LANGUAGE-BASED BIASES IN LEGAL CONTEXTS

Prof. Nathan Sanders, University of Toronto
ezCPD.ca webinar, 28 July 2021

UNIVERSITY OF TORONTO

LANGUAGE VARIATION

Languages naturally vary: individual bodies move differently, physical reality is never perfect, etc.

- *Successful communication must tolerate variation.*

Groups of people naturally shift their language to match each other, even within a single conversation, but definitely over long periods of contact, especially for children acquiring a language.

- *As more people shift towards a particular linguistic pattern, it gets entrenched within that social group.*

LANGUAGE VARIATION

Because certain social groups develop certain linguistic patterns, we begin to associate those patterns with those groups.

• *Language can be used to efficient communicate social identity and in-group and out-group membership.*

But this can also be problematic...

LINGUISTIC PRESTIGE & STIGMA

Some social identities are prestigious, so their linguistic patterns carry that prestige and often become standardized.

• *They are taught in schools.*
• *They are used as the basis for literary languages.*
• *They may even be officially codified by language academies: Académie française in France, REA in Spain, etc.*

LINGUISTIC PRESTIGE & STIGMA

Conversely, the linguistic patterns of stigmatized social identities end up becoming stigmatized.

This can up creating an unjust cycle of continued discrimination against certain social identities, using language as a proxy, even long after explicit targeted discrimination against those identities is not possible (e.g. *Charter of Rights and Freedoms*).

LINGUISTIC PRESTIGE & STIGMA

For example, people living in poverty face a variety of obstacles to education, so they must work harder to learn the same material as their affluent peers do.

- *less money to hire tutors*
- *need to spend more time helping family (less study time)*
- *less comfortable home environment*
- *less food security*
- *less access to quality healthcare*
- *less safe neighbourhood*
- *all of which increases psychological burden*

LINGUISTIC PRESTIGE & STIGMA

Additionally, coming from a stigmatized social group means their linguistic patterns are stigmatized and even farther away from the prestigious standardized form. So they have to work harder to the learn the differences and become fluent.

With a great enough difference, being smarter and working harder is often not enough to change linguistic patterns enough to convincingly match the standardized form, making them less hirable for higher paying jobs, less likely to get into top-tier universities, etc.

LINGUISTIC PRESTIGE & STIGMA

The pernicious twist here is that language proficiency on its own can be then used to as a supposedly objective measure of education, intelligence, or work ethic, while in reality, it is just a different way to discriminate against groups who are already marginalized.

This can be largely unintentional! Well-intentioned people may use language as a decision tool, wrongly thinking it is objective and not rooted in other forms of discrimination.

PERCEIVED INTELLIGIBILITY

Many studies have shown an effect of racialization and perceived intelligibility (Rubin 1992, Kang and Rubin 2009, etc.).

For example, Babel and Russell (2015) found that when recordings of native speakers of Canadian English are paired with their faces versus heard as audio-only, the Chinese Canadians are rated *less intelligible and more accented when their faces are visible*.

This effect doesn't happen for White Canadians.

PERCEIVED INTELLIGIBILITY

This has many potential consequences in legal contexts, because believing that someone is less intelligible may lead to misunderstanding their speech, because we paradoxically put in less effort into processing less intelligible speech!

- *juries may "misunderstand" witnesses or recorded evidence*
- *court reporters may "misunderstand" testimony*
- *witnesses may recount "misunderstood" conversations*
- *police may act more aggressively due to a "misunderstanding"*

PERCEIVED CREDIBILITY

In addition to perceiving certain ways of speaking as less intelligible, we may also find those speakers less credible (see Rickford and King 2016 for discussion of multiple cases, including the following).

In the 2013 trial in the States of George Zimmerman, who was accused of second-degree murder for killing Trayvon Martin, a key witness was Rachel Jeantel, Martin's close friend, who he was on the phone with while being stalked and attacked by Zimmerman.

PERCEIVED CREDIBILITY

Jeantel's six hours of testimony was a significant portion of the prosecution's case. She reported on events as she had heard them over the phone, but her testimony, delivered in African American English, was ultimately disregarded by the largely White jury, and Zimmerman was acquitted.

One juror said she found Jeantel "not credible", and another said that Jeantel's testimony was not brought up at all in the 16+ hours of deliberation and that it played no role in the verdict.

HOUSING DISCRIMINATION

A related effect is reported in much work on housing discrimination, as in the pioneering work of John Baugh (reported in Purnell et al. 1999).

Baugh is fluent in three different accents of American English (White, Black, and Chicano), and used all three with the same script to inquire over the phone about advertised housing in different areas of the San Francisco Bay area in California.

HOUSING DISCRIMINATION

Overall, when using White-accented English, Baugh got roughly a 60–70% response rate across the board, in all five neighborhoods.

But with his Black and Chicano accents, the response rate was as low as 20–30% in predominately White neighbourhoods.

HOUSING DISCRIMINATION

A similar effect can be seen just in what name an applicant has.

Hogan and Berrie (2011) performed a similar experiment in Toronto, but with email instead of phone calls, using identical wording to inquire about advertised housing, just changing the names of the sender, using stereotypically White, Black, East Asian, Arabic, and Jewish names.

HOUSING DISCRIMINATION

They found that nonresponse and additional rental conditions (asking for employment status, a deposit, etc., not required of other senders) were both common forms of discrimination.

White and Jewish names had a higher response rate and fewer additional rental conditions than other names, and Black and Arabic names faced the most discrimination of the five groups, with Asian names in the middle.

HOUSING DISCRIMINATION

Thus, based on language or even just a name suggesting a language, prospective tenants may face unjust barriers to housing.

Though this is not directly a legal context, it certainly has legal implications for housing discrimination.

COURT REPORTING

Another legal context where language matters is transcriptions made by court reporters, which are important archives of legal proceedings serving a variety of purposes.

Court reporters in the States and Canada are certified at high accuracy rates (95–98%), but in a study by Jones and colleagues (2019), court reporters in Philadelphia performed much worse with African American English, around 60% accuracy for sentences, with no reporter in the study getting above 80%, and one getting 18%.

COURT REPORTING

Note that this study was performed in ideal experimental conditions, including allowing for repetition of the sentences.

Even just looking at individual words instead, their accuracy was only about 83% on average, ranging from a low of 58% to a high of 91%, all still below the required minimum.

The errors altered the fundamental meaning of over 30% of the sentences.

COURT REPORTING

For example, "he don't be in that neighbourhood" was mistranscribed by multiple reporters as "we going to be in that neighbourhood".

Note that even correctly transcribing it may still result in a wrong interpretation: "he don't be" is a special construction in African American English called a habitual. This means he is not *usually* in the neighbourhood, but many people unfamiliar with the structure of AAE may wrongly think it means he isn't *currently* there.

COURT REPORTING

Other errors included utter nonsense, presumably under the notion that transcribing *something* was better than nothing. An example of this is transcribing "Mark sister friend been got married" as "wallets is the friend big"(!!!).

Again, someone unfamiliar with AAE might not understand the original, even if transcribed correctly. The possessive marker -*'s* is often left off in AAE, and *been* here mean a long time ago, thus, Mark's sister's friend got married a long time ago.

COURT REPORTING

In addition to the numerous errors they made, the court reporters also revealed troubling attitudes about the speakers, either in their paraphrases (often interpreting criminality where none existed in the original) or in their comments about the speakers (for example, "The tenses drive me crazy!", "What does that mean?", and "I can't stand when people talk like that" for a language they transcribe every day and are supposed to be competent with and professionally neutral towards).

AMBIGUITY & PRIMING

Consider this video with ambiguous audio, posted on TikTok by user @ksstiles1116 (Kegan Stiles).

www.tiktok.com/@ksstiles1116/video/6970367683615395077

If you are primed to believe something (such as a suspect being guilty, a witness being unreliable, etc.), ambiguous language may be misunderstood to support your beliefs.

POLICE POLITENESS

In addition, we also find that people may change their own language depending on who they are speaking to, in ways that may be based on racial or other biases biases.

For example, in a study of police body cam footage, Voigt and colleagues (2017) found that police use less respectful language with Black drivers than White drivers in routine traffic stops, which may have significant consequences for the interaction (greater likelihood of escalation/aggression, etc.).

ISSUES FOR THE DEAF

Beyond racialized accents, there are other very different ways in language matters in legal contexts.

For example, although Deaf people are allowed to serve on juries in Canada (though only since 1998), they are still underrepresented on juries, often being dismissed because they are incorrectly perceived as mentally unable to carry out their duties, with deafness being equated to lack of intelligence (Paget 2020).

ISSUES FOR THE DEAF

Although Deaf people are ordinarily provided with court interpreters for American Sign Language or Langue des signes Québécoise, some Deaf people do not use those languages, such as the defendant in *R. v. Suwarak* (1999) in Nunavut, who only knew Inuit Sign Language, and no interpreters existed at the time; after a two-year delay due to further investigation of the linguistic situation, the man entered a guilty plea (MacDougall 2001).

ISSUES FOR THE DEAF

There are many other issues that arise for Deaf people in legal contexts (barriers to communicating with the police, lack of specialized legal training for interpreters, access to video calls in prison, etc.), complied in an extensive 2018 report by Russell and colleagues from the Canadian Association for the Deaf at:

https://sencanada.ca/content/sen/committee/421/RIDR/Briefs/CanadianAssociationoftheDeaf_e.pdf

THANK YOU!

REFERENCES

Babel, Molly & Jamie Russell. 2015. Expectations and speech intelligibility. *Journal of the Acoustical Society of America* 137. 2823–2833.

Hogan, Bernie & Brent Barry. 2011. Racial and ethnic biases in rental housing: An audit study of online apartment listings. *City & Community* 10. 351–372.

Jones, Taylor, Jessica Rose Kalbfeld, Ryan Hancock, & Robin Clark. 2019. Testifying while black: An experimental study of court reporter accuracy in transcription of African American English. *Language* 95. e216–e252.

Kang, Okim & Donald L. Rubin. 2009. Reverse linguistic stereotyping: Measuring the effect of listener expectations on speech evaluation. *Journal of Language and Social Psychology* 28. 441–456.

REFERENCES

MacDougall, James C. 2001. Access to justice for deaf Inuit in Nunavut: The role of "Inuit sign language". *Canadian Psychology* 42. 61–73.

Paget, Shoshana. 2020. A right to civic duty: Jury duty for the Deaf. Online. http://lawandthesenses.org/probes/a-right-to-civic-duty-jury-duty-for-the-deaf/

Purnell, Thomas, William Idsardi, & John Baugh. 1999. Perceptual and phonetic experiments on American English dialect identification. *Journal of Language and Social Psychology* 18. 10–30

Rickford, John R. & Sharese King. 2015. Language and linguistics on trial: Hearing Rachel Jeantel (and other vernacular speakers) in the courtroom and beyond. *Language* 92. 948–988.

REFERENCES

Rubin, Donald L. 1992. Nonlanguage factors affecting undergraduates' judgments of nonnative English-speaking teaching assistants. *Research in Higher Education* 33. 511–531.

Russel, Debra, Cathy Chovaz, and Patrick Boudreault. 2018. Administration of justice: The experiences of Deaf, DeafBlind, and deaf people with additional disabilities in accessing the justice system. Canadian Association for the Deaf. Online. https://sencanada.ca/content/sen/committee/421/RIDR/Briefs/CanadianAssociationoftheDeaf_e.pdf

Voigt, Rob, Nicholas P. Camp, Vinodkumar Prabhakaran, William L. Hamilton, Rebecca C. Hetey, Camilla M. Griffiths, David Jurgens, Dan Jurafsky, & Jennifer L. Eberhardt. 2017. *Proceedings of the National Academy of Sciences* 114. 6521–6526.