Linguistic Bias in the Court System

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1 BACKGROUND

There is some important background information from the field of linguistics that is necessary to situate our study, its findings, and the implications of those findings. Linguistics, the scientific study of language, focuses on describing and understanding the structure of language both in a speech community and in the mind. Linguists do not take opinion or social evaluation as fact, and instead pursue the rigorous empirical study of language. This means that some linguistic findings contradict "common knowledge." Importantly, it is foundational to modern linguistics that no language variety is inherently more or less complicated, inherently more or less logical, or inherently better or worse than any other. It is also foundational knowledge that when a speech community speaks in a particular way – whether we are talking about pronunciation, grammatical relations, word choice, or other aspects of language – that it is unscientific to evaluate that language variety against the structure of another variety. In practice, this means not only that we do not consider Modern French "merely bad Latin" or modern American English a defective form of Old English. It also means that we do not consider regional or ethnic varieties of English "bad" versions of classroom English.

We do not deny that some language varieties carry prestige, and speakers of those varieties are treated with respect and assumed competence (for instance, the "posh" British accent normally referred to as

Received Pronunciation (RP)). However, it is the scientific consensus that such evaluations are social and historical, and are not inherently related to anything systematic about the language varieties themselves. For instance, many "nonstandard" varieties of English are stigmatized because they make use of "double negation" – what linguists call multiple negation or negative concord – and, the argument goes, this is illogical because "two negatives make a positive." However, in French, the language of diplomacy for centuries, and some would argue the language of thought, negative concord is obligatory and is understood to be a sign of its underlying logic.

Furthermore, there is no such thing as "speaking without an accent" or not speaking a dialect. Everyone has both a dialect (the variety of their language that they, and their speech community, speak), and an accent (the ways they produce and combine the sounds of their language). Accents and dialects can be associated, consciously or unconsciously, with positive and negative social evaluations that are not inherently linguistically valid.

Finally, languages are social and cultural artifacts, and are not biologically inherent. Any normal human child will acquire the language of their speech community: ethnically Han Chinese babies will speak Southern American English with an Arkansas accent if they are raised in Little Rock. There is no gene that ties language to ethnicity or race, and racial stereotypes have no bearing on linguistic fact.

2 AFRICAN AMERICAN ENGLISH

One dialect, often referred to as an ethnolect, is African American English (AAE; also called African American Language, Black English, etc.). African American English is a linguistic variety spoken by many, but not all African Americans who are descendants of enslaved Africans taken to the Americas. Not all Black people speak AAE, and not all people who speak AAE are Black. African **American English is a highly socially stigmatized language variety**, however, that stigma is not based in linguistic fact, as has been demonstrated by thousands of linguistic studies in the past 60 years (including the famous "African American English is not Standard English with Mistakes" by Geoffrey Pullum, and "The Logic of Nonstandard English" by William Labov). The stigma comes from the association of AAE with negative stereotypes about Black people, and specifically about the American descendants of enslaved African

people.

African American English is highly structured and systematic. It is rule-governed. The system of linguistic rules for African American English is different than that of what I prefer to call "classroom English." For instance, **African American English has a more complex grammatical system** of tense, aspect, and mood than classroom English (where tense and aspect refer to grammatical features relating to time and to whether an action is ongoing or completed, and mood refers to speaker evaluation of the sentence). AAE speakers can, in principle, make use of all of the tense, aspect, and mood marking of classroom English, but also have available to them grammatical markers of habituality (ongoing or habitual actions), remote perfect aspect (completed a long time ago), and more options for imminent or more distant future actions. **People who do not speak African American English and who do not have significant, long-term exposure to AAE speech communities, have been repeatedly shown not to understand these grammatical nuances** (for instance, John Rickford's work on *stressed BEEN* cited in Labov's *Language in the Inner City,* or Arthur Spears' work on *camouflage constructions* starting with "The Black English semi-auxliliary *Come*").

A short list of common grammatical features of AAE includes:

1. The optional deletion of conjugated be in certain contexts in the present tense:

    he workin' meaning "he is working" (compare against Arabic, Hebrew, Russian, Chinese, which also delete *be* in the present).

2. Habitual *be*:

    *he **be** workin'* meaning 'he is usually working,' or 'he works often.' (compare against Brazilian Portuguese, Chinese, and Zulu, which all have a habitual marker).

3. A remote perfect marker, usually called *stressed BEEN*:

    *I **been** told you that* meaning 'I told you that a long time ago' (compare against Yagua, Chichewa, and Zulu).

4. A more robust set of verbs for future action that encode gradations of future time as well as intentionality, including *gon', finna, tryna,* and *boutta.*

5. A discourse marker called preterite *had* that can indicate both time in a narrative and speaker orientation toward the discourse structure of the story, and which is distinct from the classroom English pluperfect:

   *I **had** went to the store when I saw him,* the most common interpretation being that he was seen at the store, not after leaving. That is "I went to the store and then saw him there").

6. Negative Auxiliary Inversion:

   Don't nobody tell me nothin' meaning "nobody tells me anything" and **not** "don't tell me anything."

There are many, many more such structures that are well described in the academic literature on AAE.

African American English comprises many different accents. There is not one "Black accent" and different geographic areas may be associated with very different AAE accents. There are some commonalities across regions, and many AAE speakers make use of distinctive prosody – rise and fall of the voice – however there is no single AAE accent.

African American accents are often very different from white accents in the same cities. As a result of the Great Migration, and of residential, educational, and professional segregation, working class Black accents are often very different from working class white accents, even when speakers are separated by mere blocks. This is particularly true of Philadelphia, where the Philadelphia AAE accent is dramatically different from a white working-class Philadelphia accent, and both are distinct from the newscaster accent perceived by many Americans as neutral. For a real-world example many people may be familiar with, compare Tina Fey's Philadelphia accent on SNL (dialed up to 11), with Kevin Hart's accent in his standup. They are both Philadelphia accents, but they are radically different.

3   THE STUDY

In our study of court reporter accuracy in the Philadelphia courts ("Testifying While Black: An Experimental Study of Court Reporter Accuracy in Transcription of African American English," published in *Language* in 2019), we sought to determine whether AAE speakers are always accurately transcribed. We chose

to study court reporters in part because they are trained to listen and trained to type faster than other courtroom actors, facilitating completion of the study. We do not believe there is any reason to think that court reporters are inherently more biased than other courtroom actors, nor is there any reason to believe that they contribute more than others to disparate outcomes. Indeed, we believe future research is desperately needed on lawyers, judges, and members of the public who have the potential to serve on juries.

Court reporters are certified at 95% or 98% accuracy, depending on the certifying body. However, they are trained on standard English, as spoken by highly educated lawyers, judges, and newscasters. Their day-to-day job requires them to transcribe a much broader range of accents and dialects. We chose to investigate whether they performed at the 95% accuracy mark when confronted with everyday, informal AAE.

We put together audio clips of native AAE speakers from West Philadelphia, North Philadelphia, Jersey City, and Harlem. The audio featured 13 different features of AAE like those mentioned above, and combinations of such features (e.g., *she always talkin' 'bout 'why your door always locked''*, which uses *talkin' 'bout* as a verb of quotation (here, analogous to *asking*, and deletion of verbal copula in the quoted question). The result was a survey instrument of 83 sentences with 9 different voices, randomized across speaker, gender, and grammatical feature.

We recruited 27 court reporters from the official Philadelphia court reporter pool (roughly 1/3 of the pool) and administered a test in which we played the audio for them at a comfortable, but loud, volume. We played a warning tone, followed by a second of silence, the audio, another second of silence, a repetition of the same audio, and ten more seconds of silence, for each sentence. We asked them to (1) transcribe what they heard, and (2) as best as they could, paraphrase into classroom English. We gave them unlimited time to edit and fix their transcriptions after the test. We also administered a brief demographic survey.

While we are aware that paraphrase is not part of their job, we were interested in the extent to which their ability to paraphrase what they heard, as a rough measure of comprehension, was related to the accuracy of their transcriptions.

4   FINDINGS

We found that no individual court reporter performed at or above 95% accuracy, no matter how accuracy was measured. Measuring by sentence, they performed on average at 59.5% accuracy. Measured by word – closer to how they are evaluated for their certification – they performed on average at 83% accuracy. **In other words, more than 1 in 3 sentences were transcribed incorrectly, and approximately 1 in every 5 words were transcribed incorrectly.**

Examining their paraphrases, we found that the majority of AAE grammatical features were not correctly understood. More importantly, their paraphrases often added violent, sexual, drug-related, or criminal nuances that were absent in the original utterances. For instance, one court reporter paraphrased "I was curious did his white friend call" as "did you get any cocaine or crack cocaine." Other examples included paraphrasing "he ain't workin, but he *be* working" – which had the intended meaning "he is not currently working, but he works a lot" – as "he sells drugs," and "is it a God above?" – a direct quote from a philosophizing teenager cited in Labov's 1968 interviews in Harlem, meaning "is there a God above?" – as "who is the boss of drug dealing?"

Incorrect transcriptions fell into two categories. Meaningless gibberish, and meaningful, but incorrect sentences. "It's a jam session you should go to," said by a trumpet player, meaning "there is a jam session you should go to" was paraphrased as "it's a shame, sexually, what you go through," and the paraphrase talked about prostitution. Many court reporters were uncomfortable with use of the *n-word*, and would either write it with a word final <r> (which often changes the meaning of who is referred to, see Jones & Hall's 2019 paper "Grammatical Reanalysis and the Multiple N-Words in African American English" in the journal *American Speech*), or chose to sanitize it – but in so doing changed who was being referred to (especially when speakers employed the first person construction *a n—a*. Compare against the construction "can you help a brother out," which is also grammatically third person but has first person meaning). "He don't be in that neighborhood" meaning "he is not usually in that neighborhood" was transcribed as "he'll be in that neighborhood," completely reversing the meaning. **In fact, fully 31% of the transcribed sentences changed the who, what, when, where, or force of a sentence, effectively, changing an alibi**. The gibberish that made it into what would have been the official court record was

not just steno untranslates, either. "Mark sister friend been got married," meaning "Mark's sister's friend got married a long time ago" was transcribed by one as "wallets the friend big." "He been don't eat meat" (perhaps because he went vegan years ago) was transcribed as "he's *bindling* me."

5   IMPLICATIONS FOR BIAS

Importantly, the court reporters did not profess any overt prejudices, and instead explicitly voiced concern for Black people in the criminal justice system in Philadelphia. Many expressed sentiments along the lines of "it's not my fault if they can't speak right" and felt that their hands were tied because it is not up to them to make the defendant sound better. Some expressed surprise and discomfort with the fact that "even some of the judges speak like that" and went on to say that they just write it down exactly as said, even if it's unflattering for the judge. The irony is that they did not consistently write exactly what was said at the level of their professional certification. There was strong evidence for unconscious bias against AAE speakers, but no evidence for intentional discrimination.

Black court reporters did not all significantly outperform white court reporters. Instead, there was an important interplay between competency in AAE, which some, but not all of the court reporters had some degree of, and linguistic ideologies about AAE. There is no reason to think that a Black court reporter would necessarily outperform a white court reporter if they do not speak AAE, or hold negative views about AAE and those who speak it.

We also found in an earlier pilot version of the study that lawyers performed similarly poorly, including defense lawyers. The best performer on this test, by far, was the lawyer who was a native AAE speaker from Philadelphia and who worked primarily as a defense lawyer. We believe this was a combination of familiarity with the accent and grammar, and a lack of negative linguistic and social ideologies about AAE and its speakers.

Our research fits into a broader stream of research that suggests AAE is discriminated against in all domains, not just the legal domain. There is ample evidence that AAE is discriminated against in legal domains (for an overview, see Rickford & King's 2016 paper "Language and Linguistics on Trial" in the journal *Language*). In recent years, judicial examples abound: one judge consulted urban dictionary to

determine whether "he finna shoot me" was an excited utterance, after being unable to ascertain the meaning of finna or the tense of the utterance. In another, a man was denied legal counsel after demanding "I want a lawyer, dawg" on the grounds that canine lawyers do not exist. But linguistic discrimination against AAE speakers also occurs in housing (where recent studies demonstrate that landlords and real estate agents will behave very differently depending on the perceived race of the person inquiring about housing, often engaging in illegal steering), in employment, in healthcare, and especially in education.

6   POLICY RECOMMENDATIONS

Because linguistic discrimination against AAE and bias against AAE speakers happens in many domains and results in disparate outcomes across these interrelated domains, policy changes must take into account the underlying issue. To that end, I recommend:

- **Court reporter training and certification should reflect the varieties of English they are likely to encounter in their daily jobs** and should equip them to navigate transcribing multiple "nonstandard" accents and dialects. In Philadelphia, this should start with AAE, but across the state different locales may have different priorities.

- **The linguistic basics of dialect should be incorporated in K-12 education.** The goal should remain teaching students the highest standards of academic language use, but should also reflect the scientific study of language and the validity and structure of the diversity of dialects in the state, and in the US.

- **Policy-makers should consider strengthening legal protections against linguistic discrimination**, especially where language is used as a proxy for a protected class (e.g., race).