argument, and also expressed a somewhat condescending attitude toward counsel at the same time. The court's use of "commendably" below fairly well drips with sarcasm.

> Counsel commendably concedes that if the defendant accompanied Been to Loza's apartment to procure a shotgun, returned to the scene of the fight with Been, received the shotgun from Been, and handed it to Loza, saying at the same time "kill that nigger," all with the purpose of bringing death to Gillespie, there would be support for a finding of deliberation. He argues, however, that the evidence equally supports an inference of intent that the shot be directed at the two men who arrived to help Gillespie. (Novak, 949 S.W.2d 168.)

If the appellate court had accepted defendant's argument that he could not be guilty of killing the victim in the case because he wanted to kill someone else, under the jury instructions given in this case, the jury could not transfer the intent to kill the two men to Gillespie. The appellate court also noted that the prosecution "commendably" conceded this point. The appellate court rejected the defendant's argument, and focused on the defendant's utterance: "kill *that* nigger." The court

stressed the fact that the defendant's words about killing were singular. The appellate court noted that its job was simply to determine what the jury could have found from the evidence presented in the case. And a reasonable interpretation of that evidence supported the defendant's conviction for first-degree murder.

The other paradigmatic racist characterization I will discuss in this section is De la Beckwith v. State, 707 So. 2d 547 (1997). As I discuss this case in other sections as well, I will not go into as much detail here as I easily could. A court can characterize a defendant as a paradigmatic racist through the sheer volume of utterances containing Nigger to paint the defendant as a racist. In this case, every inclusion of the word Nigger helps characterize the defendant as a racist and miscreant—and the Supreme Court of Mississippi even uses that word in its conclusion affirming de la Beckwith's conviction for the murder of Evers.

> Miscreants brought before the bar of justice in this State must, sooner or later, face the cold realization that justice, slow and plodding though she may be, is certain in the State of Mississippi. (De la Beckwith, 707 So. 2d 547.)

De la Beckwith is perhaps the archetypal paradigmatic racist. Not only did he kill Medgar Evers, but he was also active in the K.K.K., and spent time in Angola State Penitentiary in Louisiana for illegally transporting explosives. In light of de la Beckwith's multiple racist comments and violent acts, it is not hard to imagine what he and his fellow Klan members did with those explosives.

De la Beckwith is a lengthy case, 89 pages single-spaced in electronic format, and evidence of de la Beckwith's unrepentant racism abounds. The court in this case did not have to do anything other than quote the defendant to portray him as a paradigmatic racist. Some of the defendant's many uses of the epithet Nigger: (1) in letter from prison to his son; (2) to describe Medgar Evers to a neighbor after the murder; (3) to brag about the murder to others; (4) at a Klan meeting to describe killing Evers; and (5) telling a black prison nurse he didn't want to be waited on by a

Nigger. Some of these are set forth below. In the section of its opinion titled, "*The Voluble Beckwith*" the State Supreme Court goes into great detail to document the defendant's racist utterances and actions. The State Supreme Court characterized de la Beckwith in this section by citing much of the prosecution's evidence, such as the following letter to the editor which de la Beckwith wrote.

> Editor, Daily News: I'm not a prophet of gloom, but things look pretty black for the shady outfit called the N.A.A.C.P. The leaders of the N.A.A.C.P., and their comrades, are going around, all over the nation, braying like jackasses and screaming that segregation is dead. The good Negro citizens of the U.S.A. can swallow that rubbish if they wish, but the truth is that segregation is very much alive, so don't try to shovel a spade full of dirt in his face. Mr. Segregation is so tall you can't go over him, so deep you can't go under him, and so wide you can't go around him. Believe it or not, the N.A.A.C.P., under the direction of its leaders, is doing a first-class job of getting itself in a position to be exterminated.
>
> I thank God for the association of Citizens' Councils of America. Soon the cancerous growth, the N.A.A.C.P., shall be cut out of the heart of our nation, and we will all live happily ever after.
>
> Fondest regards and best wishes. BDLB, Gwd., MS. (De la Beckwith, 707 So. 2d 547.)

De la Beckwith underscores his own racism and characterizes himself as a paradigmatic racist not only with the ideas he expresses in the letter above, but also in his choice of words. The childish puns in his statement, "things look pretty black for the shady outfit called the N.A.A.C.P." emphasize de la Beckwith's racism. This letter was dated June 15, 1957, a time not far removed from the McCarthyism of the early 1950s. By including the word "comrades" de la Beckwith insinuates that the leaders of the N.A.A.C.P. are in league with communists. In fact, "comrades" is little more than a thinly veiled statement that the N.A.A.C.P. is part of a communist plot to destroy America. Furthermore, his warning not to "shovel a spade full of dirt" in the face of "Mr. Segregation" allows him to (in his mind) discredit the N.A.A.C.P., and hurl a racial epithet

at its leaders as well. Chillingly, the final sentence of the first paragraph also foreshadows de la Beckwith's murder of Evers six years later.

Two of the prosecution's other exhibits were letters addressed "To a Friend." They included the following language:

> Take your choice. Drive out or be driven out. It is imperative that we support the movement to encourage the Negro to return to his native country with dignity. Our generation is compassionate and understands that slavery—excuse me—Our generation is compassionate and understand the slavery sins of both our northern and southern forefathers, bringing this tribe from its home. We acknowledge that we do not expect to reap the harvest of contempt and being overtaken. The foul, contemptible, selfish person who continually tells the Negro that America is equally his, that he's as good as anybody, that he has the right to govern this land should be ashamed to lie like that. Believing such a lie has put many a darkie in the river late at night; some at the end of a rope, stirring others of their race to unrest.
>
> The Negro in our country is as helpful as a boll weevil to cotton. Some of these weevils are puny little runts, and can't create the volume of damage that others can. Some are powerful, becoming mad monsters, snapping and snarling and biting the cotton. They must be destroyed, with their retched remains burned, lest the pure white cotton bolls be destroyed. (De la Beckwith, 707 So. 2d 547.)

In this passage the court once again discredits de la Beckwith by letting him speak for himself. The State Supreme Court continues to let de la Beckwith speak for himself for several more pages, adducing example after example of his racism and bigotry.

By including the following short passage, the State Supreme Court manages to quote an admission, show de la Beckwith fraternizing with other violent racists and convicts, and implicitly links de la Beckwith with church bombings in the south.

> Peggy Morgan, from Greenwood, Mississippi testified that she traveled to the Mississippi State Penitentiary in Parchman, Mississippi with Beckwith and her husband to visit her husband's brother, Jimmy Dale Morgan, in the mid 1960s to mid 1970s. According to Morgan, Beckwith "started talking about some bombings." (De la Beckwith, 707 So. 2d 547.)

The witness, Peggy Morgan, continued to testify that during the course of that visit, de la Beckwith "said that he had killed Medgar Evers, a nigger, and he said if this ever got out, that he wasn't scared to kill again." (De la Beckwith, 707 So. 2d 547.)

Eventually, the State Supreme Court addresses the legal issues that de la Beckwith raised on appeal, including his argument that he was denied his Constitutional right to a speedy trial. De la Beckwith was initially arrested for the death of Medgar Evers on June 23, 1963. He was tried twice in 1964. Both trials ended in a hung jury and mistrial. Despite the fact that three decades passed before de la Beckwith was tried again, the Court rejected his argument. In so doing, it once again relied on de la Beckwith himself, and noted that the defendant had "the power and connections" to avoid "serving time in jail in Mississippi for getting rid of that nigger, Medgar Evers." The Court read de la Beckwith's statements from the 1960s and 1970s in context with later newspaper articles that gave proof that the defendant was not lying about his ability to draw upon government connections in Mississippi to avoid jail time for Killing Evers.

> The reason for the delay is apparent from the record. The district attorney had brought Beckwith to trial twice. Evidence adduced from files of the now-defunct Mississippi State Sovereignty Commission, leaked to *The Clarion Ledger* newspaper in Jackson in 1989, show that this arm of state government, unbeknownst to the prosecution at the time, had actively aided Beckwith's defense attorneys during the earlier trials. (De la Beckwith, 707 So. 2d 547.)

Thus, the Court reasoned that de la Beckwith's admitted complicity in "thwarting the aims of fair and impartial justice" had to count against him and was the reason for the delay.

Characterization of a Party as a Gangbanger.

I included a brief excerpt from the following case in the *Participants* section to illustrate in-group slang use of Nigger. I revisit that case here more fully to show how a court can characterize a party as a gangbanger. In this case the pun is definitely not intended, but it is sadly appropriate.

The issues a criminal defendant raises on appeal can play a role in how a court includes the epithet Nigger. In State v. Mason, 480 S.E.2d 708 (1997), the defendant was convicted of second-degree murder and kidnapping. He raised only one issue on appeal: whether the trial judge erred in finding that defendant's second degree murder offense was especially heinous, atrocious or cruel. Under applicable North Carolina law, longer sentences are imposed when a statutory "aggravating factor" is present in the crime. A murder which is "especially heinous, atrocious or cruel" constitutes such an aggravating factor and resulted in a longer sentence in this case.

The appellate court in Mason did find that the murder was "especially heinous, atrocious or cruel," and it characterizes the defendant as a gangbanger to support that finding. The court sets forth the salient facts of the crime in a single, paragraph-long sentence. In the passage below, Crockett and Benson were co-defendants of the named defendant, Mason.

> Crockett stated that when Benson forced the victim to have sex with Crockett, Benson hit the victim in the face with a gun and yelled, "Bitch you are getting ready to give my nigger some pussy;" Benson made a similar command when he forced the victim to have sex with defendant in the back seat of the car; when the victim failed to make moaning noises, Benson again hit her in the head with the gun and yelled at her to make moaning noises; later, when the car was parked on the deserted roadway, Benson dragged the victim out of the car by her hair and struck her in the head with his hand and the gun; Crockett and defendant also hit the victim with their hands; the victim fell into some mud by the curb, and Benson dragged her through the mud into the middle of the street; both Crockett and defendant told Benson, "come on let's go," but Benson said, "No I going to kill this bitch because of the Rodney King thing," and he shot her twice. (Mason, 480 S.E.2d 708.)

There are 161 sentences in this judicial opinion. The sentence above is one of only six sentences which include semicolons. Of the remaining five sentences which are punctuated with semicolons, another also explicitly details the defendant's crime. By using semicolons rather than periods, the court syntactically links all the gruesome and cold-blooded details of the rape and murder to the use of the gender epithet, "Bitch." In fact, this passage also contains another epithet, but the use of Nigger above is clearly in-group slang.

The sentence above is the longest sentence in the opinion at 181 words; the average sentence in the opinion contains only 23 words. The judge draws attention to the "especially heinous, atrocious or cruel" details of the crime through the extreme length of this sentence. Furthermore, Benson's final statement in the quoted passage uses A.A.V.E.: "I going to kill this bitch. . ." By including a passage in A.A.V.E. which contains copula deletion—a feature of A.A.V.E. that is often parodied and ridiculed by some Whites—the judge probably also wants to portray the defendant as illiterate as well as violent. The second half of Benson's statement highlights the fact that the killing is a hate crime; he is killing her because of "the Rodney King thing." Crockett and Benson attacked their victim on May 11, 1992, not long after the April 29, 1992 acquittal of the police who had brutally beaten Rodney King. As is well known, many Blacks in Los Angeles rioted for several days after the verdict was announced in the King case. The court links the defendants' actions in Mason to the rioters in Los Angeles by highlighting the defendants' motive for killing the victim.

Characterization of a Party as Dishonest or Unintelligent

As shown above, sometimes the words of a defendant makes it easier for the court to characterize him as a racist. Defendants also sometimes make it easier for a court to characterize them as dishonest or unintelligent by their actions. For example, in one case the defendant asked his robbery victim to write him a check. (State v. Lee, 1997 WL 686258 (1997).) Later, when the authorities discovered the robbery victim's body, they followed bicycle tracks down the dirt road of the crime scene to the defendant's house. Defendants in capital cases often argue on appeal that the trial court erred when it did not consider certain mitigating factors that the defendant claims existed at the time of the murder. A Tennessee court responded to one such a defendant, and cast aspersions not only on the defendant's argument but his intellectual attainments as well.

> The defendant was twenty-one at the time of the offense. Nothing in the record supports a finding that the defendant's age impaired his judgment about the wrongfulness of banding together with five of his compatriots to beat a drunken man to death. Nor does this Court find mitigating the fact Taylor graduated in the middle of his high school class, having been a basketball player and a runner. (State v. Robinson, 971 S.W.2d 30 (1997).)

A court can also comment on a defendant's arguments as it is addressing them. Indeed, sometimes it is the responsibility of a trial court to do so. For example, in an aggravated battery case, the African American defendant claimed that he was provoked into attacking the victim when the white victim called him a Nigger. The appellate court discredits the defendant's argument by implying that the defendant's story is simply not credible. The appellate court noted that "[t]he trial court was free to determine that it did not believe that [the victim], a lone white man in a black community, actually directed a racial slur at [the defendant] and the other attackers." (Casey v. State, 689 N.E.2d 465 (1997).) Sometimes, however, a court must work a little harder to characterize a party and impeach his credibility.

The defendant in State v. Mitchell, 1997 WL 209170 (1997), also raised a provocation defense in his appeal from a murder conviction, claiming that the victim had called him a Nigger. The court characterizes the defendant as not credible and rejects his provocation defense through its use of language. The court opens its opinion with the statement of facts.

> Anthony Mitchell appeals from a judgment entry of the Cuyahoga County Common Pleas Court entered pursuant to a jury verdict finding him guilty of the murder of Armando Fagaro and the attempted murder of Fagaro's brother-in-law, Marcello Cetera.
>
> Fagaro, a citizen of Italy, met nineteen-year-old Laura Cetera, an Italian-American, in Italy in 1993. The two developed a relationship over the next several years while Laura visited Italy. They arrived in Cleveland, Ohio, and were married on September 15, 1995, at the Cuyahoga County Justice Center. In celebration of their wedding, the couple and her brother, Marcello, spent the evening of September 18, 1995 in the Cleveland's Flats Entertainment District. (Mitchell, 1997 WL 209170.)

In the passage above, the court uses the simple past and states the facts of the case in a matter-of-fact way. The court continues in the same way, relating the facts of the case as provided by the victims in their testimony. Compare the style in the paragraphs above with that in the passage below.

> Mitchell [defendant], however, presented a different account of the evening. According to Mitchell, he arrived at Panini's around 2:30 a.m., after patronizing several other bars in the Flats area, because he had heard that Panini's was giving away free pizza. Mitchell entered the bar, saw an acquaintance and while speaking with him, heard Marcello say "Get these bums out of here." Mitchell and his acquittance started to walk towards the door, but then Mitchell stopped and said to Marcello "Who are you calling bums?" In response, Mitchell claimed Marcello called him a "nigger" and so Mitchell punched him. (Mitchell, 1997 WL 209170.)

The court begins discrediting the defendant in the very first sentence of its transition. The adverbial parenthetical "however" conveys not only that the defendant presented a different version of events (as should be expected), but the remainder of the passage evinces the court's belief that the defendant's version of events is not to be trusted. The phrase "presented a different account" carries different connotation than "testified" or "said." The first passage simply repeated a chain of events: the couple met; they developed a relationship; they married; they arrived, etc. In the final two sentences of the passage, the court again uses the simple past tense which conveys the impression the court takes this version of events as the truth, but it relates the information slightly differently for each party: "Mitchell stopped and said to Marcello 'Who are you calling bums?'" Contrast that with the first half of the compound final sentence: "In response, Mitchell *claimed* Marcello called him a "nigger." (Mitchell, 1997 WL 209170, emphasis added.) If a court writes, "the defendant said X to the victim," the court lends its imprimatur to that version of events. But if a court writes "Defendant claimed victim said X," the court is characterizing him as dishonest and discrediting him as a witness.

Sometimes the boundaries between types of characterization of a party are not clear-cut. Sometimes a party legitimately falls into more than one of the categories elucidated above. For example, the defendant portrayed in the next section was the same defendant in the first example of this section.

Characterization as an Archetypal Sociopath

The 17-year old defendant in State v. Lee, 1997 WL 686258 (1997) was tried and convicted for felony murder. The judge in the case was white and the defendant and victim were both black. The defendant raised five arguments on appeal, one of which was that the evidence was insufficient to support a finding that the murder was especially "heinous, atrocious or cruel." After laying out the procedural history of the case and stating the issues the defendant had raised on appeal, the court began its statement of facts. In the passage below, they lay the ground work for finding that the crime was especially heinous, atrocious, or cruel by characterizing the defendant as a sociopath and by characterizing his victim as a hard-working man of the earth.

> On the afternoon of September 17, 1994, Ricky Daniels drove to his family's farm in Lauderdale County to check on his aging father, William Daniels, Jr., who had been working on the farm that day. He drove to a clearing and spotted his father's truck sitting in the midst of a field, near a small pond. (Lee, 1997 WL 686258.)

In this introduction, the court characterizes the victim as hard-working (he was working on the farm even though he was "aging"), a man who was loved by his family (his son drove to check on him), and a man-of-the-earth with whom the trial jurors of Lauderdale County Tennessee likely sympathized. One can almost see the slanting, autumn sunlight of late afternoon over the farm and pond.

The court further lays the groundwork for its characterization of the defendant by documenting the crime scene.

> [The Sheriff's Department] investigation revealed that Daniels had suffered numerous gunshot wounds and that his body had been run over and crushed by the pickup truck. Evidence at the scene indicated that Daniels' body had been dragged approximately 148 feet while underneath the truck. It also appeared that the body had become dislodged at one point and that the truck backed up and ran over the body again before coming to a stop on the victim. (Lee, 1997 WL 686258.)

As with the Mitchell case discussed in the *Characterization of a Party as Dishonest or Unintelligent* section, the court reports the factual findings simply and straight-forwardly. Unlike Mitchell, however, the court's language above evokes the detachment and objectivity of a lab report rather than a newspaper article. "Evidence at the scene indicated . . ."; and the academic's caution is evident in the introductory phrase "It also appeared that . . ." Stylistically, the detachment conveys the impression that the court is not sensationalizing the facts of the case. In the course of its investigation, the Sheriff's Department investigators discovered bicycle tracks and followed them to the defendant's house where they arrested him. He later confessed to the robbery and murder.

The prosecution introduced the defendant's confession into evidence at the sentencing hearing. By recounting the confession at length, the court characterizes a person who committed a gruesome act and felt nothing. In the excerpt below, the appellant is the defendant in this case.

> [T]he appellant explained that he had been fishing at the pond on Daniels' farm the morning of the murder. Daniels arrived in his truck and told the appellant he did not have permission to be on his property and asked him to leave. The appellant pulled out a pistol, ordered Daniels out of the truck, and asked for the keys to the truck. The appellant also commanded Daniels to write him a check for $350. Daniels replied that he did not have a check, but he could get one for the appellant. The appellant shot Daniels twice in the head, causing him to fall in the front of the truck, hitting his head on the bumper. The appellant then shot him four more times, reloaded the six-shot revolver, and fired three or four more shots into Daniels.
>
> According to his statement, the appellant walked to the body and removed eight $100 bills from Daniels' right front pants pocket and $200 in mixed bills out of his left front pocket. Next, the appellant got in the truck and ran "back and forth" over the body. He threw the gun and his bicycle into Fisher Pond and ran home. He later went out and met his friend Simmie Rice. In the statement, he admitted telling Rice that he robbed and killed Daniels and showed him the money. Later that night, the appellant and Rice used some of the money to buy beer and the appellant also gave

> some of the money to his friends and to his brother, Michael Lee. (Lee, 1997 WL 686258.)

As was seen in the Mitchell case, the court here uses different verbs for each party: the victim "asked" the defendant to leave his property, but the defendant "commanded" the victim to write him a check. The court counts the number of bullets the defendant uses, so it can highlight the fact that shooting the victim six times was not enough for the defendant. The court takes note of the fact that the defendant reloaded. The court could have conveyed the same information by saying the defendant had shot the victim 9 or 10 times. Because the court stresses the fact that the defendant reloaded after emptying his gun once, the court characterizes the crime (and the defendant) as cold, calculating, and deliberate, *i.e*, especially "heinous, atrocious and cruel."

The court furthers its characterization of the defendant as a sociopath with the second paragraph above. The quotation marks in the passage indicates that the court is using the defendant's exact words from his statement rather than relying on the newspaper-style reportage of the facts as it did earlier in the paragraph. Additionally, the quoted phrase "back and forth" characterizes the defendant as both callous and simple-minded. The court shows the defendant acted without remorse by noting that the defendant and his friend took the money he had stolen from the victim and went out and bought beer, implying that the murder and robbery was "just another Saturday night" for the defendant and his friend.

The court goes into great and gruesome detail quoting the Medical Examiner's testimony about the nature of the victim's injuries, and how they were inflicted. Ultimately, the court rejects the defendant's argument that his crime was not especially cruel, heinous, or atrocious. The court dismisses the defendant's argument with classic judicial understatement.

> [T]he proof was sufficient to demonstrate that the appellant inflicted serious physical abuse upon the victim. Running over his body after shooting him fourteen times is clearly excessive. (Lee, 1997 WL 686258.)

Unconscious Admission of Racism

A court can betray its own racial animus in several ways. Sometimes the linguistic clues are relatively subtle, and other times they are glaring signposts. For example, a court may provide a subtle clue in its choice of adjectives. Many courts are uncomfortable with a party's use of the epithet Nigger. If a judge refers to a party's utterance as "a racial epithet" (*e.g.*, City of Wichita v. Edwards, 939 P.2d 942 (1997)), the judge is simply using a euphemism. If a judge refers to the use of "Nigger" as a "racial comment" (Los Angeles County Office of the Dist. Attorney v. Civil Service Com., 55 Cal. App. 4th 187 (1997)), that sometimes implies that the judge believes the comment is not a "racist comment." The phrase "racist comment" conveys greater disapproval of a defendant's utterance than does "racial comment." The two terms are not synonymous. When the results of a case are compared to how the judge describes the case, it is sometimes possible to discern a racist motive behind the judge's ruling. As the above examples indicate, the linguistic clues are not always readily apparent on a first reading. But sometimes, as the case below illustrates, they are.

In Glover v. Boehm Pressed Steel Co., 702 N.E.2d 929 (1997), an African American man sued his former employer for (among other causes) racial discrimination and intentional infliction of emotional distress. After the plaintiff had presented his case at trial, the defendant made a motion for a directed verdict[8]. The defendant's motion is commonplace in such cases, and when deciding whether to grant the motion, the judge must weigh all evidence that has been presented in the light most favorable to the non-moving party. Thus, if a certain fact could be interpreted in one of two ways, the judge must construe the evidence in favor of the non-moving party.

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[8] In a case where the party with the burden of proof has not met that burden and proved the required elements of his or her case, a trial judge may order the entry of a verdict without allowing the jury to consider the evidence. (*Black's Law Dictionary* 1990.)

The trial court in Glover granted defense counsel's motion for a directed verdict. However, in so doing, the trial court also made the following statement:

> With regard to Mr. Cervelli, I believe he was the maintenance man. And again, I'm construing the evidence in the light most favorable to the defense. And in large major [*sic*] relying on the testimony of Mr. Glover himself. (Glover, 702 N.E.2d 929.)

The trial court may have simply made a slip of the tongue; but, when the Freudian slip above is viewed in conjunction with the judge's other statements, it is clear he was biased toward the defendant employer. During the course of the trial the judge repeatedly badgered the plaintiff's attorney and fined her for contempt of court.

The trial judge relied on several pieces of evidence in reaching his decision on the defendant's motion for a directed verdict, and commented on one piece of evidence from the bench. "Strunk" in the passage below was an employee who refused to work for the plaintiff, Glover, because he was black.

> With regard to employee Strunk, he apparently did not get along with Mr. Glover who was insubordinate. He was difficult and so on and so forth. There is double or triple hearsay present at trial that he supposedly made the statement, I won't work for a nigger. Even if I assume that the statement is true . . . There is no racial overtone to his conduct. (Glover, 702 N.E.2d 929.)

The trial judge's casts doubt on whether Strunk made the statement by including "supposedly" in his recitation of the facts. Later, when hypothesizing about the import of the remark if it had been made, the judge reaches the remarkable conclusion that there is "no racial overtone" to refusing to work for a "Nigger."

> This cause is reversed and remanded for further proceedings consistent with the opinion herein. . . . It is ordered that a special mandate be sent to said court to carry this judgment into execution. (Glover, 702 N.E.2d 929.)

The appellate court's decision in this case serves as good transition to the next section on directives to a lower court.

The Ends and Acts of Judicial Language: Ordering

The second type of common judicial speech act in opinions which contain the epithet Nigger are directives to a lower court. In one sense, there is a performative or directive element to any appellate opinion. If the appellate court affirms the lower court's decision, the matter is over. If, on the other hand, the appellate court reverses the lower court's decision, it will usually remand the case back to the lower court. In some cases, the appellate court goes one step further and directs the lower court to take a certain action or to refrain from taking a certain action when it rehears the case. I discuss a particularly salient representative of this class below.

As with the Glover case discussed above, the appellate court in the racial harassment and discrimination case of Garvey Elevators, Inc. v. Kansas Human Rights Com'n, 948 P.2d 1150 (1997) concludes its opinion with a specific directive to the lower court: "Upon remand, the district court must consider whether the [defendant's] discriminatory acts were sufficient to establish a constructive discharge from employment." The court then issues other directives, and (when read in light of the court's preceding reasoning and statement of facts) strongly implies that the lower court should reach a particular conclusion.

> The district court's inquiry should focus on "whether the employer by its illegal discriminatory acts has made working conditions so difficult that a reasonable person in the employee's position would feel compelled to resign." . . . Reversed and remanded with directions to consider whether Jackson was constructively discharged from employment and, if so, the nature and extent of the award to be entered pursuant to K.S.A. 44-1005. (Garvey Elevators, 948 P.2d 1150, citations omitted.)

In directing the lower court's inquiry to certain factors that it "should" (read "must") consider and evaluate in a certain way, the lower court's finding regarding constructive discharge is all but assured. The appellate court supported its directives by relying on one of the other common judicial speech acts in this type of case: characterization of the defendant as a paradigmatic racist.

The plaintiff in Garvey Elevators brought a claim before the Kansas Human Rights Commission pursuant to a state law prohibiting racial discrimination and harassment. The hearing examiner on the Commission found in favor of the plaintiff. The defendant then appealed to the district court where the decision was set aside and the plaintiff's complaint dismissed. The Kansas Human Rights Commission and the plaintiff then appealed that decision. The appellate court in Garvey Elevators goes into great detail (and extensively quotes the record) to show that the plaintiff's boss was racist, and that the lower court misconstrued the evidence presented. Some of the more noteworthy examples of the evidence the appellate court considered in its decision reversing the district court's finding for the employer are below. In the passages below, Jackson is the plaintiff in the case; Stanley Robertson is another African American employee of Garvey Elevators, Inc.; and Harry Bell and Clarence Schwemmer were managers at Garvey who shared an office on the other side of the plant from the plaintiff Jackson. In the quoted excerpt, note the courts use of characterization of a party as a racist, and also characterization of a party as dishonest.

> Jackson testified that shortly after he began working at Garvey, Bell began making derogatory racial statements. The first statement Jackson could recall occurred approximately 3 to 4 months after Jackson had been hired. He testified that while he and Stanley Robertson, an employee who also is an African-American, were standing in the room, Bell stated, "'What do you think about those two nigger coaches?'" Robertson asked him what he said, and Bell then repeated the question.
>
> On another occasion, Jackson was present when Bell told another employee that there was no time to shut down the facility to make repairs and the employee would have to "'nigger-rig it.'" Jackson also testified about a comment Bell made that "'if Blacks weren't so lazy our taxes wouldn't be so high.'"
>
> . . .Ken Byard, a Caucasian, was in charge of construction and maintenance. He testified that Bell made numerous racial remarks about Jackson. He testified that Bell told him, "it's hard enough for me to control these Mexicans let alone a nigger trying to do it." In addition, he testified that Bell would refer to Jackson's office in the east terminal as the "nigger hut." Byard stated that these type of comments occurred every time he came to the facility.
>
> Stanley Robertson testified that he heard Bell make racial comments everyday, including the use of the words "nigger" and "black ass." He testified that even

> before Jackson started working at Garvey, Bell was making derogatory racial comments about Jackson. On one occasion, Bell told Robertson that he could not understand how Pillsbury would let a "nigger" run the elevator. After Jackson started working at Garvey, Bell told Robertson that "if he wanted a black boy or a colored man to run the elevator, we could have put you down there instead of Eli Jackson."
>
> Robertson also testified that Bell would refer to a white employee who became friends with Robertson or Jackson as "what's a nigger." He also stated Bell made negative comments about Robertson driving a white man's car. Robertson also gave corroborative testimony regarding Bell's "nigger coaches" comments and added that Schwemmer was present during the exchange. (Garvey Elevators, 948 P.2d 1150.)

After weighing the evidence presented above (and other examples as well), the appellate court comes as close to excoriating a lower court as a jurist can: "Throughout its findings and conclusions, the district court ignores the uncontroverted evidence that conclusively establishes: (a) Harry Bell is an outspoken racist, and (b) Clarence Schwemmer knew or should have reasonably known of Bell's racism." (Garvey Elevators, 948 P.2d 1150.) The appellate court noted that Schwemmer's claim that Bell never used the word Nigger was "not susceptible to belief."

The appellate court reversed the district court's decision and remanded the case for rehearing. As part of its decision, the appellate court directs the district court not just to rehear the case, but orders it to take certain actions in that rehearing.

> [T]he district court must determine whether there was a constructive discharge from employment and then craft an appropriate final order under K.S.A. 44-1005. Our decision requires a detailed narrative of the underlying circumstances that allowed rampant racism to go unchecked during Jackson's employment with Garvey. (Garvey Elevators, 948 P.2d 1150.)

A portion of Garvey Elevators is included in the next section as well to illustrate how a court can index social distance between itself and someone like Harry Bell.

The Ends and Acts of Judicial Language: Indexing

The final type of judicial speech act which is common in cases which include Nigger is the act of indexing. As used in this dissertation, "indexing" refers to the linguistic devices by which the judge reveals his or her own identity as a language user. In this subsection, "indexing" specifically refers to how a judge communicates "non-membership" in the social network of those who employ racial epithets.

The first stylistic device a judge will use to index social distance from the Addressor of the epithet Nigger is the use of quotation marks beyond their normal use to mark full quotations. For example, in the case discussed above, the appellate court wrote: "On one occasion, Bell told Robertson that he could not understand how Pillsbury would let a 'nigger' run the elevator." (Garvey Elevators, 948 P.2d 1150.) The judge could have quoted a long passage evidencing Bell's racial animus, but instead it summarizes one witness's testimony. In so doing, he signals via quotation marks that it is Bell who used the epithet Nigger, not the judge.

A court may also employ euphemisms or circumlocutions to avoid having to quote a passage containing the epithet Nigger more than once. For example, one judge hearing an appeal from a hate crimes conviction used a euphemism to refer to the class of words to which Nigger belongs, and also employed quotation marks around only one word in the sentence.

> In the present case, substantial evidence exists indicating [the defendant's] actions were racially motivated. [The defendant] used racial epithets during the encounter with [the victim], twice referring to her as a "nigger." (City of Wichita v. Edwards, 939 P.2d 942 (1997).)

Because some judges feel they must index social distance from Addressors who use racial epithets, it is reasonable to hypothesize that the reason they do so is because our society has undergone a change in the standard for what constitutes "prestige speech." (Chambers 2003:159-160.) I discuss the change in the speech community's standard for prestige speech in the *Norms* section below.

Norms

The letter N stands for Norms of Interaction, *i.e.*, how and when to speak in a particular context. For example, in contemporary American society, we don't talk much in elevators. Even people in the midst of a conversation while in the lobby while waiting for the elevator will usually interrupt their conversation once the doors open and they step inside the elevator. Because judicial opinions are themselves normative texts which define what is, and what is not, acceptable in our society, it should come as no surprise that the norms of interaction within the law are quite constrained. (Dernbach, *et al.* 1994.)

As discussed in the section above, many judges now feel a prohibition against including certain words in their opinions. In this final substantive section of Chapter 6, I discuss some examples of what certain judges consider taboo, and contrast those examples with excerpts from other judges' opinions.

By virtue of the fact that every opinion in the synchronic corpus contains the epithet Nigger at least once, we may infer that the judges in these cases have overcome the linguistic taboo at least slightly somewhat. Otherwise, they would have used a euphemism or editorial deletion to indicate the word was taboo for them. Because they have not, it is interesting to note the cases where a judge has used such editorial deletions for other taboo words. The passage below is taken from an appeal in a capital murder case. In this statement given to the police, the defendant recounts how he shot the victim, Anthony Richardson. All bracketed editorial insertions and "corrections" to the defendant's A.A.V.E. are the judge's.

> I walked past [the victim] and he said something to me. [He] said I was one of the stick-up boys and he put his hand on his waist like he was reaching into his pants for a gun. He reached toward his pants with his left hand. I said I ain't no stick-up boy. [He] said go the f*ck ahead. I was by the church wall and then he was like walking a little bit, and I was thinking[,] why [is] this nigger talking to me like this, and it was like about from one corner of this room to the other like about a couple

> of steps and I pulled my gun and shot him. (Com. v. Washington, 692 A.2d 1024 (1997).)

In the passage above, the judge provides a counterexample to my hypothesis that racial epithets carry a greater linguistic taboo than profanity. It was common for judges to include epithets but censor profanity in early 20th century cases, but there are not many cases in the synchronic corpus which censor profanity such as Fuck but let an epithet like Nigger stand. The judge's opinion is otherwise unremarkable, and the defendant was as sympathetic as most capital defendants are. The case itself is rather straightforward, and does not contain any egregious leaps in judicial logic to reach a predetermined conclusion.

The judge in Edwards is not alone in what he considers linguistic taboo. Two other judges also made similar editorial deletions of Fuck or one of its many morphemic variants. For example:

> [The witness] testified that he heard the defendant say, "I got you mother f------ now," and then the defendant opened fire (People v. Williams, 688 N.E.2d 320 (1997));

or

> Taylor told Carmichael to "get the f - - k out of the way." The victim began to run and Carmichael, realizing he was considerably outnumbered, retreated and went inside Sue's Place. The crowd chased the victim out of sight. . . . Sometime thereafter, Swaggerty, Ray, Taylor, Woods, and Jimmy Jackson returned to Sue's Place. Swaggerty boasted, "We f - - ked him up, didn't we?" (State v. Robinson, 971 S.W.2d 30 (1997).)

Several days before the victim in Robinson was beaten to death, he had pulled a gun on one of the people who later killed him, and threatened to "kill all the niggers" in that neighborhood. That utterance is the only time the epithet Nigger appears in the opinion. The judge in Williams also includes the single instance of Nigger within a direct quotation: "I got you, nigger." Despite the reluctance of the judges in the cases above to write the word Fuck, far more judges who wrote the opinions in the synchronic corpus use no editorial deletions for any of the profane taboo words

which were the subject of my earlier studies. And, as the example below indicates, several courts are literally rewriting what is acceptable linguistically.

A North Carolina district attorney was removed from office for using the word Nigger not in court, but while off-duty in a bar during the wee hours of the morning. (In re Spivey, 480 S.E.2d 693 (1997).) Jerry Spivey, a district attorney in North Carolina, noticed his wife speaking with a black patron at the bar.[9] When speaking to another patron in the bar, Spivey used the word Nigger to refer to the African American man. Spivey used the word again when he was introduced to the African American man. Spivey was thrown out of the bar shortly thereafter for his drunken and belligerent behavior.

Several attorneys who were also present in the bar sought and won the removal of Spivey from office for conduct prejudicial to the administration of justice and for bringing the office of the district attorney into disrepute. On appeal, the North Carolina Supreme Court affirmed Spivey's removal from office, and rejected Spivey's defense that his speech was protected under the First Amendment, ruling that his language was covered by the First Amendment's fighting-words exception[10]. Applying Chaplinsky, the court ruled that Spivey's use of Nigger fell squarely within the fighting words exception to the First Amendment.

> At the hearing on this matter, there was testimony concerning the hurt and anger caused African-Americans when they are subjected to racial slurs by white people. We question, however, whether such testimony was necessary to the findings of the superior court in this case. Rule 201(b) of the North Carolina Rules of Evidence provides that a trial court may take judicial notice of a fact if it is not subject to reasonable dispute in that it is generally known within the territorial

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[9] The man Spivey's wife was talking with was Ray Jacobs, a professional football player with the Denver Broncos who had played college football in North Carolina. Spivey's wife had sought to introduce the two men because her husband would have known of Jacobs by virtue of his college career.

[10] See material on unprotected classes of speech in Chapter 2.

> jurisdiction of the trial court. No fact is more generally known than that a white man who calls a black man a "nigger" within his hearing will hurt and anger the black man and often provoke him to confront the white man and retaliate. The trial court was free to judicially note this fact. (In re Spivey, 480 S.E.2d 693.)

The import of the passage above is the fact that the Supreme Court of North Carolina declared that it was not necessary to produce any evidence to find that, as Spivey used it, Nigger was a "fighting word" as described in Chaplinsky. This finding is remarkable when one considers that it was not too many years ago that much of the South was segregated. Furthermore, Jesse Helms ran many successful Senate re-election campaigns in North Carolina using race-baiting tactics and advertising.

The State Supreme Court of New Jersey reached a result similar to In re Spivey in a civil suit. The central issue in Taylor v. Metzger was whether a single racial epithet directed against a subordinate employee by a supervisor could create a hostile work environment under applicable labor law. In that case, the plaintiff's supervisor at the Sheriff's Department "greeted" the black, female 20-year veteran of the force with "There's the jungle bunny." (Taylor v. Metzger NJ (A-9-97).) The State Supreme Court stressed the importance of the power differential between the Addressee and Addressor, and ultimately found for the plaintiff. In its opinion, the Court took note of the fact that societal standards of acceptability change, and that the law should reflect those changing standards. In so doing, the Court lent further support to the sociolinguistic rule that all natural languages inexorably change over time (Labov 1984:9.) One aspect of a culture which undergoes change is its lexicon, and one aspect of the lexicon which undergoes change is what speakers consider to be taboo. What is taboo at one place and time may be acceptable elsewhere or during a different era. (Nunnally 1995:36.)

> Even if we assume that a supervisor's racist slurs directed toward his subordinates would not have been deemed intolerable one or two generations ago, defendant's behavior is not acceptable today. Although the slang epithet "nigger" may once have been in common usage . . . [it] has become particularly abusive and insulting in light

> of recent developments. . . . Changing sensitivity in society alters the acceptability of former terms. The common law must adapt to this modern circumstance. (Taylor v. Metzger NJ (A-9-97), citations omitted.)

The decision in Taylor was not unanimous, however. One Justice dissented, and wrote that the majority had substantially increased the scope of the hostile work environment claim and decreased the standard needed to assert a claim of emotional distress. The dissenting Justice believed that the Sheriff's epithet was "extremely offensive, demeaning and humiliating," he used it only once. As the dissenting Justice in Taylor and the judges who censored "Fuck" illustrate, our society has largely shifted what it considers linguistically taboo, but speech standards are never categorical or absolute.

Conclusion

Race in America is often seen only in shades of black and white. Unfortunately, this chapter reinforces that common misconception by focusing on only one epithet: Nigger. Because Nigger is almost always addressed to an African American whether it is said by a White or a Black, few Asians or Hispanics appear in this chapter. Simply because I have focused on one epithet that is usually used by Blacks or Whites should not imply that race relations in the U.S. are simple or dichromatic. As a native Californian, I am well aware that issues of race in the U.S. are far more variegated and complex. Ours is an increasingly pluralistic society which makes an awareness of racial issues and complexities essential for our democracy. In the concluding chapter, I discuss how the pieces of the puzzle provided by my diachronic analysis and synchronic analysis fit together.

CONCLUSION

In this final chapter, I provide a retrospective look at the previous six chapters, summarize the findings of both phases of the research, discuss the implications of this research, and provide suggestions for future study. This chapter is divided into eight sections. In the first section I provide a retrospective overview of the study. In the second section I review the purpose and objectives of this dissertation. I reprise the literature review in the third section. The fourth section provides an overview of the methods I used in this study, and is subdivided into two subsections, one each for the diachronic and synchronic methods. The next section is similarly subdivided and presents a summary of my findings and conclusions. I discuss problems I encountered in this study and provide suggestions for further research in the sixth section in the chapter. The penultimate section of the chapter discusses the importance and practical applications of my research. The final section of Chapter 7 is a conclusion.

Retrospective Overview

This first chapter provided background information about previous studies, established the premise for this study, delineated the genre, and set forth the theoretical perspectives which inform this study. The second chapter contained a review and analysis of the supporting literature relevant to taboo language and epithets. I provided a detailed presentation of the diachronic methodology and procedures in Chapter 3, and presented the diachronic results and analysis in Chapter 4. I shifted the focus from the macro analysis in Chapters 3 and 4 to a micro analysis in Chapter 5 in which I laid out the synchronic methodology. I presented the results of the synchronic analysis in Chapter 6.

Review of the Purpose and Objectives

The problem this study addresses is whether racial and gender epithets are becoming more taboo as evidenced by the rate of their usage in 20th-century, state appellate-court judicial opinions. This dissertation is an extensive follow-up inquiry to a smaller pilot study into the usage of racial and gender epithets in the same genre.

This dissertation was designed as a two-phase study in order to incorporate both synchronic and diachronic, and both quantitative and qualitative methodologies. The purpose of the first, diachronic phase of this study was to use quantitative analyses to test the theory that our culture is undergoing a shift in linguistic taboos from traditional taboo words dealing with sex, the body, or bodily functions to newer taboos of racial and gender epithets. Four principal research questions guided this first phase of the dissertation: (1) What is the rate of epithet usage within state appellate court judicial opinions for each of the ten decades of the 20th century? (2) Is the use of racial and gender epithets increasing or decreasing? (3) Are there any discernible historical, lexical, or geographical patterns of distribution in the use of racial and gender epithets? And, (4) how does the rate of epithet usage compare to the rate for usage of profanity in within the same genre?

The objective of the second, synchronic phase of this study was to use qualitative methods to discover how one specific epithet is used within a sample of judicial opinions from the 1990s which contain that epithet. Specifically, the focus of the qualitative analysis drew upon the tools of discourse analysis to understand how judges use the epithet "Nigger" in judicial opinions.

Review of the Literature

The second chapter presented a review of the literature that is germane to this dissertation. I provided background information and introductory material in this chapter, and delineated the current state of First Amendment law with respect to taboo words. I also briefly discussed how

courts analyze laws when they are challenged on First Amendment grounds. I then delineated two opposing ideological approaches to restrictions on hate speech and pornography, and placed them within a sociolinguistic context. I concluded my review of the relevant literature by providing an overview of the few academic studies on taboo speech.

Among other protections, the First Amendment to the U.S. Constitution guarantees citizens the right to free speech. The philosophical basis for current interpretations of that Amendment stems from the belief that the government has no place in suppressing ideas simply because it does not agree with those ideas. This philosophical ideal goes back to John Stuart Mill and his essay *On Liberty.* U.S. Supreme Court Justice Oliver Wendell Holmes, Jr. espoused a philosophical perspective very much like that of Mill. Holmes was the first person to use the metaphor that has come to be known as "the Marketplace of Ideas."

Despite the strong cultural, legal, and philosophical reasons to protect speech, not all speech is entitled to the same degree of protection. When the U.S. Supreme Court creates an entire category of unprotected speech, it generally does so because it believes that the harm caused by some types of messages cannot be cured with more speech. The Supreme Court has delineated five principal categories of speech that are not protected by the First Amendment, two of which were relevant to this dissertation: obscenity and fighting words.

The legal standards regarding obscenity have not always been clear, nor have officials always enforced restrictions on speech in an even-handed manner. The U.S. Supreme Court has tried many times over several decades to define obscenity and to provide specific guidelines as to what, if any, materials may be banned on the basis of obscenity. In a series of cases, the Supreme Court ultimately came up with the formulation and definition that is still the law. The current obscenity standard is (a) whether the average person, applying contemporary community standards would find that a work, taken as a whole, appeals to the prurient interest; (b) whether the work

depicts or describes, in a patently offensive way, sexual conduct specifically defined by state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. (Miller v. California, 413 U.S. 15 (1973).)

The other category of unprotected speech which was relevant to this dissertation was fighting words. In Chaplinsky v. New Hampshire, 315 U.S. 568 (1942), the Supreme Court held that there were certain well-defined and narrowly limited classes of speech which could be prohibited without running afoul of the First Amendment. The Court in Chaplinsky believed that "fighting words," words which by their very utterance inflict injury or tend to incite an immediate breach of the peace, was one such narrow and well-defined category. According to the Court, the test for whether a statement was offensive enough to constitute fighting words was what a reasonable person believed would cause the average addressee to fight if those words had been directed toward him or her. In the years since Chaplinsky, the Supreme court has seemingly limited the scope of the fighting-words doctrine, and, in fact, not once in the more than 60 years since Chaplinsky has the Court upheld a conviction for fighting words. But neither has the Court expressly overruled it.

The obscenity and fighting words exceptions to the First Amendment became the basis for some groups to attack certain types of speech they found offensive. For example, many minority activists sought restrictions on hate speech, *i.e.*, the racial and gender epithets which were the subject of this dissertation. Similarly, many feminists and conservative Christians wanted to restrict or ban pornography. The other ideological pole in these debates opposed any restrictions on speech. Each side in the public debate on speech restrictions aggressively pressed its case, knowing that it was not a mere tweaking of First Amendment doctrine which was at stake; several proposed restrictions on speech expressly called for restructuring the theoretical and epistemological bases of First Amendment law. Indeed, many of the proponents of restrictions on speech believed that the Supreme Court gave too much preference to the First Amendment guarantee of free speech to the

detriment of the Fourteenth Amendment's equal protection clause. Henry Louis Gates, Jr. has pointed out that attempts to shift constitutional debate from the First to the Fourteenth Amendment overlooks constitutional history, and opens a Pandora's Box of doctrinal interpretation. As he notes, the problem with drafting content-specific restrictions on speech is that the restrictions can never be specific enough to pass constitutional muster.

Although neither side in the debate couches its argument in strictly linguistic terms, those who endorse restricting speech they believe is harmful implicitly endorse a strong statement of the Whorfian hypothesis, *i.e.*, that language determines thought. The opposing camp in the debate emphasizes the countervailing principle of linguistic relativity. The Whorfian hypothesis balances two principles: linguistic determinism and linguistic relativity. Linguistic determinism is the belief that language shapes how we think. The import of the Whorfian hypothesis is that if the way a language is built has a causal connection to how the speakers think about the world, then one should be able to go from that language's grammatical categories and see parallels and patterns writ large in the culture.

The obvious shortcoming of the Whorfian hypothesis is that human beings can and regularly do make observations and form judgments even if their vocabulary lacks a ready means to express those observations and judgments. For example, if a culture has only two or three basic color terms, it does not mean that members of that culture perceive the colors we call blue and yellow as the same color. Rather, a culture with fewer basic color terms than contemporary U.S. culture simply groups the color spectrum into bigger chunks than we do and labels those chunks with the available color terms of their culture. (Berlin and Kay 1969:139, cited in Kay *et al.* 1991:458.) The middle ground (*vis a vis* the Whorfian hypothesis if not the debate on restrictions on speech) is that language does have a strong influence on how people view the world, but as to how people *use* language, *not* how language is structured.

Most of the scholarly papers that have dealt with cultural or linguistic taboos have done so in four general ways: (1) ethnological descriptions of taboo subjects, items, people, or language; (2) etymological or historical studies of taboo speech; (3) investigations into gender differences in the use of taboo speech; and (4) studies of the emotive or cognitive effects of taboo speech on speakers or listeners. In the penultimate section of Chapter 2, I discussed each of the preceding approaches and the resulting findings of those studies.

Two works in particular, approached the subject of taboo speech or racial epithets in a way that is similar my approach in this dissertation. Randall Kennedy (2002) provided an overview and analysis of how American culture has dealt with the word Nigger, and how black and white speakers have approached that epithet. Kennedy discusses not only use of Nigger as an insult, but also the contemporary practice among some Blacks of using the word to refer to one another in expressions of solidarity and shared identity. He notes that Nigger when used as an insult has become a linguistic taboo, and he supports appropriating Nigger "from white supremacists, to subvert its ugliest denotation, and to convert the N-word from a negative into a positive appellation." (Kennedy 2002:174-175.) Kennedy's book informs not only my study, but helps elucidate another work which predates the publication of his book.

Lester (1996) argues that Fuck and Nigger are possibly the two most taboo words in the English language. As did I, Lester wanted to quantify and compare the use of Nigger and Fuck. The genre which Lester chose for his study, however was the print and broadcast media in the U.S. The catalyst for his study was the O.J. Simpson murder trial. Lester noted that Mark Fuhrman's use of the word and its centrality to his testimony resulted in a sudden and dramatic increase in use of the word Nigger on air and in print. Lester compared the online versions of several newspapers and broadcast news programs to determine which was used more: Nigger or Fuck? Also, which euphemism do journalists use more: the "N-word" or the "F-word"?

According to Lester, all media in his study used the word Nigger more than the word Fuck. After he had factored out stories relating to the O.J. Simpson murder trial, Lester found that the media dramatically favored the F-word euphemism over the N-word. In contrast to other popular culture indicators, Lester found that the use of Fuck was virtually nonexistent among the seven media organizations he studied. Lester found that Fuck was used just three times by the media he studied, but the word Nigger appeared in nearly 750 print and broadcast stories. Thus, Lester's data strongly suggest that it is more acceptable to print or air the word Nigger than the word Fuck.

The literature provides support for the thesis of this dissertation, namely that our culture is undergoing a shift in linguistic taboos away from profane terms and toward racial and gender epithets. The literature which has covered the use of taboo language—and specifically profanity or racial and gender epithets—within the law is quite thin, however. For all of its recognized and self-professed importance, the legal system has not been studied very extensively by sociolinguists and anthropologists. And most lawyers are either too close to the system to observe it or simply too busy practicing law to care about the theory of law or discourse. Thus, the connection, if any, between taboo word usage and usage of racial and gender epithets in judicial opinions has not been established in the literature, and demonstrates a need for the current study. The reason for studying the legal system is the same as it is for studying any other system or artifact within a culture: to gain a better understanding of how the system fits within the culture, and by better understanding culture, to understand better what it means to be human.

Review of the Methods

Diachronic Methodology

The rationale behind the design of the study is that as a term becomes increasingly taboo, judges should feel a stronger inhibition against including it in their opinions. Therefore, the epithets

would appear in fewer judicial opinions. One of the bases for this dissertation was the belief that how frequently an epithet appeared within judicial opinions could be seen as a relative measure of how taboo that word is. The specific study design used in the diachronic analysis portion of this dissertation was a retrospective review of judicial opinions in order to determine the frequency rates of epithet usage over the course of the 20th century.

The corpus for the diachronic analysis portion of this dissertation was comprised of 4,040,888 judicial opinions. The opinions which comprised the corpus for this study were drawn from all 50 states, and covered a period of 97 years. This national corpus is in turn comprised of nine regional corpora. All opinions within the corpus were maintained in databases created and maintained by Westlaw, a commercial information services broker and one of the two leading online legal research services.

The corpus used for this study was examined for meaningful patterns in the distribution of three categorical variables: a geographic variable, a time variable, and a lexical variable.

The regional subdivisions of the U.S. Bureau of the Census comprised the categories for the geographic variable in this study. In alphabetical order, the nine regional divisions of the geographical variable and the states which comprise them were:

1. East North Central (Indiana, Illinois, Michigan, Ohio, and Wisconsin),
2. East South Central (Alabama, Kentucky, Mississippi, and Tennessee),
3. Middle Atlantic (New Jersey, New York, and Pennsylvania),
4. Mountain (Arizona, Colorado, Idaho, New Mexico, Montana, Utah, Nevada, and Wyoming),
5. New England (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont),
6. Pacific (Alaska, California, Hawaii, Oregon, and Washington),

7. South Atlantic (Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, and West Virginia),

8. West North Central (Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota), and

9. West South Central (Arkansas, Louisiana, Oklahoma, and Texas).

The lexical variable chosen for this study consisted of 23 categories, namely 23 specific epithets. These epithets were chosen so that epithets for each major racial group in the United States were included. This group of epithets comprised derogatory references to Blacks, Whites, Hispanics, and Asians. Epithets relating to an individual's biological sex, gender identity, and sexual preference were also included for study. The following epithets were chosen for data collection: Beaner, Bitch, Darky/ie, Chink, Cholo, Coon, Cracker, Dyke, Fag/Faggot, Gook, Gringo, Honky/ie, Jap, Jungle Bunny, (Male) Chauvinist (Pig), Nigger, Nip, Redneck, Slant, Slut, Spade, Spic/Spick, and Wetback.

The final variable in the diachronic study was time. Variation in the frequency of epithet use within judicial opinions was tracked for the years 1900 through 1997, inclusive. There were a total of ten divisions within the temporal variable, the ten decades of the 20th century.

Each of the variables within the diachronic analysis was tested against a null hypothesis. One additional null hypothesis compared use of profanity and epithet use. The null hypotheses posited for quantitative testing in the diachronic portion of this study are set forth below:

1.0 For each of the decades encompassed in this study, there will be no significant difference in the rate of epithet usage among the nine regions.

2.0 For each of the decades encompassed in this study, there will be no significant difference in usage among the epithets.

3.0 For the sum total of all epithets and all regions, there will be no significant difference in the rate of epithet usage among the ten decades encompassed in this study.

4.0 There will be no correlation between the usage of profanity and the usage of epithets over the ten decades encompassed in this study.

Data were collected by performing computer searches for each of the epithets included for study as keywords. The corpus was searched for opinions containing at least one of the epithets included in this study. The unit of analysis was the judicial opinion, and a single token of any of the linguistic types used for the keyword searches satisfied the criterion for including that opinion in the data set. These keyword searches determined the total number of opinions containing each of the linguistic types chosen for study.

In order to control for polysemy, the data were reviewed in order to discard any "false positives," *i.e.*, cases which contained a word chosen for study, yet did not use that word as an epithet. Based on this review, four epithets were discarded from the data set, and totals for two additional epithets were statistically adjusted. The 19 epithets included in the final data set were: Beaner, Bitch, Chink, Darkie, Fag, Gook, Gringo, Honkie, Jap, Jungle Bunny, Male Chauvinist Pig, Nigger, Nip, Redneck, Sissy, Slut, Spade, Spick, and Wetback.

The first null hypothesis assessed geographic variation in epithet use. The dependent variable was the geographic region, and the independent variables were time and lexical choice. After regional scores for the total number of opinions containing at least one epithet had been determined for each decade, the frequency of epithet use was computed and expressed as epithet use per 10,000 judicial opinions for each geographic region. Once the regional rates of epithet usage were computed, and standard measures of descriptive statistics were used to describe the data set. Frequency rates for epithet use were compared by region, and results were sorted by rank from high to low for each region.

The second null hypothesis assessed lexical variation in epithet use, *i.e.*, do some epithets appear more frequently than others? The dependent variable was lexical choice, and the

independent variables were time and geographic region. Once the total number of opinions containing each of the 19 epithets had been compiled, standard measures of descriptive statistics were used to describe the data set. Preference for one epithet over another was determined by comparing the relative frequencies of the epithets.

Null Hypothesis 3.0 assessed variation in epithet use over time. The dependent variable was time, the 10 decades encompassed in this study. The independent variables were geographic region and lexical choice. Frequency of epithet use for each decade was computed and expressed as the rate of epithet use per 10,000 judicial opinions. Once the national rates of epithet usage were computed for each decade, standard measures of descriptive statistics were used to describe the data set, and frequency rates for epithet use were compared by decade.

The final null hypothesis tested the theory that racial and gender epithets were replacing profanity as our society's linguistic taboo. Mean frequency rates for epithet use and mean frequency rates for use of profanity were compared by decade, and results were plotted on a line graph. Finally, the correlation coefficient was computed for the two sets of scores to determine the strength and direction of relationship, if any, between the two.

The research design of this dissertation and the utilization of a census rather than a sample reduced or eliminated the need for most of the traditional measures used to estimate reliability. The principal source of random error in this dissertation—*i.e.* the greatest threat to reliability—was in data entry. Previous studies of the accuracy of data entry operators, however, established error rates of less than 1% for keypunch operators or other workers utilizing numeric key pads. Therefore, errors in data entry was not deemed a significant threat to reliability.

Both face validity and content validity were established via peer and faculty review. A pilot study on the use of racial epithets in judicial opinions, and a series of studies using the same methodology to establish rates for the usage of profanity for the same genre were conducted at the

University of Georgia. The pilot study and previous studies were reviewed by fellow graduate students in the Linguistics Program at the University of Georgia, members of the graduate faculty at that institution, and additional graduate students outside the discipline of linguistics. Although the specific methodology and constructs used in this study had not been applied previously, analogous "keyword search" designs had been used profitably.

Based on the methods and estimates above, it is not unreasonable to conclude that the results of this study have an acceptable degree of reliability and validity.

Synchronic Methodology

The objective of the synchronic phase of the study was to use qualitative methods to discover how the epithet Nigger was used within a sample of judicial opinions. My objective was to examine how judges used epithets in contemporary opinions. Therefore, I chose to focus exclusively on opinions from 1997 because that year was the most recent among my data. I decided to focus the synchronic analysis on the use of the epithet Nigger because that epithet occurred frequently in the data set, was a maximally taboo prototypical epithet, and did not carry the same problems of polysemy as many of the other racial or gender epithets.

The corpus for the synchronic analysis portion of this dissertation was a convenience sample of just over half of the state appellate court judicial opinions from 1997 which contained the epithet Nigger.

The research questions which guided the qualitative analysis were more impressionistic than the research questions for the quantitatively oriented diachronic analysis. Preliminary questions addressed included: (a) Are there any discernible patterns in the type of case in which Nigger appears? (b) How do judges use Nigger in judicial opinions? and (c) What functions were served by including Nigger in an opinion?

The principal hypothesis which motivated this dissertation was that racial and gender epithets were replacing profanity as the taboo words of our culture. This hypothesis contains certain theoretical and philosophical presuppositions which in turn implicate corresponding sociolinguistic theories. The presuppositions inherent in the hypothesis are:

(1) our culture recognizes certain words or topics as taboo;

(2) speakers know what words or topics are taboo; and

(3) speakers will not lightly breach a taboo.

My synchronic analysis proceeded from the assumption that the appellate judges who wrote the opinions in the corpus possessed communicative competence. Therefore, if a judge includes a word which speakers possessing communicative competence would recognize as taboo, then that judge included the epithet knowing that he or she was breaching a cultural taboo. What the judge may have been trying to do by breaching that standard is the subject of the synchronic analysis.

Many of the theoretical perspectives which bear on the synchronic analysis originated within the fields which have come to be known as linguistic anthropology and discourse analysis. The issue of how speakers understand and respect cultural standards implicates the sociolinguistic theory of communicative competence. The essential aspect of communicative competence is the element of cultural competence, the bedrock skill upon which all other aspects of communicative competence rest. Cultural competence is the ability to understand behavior from the standpoint of the members of a culture and to behave in a way that would be understood by the members of the culture in the intended way.

In my qualitative analysis, I relied heavily on methods drawn from the ethnography of speaking to a greater degree than other pre-existing methodologies for the framework of my analysis. The mnemonic "S.P.E.A.K.I.N.G." from the ethnography of speaking gave shape to how I analyzed the speech factors associated with use of the epithet Nigger. Each letter in the mnemonic

corresponds to a factor which begins with that letter. S stands for the "scene" or "setting" of the interaction. The letter P stands for participants. The letter E stands for ends, or the desired outcome or goals for an interaction. The letter A stands for act sequence, *i.e.*, the specific expectations for speaking behavior. The letter K stands for key, which is analogous to a musical key. The key allows the participants to interpret the speech message, *i.e.*, is it serious or a joke? Is it truthful?

The next speech factor in Hymes's mnemonic is instrumentalities. There are two items to consider under instrumentalities: (1) channels, and (2) forms. Channels are any medium for "speech," while forms include code, languages, dialects, styles, varieties, or registers. The letter N stands for Norms of Interaction, *i.e.*, how and when to speak in a particular context. The final factor in the typology of speech factors is genre, and refers to a specific formulaic style of text or speech act. For the purposes of my dissertation, the principal genre was the judicial opinion.

In addition to the work of Hymes, I drew on a broad range of scholars who work within discourse analysis, linguistic anthropology, sociolinguistics, as well as social psychology. Though it is more traditional in some social sciences to work within a single set of theoretical precepts and use a single methodology, it is not uncommon in discourse analysis to draw upon whatever sources help elucidate cultural and linguistic behavior. It was because I wanted to understand the world of racial and gender epithets within judicial opinions that I sometimes went outside of the world of "*langue*" to draw upon the many sources outside of linguistics which helped shed light on "*parole.*"

Summary of Findings and Interpretation

Diachronic Analysis

The most striking observation with respect to patterns of epithet use was the rejection of virtually all null hypotheses. The first null hypothesis, which predicted that there would be no significant difference in the rate of epithet usage among the nine regions encompassed in this study,

was rejected for all ten decades of the 20th century. The second null hypothesis, which predicted that there would be no significant difference in usage among the epithets, was also rejected for each of the ten decades included in this study. Null Hypothesis 3.0, which predicted that there would be no significant difference in the rate of epithet usage among the ten decades encompassed in this study was likewise rejected for all nine regions. Null Hypothesis 3.1 predicted that there would be no significant difference in the rate of epithet usage at the national level among the ten decades of this study. As with the first three null hypotheses, NH 3.1 was rejected. The final null hypothesis, which predicted that there would be no correlation between the usage of profanity and the usage of epithets over the ten decades encompassed in this study, was the only null hypothesis not to be rejected outright. These results indicated that there were geographical, lexical and historical differences in epithet usage. The only null hypothesis not to be rejected shows that there was indeed a correlation between epithet use and use of profanity in judicial opinions.

In my earlier studies on profanity use in judicial opinions which gave rise to this dissertation, I found that the popular perception regarding profanity usage was correct: there was indeed a growing trend in America toward acceptance of words which were once taboo. (As measured by the frequency with which seven specific taboo words appeared in judicial opinions.) Before the sweeping cultural changes of the mid 1960s and early 1970s the use of profanity within judicial opinions was virtually nonexistent. From the mid 1970s on, however, use of profanity has increased dramatically.

In contrast to profanity use which exhibited extremely low rates at the beginning of the 20th century, epithet use for the first two decades of the century were quite high. The rate of epithet usage plunged from the 1920s to the 1930s, and then went back up in the 1940s and 1950s. The rate of epithet use once plunged once again during the 1960s, although the decrease in the rate of usage was not as great as the decrease from 1920 to 1930. The rate of epithet usage during the 1970s and

1980s again returned to about same level as it was during the 1940s and 1950s. By the end of the century, the rate of epithet usage was nearly identical to the high rates of usage in the first two decades of the century. Clearly, there were historical differences in epithet usage over the course of the 20th century.

The increasing use of epithets after the initial decrease in epithet usage during the first two decades after the rise of the civil rights movement could have been due to a backlash effect against minorities or resentment of minorities' civil rights gains. Backlash against minorities was not the only possible explanation for the upward trend in epithet usage, however. One alternative explanation was that the current rise in epithet use reflects minorities' increased willingness to litigate injustices inflicted upon them. If the civil rights movement leveled the judicial playing field somewhat, it is possible that minorities felt more confident about bringing suit for harassment or discrimination. If harassment and discrimination suits were to increase, one should expect to see a greater number of epithets because epithet use often serves as one or more of the grounds for those very suits.

A third plausible explanation may also explain the rise in epithet use at the end of the century, and that is the phenomenon of "in- group slang," use of taboo terms to signal inclusion within a closely-knit social network. Given the dramatic increase in epithets and the synchronic analysis of a sample of opinions containing the epithet Nigger in Chapter 6, the likelihood of a backlash against women and minorities accounting for the entire increase was somewhat small. In my synchronic analysis, I found that many of the criminal cases included use of Nigger as in-group slang. Furthermore, discrimination and harassment cases constituted the bulk of the civil suits. Thus, the more plausible explanation for the current increase in the rate of epithet usage is a combination of in-group slang and an increased willingness among women and minorities to bring suit when harassed or discriminated against.

The first surprise among the lexical data was the incredibly high rate for the epithet Bitch across all ten decades. The epithet Bitch accounted for nearly two-thirds of all epithets in the diachronic corpus. Given that women face many several obstacles to full participation in society, the use of Bitch in large numbers should not ultimately be surprising. The overwhelming use of Bitch, however, could not have been predicted.

The epithet Nigger was the second most common epithet for every decade of the twentieth century; it never accounted for less than 11.7% of all opinions which contained an epithet during any decade, and in one decade Nigger accounted for more than 20% of all epithets which appeared in judicial opinions.

After the exceptionally high rates of use for Bitch and Nigger, the next striking pattern which emerged from the data was the overall pattern of distribution. For all decades, one epithet accounted for two-thirds to three-quarters of all epithet use, and a second epithet accounted for one-tenth to one-fifth of all epithet use. After the two most common epithets, several other epithets each accounted for two to five per cent of epithet use, and the remaining epithets in the data set would be used but once or twice. At first glance this lexical distribution pattern which was present in all decades of the century may seem curious. Indeed, such a distribution pattern may even seem counterintuitive. Studies in dialectology, psycholinguistics, and similar disciplines, however, typically demonstrate similar distribution patterns. When viewed in this context, the lexical distribution pattern exhibited among the relative frequencies of the epithets does not seem anomalous. In fact, the distribution pattern here conforms with established patterns of other linguistic studies.

Broadly speaking, there are two ways for a linguist to approach language change. One is to look at the internal factors of language change, and the other approach is to look at the sociolinguistic forces of language change. (Atchison 1991:134.) The diachronic analysis in this

dissertation proceeded from the latter perspective. I examined use of the racial and gender epithets in the judicial opinions for evidence of a change within the culture.

Atchison (1991:134) suggested three broad categories of the sociolinguistic causes of language change: fashion, foreign influence, and social need. All three factors were relevant in varying degrees to my diachronic analysis. Several judicial and legislative changes in the law such as the civil rights legislation in the middle and latter part of the century reflected changing social standards and views on minority participation in U.S. society. In marked contrast to the civil rights gains that Blacks and women made, Asians faced many formalized legal barriers to full participation in society for much of the century, many of which stemmed from a fear of Japanese cultural influence or (during World War II) outright invasion.

The statistical findings in Chapter 4 did not provide support for one of the objectives of the study, *i.e.*, documenting that rates of epithet usage in contemporary American culture were decreasing. The diachronic results did, however, provide limited support for the theory that racial and gender epithets are replacing traditional taboo words dealing with sex, the human body, and bodily functions as the nation's new taboo words.

Synchronic Analysis

I analyzed the utterances in the synchronic corpus according to the methods described in Chapter 5, and analyzed the opinions in the synchronic corpus according to Hymes's (1962) delineated speech factors. I found in my analysis that virtually all 99 utterances containing the epithet Nigger appeared within quotation marks or indented block quotations. Judges used quotation marks to punctuate direct quotations, as one would expect. However, judges also used quotation marks around Nigger, even if that was the only word within the sentence which was within quotation marks. Judges use quotation marks around Nigger not only in direct quotations, but also to index

themselves as non-racists, distancing themselves from the epithet and marking "Nigger" as something apart from their own speech.

In addition to the 99 utterances containing Nigger in the data set, I found nearly as many utterances containing euphemistic references to the Addressor's use of Nigger, *e.g.* "Defendant's remark . . . " or "the racial epithet used by defendant . . ." and so forth. Seventy-one utterances in the synchronic corpus used "racial epithet" or "racial slur," to refer to the class of words to which Nigger belongs rather than as a euphemistic reference to the utterance containing Nigger. Such circumlocutions often appear in employment discrimination or harassment cases. In addition to the results set forth above, 32 utterances in the synchronic corpus contained other racial or gender epithets or other taboo words, *e.g.* "Jungle Bunny" or "Fuck."

Of the 41 cases in the synchronic sample, only nine were civil suits, and the remaining 32 cases were criminal prosecutions. Four of the civil suits were employment discrimination and/or harassment suits, and two of these cases also included claims for the negligent or intentional infliction of emotional distress. Two of the civil suits were appeals of disciplinary actions that had been taken against public employees for using the word Nigger. One of the civil suits was a personal injury action brought by white plaintiffs who had belligerently picked a fight for racist reasons while they were drunk. The African American security guard who was the victim of the attack shot one of his assailants, and the other family members sued the security guard's employer. Lastly, two of the nine civil cases which included the word Nigger were procedural appeals.

I discovered a total of 21 different offenses within the 32 criminal cases in the synchronic corpus. By far the most common offense was murder, which was charged in 20 of the 32 criminal cases in the sample. If one also includes the two additional manslaughter cases, over two-thirds of all criminal cases in which the word Nigger appears involved the death of a human being. The next most common charges were firearms violations. There were five cases involving firearms

violations. These charges included armed criminal action, use of firearm in the commission of a felony, unlawful use of a weapon by a felon, and aggravated discharge of a firearm. Four cases included charges for assault, including aggravated assault and armed assault. Four cases included charges for battery, including aggravated battery.

In two cases each, the defendant was charged with kidnapping, disorderly conduct, and robbery. The following criminal charges were present in only one case each: arson, attempted murder, burglary, escape, ethnic intimidation, grand theft auto, interference with an official proceeding, involuntary manslaughter, voluntary manslaughter, obstructing legal process with force, possession of a stolen vehicle, sexual assault, and one case involved a sentence enhancement because the crime (aggravated assault) was racially based.

My analysis of the participants to the original interaction which included the utterance "Nigger," revealed that there are only five main types of utterances containing Nigger, and that the type of utterance is usually determined by the Addressee and Addressor. The types of utterances containing Nigger and/or types of Addressors who used Nigger were: (1) the paradigmatic racist; (2) in-group slang; (3) in-group insult; (4) attributed utterance; and (5) a restatement of Nigger in the court's reasoning. I was unable to determine race of the Addressee and/or Addressor in a couple of cases, and I also included a final category "Other" into which I have placed the few cases that did not fit within one of the five types listed above.

I also analyzed the opinions from the perspective that the judge could also be considered a participant in the utterance containing Nigger; it is self-evident they are at least secondarily. I discovered that the majority of opinions in the corpus were written by white males. Twenty of the 41 opinions were written by white males. Five of the 41 were written by white females. Only three of the opinions in the corpus were written by a minority judge; two black males and one Asian male

authored those opinions. Additionally, I was unable to determine the race of the judge in 13 of the 41 cases.

I discovered that the judges who authored the opinions in the corpus, typically evinced only a few different ends and acts *vis a vis* the opinion and the Addressor who uttered Nigger. The three most common judicial speech acts in cases which included Nigger were: (1) characterizing, (2) ordering, and (3) indexing. Indexing, as alluded to above, refers to a judge who uses linguistic features in his or her opinion to mark his social distance from the Addressor. The judicial speech act of ordering takes the normal appellate speech act of deciding one step further, and provides specific directives to a lower court to take (or refrain from taking) certain actions that the appellate court spells out in its opinion. The first type of judicial speech act, characterizing, is further subdivided into five types. When an appellate court characterizes a party or lower court in a certain way, it typically does so in one or more of the following ways: (1) characterizes a party as a paradigmatic racist; (2) characterizes a party as a gangbanger; (3) characterizes a party as dishonest or unintelligent; (4) characterizes a party as an archetypal sociopath; or (5) unconsciously evinces its own racism.

I analyzed the opinions in the corpus with an eye to how the language may express shifting societal norms for what is linguistically taboo in our culture. Because every opinion in the synchronic corpus contains the epithet Nigger at least once, we may infer that the judges in these cases have overcome the linguistic taboo against using Nigger at least slightly somewhat. Otherwise, they would have used a euphemism or editorial deletion to indicate the word was taboo for them. Because they have not, I contrasted the cases in the corpus in which a judge had used an editorial deletion or orthographic euphemism for other taboo words. I discovered that a small number of judges who felt that it was acceptable to include the epithet Nigger in their opinion also felt that it was not acceptable to include the word Fuck. Despite the reluctance of the some judges

to write the word Fuck, far more judges did not editorially delete or euphemize the profanity used the parties in the case.

I discovered that an increasing number of courts are finding that the word Nigger is taboo, even if they include it in their opinions. For example, the Supreme Court of North Carolina held that a lower court could have taken judicial notice of the fact that Nigger constitutes a fighting word as defined by Chaplinsky. Similarly, the Supreme Court of New Jersey held that a single racial epithet directed against a subordinate employee by a supervisor could create a hostile work environment under applicable labor law. Although these types of decisions are far more plentiful now than in the early part of the century, they still do not constitute the majority view.

Discussion of Problems and Suggestions for Further Research

My dissertation is not without its share of difficulties, and I will address the most significant difficulties here. First, I had originally planned to cover the entirety of the 20th century in my dissertation. I was not able to do so, however. The database which I used for my study, Westlaw, is a proprietary database, and my password expired in 1998. *Ergo*, the rather odd span of years in the title of my dissertation.

Second, as I began my analysis, I found that there were several gaps in the keyword searches I had performed while I did have access to Westlaw. For example, I discovered that I had performed a keyword search for the epithet Nigger in only 41 of the 50 states in the database. Therefore, I relied on colleagues with access to Westlaw to help fill in those gaps. This additional research was spread out over 1998, 1999, 2000, and 2002. This should not have played a significant role, however, as the number of cases which have already been decided is necessarily finite, *i.e.* Westlaw cannot create new cases which did not exist in the past. By using date restrictions in my searches, the database I searched in my later searches should have been the same size as the database for my

first searches. The later research may have affected results, however, if Westlaw added cases from additional jurisdictions. For example, if the 1990-1997 database for a certain state contained decisions from only the southern and northern districts of that state in 1998, but Westlaw added 1990s cases from the middle district of that state two years after I conducted my initial searches, the different database sizes could have skewed some of the results.

Successive researchers could easily avoid the type of difficulties I note above, by focusing on a smaller time frame and/or geographic region; in retrospect examining opinions from all 50 states over nearly 100 years was a more ambitious undertaking than I had first imagined. I would also like to see successive researchers address the subject of the "taboo-ness" of certain words. Researchers might approach this issue by using a questionnaire that incorporates a Likert scale. For example, "Would you use X when speaking to:" an older person of the same race and gender; a younger person same race and gender; opposite races and genders; ministers; friends; teachers; parents; grandparents, a supervisor at work, and so on.

I believe that my search methodology would yield good results when applied to other genres as well. For example, one might compare rates for taboo word usage in popular films over a span of time. In fact, I seriously considered such a topic myself for this dissertation.

Importance and Practical Implications of the Study

The importance of this dissertation to the field is manifold. First, despite the many scholars who have dealt with the topic of hate speech or epithets in general, at the time I began work on this dissertation, no one had attempted to empirically test the hypothesis that racial and gender epithets were becoming increasingly taboo. And I am still the first person to quantify the taboo within legal language. Thus, this dissertation serves a need by examining the use of racial and gender epithets within one influential genre of our society, and quantifying that use. Second, this study is important

because it is relevant to the growing public dialog on the issue of race. A sociolinguistic study which is both diachronic and synchronic in its perspective, and which uses both qualitative and quantitative methods, has the potential to contribute to the public dialog on race, gender, and diversity. Ideally, sociolinguists, anthropologists, sociologists, legal practitioners, as well as others who are interested in the public dialog on race, hate speech, and freedom of speech will find this dissertation useful.

The third reason this study is important is the contribution it makes by quantifying the databases used in this study, and hence establishing a very large and potentially productive corpus. The contents of this database can now be used profitably by other scholars who have access to Westlaw. The foundation which I have laid will allow other researchers to pursue their own research agendas using the baseline figures which I established.

Fourth, this study is important is because it contributes to the growing linguistic literature documenting language change, in this case, a putative shift in linguistic taboos. Finally, this dissertation serves a valuable function by emphasizing empirical results in the diachronic analysis and explicating how judges use one particular epithet in the synchronic analysis. Much of the pre-existing material on racial and gender epithets was more essay than research study, and, while that is a perfectly legitimate approach to take to racial and gender epithets, it does not result in much useful information for scholars.

Conclusion

I would like to conclude this dissertation not with the words of a jurist or linguist, but with the words of a poet and essayist. Over the Christmas holiday at Stanford in 1968-1969, Wendell Berry examined his own attitudes toward race and his cultural inheritance as a white Southerner. He later republished that soul-searching essay in the late 1980s. Berry explains his reasons for

writing *The Hidden Wound* (1989) below. Though I didn't know it at the time I began my research, I discovered I held similar sentiments myself.

> For whatever reasons, good or bad, I have been unwilling until now to open in myself what I have known all along to be a wound—a historical wound, prepared centuries ago to come alive in me at my birth like a hereditary disease, and to be augmented and deepened by my life. If I had thought it was only the black people who have suffered from the years of slavery and racism, then I could have dealt fully with the matter long ago; I could have filled myself with pity for them, and would no doubt have enjoyed it a great deal and thought highly of myself. But I am sure it is not so simple as that. If white people have suffered less obviously from racism than black people, they have nevertheless suffered greatly; the cost has been greater perhaps than we can yet know. If the white man has inflicted the wound of racism upon black men, the cost has been that he would receive the mirror image of that wound into himself. As the master, or as a member of the dominant race, he has felt little compulsion to acknowledge it or speak of it; the more painful it has grown the more deeply he has hidden it within himself. But the wound is there, and it is a profound disorder, as great a damage in his mind as it is in his society.
>
> This wound is in me, as complex and deep in my flesh as blood and nerves. I have borne it all my life, with varying degrees of consciousness, but always carefully, always with the most delicate consideration for the pain I would feel if I were somehow forced to acknowledge it. But now I am increasingly aware of the opposite compulsion. I want to know, as fully and exactly as I can, what the wound is and how much I am suffering from it. And I want to be cured; I want to be free of the wound myself, and I do not want to pass it on to my children. Perhaps this is only wishful thinking; perhaps such a thing is not to be done by one man, or in one generation. Surely a man would have to be almost dangerously proud to think himself capable of it. And so maybe I am really saying only that I feel an obligation to make the attempt, and that I know if I fail to make at least the attempt I forfeit any right to hope that the world will become better than it is now. (Berry 1989:3-4.)

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APPENDIX

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
1.	In the present case, the record shows that Casey and his counsel asked the trial court to consider the following mitigators: . . .(2) that Wrighthouse provoked the offense by calling Casey and others "niggers". . .	Casey v. State, 689 N.E.2d 465 (1997)
2.	Edwards used racial epithets during the encounter with Anderson, twice referring to her as a "nigger."	City of Wichita v. Edwards, 23 Kan. App. 2d 962, 939 P.2d 942 (1997)
3.	. . . Edwards [Defendant] . . . admitted yelling at Anderson and calling her names. Edwards stated that he told Anderson he would "cut her fat nigger legs off" if she did not leave Smith [defendant's girlfriend and ex-roommate of Anderson] alone.	City of Wichita v. Edwards, 23 Kan. App. 2d 962, 939 P.2d 942 (1997)
4.	According to Anderson [ex-roommate of defendant's girlfriend], Edwards [Defendant] shoved her chair, pinning her up against the bar, and said, "You goddamn nigger bitch, if you ever talk to Terri [Defendant's girlfriend] again, I'll fucking kill your ass."	City of Wichita v. Edwards, 23 Kan. App. 2d 962, 939 P.2d 942 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
5.	I walked past [Richardson] and he said . . . go the f*ck ahead. I was by the church wall and then he was like walking a little bit, and I was thinking[,] why [is] this nigger talking to me like this . .	Com v. Washington, 547 Pa. 563, 692 A.2d 1024 (1997)
6.	In 1927 . . . That year, an anonymous note from a neighbor to Barnes, who made his fortune from patent medicine, referred to him as a "clap doctor" and "a nigger lover."	Davis v. Glanton, 705 A. 2d 879, (Pa. Super., Dec. 23, 1997)
7.	a letter from Beckwith . . . in which Beckwith stated among other things that "So when you think of me, you see a man deep in debt, facing five years in prison, living like a nigger . . ."	De la Beckwith v. State, 707 So. 2d 547 (1997)
8.	A. Okay. He said that he had killed Medgar Evers, a nigger, and he said if this ever got out, that he wasn't scared to kill again.	De la Beckwith v. State, 707 So. 2d 547 (1997)
9.	We further note Beckwith's own contention to State witness Mark Reiley that he had "the power and connections" in Mississippi to avoid incarceration for "getting rid of that nigger, Medgar Evers."	De la Beckwith v. State, 707 So. 2d 547 (1997)
10.	Later on another occasion, according to Reiley, Beckwith "told me that if he didn't—if he was lying and didn't have the power and connections he had, that he would be serving time in jail in Mississippi for getting rid of that nigger, Medgar Evers."	De la Beckwith v. State, 707 So. 2d 547 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
11.	One [highly inflammatory racial] question in particular dealt with the term "nigger," which led the court to caution that. . .	De la Beckwith v. State, 707 So. 2d 547 (1997)
12.	So when you think of me, you see a man in deep debt, facing five years in prison, living like a nigger and as far in global, not state or county, Klan work as a 56-year-old man can be, and happy at it.	De la Beckwith v. State, 707 So. 2d 547 (1997)
13.	A. On an occasion when I was standing in his front yard--I don't remember how the conversation was led into--that he did make the statement that he was tried twice in Mississippi for killing that nigger.	De la Beckwith v. State, 707 So. 2d 547 (1997)
14.	A. He was screaming back at her, "If I could get rid of an uppity nigger like nigger Evers, I would have no problem with a no-account nigger like you."	De la Beckwith v. State, 707 So. 2d 547 (1997)
15.	. . . at a Klan meeting in Byram, Mississippi. Beckwith was the featured speaker and Dennis remembered that "he was admonishing Klan members to become more involved, to become violent, to kill the enemy, to—he admonished us to kill from the top down, and he said, 'Killing that nigger didn't cause me any more physical harm than your wives have to have a baby for you.'"	De la Beckwith v. State, 707 So. 2d 547 (1997)
16.	A. He was very polite when he spoke to her, but he did say that he would--he would rather her go get a white person because he would rather a nigger not wait on him--wait on him or take care of him.	De la Beckwith v. State, 707 So. 2d 547 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
17.	Robertson also gave corroborative testimony regarding Bell's "nigger coaches" comments and added that Schwemmer was present during the exchange.	Garvey Elevators, Inc. v. Kansas Human Rights Com'n, 24 Kan. App. 2d 595, 948 P.2d 1150 (1997)
18.	On another occasion, Jackson was present when Bell told another employee that there was no time to shut down the facility to make repairs and the employee would have to "'nigger-rig it.'"	Garvey Elevators, Inc. v. Kansas Human Rights Com'n, 24 Kan. App. 2d 595, 948 P.2d 1150 (1997)
19.	He testified that Bell told him, "'it's hard enough for me to control these Mexicans let alone a nigger trying to do it.'"	Garvey Elevators, Inc. v. Kansas Human Rights Com'n, 24 Kan. App. 2d 595, 948 P.2d 1150 (1997)
20.	In addition, he testified that Bell would refer to Jackson's office in the east terminal as the "'nigger hut.'"	Garvey Elevators, Inc. v. Kansas Human Rights Com'n, 24 Kan. App. 2d 595, 948 P.2d 1150 (1997)
21.	He testified that while he and Stanley Robertson, an employee who also is an African-American, were standing in the room, Bell stated, "'What do you think about those two nigger coaches?'"	Garvey Elevators, Inc. v. Kansas Human Rights Com'n, 24 Kan. App. 2d 595, 948 P.2d 1150 (1997)
22.	Bell also told him that Jackson spoke just like a "nigger."	Garvey Elevators, Inc. v. Kansas Human Rights Com'n, 24 Kan. App. 2d 595, 948 P.2d 1150 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
23.	On one occasion, Bell told Robertson that he could not understand how Pillsbury would let a "nigger" run the elevator.	Garvey Elevators, Inc. v. Kansas Human Rights Com'n, 24 Kan. App. 2d 595, 948 P.2d 1150 (1997)
24.	Finally, Baker testified that when the decision was made to start a bin cleaning project, Bell stated that he was not going to have to be involved with it because the "nigger's going to do it."	Garvey Elevators, Inc. v. Kansas Human Rights Com'n, 24 Kan. App. 2d 595, 948 P.2d 1150 (1997)
25.	Robertson also testified that Bell would refer to a white employee who became friends with Robertson or Jackson as "'what's a nigger.'"	Garvey Elevators, Inc. v. Kansas Human Rights Com'n, 24 Kan. App. 2d 595, 948 P.2d 1150 (1997)
26.	Schwemmer maintained that Bell never used the word "nigger."	Garvey Elevators, Inc. v. Kansas Human Rights Com'n, 24 Kan. App. 2d 595, 948 P.2d 1150 (1997)
27.	Stanley Robertson testified that he heard Bell make racial comments everyday, including the use of the words "nigger" and "Black ass."	Garvey Elevators, Inc. v. Kansas Human Rights Com'n, 24 Kan. App. 2d 595, 948 P.2d 1150 (1997)
28.	Mr. Glover also experienced a problem with Mike Cervelli, a maintenance man with Boehm Pressed Steel, who had used the phrase nigger-rig in Mr. Glover's presence to describe a certain type of repair.	Glover v. Boehm Pressed Steel Co., 122 Ohio App. 3d 702, 702 N.E.2d 929 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
29.	Allegedly, Mr. Javanov had used the word nigger while at the workplace in Mr. Glover's presence and maintained a hostile and critical attitude toward Mr. Glover.	Glover v. Boehm Pressed Steel Co., 122 Ohio App. 3d 702, 702 N.E.2d 929 (1997)
30.	Mr. Glover also maintained that Strunk had allegedly told the Union Steward, Lewis Brooks, that he would never work for a nigger.	Glover v. Boehm Pressed Steel Co., 122 Ohio App. 3d 702, 702 N.E.2d 929 (1997)
31.	There is double or triple hearsay present at trial that he supposedly made the statement, I won't work for a nigger.	Glover v. Boehm Pressed Steel Co., 122 Ohio App. 3d 702, 702 N.E.2d 929 (1997)
32.	Roger Green then rolled down the car window and said, "What are you looking at nigger?"	Green v. Jackson, 289 Ill. App. 3d 1001, 682 N.E.3d 409, 224 Ill. Dec. 848 (1997)
33.	Roger exited the vehicle and asked Jackson, "What's a nigger like you doing up here in this neighborhood anyway?"	Green v. Jackson, 289 Ill. App. 3d 1001, 682 N.E.3d 409, 224 Ill. Dec. 848 (1997)
34.	Jackson testified that he heard Roger Green yell, "The nigger's got a gun," and that the Greens reached for Jackson's weapon.	Green v. Jackson, 289 Ill. App. 3d 1001, 682 N.E.3d 409, 224 Ill. Dec. 848 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
35.	Esbrook testified that he overheard Roger Green tell Jackson, "What are you doing in this neighborhood, nigger, why don't you leave those people alone?"	Green v. Jackson, 289 Ill. App. 3d 1001, 682 N.E.3d 409, 224 Ill. Dec. 848 (1997)
36.	Dyra overheard Roger Green say, "What are you looking at, nigger?" before Roger exited his vehicle and began beating Jackson.	Green v. Jackson, 289 Ill. App. 3d 1001, 682 N.E.3d 409, 224 Ill. Dec. 848 (1997)
37.	Hoffman stated, "Help me, open the door, is your sister home, some niggers beat me up, I think my arm is broken."	Hoffman v. State, 950 P.2d 141 (1997)
38.	While K.V. wrapped Hoffman's wrist with the bandage, Hoffman was saying "those f-ing niggers, those f-ing niggers."	Hoffman v. State, 950 P.2d 141 (1997)
39.	Taken in context, the use of the word "nigger" by Spivey squarely falls within the category of unprotected speech defined by the Supreme Court in Chaplinsky v. New Hampshire.	In re Spivey, 345 N.C. 404, 480 S.E.2d 693 (1997)
40.	Spivey's use of the word "nigger" and his abusive conduct on the night in question did not in any way involve an expression of his viewpoint on any local or national policy.	In re Spivey, 345 N.C. 404, 480 S.E.2d 693 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
41.	In fact, Spivey himself has repeatedly asserted since the incident in question that the use of the racial epithet "nigger" does not in any way reflect his views about race.	In re Spivey, 345 N.C. 404, 480 S.E.2d 693 (1997)
42.	While there, Spivey loudly and repeatedly addressed a black patron, Mr. Ray Jacobs, using the derogatory and abusive racial epithet "nigger."	In re Spivey, 345 N.C. 404, 480 S.E.2d 693 (1997)
43.	No fact is more generally known than that a white man who calls a black man a "nigger" within his hearing will hurt and anger the black man and often provoke him to confront the white man and retaliate.	In re Spivey, 345 N.C. 404, 480 S.E.2d 693 (1997)
44.	Instead, when taken in context, his repeated references to Mr. Jacobs as a "nigger" presents a classic case of the use of "fighting words" tending to incite an immediate breach of the peace which are not protected by either the Constitution of the United States or the Constitution of North Carolina.	In re Spivey, 345 N.C. 404, 480 S.E.2d 693 (1997)
45.	By another assignment of error, respondent Spivey contends that his removal from office for his behavior, including the use of the word "nigger" and other tasteless language, violates the First Amendment to the Constitution of the United States and Article I, Section 14 of the Constitution of North Carolina.	In re Spivey, 345 N.C. 404, 480 S.E.2d 693 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
46.	Rassmann . . . approached the scene to provide backup . . . [and] greeted Pronovost with either "Hey Pronovost" or "Hey Bro." Karins then turned to Rassmann and stated "Oh no, don't start that nigger shit!" and walked away.	Karins v. City of Atlantic City Supreme Court of New Jersey (A-6-97)
47.	Overhearing the pun, Markus remarked, in a pretend Southern accent, "Yes, the office is going to have a lynching. We've got a rope and all they need is a nigger. And Walls, you're it."	Los Angeles County Office of the Dist. Attorney v. Civil Service Com., 55 Cal. App. 4th 187, 63 Cal. Rptr. 2d 661 (1997).
48.	Markus denied making such comments. Instead, he claimed upon overhearing Ashen make a pun out of Lynch's name, Markus asked, "What is this about lynching a nigger?"	Los Angeles County Office of the Dist. Attorney v. Civil Service Com., 55 Cal. App. 4th 187, 63 Cal. Rptr. 2d 661 (1997).
49.	On occasion, her epithet assumes an overtly negative tone. Some people simply refer to Karla Morgan as "that nigger lover."	Morgan v. Dickstein, 292 Ill. App. 3d 822, 686 N.E.2d 56, 226 Ill. Dec. 707 (1997)
50.	Appellant alleged Frank Versagi referred to her as nigger and discriminated against her with regard to her employment.	Motley v. Flowers & Versagi Court Reporters, 1997 WL 767466 (Ohio App. 8 Dist., Dec. 11, 1997)
51.	Frank Versagi denied having any relationship or sexual contact with appellant or referring to her as a nigger or making derogatory comments because of appellant's race or sex.	Motley v. Flowers & Versagi Court Reporters, 1997 WL 767466 (Ohio App. 8 Dist., Dec. 11, 1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
52.	The only evidence in the record of racial discrimination is the allegation that Frank Versagi called appellant a nigger.	Motley v. Flowers & Versagi Court Reporters, 1997 WL 767466 (Ohio App. 8 Dist., Dec. 11, 1997)
53.	That's what he says to you---"Boy," "Nigger."	People v. Budzyn, 456 Mich. 77, 566 N.W.2d 229 (1997)
54.	You didn't have a choice coming over here. He didn't say "black man, black woman, come on over and help me build America." He said "nigger get down in the bottom of that boat and I'm taking you over there to help me build America."	People v. Budzyn, 456 Mich. 77, 566 N.W.2d 229 (1997)
55.	[The white man] ought to get on his knees and say he's committed the crime. But does he do that? . . No, he scorns you [and] splits your head with his night stick, he busts you upside of the head with that billy club, he calls you a nigger.	People v. Budzyn, 456 Mich. 77, 566 N.W.2d 229 (1997)
56.	. . . the prosecutor asked, "What did he say on that one?" [The psychiatrist] then gave the answer, "A dead nigger, don't like Black people."	People v. Fairbank, 16 Cal. 4th 1223, 947 P.2d 1321, 69 Cal. Rptr. 2d 784 (1997)
57.	During cross-examination of [psychiatrist] . . the prosecutor [asked] .. how defendant had responded to specific questions. . . "Who was Martin Luther King?" [the psychiatrist] testified that defendant responded: "A dead nigger, don't like Black people."	People v. Fairbank, 16 Cal. 4th 1223, 947 P.2d 1321, 69 Cal. Rptr. 2d 784 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
58.	Defendant then walked towards Williams and said, "Ain't you the nigger that chased me the other day?"	People v. Groves, 287 Ill. App. 3d 84, 677 N.E.2d 1351, 222 Ill. Dec. 552 (1997)
59.	Although the prosecutor could have made the point effectively without quoting the part of the statement containing the word "niggers," the brief and isolated remark, spoken originally by a person who was herself black, was not likely to trigger racial prejudice in the jury.	People v. Mayfield, 14 Cal. 4th 668, 928 P.2d 485, 60 Cal. Rptr. 2d 1 (1997)
60.	[Defendant's stepfather] also verbally abused defendant, telling him he was "stupid" and referring to him as a "nigger" and other abusive terms.	People v. Mayfield, 14 Cal. 4th 668, 928 P.2d 485, 60 Cal. Rptr. 2d 1 (1997)
61.	Referring to defendant's tape-recorded telephone conversation with Yvonne Hester, the prosecutor said: "Then she goes on to say 'you're in this situation because you're hanging around with those losing niggers who ain't got nothing going for them.'	People v. Mayfield, 14 Cal. 4th 668, 928 P.2d 485, 60 Cal. Rptr. 2d 1 (1997)
62.	Referring to defendant as a "black mother fucking nigger," the officer told defendant to put his hands up.	People v. Mayfield, 14 Cal. 4th 668, 928 P.2d 485, 60 Cal. Rptr. 2d 1 (1997)
63.	Hall testified that . . . [a person investigator interviewed] who claimed to have witnessed an incident in which Sergeant Wolfley referred to another of her sons, Steven Davis, as a "nigger mother fucker" and chased after him while waiving a gun.	People v. Mayfield, 14 Cal. 4th 668, 928 P.2d 485, 60 Cal. Rptr. 2d 1 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
64.	At the intersection of Thomas Street and Central Park Avenue, McGee heard someone say, "Nigger, blow that shit."	People v. McGee, 286 Ill. App. 3d 786, 676 N.E.2d 1341, 222 Ill. Dec. 137 (1997)
65.	Defendant testified that Edward had said, "You got a problem you fuckin' niggers?" as Edward drove past.	People v. Taylor, 287 Ill. App. 3d 254, 678 N.E.2d 358, 222 Ill. Dec. 746 (1997)
66.	. . . the defendant and the victim . . had a confrontation . . . According to the defendant, after the confrontation and as he was leaving the building, he heard the victim say, "I got you, nigger."	People v. Williams, 293 Ill. App. 3d 276, 688 N.E.2d 320, 227 Ill. Dec. 839 (1997)
67.	Written on the bedroom wall were the words "Saten sic, Nigger, Fuck, FSU, FAMU, KKK, ANM." The handwriting on the wall matched samples later submitted by Robertson.	Robertson v. State, 699 So. 2d 1343, 22 Fla. L.Weekly S404 (1997)
68.	Ward [Neighbor of victim's older sister] testified that prior to Yates [defendant's accomplice] leaving her home, he told her "they were about to go jack some nigger for their car."	State v. Claiborne, 262 Kan. 416, 940 P.2d 27 (1997)
69.	McDaniel quickly informed Eisman that . . . Young had done nothing to provoke Colella. At that point Colella interjected: "Oh, you're going to take the word of a nigger over me."	State v. Colella, 298 N.J. Super. 668, 690 A.2d 156 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
70.	Robbins [fellow officer] testified that Colella overheard this conversation and stated: "You going to let a nigger order you around?"	State v. Colella, 298 N.J. Super. 668, 690 A.2d 156 (1997)
71.	Eisman [responding cop] also heard Colella call Young a "nigger," as well as say that "he would be beating blacks all his life."	State v. Colella, 298 N.J. Super. 668, 690 A.2d 156 (1997)
72.	According to McDaniel, as Colella was being handcuffed, he began to yell at Eisman: "Oh, you're nothing but a nigger lover, nothing but a nigger lover."	State v. Colella, 298 N.J. Super. 668, 690 A.2d 156 (1997)
73.	Colella acknowledged telling the arresting officer, "I don't believe you are going to take that nigger's word over mine."	State v. Colella, 298 N.J. Super. 668, 690 A.2d 156 (1997)
74.	Jones reported that Colella stated to him: "nigger, I'll be out of jail—I'll be bailed out within half an hour, I'd like to meet you at—I will meet you over to [sic] the Four Seasons Restaurant over in Chambersburg and I'm going to kick your ass."	State v. Colella, 298 N.J. Super. 668, 690 A.2d 156 (1997)
75.	According to Jones, Colella further said: "I have been beating niggers up all my life."	State v. Colella, 298 N.J. Super. 668, 690 A.2d 156 (1997)
76.	Colella then jumped up and repeated: "nigger, I told you to get the fuck out of here, you don't [*sic*] understand."	State v. Colella, 298 N.J. Super. 668, 690 A.2d 156 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
77.	McDaniel [witness], who observed the entire incident, testified that Colella [defendant] appeared to be upset over an argument he was having with Torres [his girlfriend]. After Young [victim] inquired about the card, McDaniel reported that Colella said: "nigger, get the fuck out of here, you see I'm talking to my woman."	State v. Colella, 298 N.J. Super. 668, 690 A.2d 156 (1997)
78.	Eisman summoned Amtrak Patrolman Odell Jones, an African-American . . . for additional assistance because Colella was screaming and kicking. When Jones arrived at the holding cell area, he heard Colella state to Eisman that he could not believe the officer would take "a nigger's word" over his.	State v. Colella, 298 N.J. Super. 668, 690 A.2d 156 (1997)
79.	Colella felt he was "doomed" since he had hit Young and called him a "nigger."	State v. Colella, 298 N.J. Super. 668, 690 A.2d 156 (1997)
80.	We don't allow that type of stuff in Lauderdale County," referring to interracial dating or marriage. [Sheriff] Crain referred to his girlfriend as a "yeller-headed nigger lover."	State v. Culp, 1997 WL 97870 (Tenn. Crim. App., Mar. 7, 1997)
81.	[From co-defendant Wilke's statement to police]: Lester [Dixon's stepfather] and Tyson [defendant] pulled up and Tyson wanted me to come on up into the Big D's house. Me and Big D, TJ, Tyson, were in the house and we went in the den and few were talking. Tyson said, I'm about to hit the nigger Mo up.	State v. Dixon, 1997 WL 113756 (Ohio App. 8 Dist., Mar. 13, 1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
82.	Mr. James [witness] testified further that he heard Tyson Dixon [defendant] and Romell Wilkes [co-defendant] say "We got that nigger," but could not identify which one made the statement.	State v. Dixon, 1997 WL 113756 (Ohio App. 8 Dist., Mar. 13, 1997)
83.	In rebuttal, the prosecution asked Green if at any time when he was in jail with Beavers he heard Beavers use the terms "nigger," "tree jumper" or "coon."	State v. Gibson, 210 Wis. 2d 498, 568 N.W.2d 321 (1997), 1997 WL 163594 (Wis. App., April 9, 1997)
84.	The state correctly argues that the record shows the prosecutor anticipated Hill's defense of racism. Hill testified that one of the officers said, "Nigger, didn't I already tell you to leave?"	State v. Hill, 1997 WL 406651 (Minn. App., July 22, 1997)
85.	Defendant, who had only five dollars earlier, purchased approximately eighteen bottles of beer soon after his return and paid for them with crumpled ten- and twenty-dollar bills he pulled from his pocket. Later, the bartender overheard defendant tell Spruill "he couldn't believe he got away with offing a nigger."	State v. Jones, 347 N.C. 193, 491 S.E.2d 641 (1997)
86.	The appellant's brother . . . testified for the defense . . . According to [brother] two to three days after the murder, Simmie Rice told him "we killed that nigger and your brother took the blame."	State v. Lee, 1997 WL 686258 (Tenn. Crim. App., Nov. 5, 1997)
87.	Benson Lewis [defendant] testified that . . . he thought they [the victims who were trying to steal his car] were trying to kill him because someone in the car said, "Hey, nigger," so he started shooting at the car and kept firing.	State v. Lewis, 955 S.W.2d 563 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
88.	Specifically, Crockett stated that when Benson forced the victim to have sex with Crockett, Benson hit the victim in the face with a gun and yelled, "Bitch you are getting ready to give my nigger some pussy"; Benson made a similar command when he forced the victim to have sex with defendant in the back seat of the car; when the victim failed to make moaning noises, Benson again hit her in the head with the gun and yelled at her to make moaning noises; later, when the car was parked on the deserted roadway, Benson dragged the victim out of the car by her hair and struck her in the head with his hand and the gun; Crockett and defendant also hit the victim with their hands; the victim fell into some mud by the curb, and Benson dragged her through the mud into the middle of the street; both Crockett and defendant told Benson, "come on let's go," but Benson said, "No I going to kill this bitch because of the Rodney King thing," and he shot her twice.	State v. Mason, 125 N.C.App. 216, 480 S.E.2d 708 (1997)
89.	. . . Mitchell stopped and said to Marcello "Who are you calling bums?" In response, Mitchell claimed Marcello called him a "nigger" and so Mitchell punched him.	State v. Mitchell, 1997 WL 209170 (Ohio App. 8 Dist., April 24, 1997)
90.	Been [guest at Loza's party] handed the gun to the defendant who handed it to Loza [racist host ordered AA to leave party for talking to white woman-shooter], saying "kill that nigger."	State v. Novak, 949 S.W.2d 168 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
91.	Counsel commendably concedes that if the defendant accompanied Been [party guest-accessory] to Loza's [racist host-shooter] apartment to procure a shotgun, returned to the scene of the fight with Been, received the shotgun from Been, and handed it to Loza, saying at the same time "kill that nigger," all with the purpose of bringing death to Gillespie [victim], there would be support for a finding of deliberation.	State v. Novak, 949 S.W.2d 168 (1997)
92.	Owsley [defendant] spoke directly to Iverson [victim], calling him "a thorough nigger" and saying that "you're [Iverson] begging for your life now, nigger."	State v. Owsley, 959 SW.2d 789 (1997)
93.	Mr. Duke [investigating detective] testified during Defendant's trial that Defendant told him that after Defendant returned home from his friend's house, he found a white man, wearing a tie and carrying a brief case, who knocked Defendant down and stated "[m]mm, mmm, two niggers in one day."	State v. Perry, 954 S.W.2d 554 (1997)
94.	The victim, Patrick Alley, was beaten to death in Newport, Tennessee . . . In the days preceding his death, he had pulled a gun on Woods and threatened to "kill all the niggers on the Hill [a black neighborhood in Newport]."	State v. Robinson, 971 S.W.2d 30 (1997)
95.	Defendant replied, "[g]o check your boy, you'll see what happened." The driver gave similar testimony, but stated that defendant said, "I just popped your nigger, go see."	State v. Stoudemire, 118 Ohio App. 3d 752, 694 N.E.2d 86 (1997)

Table A.1

Utterances Within the Synchronic Corpus Containing Nigger.

No.	Utterance	Case
96.	The possibility that the murder had been gang-related would have explained the brazen manner in which defendant carried out the act, and further explain his statements to the two men near the scene that they should "[g]o check your boy, you'll see what happened" and "I just popped your nigger, go see."	State v. Stoudemire, 118 Ohio App. 3d 752, 694 N.E.2d 86 (1997)
97.	. . . [Defendant] received information that [victim] was sitting outside an abandoned grocery store . . . [Defendant], along with his brother and two other accomplices, armed themselves with guns and confronted [victim]. [Defendant] asked him, "What's up now nigger?"	State v. Williams, 212 Wis. 2d 241, 568 N.W.2d 785 (1997), 1997 WL 289960
98.	Dr. Fox [plaintiff's psychiatrist] again examined plaintiff. He repeated what she had told him: . . .She told me that in the recent past, she saw a TV show in which they were discussing racial slurs and negative words and the terms nigger and jungle bunny were on that list.	Taylor v. Metzger, Supreme Court of New Jersey (A-9-97)
99.	At the post-conviction hearing, Attorney Parsons [defendant's trial counsel] testified that some time after voir dire but before the motion for new trial, he had a conversation with the assistant district attorney, who purportedly stated, "I hope they fry that nigger."	Thompson v. State, 958 S.W.2d 156 (1997)