Language and Linguistics in the Courtroom: African American Vernacular English and Tipping the Scales of (In)Justice

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> "EQUAL JUSTICE UNDER LAW" - *These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution.*
>
> (Supreme Court of the United States, 2019)

Abstract

The United States' legal system is predicated on the ideals of seeking truth, equality, and justice. However, the truth is that not all varieties of U.S. English are 'created equal' in the eyes of America's courtrooms. This disparity can lead to a miscarriage of justice, with effects that put speakers of vernacular English 'on trial'. This essay examines existing research and consequential case studies of linguistic discrimination. It focuses on how unconscious biases affect the courtroom's key members (e.g. judges, jurors, court reporters) when witnesses or defendants speak a variety other than Standard American English (SAE)—specifically, African American Vernacular English (AAVE). In particular, it shows that, when key members of the court have these misperceptions or negative attitudes toward speakers of U.S. English varieties deemed non-standard, they may misinterpret, miscomprehend, or mistranscribe what's said, which may lead to decisions with major negative consequences. Lastly, this study highlights and proposes potential solutions that could be implemented to reduce linguistic discrimination when AAVE is spoken in the courtroom.

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My heartfelt appreciation to my family and loved ones for their unwavering support, unconditional love, and beautiful models of hope, determination, commitment, and resilience is beyond compare. I stand on your shoulders of service and selfless sacrifice, and I hope to make you proud.

Contents

1 Introduction

1.1 Framework: "*Equal Justice Under Law*"

As the first 10 Amendments to the Constitution of the United States of America, The Bill of Rights details the guaranteed rights of American citizens in connection with their government, including individual freedoms of religion, press, and speech. The rules governing the due process of law are also enumerated. There is only one right that is repeated twice in The Bill of Rights — the right to a trial by an impartial jury in the Sixth Amendment and the right to a jury trial in the Seventh Amendment (National Archives, 2016). These rights are fundamental under the Constitution and provide an integral part of this essay's framework and purpose.

> "Amendment VI
>
> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.
>
> Amendment VII
>
> In Suits at common law [...], the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."
>
> (National Archives, 2023)

With a Bill of Rights framework, the legal system in a courtroom is predicated on the ideals of seeking truth, equality, and justice. However, the truth is that all varieties of American English are not created equal in the eyes of America's courtrooms. In my

research, I explore the influence on the courtrooms' key players like judges, jurors, court reporters, and attorneys, if the witnesses or the defendants speak in a dialect or variety of Standard (or Mainstream) American English (SAE)[1], specifically, if African American Vernacular English (AAVE or AAE)[2] is spoken. In addition to the influence of AAVE on these key players, I then want to examine the impact of this influence on the resulting outcomes of these legal cases or legal studies where AAVE was spoken. Since most of the case evidence and information are presented orally, a significant linguistic disparity can lead to a miscarriage of justice, with effects that put speakers of vernacular English, specifically often AAVE on trial, and tip the scales of injustice.

1.2 My '*What*?' and '*Why*?'

1.2.1 My 'What?'

For my senior project, I focus on the sociolinguistic topic of grammatical diversity within U.S. English, specifically spoken AAVE and linguistic discrimination against AAVE in our country's legal system. In particular, my study includes some of the morphology (word formation) and syntax (sentence structure) of these linguistic differences, as well as the resulting attitudes, unintentional biases, and prejudices against speaking AAVE in the courtroom. When there is a lack of linguistic knowledge accessible and applied in the courtroom, it can have life-or-death consequences.

1.2.2 My 'Why?': Its Importance

Researching the impact of language variation in the legal system matters. Specifically, understanding these differences is important to linguistics and to human knowledge more broadly because it then gives us an opportunity to recommend and provide solutions to

[1] Throughout this thesis, Standard American English or its acronym SAE is primarily used and interchanged as the encompassing or synonymous term that covers other linguistic names like Mainstream American English (MAE) and General American English (GAE), etc.

[2] Throughout this thesis, African American Vernacular English or its acronym AAVE is primarily used and interchanged as the encompassing or synonymous term that covers other linguistic names like African American English (AAE), Standard African American English (SAAE), Black [American] English, etc.

reduce the widespread discrimination, regardless if the linguistic discrimination is systemic or intentional. Conducting this language variation study from the lens of morphosyntax and sociolinguistics is my call to action to help highlight possible solutions. If reasonable and practical solutions are implemented, the courts can perhaps move closer to a more just, accessible, fairer, and inclusive legal system regardless of the U.S. English variety or vernacular that is spoken.

1.3 Essay Goals

1.3.1 *Objectives*

Examining existing research and consequential case studies of linguistic discrimination, this essay's goals are threefold. Firstly, it focuses on the influence on some of the courtroom's key members (e.g. judges, jurors, and court reporters) when witnesses or defendants speak a variety other than SAE — specifically, AAVE in the courtroom. Second, this essay shows that, when key members of the court have negative attitudes toward speakers of non-standard varieties of English, they may misinterpret what is said, and this may lead to decisions with extreme negative consequences. Lastly, this study's goal is to explore prior research in order to highlight potential solutions that could be implemented to reduce linguistic discrimination when AAVE is spoken by witnesses or defendants in the courtroom.

1.3.2 *Achieving those goals*

The general organization of my senior linguistic research thesis includes an introduction, background on language in America, cases of linguistic discrimination in four major areas of impact (i.e. witness, judge, juror, and court reporter), reducing linguistic discrimination, and potential solutions. My primary approach to answering the key research question involves in-depth reading and research, refining the questions, summarizing the societal impact, and presenting possible solutions identified by other researchers and my own. My senior study does not include an experiment, so Yale's detailed experiment protocol and Institutional Review Board (IRB) approval will not be required.

To frame the study's inquiry, I provide an overview of AAVE as a variety of English and outlining some of the key aspects and features of this vernacular English language, including some of the common morphological and syntactic features. As additional background, it will be important to lay out the common misperceptions and stigmatization about spoken AAVE in America and how these biases transfer into the courtroom. Additionally, to better understand the topic, I research two areas of this issue: (1) in existing legal cases, and, (2) in linguistic experimental studies. The actual legal cases show the different impact that judges, jurors, and court reporters have on court cases when the witness or defendant speaks AAVE and is misunderstood. While the experimental linguistic studies provide data on unintentional biases about AAVE and its speakers by these key courtroom players. Consequently, analyzing the data and assessing the results will hopefully provide an opportunity to provide possible solutions to reduce the sociolinguistic problem of potential negative impacts on AAVE speakers who are witnesses or defendants in court cases.

One of the most in-depth case studies of linguistic variation in the US courtroom is Rickford and King (2016). They specifically examined how, in the 2013 prosecution case against George Zimmerman (the defendant charged with murdering teenager Trayvon Martin in 2012), the prosecution's key witness [3]Rachel Jeantel's way of speaking — with "the grammar of AAVE, with some resemblances to [Caribbean Creole English (CCE)], if not influences from, CCE varieties" — impacted the outcome and verdict in the case (Rickford & King, 2016:957). Additionally, Kurinec and Weaver (2019) show that the use of AAVE influences juror decision-making. Further, Jones et al. (2019) examined highly-skilled, experienced Philadelphia court reporters' comprehension and transcription accuracy when AAVE was spoken, which fell far below the expected 95%-98% certification standard. Alger (2021) argues that speech transcription of spoken AAVE is a barrier to justice. Lastly, other research by Altman (2022), Donald et al. (2020), and Harvard Law Review (2023) examine judicial accountability, juror accommodations, and the results of implicit bias in the courtroom, especially by judges who have extensive impact on everyone involved in the judicial process. More in-depth case studies are needed to better understand the extent of

[3] The primary witness Jeantel was 19 years old at the time of the referenced 2013 criminal case.

the impacts when AAVE is spoken by witnesses and/or defendants in U.S. courtrooms to identify and implement viable solutions to reduce linguistic discrimination.

2 African American English Overview

2.1 What is it?

There are at least three components to all languages which are put together, including the language's vocabulary (lexicon), sound system, and system of grammar (Kiesling, 2019:10). For decades, linguists have studied and repeatedly observed that the grammar of African American English (AAE) and its varieties (including African American Vernacular English (AAVE)) have these three components and are systematic. Understanding that the grammar of AAVE has patterns, rules, and structure is crucial to address the stereotypes and stigmatization of AAVE as a 'grammatically-incorrect Standard English' (Pullum, 1999:39-41). In The Language and Life Project at North Carolina State University's 2017 documentary "Talking Black in America," several linguists discuss the misperception of African American English as being substandard English with mistakes. This misperception is based on people's internal socialization that Walt Wolfram simplifies as people believing "[if] it's not standard English, it's wrong" (Wolfram et al., 2017)[4]. Wolfram corrects this persisting mischaracterization, and states that "[language] itself is always right because there's always a systematicity, a patterning to it" (Wolfram et al., 2017)[5]. On the conception that AAE is not systematic, Arthur Spears clarifies, "[all] stigmatized languages usually have this false reputation of having no structure or having no grammar" (Wolfram et al., 2017)[6]. To correct this common misunderstanding in America, Sharese King explains that AAE "is not random. People are not making mistakes; people are not confused about a rule. [People] are governed by a different set of rules" when speaking AAE (Wolfram et al., 2017)[7]. AAE and its varieties have a lexicon, sound system, and system of grammar.

[4] (Wolfram et al., 2017 10:55-11:04).
[5] (Wolfram et al., 2017 11:13-11:20).
[6] (Wolfram et al., 2017 11:20-11:30).
[7] (Wolfram et al., 2017 11:53-12:04).

In language, we use words and grammar to create categories. Similarly, in society, people categorize themselves and each other by using various social, economic, and demographic factors, including: race, ethnicity, age, gender, occupation, class, and even, what kind of car the person drives, and "status get[s] attached to them" (Kiesling, 2019:59). In the U.S., Standard American English is deemed to have status and prestige while other varieties like AAVE are stigmatized. Under the "consensus model of social class, [people] value the linguistic usages of upper-class groups more highly than the vernacular language varieties associated with lower-class groups" (Wolfram & Schilling, 2006:161). Additionally, instead of other English varieties, SAE is viewed as more appropriate to use in conventional establishments like school and workplace settings.

Conversely to SAE's prestigious status, AAVE is often negatively referred to as being mere 'slang,' Wolfram and Schilling (2006) define slang as terms with a group of characteristics (instead of one criterion). The set of traits of slang include its: 1) informality; 2) typical reference to a group outside the general adult population (such as special in-groups like ethnic minority group, teenagers, or other close peer groups who cultivate the terms for their in-group status); 3) usage as a special type of synonym that defies proper behavior deliberately; and 4) typical brief lifespan. Slang are often regularly-used words given new meanings like *sick* and *ill* (which are already standard adjectives in English) gaining the additional meaning of "really good" (Wolfram & Schilling, 2006:65). The characterization of AAVE as equivalent to slang is incorrect. In the 1999 edition of *The Workings of Language*, Pullum (1999) examines this important dialect of English and challenges the general American English comfort zone by helping us to understand that "AAVE is not 'Standard English with mistakes'" (Pullum, 1999:58). Specifically, prompted by years of backlash of negative responses to a 1996 New York Times editorial, Pullum dispels myths around AAVE and the differences between slang and language. Compelled by the editorial news report about the Oakland school board declaring that "black slang is a distinct language'", Pullum (1999) enlightens readers that AAVE and slang are not synonymous (Pullum, 1999:40). Unlike AAVE, slang does not have a grammar of its own. Also, slang represents an everyday word or phrase connected to a particular subculture community (Pullum, 1999:40). The misconception persists today that AAVE is the equivalent

of “grammatically incorrect Standard English,” or the harmful, prejudiced notion that AAVE is “mere street slang used by thugs and criminals” and similarly ignorant statements. Pullum enlightens us that AAVE is not “Standard English with mistakes” (p. 40). Specifically, the primary reason people view AAVE as such is “its close relation to another language of much higher prestige” (Standard English) and negative systemic societal attitudes toward a minority community that uses it (Pullum, 1999:39) — however, AAVE (like any other English dialect) is its own English with its own fully-formed grammar and syntax, a fact that differentiates AAVE (and, in fact, any dialect) from being merely ‘all just slang’. Even though AAVE is systemic with its own structure, grammar and syntax, language discrimination against AAVE continues today.

Green (2002) provides further insight into understanding AAVE with focus on this language system’s syntactic components that show the manner in which words are arranged to create sentences. Some of the most commonly-known features of AAVE are its syntactic properties, the aspect of the language system focused on how people put words together to form sentences (Green, 2002:34).

2.2 Syntactic properties

The below section overviews some examples of AAVE’s distinctive syntactic properties, inclugin multiple negation, negative inversion, and habitual *be*, which illustrate linguistic differences between AAVE and SAE. Some of these examples occur in the thesis’s cases of linguistic discrimination. Specifically, to illustrate and provide a better understanding of AAVE, an overview of some linguistic features common to this variety might include negative concord, negative inversion, and habitual *be*.

‘Focusing on the negative’: AAE & features of negation

Negative concord / Multiple negatives

The feature of “negative concord,” sometimes simply referred to as “double negatives” or multiple negatives, arises when multiple instances of negation within an utterance collectively work together to function as merely a single instance of negation of that

utterance (Matyiku, 2011). The phenomenon of negative concord is used in different varieties of English, but is commonly associated with AAE and Southern regional English (Wolfram & Schilling, 2016).

For example, as explained by Green (2002) in reference to AAE, someone might say:

(1) "I **don't** want **nothin'** to do with it."
I don't want anything to do with it.

And, another somewhat-common double negation by some speakers of AAE is illustrated in the following examples:

(2) "Nothing on earth can't stop her."
Nothing on earth can stop her.

(3) "I don't need no help."
I don't need any help.

Therefore, in AAE, these negative elements do not provide more negative meanings to these sentences or in utterances with multiple negations.

Negative inversion

The feature of "negative auxiliary inversion" occurs when a modal verb or auxiliary verb which has been negated (usually by being suffixed with *-n't*) moves its location to be before an indefinite subject — in a (non-interrogative) negative utterance that is clearly evident in AAE speech throughout the United States (Matyiku, 2011). Further, the negative inversion property is exhibited in speech and literature of both AAVE and Southern white vernacular English (SWVE) (Salmon, 2018:404). For many speakers, it is common for negative auxiliary inversion to show up in conjunction with negative concord, as in a sentence such as:

(4) "Can't nobody figure out what they're doing."
Nobody can figure out what they're doing.

However, negative auxiliary inversion in AAE can *only* occur if negative concord is also present, so a sentence such as:

(5) "(*)Don't anybody break up a fight."
Nobody breaks up a fight.

would be ungrammatical in AAE (Matyiku, 2011).

Habitual *be*

The verbal marker '*be*', indicating an event's habitual occurrence, is a common AAVE syntactic feature. Often, non-AAVE speakers use examples of habitual *be* to make derogatory comments about AAVE and to try to illustrate that AAVE speakers are uneducated or their speech is illogical (Green, 2002:35). However, in some dialects of English such as AAVE, the word "*be*", according to meaning #B1f in the *Dictionary of Regional American English*, is often used in its unconjugated form "to signify habitual or repeated action, or to refer to continuous actions or usual conditions" (Cassidy & Houston Hall, n.d.). This habitual *be* is used in AAE to refer to something that one habitually or regularly does (or hyperbolically, something that one "is always doing") — as opposed to "is", "are", and "am" in SAE, which (when preceding a verb in its "-ing" form) describe something that one *is doing currently*.

Jackson and Green (2005) published findings from a study they conducted about children's comprehension of "habitual *be*" (aspectual *be*), which is a common syntactic feature in AAE speech. In their study, there were 55 children who were either 5 or 6 years old at the time, who were typically-developing and raised in similar working-class households in two states in America's northeast. The children's primary language/dialect of either SAE or AAE determined the subject groups. While race was not a criterion for being selected into the study, all the AAE speakers were black and all the SAE speakers were white. Jackson and Green (2005) hypothesized that children who understood the auxiliary *be* and aspectual (habitual) *be* would be able to look at illustrations and select the correct answers to questions that utilized and corresponded to those verb forms (Jackson & Green, 2005:240-241).

In one part of their study, they showed various children (37 AAE-speakers, 18 SAE-speakers) an illustration involving kid-familiar characters from *Sesame Street* then

asked questions about the image. In the illustration, Cookie Monster (a character known for constantly consuming cookies) is sick in bed without any cookies. Elsewhere in the drawing, the character Elmo can be seen eating cookies.

Overall, on average in the Jackson and Green (2015) study:

- When asked an auxiliary *be* comprehension question, "Who is eating cookies?", the participants (AAE-speakers and non-AAE-speakers) correctly selected Elmo, the only one currently eating cookies.

However,

- When asked an aspectual *be* comprehension question, "Who ***be*** eating cookies?", the non-AAE-speakers selected Elmo — but the AAE-speakers correctly selected Cookie Monster, who is always (habitually) eating cookies (Jackson & Green, 2015).

In the Jackson and Green (2005) study with multiple variables, there was a statistical difference between the subject groups on one of the six types of questions — the habitual / aspectual *be* form of the question, *Who **be** eating cookies*?. The significant difference was that the children who primarily spoke AAE were able to correctly understand and interpret the habitual meaning of aspectual *be* substantially more often than the children who spoke SAE. This result showed that AAE-speaking children were more likely to correctly answer the habitual *be* question that is grammatical in their variety of English. However, the SAE-speaking children were not likely to correctly respond to a question that was ungrammatical in their variety of English (Jackson & Green, 2005). Meanwhile, the auxiliary *be* question ("Who is eating cookies?") is grammatical in both AAE and SAE, a likely explanation of why the children in both subject groups responded similarly and correctly to this question.

2.3 Phonological differences

Testimonies transcribed in a courtroom matter and become the official court record, which underscores the significance of understanding witness and defendant testimony. As discussed later in this thesis, accurately comprehending and transcribing spoken AAVE are

important to addressing and potentially resolving some of the issues related to linguistic differences. Therefore, for better context, Table 1 provides some phonological examples of how some words may be pronounced by a speaker of AAVE and how these words sound.

Table 1: Examples of pronunciation differences between SAE and AAVE

SAE	**common AAVE pronunciation**	**+ phonetic transcription**
a. 'thing'	thing	[θɪŋ]
b. 'think'	think	[θɪŋk]
c. 'these'	**d**ese	[diz]
d. 'that'	**d**at	[dæt]
e. 'bath'	ba**f**	[bæf]
f. 'with'	wi**f**, wi**t**	[wɪf], [wɪt]
g. 'month'	mon**t**, mon**f**	[mʌnt], [mʌnf]
h. 'Bethlehem'	Be**f**lehem	[bɛfləhɪm]
i. 'bathe'	ba**v**e	[bev]
j. 'smooth'	smoo**v**e	[smuv]
k. 'mother'	mo**v**a	[mʌvə]

-(Green, 2002:118) [order of columns rearranged]

Green (2002) examines established phonological patterns that commonly occur in AAE — including the production of [t]/[d] and [f]/[v] sounds in words that in SAE would usually be pronounced with the interdental fricatives [θ] (the voiceless "th" sound in the word "thing") and [ð] (the voiced "th" sound in SAE in the word "this").

By comparison within this sample group of words:

- Words (a) and (b) are pronounced the same in AAE and SAE.
- Words (e) and (h) are often pronounced with [f] (and not [θ]).
- Words (f) and (g) are often pronounced with either [f] or [t] (and not [θ]).
- Words (i), (j), and (k) are often pronounced with [v] (and not [ð]).
- Words (c) and (d) are often pronounced with [d] (and not [ð]).

Understanding some of the common phonological differences between AAE and SAE and how words are pronounced, may help identify solutions for linguistic disparities in the courtroom.

2.4 Grammar of different AAVE varieties

The grammar of AAVE has major structures to it, including structures related to verb phrases, negation, nominals, and question formation. With this essay's focus on AAVE in the courtroom, linguistic discrimination against AAVE and its speakers, and potential solutions to reducing that discrimination — it is helpful to have a visual reference to the grammar of urban AAVE and other varieties of English, including European American vernaculars (EAVs) in the U.S.. Specifically, looking at the grammar of AAVE from three major perspectives in the tables below, respectively: 1) new and intensifying structures in urban AAVE, 2) receding urban AAVE features, and 3) stable urban AAVE features with a solid check mark ✓ indicating the feature's frequent presence, while a check mark within parentheses (✓) means the feature has an infrequent presence (Wolfram, 2000:126). Sociocultural centers for language change are occurring in cities and diffusing these changes from urban to rural areas, so it is important to look at the grammar structures of urban AAVE as a benchmark in comparison to others. The grammar structures that are emerging or increasing in usage in urban AAVE are show in Table 1.

Table 1. New and intensifying structures in urban AAVE

Structure	Urban AAVE	Rural AAVE	Earlier AAVE	Southern EAV	Northern EAV
habitual *be* + v-*ing* e.g. *I always be playing ball*	✓	(✓)			
intensified equative *be* e.g. *She be the diva*	✓				
preterit *had* + V e.g. *Then had tripped*	✓	✓			
resultative *be done* e.g. *She be done had her baby*	✓				
indignant *come* e.g. *They come talkin' that trash*	✓				
-3rd sg. -*s* abs e.g. *She run everyday*	✓	✓	✓		
ain't for *didn't* e.g. *I ain't go yesterday*	✓	(✓)	✓		
counterfactual *call oneself* e.g. *He calls himself dancing'*	✓	✓		(✓)	

(Table 1 taken from Wolfram, 2000:127)

Table 2 illustrates the grammar structures that are decreasing in usage in urban AAVE. Many of these AAVE features still have a presence in rural AAVE.

Table 2. Receding urban AAVE features

Structure	**Urban AAVE**	**Rural AAVE**	**Earlier AAVE**	**Southern EAV**	**Northern EAV**
remote *been* e.g. *I been ate it*	(✓)	✓	✓		
double modals e.g. *I might could do it*	(✓)	✓	(✓)	✓	
a-prefixing e.g. *I was a-huntin'*		✓	✓	✓	
leveling present *be* to *is* e.g. *We is here*	(✓)	✓	✓	(✓)	
3rd pl *-s* e.g. *The dogs barks*		(✓)	✓	✓	
counterfactual *liketa* e.g. *I liketa died*	(✓)	✓	(✓)	✓	
causative *have…to* e.g. *We'll have him to do it*	(✓)	✓	(✓)	✓	
wont for past *be* e.g. *I wont there yesterday*		(✓)		✓	
different irregular forms e.g. *It riz in front of me*		✓	✓	✓	
for to complement e.g. *I want for to bring it*		✓	✓	✓	
what as a relative pronoun e.g. *The man what took it*		(✓)	✓	(✓)	
non-inverted simple questions e.g. *What that is*?	(✓)	✓	✓		

(*Table 2 taken from Wolfram*, 2000:128)

Table 3 shows AAVE features that have remained unchanged over a period of time.

Table 3. Stable urban AAVE features

Structure	**Urban AAVE**	**Rural AAVE**	**Earlier AAVE**	**Southern EAVE**	**Northern EAV**
copula absence e.g. *She nice*	✓	✓	✓	(✓)	
completive *done* e.g. *She done did it*	✓	✓	✓	✓	
negative concord e.g. *She didn't do nothing'*	✓	✓	✓	✓	✓
preverbal indefinite e.g. *Nobody don't like it*	✓	✓	✓	(✓)	
negative inversion e.g. *Didn't nobody like it*	✓	✓	(✓)		
ain t for *be* + *not have* + *no* *e.g. I ain t been there*	✓	✓	✓	✓	✓
regularized *was* for past *be* e.g. *We was there*	✓	✓	✓	✓	✓
irregular verbs					
past for participle e.g. *I had went*	✓	✓	✓	✓	✓

(*Table 3 taken from* Wolfram, 2000:129-131)

Table 3. (*continued*) Stable urban AAVE features

Structure	**Urban AAVE**	**Rural AAVE**	**Earlier AAVE**	**Southern EAVE**	**Northern EAV**
participle for past e.g. *I seen it*	✓	✓	✓	✓	✓
bare root past form e.g. *Yesterday I run fast*	✓	✓	✓	✓	✓
regularized past form e.g. *I knowed it*	✓	✓	✓	✓	✓
different past e.g. *It riz up in front of me*		✓	✓	✓	
finna quasi auxiliary e.g. *I finna do it*	✓	✓	(✓)	✓	
quotative *say* e.g. *He told him say, "Leave"*	✓	✓	✓		
stative locative *here go* *e.g. Here go the pencil*	✓	✓	(✓)		
Plural					
measure noun pl. abs. e.g. *three mile*	✓	✓	✓	✓	
generalized *-s* abs. e.g. *three boy*	(✓)	✓	✓		
regularized irregulars e.g. *oxes*	✓	✓	✓	✓	(✓)
subject relative pro deletion e.g. *It's a man took it*	✓	✓	✓	✓	
benefactive dative e.g. *I got me a new car*	✓	✓	(✓)	✓	
possessive *-s* absence e.g. *the girl hat*	✓	✓	✓	✓	
regularized *mines* e.g. *It's mines*	✓	✓	✓	(✓)	
regularized *hisself* e.g. *He shaved hisself*	✓	✓	✓	✓	✓
possessive *they* e.g. *It's they book*	✓	✓	✓		
2nd pl. *y'all* e.g. *Will y'all be there*	✓	✓	✓	✓	
demonstrative *them* e.g. *I love them shoes*	✓	✓	✓	✓	✓

Table 3. (*continued*) Stable urban AAVE features

Structure	Urban AAVE	Rural AAVE	Earlier AAVE	Southern EAVE	Northern EAV
associative *an 'em* e.g. *Derek an' em will be there*	✓	✓	✓	(✓)	(✓)
existential *it* e.g. *It's a J Street in DC*	✓	✓	✓	✓	
existential *they* e.g. *They's a J Street in DC*	✓	✓	(✓)		
inverted embedded questions e.g. *I asked could I go*	✓	✓	✓	✓	(✓)

(*Table 3 taken from Wolfram*, 2000:129-131)

3 America's languages and their suppression

3.1 Does America really have no official language?

The originators of the Constitution of the United States of America did not name an official national language in the founding document in 1787. However, over the course of America's history, there has been a preference toward the English language as its unofficial national language. As indicated by the U.S. government, "The United States does not have an official language, but some states list English as their official language" (The United States of America Government, n.d.). During the late 1600s in America's colonial period, children were primarily educated in their native languages to maintain their native cultures (Crawford, 1987); some children had bilingual schooling. Even with the attitudes against the British during the American Revolutionary War in the 18th century, the efforts to move from English to German as the national language failed (Crawford, 1987).

However, by the mid-1700s, by way of example, Ben Franklin's determination to have English taught in predominantly German communities in Pennsylvania met with resistance. As a compromise, the Pennsylvania street signs were in both English and German until 1914. World War I hostilities against Germany shifted the English–German language dispute as people spurned the German language (Altman, 2022:509). After both the 1898 Spanish-American War and Theodore Roosevelt's presidency, as printed on October 13, 1915, *the New York Times* reported former president Roosevelt's speech declaring "There is no room in this country for hyphenated Americanism[.] There is no such thing as a hyphenated American who is a good American[.] Again, every citizen should [realize] his duty to the nation [and] secure [a] common language, the English language" (New York Times, 1915:1, 1915:5). Roosevelt proceeded to pound this English-only drumbeat and declare that continuing to have different languages in America would be beyond unfortunate, it would be a crime (Crawford, 1987). With Roosevelt as one of the leading proponents, the nation's government staunchly shifted from supporting bilingual schooling in its multilingual, multicultural society to adopting English as the country's unofficial 'official language' position. This attitude has prevailed ever since.

3.2 America's history of language suppression

As a result of these wars and shifting English-only sensibilities, bilingual schooling was broadly impacted, so, by the early 1920s, 34 states required educational instruction be conducted in English. The state legislatures were impactful in directing state education departments to follow these requirements. Suppression of the languages and cultures of black people enslaved in America and America's indigenous people was egregious. In 1838, the Cherokee tribe had 90% literacy in their native language (Crawford, 1987). However, with America's practice of "cultural genocide" (Altman, 2022:509) and forced English-only punitive programs, the Cherokee people's literacy rate went from the highest to the lowest in the country. Continuing in the 20th century, the suppression of languages like Spanish was reinforced by laws like those in Texas that prohibited using any language except English for teaching in public schools until 1973 (Crawford, 1987). Later, even when bilingual education was allowed, the purpose was not for fluency development of multiple languages,

but rather an offsetting plan "to help children overcome the 'language handicap' of not speaking [Standard American] English" (Crawford, 1987). This language bias and discrimination has always been magnified and perpetuated into the 21st century against speakers of AAVE.

3.3 Suppression of AAVE

Throughout America's history, people with power and control over others have used separation, isolation, and discrimination as some of the means to achieving and maintaining their position in society. Altman (2022) argues that linguistic discrimination in America against black people began when they were enslaved. As a power and control mechanism, African slaves were separated to ensure people who spoke a common language were not together in servitude. This deliberate division suppressed the slaves' families, cultures, languages, and abilities to plan escapes (Altman, 2022:511). Repressing and disabling the slaves' communication systems continued. Slaves were forbidden from learning how to write in English or speaking their native languages. Severe punishments were meted out against slaves for any violations.

In the Language and Life Project 2017 documentary "Talking Black in America", the production examines the understanding of AAE, with a diverse group of linguists in America contributing to the conversation and providing a better understanding of AAE's 'correctness,' history, evolution, and necessity in terms of people's need for human identity, connection, communication, and belonging. These linguistic historians explained that one of the first ways to "turn people into slaves" and try to strip away their humanity was separation and linguistic isolation from others (in the case of Transatlantic Slave Crossings, other Africans) who spoke the same language. As John Baugh, linguist at Washington University in St. Louis, noted, "African slaves, when they were captured, were often isolated linguistically from others that spoke their own mother tongue [with this linguistic isolation] maintained on the [slave] ships[, and] as a result of that, not one indigenous African language has survived the Atlantic crossing intact" (Wolfram et al., 2017)[8].

[8] (Wolfram et al., 2017 16:40-17:10).

Even though Congress passed and ratified the 13th Amendment to the Constitution to abolish slavery in the United States in 1865 (National Archives, 2021), linguistic discrimination against black speakers of vernacular English (or a variety of SAE) has continued since then, specifically, against speakers of AAVE. A direct correlation exists between the power and wealth imbalance in America and the prestige of SAE over other varietal English speakers. Linguist Noam Chomsky expresses this power and wealth to language dynamic as, "If the distribution of power and wealth were to shift from southern Manhattan to East Oakland, 'Ebonics' would be the prestige variety of English and [those on Wall Street] would be denounced by the language police" (Hartman, 2016:128). In essence, if you control the wealth, power, and institutions in America, you can also dictate the economic, political, cultural, and social norms, including language preferences.

3.4 Linguistic Discrimination against AAVE

AAVE is stigmatized in the United States, with this variety of English being unfairly and incorrectly viewed and stereotyped as less-educated. University of South Carolina linguist Tracey Weldon's 2021 research on middle-class AAE speakers declares AAE "a systematic, rule-governed variety deeply rooted in the history and culture of its speakers [and] remains one of the most disparaged varieties spoken in the United States — a linguistic testament to the racial discrimination and stereotyping that [Black Americans] have endured" (Weldon, 2021:1). Weldon and other black people throughout the decades learned the importance of code-switching their speech around white people since they were taught that the "so-called 'White' or 'Proper' voice was a means of accommodating to White speaker sensibilities, but also a way of presenting oneself as someone who had achieved a certain level of education or sophistication" (Weldon 2021:101). Weldon further explains that "Talking Black" was only acceptable at home or only around other black people, and, to this day the stigma remains that, "'Talking Black' [is] widely regarded as "bad English" [to be] "corrected" in mainstream circles" (Weldon 2021:101). Language and linguistic (and racial) discrimination in America have perpetuated these stereotypical beliefs over multiple generations that AAVE is Standard American English with grammatical mistakes.

Later in the documentary "Talking Black in America", CUNY linguist Arthur Spears explains the impact of isolation again on the evolution of AAE by postulating "Why does black English exist? Isolation. For a population to develop its own variety of language, there has to be some kind of apartness. Whenever people are apart, they diverge culturally and linguistically" (Wolfram et al., 2017)[9]. Lastly, Renee Blake, linguist at NYU, shared her story of hope for the future for people of color in America, especially in connection with AAE. Blake recounted her experience on the NY train to Harlem with a diverse group of not-isolated, not-separated, black folks on the train as "all of the black diaspora interacting and coming together, mixing and transforming right there in front of your eyes. And they were like, 'You know, I see you' [to each other]. And there was just wonderful cadence and rhythm and impromptu, articulation of who they were. I said, '[We're] gonna be okay if this is what is coming behind us'" (Wolfram et al., 2017)[10]. Unfortunately, Blake's hopeful view of the rhythms, cadence, and expressions of AAVE and its speakers stops at the courtroom doors.

3.5 Linguistic profiling in the law

These incorrect stereotypes that AAVE and speakers of AAVE are uneducated or inferior have carried over into the courtroom. Since many people (including some key players in the courtroom like judges, jurors, court reporters, lawyers, etc.) are not familiar with AAVE, do not quite understand it, or think AAVE is just SAE filled with mistakes. People then sometimes conclude from this that the speakers of AAVE must be uneducated, unintelligent, or not credible — sometimes even viewing these speakers as inferior. These erroneous viewpoints perpetuate stereotypes against AAVE and its speakers, whether inadvertent or intentional. When the people who are perpetuating these misperceptions and misjudgments are some of the primary members in the legal system, the consequences can carry a heavier weight. The impact and consequences of language discrimination are profoundly illustrated in the courtroom by these key decision-makers.

Understanding the history of linguistic discrimination against AAVE in America provides a necessary background for a closer examination of what happens when AAVE is

[9] (Wolfram et al., 2017 30:39-30:59).
[10] (Wolfram et al., 2017 55:32-55:47).

spoken in the courtroom. Specifically, by examining the impact that witnesses, court reporters, jurors, and judges have in situations where AAVE is spoken in the legal system, the results sometimes indicate there is linguistic discrimination against AAVE and its speakers.

Witnesses, along with their beliefs, biases, and ways of speaking, are pivotal players in the legal system. Language discrimination in the courtroom can result from witnesses identifying criminal suspects. Altman (2022) notes that witnesses are routinely permitted to "testify to the race of the speaker based solely on the linguistic inferences gathered from the speaker's speech, without additional identifying information" (Altman, 2022:518). Their legal article further notes there is case law where witnesses testified to the race of the alleged perpetrator saying the person "sounded white" or "sounded black" (p. 517). This racial identification in witness testimony prompted questions of "linguistic profiling," which can lead to treatment that is not fair or justified of a speaker of vernacular English (p. 517). While witnesses can impact legal proceedings by linguistically profiling alleged perpetrators and defendants, they can also have an impact on other key players in the courtroom by their language and speech. In some cases, the witness and their speech are put on trial and essentially dismissed if the witness speaks a vernacular English. Rickford and King (2016) study one such case.

4 Impact of the Jurors

4.1 Rickford & King (2016) — dismissing a witness because of their language

4.1.1 Main linguistic issue

In John R. Rickford and Sharese King's 2016 court case study, "Language and linguistics on trial: Hearing Rachel Jeantel (and other vernacular speakers) in the courtroom and beyond" in Language, various linguistic properties of the speech of Rachel Jeantel (as heard in the

courtroom and in TV interviews) are reviewed and discussed. 19-year-old Jeantel's testimony in the 2013 prosecution case against George Zimmerman (the latter being charged with murdering teenager Trayvon Martin in 2012) was vital to the case for the prosecution. Crucial to the case, Jeantel was the primary prosecutorial witness as the last person to talk with and be on the phone with Trayvon Martin when Zimmerman killed him. However, for the defense, her testimony spoken in AAVE with some influences from CCE varieties, and thus her idiolect[11] overall, were "dismissed as incomprehensible and not credible" by the jurors, leading to Zimmerman's acquittal (Rickford & King, 2016:948).

4.1.2 *Intelligibility errors of English vernaculars are widespread*

Evidence of linguistic issues in court cases is quite widespread in other countries, and not just limited to the United States. Rickford and King (2016) identify some of these legal cases, including one involving an Aboriginal English speaker in Australia and another case with a Jamaican Creole speaker in the United Kingdom. The significant tie-ins of these Australian and UK cases are the intelligibility errors made by court transcribers because of syntax, semantics, or phonology, which relates to some cases in the United States. These cases are also relevant to this essay because in both the Australian and UK courts, linguistic interpreters resolved the miscomprehension and transcription errors. In a courtroom in the United Kingdom, a Jamaican Creole speaker spoke the following sentence:

(6) "wen mi ier di bap bap,

mi drap a groun an den mi staat ron." - Jamaican Creole

when I heard the 'bap bap' [the shots],

I fell to.the ground *and then I started to.run.* - meaning

"When I heard the shot (bap, bap),

I drop the gun, and then I run. - mistranscription

[11] "Jeantel lives in a city and neighborhood with people originally from Jamaica and other countries in which Caribbean English creoles or vernaculars are spoken, and additionally her mother is from Haiti and her father from the Dominican Republic, and she is fluent in both Haitian Kweyol (Creole, French-based) and Spanish" (Rickford & King, 2016:957).

(Rickford & King, 2016:952)

However, in this situation and many others, a lack of linguistics knowledge in the courtroom — and in this case an incorrect comprehension and transcription of the Jamaican Creole phrase "mi drap a groun" — could have led to unintended disastrous consequences for the speaker. In the speaker's idiolect within Jamaican Creole, "a" in this sentence has the function of "to (the)", and with "groun" meaning "ground" — giving the utterance a meaning along the lines of "I drop to the ground". However, the transcriber interpreted the speaker's "a" as a determiner (as in "a" or "the"), and interpreted "groun" (/groŋ/) as "gun" — writing this sentence as "I drop the gun" (Rickford & King, 2016:952). The incorrect transcription completely altered the meaning of the sentence spoken — taking a sentence where the speaker dropped to the ground after hearing gunfire, and neglectfully misinterpreting and twisting it into a sentence where the speaker would be holding the gun. In this case, a Jamaican Creole interpreter who read the transcript and listened to an audio recording of the witness's Jamaican Creole testimony caught and corrected this mistranscription. This specific transcription error was eventually corrected, but if it had not been, the results could have been disastrous.

Another example of a legal case involving issues of intelligibility include a witness in Australia who spoke Aboriginal English. The witness mentioned a "half moon" when talking about the events of a specific night (Rickford & King, 2016:952). Given that the night in question had a *crescent* moon, this witness was likely to have his entire testimony discounted or dismissed. However, one interpreter knew the word *'half'* carried the meaning of 'a small part of' in the witness's dialect of Aboriginal English, and had the idea to have the witness draw for the court what the moon looked like that night, to which the witness drew a crescent moon. The presence of an interpreter was pivotal in bridging the gap between different dialects of English in the courtroom. Similarly, one of the cases in the United States involving intelligibility issues and a witness's speech on trial involves a witness named Rachel Jeantel.

4.1.3 *Jeantel's speech on trial*

The audio-recorded speech of Rachel Jeantel in her deposition, interviews, and court testimony demonstrate some of AAVE's common grammatical features, including auxiliary-subject inversion, existential *it*, not *there*, stressed *BIN*, habitual *be*, preterit *ain't*, and negative concord.

(7) "Auxiliary-subject inversion in embedded indirect questions, without *if/whether* complementizer

a. But I do remember him asking me **have I** ever got a gun before
(deposition; 3/13/2013)

b. I was asked was **I—did I** go to the doctor or anything (deposition; 3/13/2013)

(8) Existential *it*, not *there*

a. Monday **it** was a rumor going around his school.
(Piers Morgan interview; 7/19/2013)

b. **It's** a lot of text message(s) missing (deposition; 4/24/2013)

(9) Stressed *BIN* as remote phase marker

I **BIN** knew I was the last person to talk to Trayvon. (= 'had known for a long time')
(deposition; 3/13/2013)

(10) Invariant habitual *be*

a. That's where his headset **be** at (testimony; 6/26/2013)

b. Sometimes my friends **be** texting for me, when I'm busy
(deposition; 4/24/2013)

(11) Preterit *ain't* (= 'didn't')

They **ain't** [= 'didn't'] call my number. (testimony; 6/26/2013)

(12) Negative concord

The Crump interview **don't** mean **nothing** to me. (testimony; 6/26/2013)"

(Rickford & King, 2016:957-958).

The above examples of Jeantel's speech illustrate common features of AAVE.

Another one of Jeantel's linguistic properties of focus is when "-s" as a suffix (in all three versions of the suffix "-s") is absent in her speech. Rickford and King (2016) detailed that Jeantel systematically had an "absence of possessive, present tense, and plural -s," consistent with many other studied AAVE speakers. As part of her systematic speech in her court testimony, "-s" is not present 99% of the time in a third singular present-tense, and "-s" is absent 95% of the time in a possessive, and "-s" is unused 27% of the time in a plural. Her idiolect, involving AAVE and other vernacular varieties of English, is stigmatized in the United States, with these varieties being unfairly and incorrectly viewed as uneducated. The consistent feature of Jeantel's speech of the absent "-s" suffixes likely underscored the prejudiced views of outside observers who wrote hateful comments calling her an "idiot," "inarticulate," "uneducated," and worse (Rickford & King, 2016:957). Thousands of debasing and degrading comments of Jeantel's testimony and speech made by viewers appeared online. Here are just a few:

(13) "'She is a dullard, an idiot, an individual who can barely speak in coherent sentences' —Jim Heron, Appalachian State [...]

(14) 'This lady is a perfect example of uneducated urban ignorance ... When she spoke everyone hear, "mumble mumble duhhhh" im a miami girl, duhh-hhh.' —Sheena Scott [...]

(15) '[RJ] cannot even speak English ... she speaks Haitian hood rat ... ' — edteach, quoted by Nic Subtirelu in Linguistic Pulse [...]

(16) 'Everyone, regardless of race, should learn to speak correct English, or at least understandable English ... . I couldn't understand 75% of what she was saying ... that is just ridicolous [sic]!' —Emma, comment on MEDIAite"

(Rickford & King, 2016:957).

Jeantel's vernacular was further scrutinized as "unintelligible" (972) in the courtroom after one juror continued to interrupt and ask for Jeantel's words to be repeated

or clarified. Dialect differences, prejudices, and biases likely factored into the "jurors' low assessment of Jeantel's credibility" (972), as they disregarded and dismissed her critical testimony, and then acquitted Zimmerman.

However, Rickford & King's (2016) meticulous review and careful analysis of almost 15 hours of trial-related audio recordings of Jeantel's speaking, they demonstrated that "[Jeantel's] speech is neither 'inarticulate' nor 'incoherent', but a systematic exemplification of the grammar of AAVE, with [some] influences from CCE varieties" (Rickford & King, 2016:957).

4.1.4 *The outcome*

Essentially, Jeantel and her AAVE dialect were put on trial with a devastating verdict about vernacular biases and impactful results for people inside and outside the courtroom. Just as the 'Black Lives Matter' phrase and movement resulted from and were based on "the systemic racism [that Ms. Alicia Garza] saw in Trayvon's killing and Zimmerman's acquittal" (Rickford & King, 2016:949), as a student studying linguistics, I am further inspired to accept the call to action to have linguistic knowledge help other people in every aspect of life since "language is what most distinctly makes us human" (Rickford & King, 2016:980). Rickford and King's (2016) study of Jeantel's AAVE dialect on trial in the Trayvon Martin case might be the most well-known example of linguistic discrimination against AAVE and other varieties of English. Other cases of linguistic discrimination are happening in U.S. courtrooms daily.

The verdict: "In a sense, Jeantel's dialect was found guilty as a prelude to and contributing element in Zimmerman's acquittal" (Rickford & King, 2016:950).

4.2 Kurinec & Weaver (2019) — Juror Impact

4.2.1 *Main linguistic issue*

In Kurinec and Weaver (2019)'s study, they examine the influence of dialect and race on the decision-making of jurors. Specifically, they researched the potential impact of juror biases

against AAVE on the juror assessments of AAVE speakers, as well as this impact on the potential results in the courtroom.

4.2.2 *Hypothesis*

As foundational for their work, Kurinec and Weaver (2019) reviewed the Rickford and King (2016) case study that showed that the AAVE dialect of the case's primary witness Rachel Jeantel impacted the outcome of the 2013 trial against George Zimmerman in the killing of Trayvon Martin (Kurinec & Weaver, 2019:5). As previously discussed, Jeantel's testimony in an AAVE with a variety of CCE influences was deemed incomprehensible by some key players in the courtroom, including the jurors in that case. Some people disregarded Jeantel and her testimony as uneducated and not reliable, respectively. Consequently, the jurors rendered a not-guilty verdict in the Zimmerman case. Therefore, Kurinec and Weaver (2019) hypothesized that other jurors, in general, would negatively assess witnesses or defendants who spoke AAVE. They further anticipated that biases against this vernacular of English versus General American English (GAE) being spoken in criminal cases would lead jurors to issue more guilty verdicts in those cases.

4.2.3 *Methods*

In their two studies, mock jurors heard audio recordings of witness and defendant (all roles crossed with white people and black people) testimony spoken in GAE and AAVE. As part of the Kurinec and Weaver (2019) investigative study, they had both white speakers of GAE and black speakers of AAVE in the various witness and defendant roles (Kurinec & Weaver, 2019:5). Jurors heard audio recordings of both GAE speakers and AAVE speakers as defense witnesses. After listening to the defense witnesses' or defendants' audio clips, jurors made assessments about their credibility, education level, and if the person was likable. Using a mock jury setup, the researchers wanted to determine if the defense witnesses' spoken dialect (AAVE or GAE) would impact the juror's assessment of the people and the case outcomes (Kurinec & Weaver, 2019:5).

4.2.4 *Results*

With all variations of the witness and defendant roles spoken by white participants speaking GAE and black participants speaking AAVE, Kurinec and Weaver (2019) determined their "analyses found that AAVE predicted more negative overall evaluations of the speaker [as a witness or defendant], and these negative evaluations were associated with an increase in guilty verdicts" (Kurinec and Weaver, 2019:1). The data from their studies showed evidence that juror bias against AAVE and its speakers did affect juror appraisals of both the speakers and case results.

4.2.5 *Conclusion*

Their two examination studies set out to understand if a witness or defendant speaker's race (white or black) or dialect (GAE or AAVE) impacted the juror's evaluation of the speaker and the case outcome. In general, speakers of AAVE were assessed more negatively than speakers of GAE, and there were more guilty verdicts rendered in cases involving AAVE speakers. The Kurinec and Weaver (2019) research studies can assist lawyers with important information as they prepare legal cases that have speakers (witnesses or defendants) of AAVE (Kurinec and Weaver, 2019:20).

5 Impact of Court Reporters

5.1 Jones et al. (2019) — testing AAE transcription accuracy

5.1.1 *Main linguistic issue*

The Jones et al. (2019) linguistic experimental study posed the key question, "What happens to the right to a fair trial when the words of the defendant, or the witnesses, are misunderstood and inaccurately inscribed in the official court record?" (Jones et al., 2019:216). In their study, they examined Philadelphia court reporters' comprehension and accuracy of their transcriptions when a vernacular of English was spoken. Court records are the official documentation generated by state-certified court reporters used to make

legal decisions. They must accurately and completely transcribe what is actually said in different aspects of the legal process from depositions, attorney statements and examinations, witness and defendant testimony, etc. Consequently, transcription errors can have a significant impact on court proceedings and people's lives. For example, if the recorded witness deposition has transcription mistakes in it, a truthful witness can be charged with perjury if the flawed transcription contradicts the witness's prior statement.

Specifically, the Jones et al. (2019) research showed that if a variety that differs from SAE is spoken but misunderstood and inaccurately transcribed by the court reporter, the legal consequences can be significant. The morphology, syntax, and phonology of AAE are different from SAE (Jones et al. 2019:223). In their experimental study of AAE comprehension by the best Philadelphia court reporters, they noted that AAE spoken in the Philadelphia criminal justice system is often mistranscribed (Jones et al. 2019:224).

5.1.2 *Methods*

The Jones et al. (2019) study focused on the reporters' comprehension and transcription of naturally-spoken AAE. Their experimental study included 27 actively-working Philadelphia court reporters[12] deemed some of the "best", primarily based on their state certification test scores and experience. In their multi-part pilot study, they used a cross-section of Philadelphia-based participants of native AAE-speaking black people, non-AAE-speaking white people, and Philadelphia attorneys (some lawyers were black and some lawyers were white). Their examination used linguistic features common to AAE like null copula, stressed *been*, habitual *be*, and deletion of possessive /s/ in the study's data sample of spoken words, phrases, and sentences to test for levels of miscomprehension and resulting mistranscription (Jones et al. 2019:224). The reporters were then tested on their comprehension and understanding of naturalistic speech of AAE.

[12] The majority of the 27 Philadelphia court reporters in the Jones et al. (2019) study were white women consistent with the race and gender of court reporting professionals in the U.S. (Jones et al. 2019:224).

5.1.3 *Results*

According to their research, even though these reporters met the speed, spelling and 95%+ accuracy requirements to be certified, they are "neither trained nor tested on their transcription of nonstandard dialects," and fell "far short of 95% accuracy when confronted with everyday examples of AAE" (Jones et al. 2019:217). Specifically, their experimental study demonstrated that an average of 40.5% of AAE spoken utterances in the experiment was mistranscribed by the Philadelphia court reporters with only an average 59.5% transcription accuracy rate of the AAE utterances (Jones et al. 2019:230). Additionally, their study assessed the reporters' word error rate ('WER') to be 82.9% correct (Jones et al. 2019:230). These performance results of AAE transcription were well below the 95%+ accuracy professional standards required for reporters' state certification.

5.1.4 *Conclusion*

Using the Philadelphia legal court system framework and Philadelphia-based participants, Jones et al. (2019)'s linguistic experimental study to assess the comprehension and transcription accuracy of English vernacular speech by court reporters yielded important results (Jones et al. 2019:216). Specifically, they explored the potential effect to the right to a trial right if what is spoken in the courtroom in witness or defendant testimony is misunderstood or mistranscribed in the court record. They used spoken AAE as the vernacular of English in their research study (Jones et al. 2019:217). Since official court records are the vital representation of what is said in the legal system, court reporters' high-percentage comprehension and accurate transcription work are critical towards the pursuit of truth, justice, and the right to a fair trial (Jones et al. 2019:247). This 2019 examination showed the court reporters' approximately 60% level of comprehension and transcription of commonly-spoken in the AAE lexicon is well below the 95% transcription accuracy rate that court reporters need to be certified. Consequently, as Jones et al. (2019) concluded if the words of speakers of AAE are not understood and accurately transcribed at a high level by court reporters, who comprehend and transcribe speech as a profession, it is reasonable to believe that judges, jurors, and attorneys may also misunderstand what

was spoken. Consequently, the right to testify and the right to a fair trial are at risk (Jones et al. 2019:247).

5.2 Alger (2021) — Mistranscription can be a barrier to justice

5.2.1 *Main linguistic issue*

Even when it is inadvertent, linguistic discrimination against vernacular varieties of spoken English in the courtroom is evidenced by mistake-laden transcripts. Certified court reporters provide these official court records by transcribing spoken language into written language. However, in the *Georgetown Journal of Law*, Alger (2021) argues that justice may be impeded for speakers of AAVE in the legal system by incomplete, inaccurate, or inadequate speech transcription (Alger, 2021:87). A vital aspect of the legal system is language — spoken, signed, and written — and understanding it and interpreting it. However, sometimes, when spoken language becomes modified or deleted when speech is transcribed into writing, its crucial intended meaning is lost (Alger, 2021:88). Professionals in the judicial system like judges, lawyers, court stenographers, etc. depend on written communication and official records. These legal experts can have a "prescriptive lens" of language and assign meaning to language rooted in their believed correct way to speak in standard English (Alger, 2021:88). Their rigid view of language can be problematic "when they are faced with dialects [or varieties] that do not conform to mainstream society's idea of 'proper English'" (Alger, 2021:88). The consequences of their prescriptive views, beliefs, and actions in the legal system can be inadvertently prejudicial against speakers of AAVE in the courtroom.

Accurately hearing, interpreting, and transcribing spoken language into written words are crucial aspects of the legal process. According to Alger (2021), The Constitution's protection for people's right to due process under the law can be infringed upon when legal transcriptions are inaccurate or inadequate (89). Jones et al. (2019) observed and recorded

an alarming high rate of Philadelphia court reporters' miscomprehension and error-filled transcription of AAVE. With written words being foundational to the legal system's pursuits of truth, fairness, and justice, court reporters' accurately transcribing spoken words as the official court records are vital.

5.2.2 *Overview*

The Alger (2021) paper specifically focuses on the impact of court reporters' speech mistranscription of AAVE to identify some possible linguistic solutions. The article is organized as follows: 1) the linguistic bias of AAVE in the criminal legal system, 2) court reporters' responsibility to generate verbatim records, 3) review cases involving AAVE misinterpretation and misunderstandings revealing "implicit language bias," and, 4) ideas to use linguistics to help court reporters reduce speech transcription errors of this vernacular of English (Alger, 2021:89).

5.2.3 *Results*

5.2.3.1 Responsibilities for Accurate Records

In their legal paper, they note that "court reporters are bound by a code of ethics and law in performing their duties" (Alger, 2021:93). With court reporters' binding responsibility to provide transcripts accurately and completely as the official record, they possess English language proficiency of spelling, grammar, punctuation, and legal lexicon. However, their tested and certified mastery is only for SAE and not for other varieties of English like AAVE. Everyone in the courtroom is reliant on accurate court records, including judges, jurors, and lawyers. They make key decisions that impact witness testimony and credibility, as well as verdicts and appeals for defendants.

5.2.3.2 Sanitizing Speech and Record Cleanup

Alger (2021) indicates that when court reporters transcribe from AAVE oral-speech-to-written-form, discrepancies can be inherent from inadvertent speech-to-text human error. Discrepancies can also arise from the influence of cultural or professional beliefs of court

reporters. With the expectation that they deliver accurate transcriptions, court reporters have a prescriptivist's view for grammar correctness. As a result, their paper indicates that court reporters sanitize this variety of English by cleaning up AAVE's "ungrammatical" speech to the level of SAE "standard of correctness" (Alger, 2021:94). In correcting and altering AAVE speech, court reporters inadvertently change what AAVE speakers are expressing, so the official record is not an accurate verbatim record. These oral speech to written modifications can alter the outcome of these legal cases.

There were several examples of AAVE speech-to-transcript cleanup by court reporters in the criminal case against Zimmerman for killing Trayvon Martin that changed the syntax and semantics of the witness testimony. One example illustrating fixing AAVE speech-to-written form involved Jeantel's ear witness testimony that during a physical confrontation between Zimmerman and Martin, while on the phone with Martin, Jeantel heard someone exclaim, "Get off!" (Alger, 2021:95). The prosecutor questioned Jeantel to find out "[c]ould [she] tell who was saying that?" (95). In response, Jeantel testified that:

(17) "I could an' it was Trayvon." - Jeantel's likely words as understood by a linguist

I could, and it was Trayvon. - meaning

"I couldn't know Trayvon." - court reporter's initial transcription

"I couldn't hear Trayvon." - court reporter's revised transcription

(Alger, 2021:95)

The defense attorney used the transcript mistake as a way to discredit Jeantel and her witness testimony. Jeantel, the prosecution's primary witness, was deemed not credible, which factored into the jurors not convicting Zimmerman of killing Trayvon Martin.

In making verbatim records consistently readable, tested court reporters frequently altered the meaning of typically-spoken AAVE when tested by linguists in the 2019 "Testifying While Black" study. Jones et al. (2019) documented several examples of the meanings of the utterances being changed by the tested court reporters:

(18) "I was wondering when you <u>*tryna*</u> go." - AAVE sentence

I was wondering when you <u>intend to</u> go. - sentence meaning

I was wondering when you <u>*try* and</u> *go.* - transcription

(Jones et al., 2019:241)

In the court reporter's effort to 'correct' the grammar, the statement's meaning was changed (as in the example above).

There is a difference in meaning between the AAVE's expression of *intent* versus the court reporter's transcription that changes the meaning to an inquiry of *attempt* (Alger, 2021:98). One of AAVE's characteristic lexical features is the word *tryna*, which the court reporters tried to standardize to make the transcript more readable. In doing so, they changed the sentence's meaning. In a courtroom setting, the difference between testimony that expresses "intending [versus] attempting to do something" could lead to significantly different outcomes (Alger, 2021:98).

In another example from the 2019 Jones et al. study, court reporters made major misinterpretations of the standard AAVE feature of "habitual *be*" (Alger, 2021:99).

In cleaning up what they deemed as incorrect grammar or an incorrect conjugation of *to be*, they mistranscribed what was spoken in AAVE:

(19) "[h]e be done gone to bed when I be getting off work - AAVE

[u]sually, he has already gone to bed when I get off work - meaning

"[h]e is going to bed when I get off work" - transcription

he goes to bed when, or after, the speaker gets off work - transcription meaning

(Alger, 2021:99)

This mistranscription significantly changes the meaning of the AAVE speech. In the legal system, this difference in meaning between the spoken AAVE and the court reporter's

transcription could discredit a witness or "make or break an alibi" (Alger, 2021:99).

In addition, inadequate court transcripts of miscomprehended spoken AAVE are also an evident issue as documented in the 2019 "Testifying While Black" study. When they tested the court reporters, there were numerous occurrences when the court reporters created their own vocabulary, wrote sentences that did not make sense or were ungrammatical in both SAE and AAVE, or they just typed 'untranslates' (meaning, untranslatable) in their transcriptions (Jones et al. 2019:233). Even when court reporters had a chance to review their transcriptions without time constraints, they did not fix the 'untranslates' in their records (233). Some examples of inadequate transcriptions in this 2019 study include:

(20) word salad:

"Mark sister friend *been* got married."	-	AAVE
Mark's sister's friend got married a long time ago.	-	AAVE meaning
"Wallets is the friend big."	-	transcription

(21) nonce words:

"He *been* don't eat meat."	-	AAVE
He doesn't eat meat and hasn't for a long time.	-	AAVE meaning
"He bindling me."	-	transcription

(Jones et al. 2019:234)

The inadequate transcriptions with the court reporters' nonsensical words, made-up phrases, or 'untranslates' without corrections probably reflect two things. The incomplete transcripts might indicate the certified court reporters' professional training and expectation to produce a high word count instead of no transcript (Jones et al. 2019:234). Secondly, the faulty transcriptions might show, as a minimum, an apathy towards the needs of AAVE speakers or a negative view about AAVE speech.

5.2.3.3 *Transcripts in the Appellate Review Process*

Accessibility to an appeal for a criminal defendant is a right in many states. Judges use case transcripts as the official verbatim record to decide whether or not to grant an appeal to a defendant on a case-by-case basis. Serious issues with inaccurate or inadequate transcripts involving legal cases have arisen with impact to constitutionally- protected right to due process of law or to a state right to access to an appeal. The requirement that court reporters must "record verbatim court proceedings in their entirety" was upheld in *United States v. Charles*, the Eleventh Circuit.[13] This case emphasized that complete court transcripts be accurate and adequate for appeal purposes. Also, since defendants will often have different lawyers to appeal their cases, the appellate attorneys must rely on the official transcript record of the initial cases. Consequently, when speech is mistranscribed, the consequences can be significant in the appeal process. So, the necessity of a "complete transcript" without sanitizing transcription errors and omissions becomes vital in the appellate process as noted in *United States v. Green*, the Fifth Circuit, to make sure judges can make merit-based decisions on the appeal.[14]

Miscomprehending AAVE speech during the appeals process impacted the judges' decision of non-testimony admissibility in *United States v. Arnold*[15]. Specifically, the appellate judges debated the temporal aspect of the witness's spoken AAVE phrase, "[h]e finna shoot me" to a 911 operator (Alger, 2021:99):

(22) "[h]e finna shoot me - witness AAVE statement to the 911 operator

he is fixing to/fixin' to shoot me - witness AAVE statement meaning

(Alger, 2021:99)

In addition to "finna" creating a miscomprehension issue, one judge claimed that the witness was not under current threat at the time of her utterance to the 911 operator since the witness's statement did not have the word *is* in it. In contrast, the other appellate

[13] United States v. Charles, 313 F.3d 1278, 1283 (11th Cir. 2002)
[14] United States v. Green, 293 F.3d 886, 893 (5th Cir. 2002)
[15] United States v. Arnold, 486 F.3d 177, 192-193 (6th Cir. 2007)

judges disagreed and argued that the witness expressed a present physical threat because "the lack of the auxiliary verb '*is*' copula deletion in AAVE only occurs in present tense" (Alger, 2021:99).

Alger (2021) indicated that in February 2020 there was another case when the court reporter's transcription of AAVE speech was inaccurate, with potentially egregious results. Specifically, the New York case of a double homicide where the court reporter's significantly erroneous transcription from a grand jury trial inaccurately turned the prosecution's primary witness's and second defendant's testimony into a homicide confession. In this example extracted from the case's official record, the key witnesses who spoke AAVE said:

(23) "I shut the door." - witness testimony

I shut the door. - witness testimony meaning

"I shot the dude." - court reporter's transcription in official record

(Alger, 2021:97)

The grand jury court reporter put in the official court records, "I shot the dude" (Alger, 2021:97). The reporter mistranscribed the speech of the witness, who was also a co-defendant. Ordinarily, the grand jury process solely relies on the hearing's written record upon which to make decisions. However, an accidental audio recording of the grand jury hearings was made and emerged. Even though audio taping is not usually permitted during the grand jury process, in this case, the defense attorney identified the issue and the judge allowed the audio recording to be heard which proved the witness was not confessing to shooting someone. The results of the court case could have violated an individual's rights because of the transcription errors.

5.2.4 *Conclusion*

With Constitutional and state protections, citizens have the right to due process, including complete and accurate transcripts in the legal process. Court reporters are trained and

tested to transcribe with a high level of accuracy, but their certified proficiency is only in SAE and not in other varieties or vernaculars of English. Consequently, in their effort to deliver a professional and complete work product, court reporters can have a prescriptivist lens of SAE and try to clean up what they deem as ungrammatical language and sanitize vernacular English. With court reporters as speech recognition and transcription experts not comprehending AAVE speakers, then it is likely that others in the courtroom like jurors, judges, and attorneys are misunderstanding, too.

5.3 Kaplan (1994) — Impact of Court Reporters' Edits

5.3.1 *Differentiating their Editing Functions*

Kaplan (1994) discusses the critical impact of court reporters' tendency "to differentiate markedly their editing functions [of grammatical form] between attorneys, judges, and expert witnesses, on the one hand, and lay witnesses on the other" (Kaplan, 1994:101). The court reporters' decisions on what to include or what to omit in the records can lead to an "unequivocally unequal treatment of different classes of speakers in the room [which may show] bias," which impacts the speakers' veracity and reliability on the legal documents (Kaplan, 1994:101).

5.3.2 *Editing of the Speakers*

Kaplan (1994) further examines the domino effect of the court reporters' editing of the speakers' words, where deciding what is relevant to include or not leads to other significant consequences. By illustration, "Walker's survey of judges suggests that a significant proportion of appellate judges do in fact read trial court transcripts, sometimes to measure character, intelligence, and credibility of witnesses, presumably based on some of the features of [speech, there] can be appellate significance in what court reporters do to speech in 'reducing' it to writing." (Kaplan, 1994:101).

6 Reducing linguistic discrimination and Potential Solutions

6.1 Altman (2022)'s main linguistic issue

Altman (2022) notes that linguistic discrimination in America remains prevalent and socially acceptable. Further, this article claims that when dialects, varieties, or vernaculars of SAE are criticized, it is synonymous with a critique of the speakers themselves or it blocks the speakers' full opportunity to use needed establishments such as the justice system. Altman (2022) examines the impact of linguistic discrimination of people who speak AAVE and then identifies recommendations to eliminate it for two key players in the legal system—jurors and judges. While this legal paper centers the discussion on AAVE and its speakers, Altman (2022) also contends the recommended proposals could help reduce other mainstream types of language discrimination.

6.1.1 *Discussion*

Leading to suggestions to eliminate linguistic discrimination in the legal system by judges and jurors, the paper explores three issues. First, their paper overviews the United States of America's history of "no official language" but an ever-present "'English only' movement" (Altman, 2022:507, 508). Specifically, Altman (2022) illustrates the government's intervention in minority languages in America and AAVE's position within that framework. Altman (2022) als examines linguistic profiling and discrimination within a more narrow context of bias against witnesses or defendants who speak AAVE in the criminal law system in America. Lastly, Altman (2022) posits that focusing on specific ideas involving jurors and judges to reduce language prejudice provides opportunities toward diminishing linguistic discrimination towards AAVE speakers in the courtroom.

6.1.2 *Conclusion*

Altman (2022) asserts that language discrimination is socially acceptable and pervasive in

the legal system. This linguistic bias and criticisms of vernacular English, AAVE in this paper, equates to linguistic prejudices against AAVE speakers. Altman focuses on judicial and juror biases to offer potential solutions. If the recommendations for judges and jurors identified and discussed in Section 7.1 work to assist AAVE speakers, they could conceivably reduce linguistic discrimination against other dialects, vernaculars, or varieties of SAE in America's courtrooms.

6.2 Donald et al. (2020) — Judicial Impact: Implicit Bias

In the *Howard Law Journal*, Altman's legal paper, "Speech on Trial? An Exploration into the Effects of Lingual Discrimination on African American Vernacular English Speakers" (2022) focuses on linguistic discrimination of AAVE speakers in the legal system (Altman, 2022). Maryfield (2018) for The Justice Research and Statistics Association (JRSA) differentiates racial discrimination from "implicit [racial] biases [that are] made by individuals in the unconscious state of mind [and] likely not aware of the biased association" (Maryfield, 2018:1). As a result, "[implicit] racial bias can cause individuals to unknowingly act in discriminatory ways [based on] perceptions [shaped] by experiences" (Maryfield, 2018:1). After revealing and acknowledging these unconscious thoughts, it provides an opportunity to focus on resolving judges' implicit racial bias in the courtroom. The potential solutions are outlined in Section 7.2 below. The results of the Rachlinski et al. (2009) research study (focused on court judges' implicit racial bias) are "both alarming and heartening:

> (1) Judges hold implicit racial biases.
>
> (2) These biases can influence their judgment.
>
> (3) Judges can, at least in some instances, compensate for their implicit biases"
>
> (Rachlinski et al., 2009:1197).

A research report shows that "judges in Connecticut set bail at amounts that were twenty-five percent higher for Black defendants than for similarly situated white defendants, [and another] research suggests that 80 percent of white judges more strongly associate Black faces with negative words and white faces with positive words" (Altman

2022:527). These racially disparate results can be increased exponentially for speakers of African American Vernacular English.

6.2.1 *Main linguistic issue*

In the courtroom, judges have far-reaching impacts on the people, process, and outcomes of cases. As judicial decision-making matter experts, Judge Bernice Donald[16] teamed up with Professors of Law Jeffrey Rachlinski[17] and Andrew Wistrich[18] to examine the consequences of implicit bias in the courtroom (Donald et al. 2020:75). They broadly define "implicit bias" as a preconception, stereotype, or prejudice about specific groups of people without conscious awareness of that presumption (75). In general, human brains identify generalizations and patterns in the things the brain observes. During the brain's cognition process, people can discriminate with implicit bias against certain groups by making prejudicial overgeneralizations. Their research focuses on whether implicit bias influences judicial decision-making or behavior.

6.2.2 *Discussion*

The Donald et al. (2020) research shows judges hold many of the same implicit stereotypical associations as other adults. In their study testing implicit association, 80% of white judges had a similar pattern of associating positive words with white faces and negative words with black faces. In contrast, 50% of the black judges showed the opposite pattern of associating positive words with black faces and negative words with white faces and the other 50% displaying the same "white–good/black–bad" connection that the white judges made (Donald et al., 2020:76). Essentially, the outcome of the implicit association test shows similar results for judges compared to other adults in America. Even though

[16] Judge Bernice B. Donald of the United States of Court of Appeals for the Sixth Circuit and holds a law degree from Memphis School of Law and an LLM from Duke University. Contributing author for *Enhancing Justice: Reducing Bias*, used as a resource book for judges (Donald et al. 2020:80).
[17] Jeffrey Rachlinski, Professor of Law at Cornell Law School and holds a J.D. and a Ph.D. in Psychology from Stanford. He focuses on cognitive and social psychology applied to law, especially with judge's decisions (Donald et al. 2020:80).
[18] Andrew J. Wistrich is a former magistrate judge of the United States District Court for the Central District of California and holds a law degree from University of Chicago. He is a distinguished practitioner at Cornell Law School and visiting fellow at Institute of Advanced Legal Studies of the University of London. He is the author / co-author of articles and chapters about civil procedure and judge's decision-making (Donald et al. 2020:80).

judges have implicit association, Donald et al. (2020) examines if the judicial decision-making is affected by their implicit bias. Judges are expected to abide by a code of ethics and affirm to be impartial regarding people's race in the process of making decisions. Judges are likely motivated by their sworn oath of impartiality and judicial code of ethics. The research provides substantiation that some judges can consciously circumvent biases and stereotypes depending on their implicit associations when making legal decisions.

In their research, Donald et al. (2020) conducted a couple of studies with judges to examine the impact of race on judicial decision-making. Specifically, in the first study, the same hypothetical cases were presented to the judges with the defendant's race being clearly identified as black and then white. In addition, in these test cases, if the defendant claiming self-defense was black, the victim was white, and, then, using the same hypothetical case the races of the defendant and the victim were reversed — the defendant claiming self-defense was white, the victim was black. Sommers & Ellsworth (2001) used similar hypothetical cases to collect data and analyze the hypothetical conviction rates made by adult American laypersons (who do not typically work in the legal system) based on the information from their study's hypothetical cases. Their study results indicated that the adult laypersons in the study decided to convict the black defendants 90% of the time and only 70% of the white defendants using the same legal case circumstances and facts (Sommers & Ellsworth, 2001). However, the judges in the Donald et al. (2020) study showed zero difference between the conviction rates of the black and white defendants. However, in this same study, implicit bias became a factor for judges when subliminal and contextual cues were given to indicate the defendants' likely race of either black or white. Judges who had shown a high white–good/black–bad implicit association in the study issued more severe penalties to defendants whose race was subtly suggested to be black. In summary, judges were able to avoid their implicit associations in their decision-making when a defendant's race was clearly identified. However, judges' decisions were influenced by their implicit association if the defendant's race was not overtly indicated but subtly suggested.

6.2.3 *Conclusion*

With a couple of experimental studies, the Donald et al. (2020) research explores the influence of racial implicit bias on judges' decisions. With increased awareness, judges can avoid discrimination through implicit bias. In addition, as the leader in the courtroom, judges also have the ability to mentor and influence the expected behavior of the other key players in the courtroom. Further, their research outlines a few impactful potential measures by judges that can either indirectly or directly ameliorate the effects of racial implicit bias in the courtroom. The Donald et al. measures are further discussed in Section 7.2.

6.3 Harvard Law Review (2023)[19] — Procedural due process can produce dialectal misinterpretation

6.3.1 *Main linguistic issue*

This *Harvard Law Review* 2023 article examines the legal due process when errors occur because a dialect[20] or a variety of SAE is spoken, specifically Black English[21]. This article focuses on linguistic mistakes made by miscomprehending or mistransmitting AAVE as an opportunity to explore due process procedural changes as possible solutions to linguistic discrimination. The Constitution's Due Process Clauses require that both the judicial and executive branches of government "maintain procedures to avoid inaccurate transmission of linguistic data that adversely affects litigants" (Harvard Law Review, 2023:1959). This paper claims that due process procedures that consistently result in "misinterpretation of plain English" constitute a violation of this process and create significant difficulties for criminal defendants to have fair outcomes (1959). Further, the article argues continuing the status quo of dialectal inequity in the law would be a violation of procedural due process.

[19] This *Harvard Law Review* article does not identify the authors' names; therefore, the citation is different.
[20] This *Harvard Law Review* article uses the term 'dialect' or 'dialectal,' which for the purpose of this paper will be used synonymously with the linguistic term 'variety'.
[21] This *Harvard Law Review* article uses the term "Black English," which for the purpose of this paper will be interchangeable with 'African American (Vernacular) English,' or 'AAVE'.

By focusing on misinterpretation or transcription errors from an AAVE perspective, the article indicates that possible solutions can be extrapolated to other dialects and varieties of U.S. English. Also, with a disproportionate number of black criminal defendants, the *Harvard Law Review* further indicates that these due process mistakes are surreptitious with far-reaching implications for litigants whose cases involved AAVE speakers and testimony.

6.3.2 AAVE *Misinterpreted*

6.3.2.1 Judge Moore's Dissent about 'Finna'

In further examination of the *United States v. Arnold*[22] case, the federal appellate Judge Moore wrote her dissent based on her incorrect interpretation about the testimony spoken in AAVE by Tamica Gordon. The witness said, "he finna shoot me".

(24) "he **finna** shoot me" - Gordon witness testimony

he's fixing to shoot me - Gordon testimony meaning

...i.e. *he's going to / intending to / getting ready to shoot me*

Even after directly listening to the recorded testimony several times, Judge Moore misinterpreted Gordon's testimony as possibly past tense by looking up 'finna' in the Urban Dictionary as the judge's referenced source (Harvard Law Review, 2023:1962). However, Urban Dictionary is a user-generated website where anyone can define ever-changing slang words and phrases and is not a primary, scholarly linguistic source. AAVE has grammatical rules and is not slang. The other appellate judges on the case disagreed with Judge Moore's Urban Dictionary assessment to not admit this aspect of the witness's testimony as evidence. Instead, the other appellate judges agreed that the witness Gordon's testimony should be admissible evidence because it was an excited utterance said in the present tense in keeping with AAVE grammatical rules. Consequently, the witness Gordons testimony was allowed as evidence.

[22] United States v. Arnold, 486 F.3d 177, 180 (6th Cir. 2007)

6.3.2.2 Police mistranscriptions

In a 2015 San Francisco legal case, police incorrectly transcribed a call from a suspect in jail. who spoke AAVE. The police's transcription errors and omissions were identified by two linguists Rickford and King. In the call, the black suspect said,

(25) "He **come** tell (me) bout I'm gonna take the TV" - spoken by the suspect

"??? I'm gonna take the TV" - incomplete police transcription

The intended meaning of the above sentence: In the example above, the suspect was not making an admission that he took or was going to take the TV. Instead, the suspect is only indicating that someone else is saying that he took or was going to take the TV.

(26) "I'm **fitna** [=immediate future] be admitted" - spoken by the suspect
I'm fixing to [≈ 'going to'] be admitted - actual meaning

"I'm fit to be admitted" - incorrect police transcription

In the above two examples, the police's mistranscription of the suspect's recorded call omitted an initial phrase and had errors involving preverbal tense-aspect and modality markers typical of spoken AAVE (Rickford & King, 2016:955). Depending on the case and circumstances, these types of police errors and omissions could have damaging effects against speakers of AAVE who are suspects or defendants.

6.3.3 Dialectal Due Process Conclusion

The *Harvard Law Review* (2023) explores the Constitutional responsibility to provide a procedural due process that does not systematically generate inaccurate transmission of linguistic information that negatively impacts defendants. Routine misinterpretations and mistranscriptions of spoken AAVE in legal proceedings can be violations of this procedural due process. Therefore, the article recommends taking a judicially-administrative approach to problem-solving, including identifying and noting the type of nonstandard English variety or dialect on the case records, audio recording testimony, and judges providing explicit juror instructions to increase implicit bias awareness and reduce linguistic

discrimination. While these potential remedies are not all-inclusive, they are potential solutions worth further examination and possible implementation. The *Harvard Law Review* (2023) solutions are further explored in Section 7.3 below.

7 Potential Solutions

7.2 Judicial implicit bias awareness

7.2.1 *Judges guarding against their own implicit bias from the study to the courtroom*

In the Donald et al (2020) study, when race was clearly identified, judges were able to be more aware of their implicit biases and to avoid these biases from influencing their decision-making, and "many judges are alert to the danger of bias in the courtroom and work to neutralize it" (Donald et al. 2020:78). Using the judges' results from the experimental study could provide a viable solution in the courtroom. Judges could have this same type of implicit association awareness and vigilance against allowing implicit bias to affect their decision-making in courtrooms (Donald et al. 2020:77). Courtroom hearings and trials are public, and most judges are vigilant about protecting against racial implicit bias impacting their decision-making.

7.2.2 *Judges guarding against others' implicit bias in the courtroom*

Donald et al. (2020) asserts that it is the judge's responsibility to help ensure "fair administration of justice", including mitigating the influence of racial implicit bias in the courtroom. Donald et al. posit different ideas towards this end goal. Since judges are the recipients of documents and arguments, if these documents are stained with implicit bias, they could impact the judges' ability to render fair rulings. Many judges serve as mentors to attorneys, so they can lead by example by both being tuned into their own behavior as well as participating in implicit bias programs to increase their awareness. The 2020 Donald et al. research further identifies other opportunities for judges to avoid the effects of implicit bias, including insisting on respect for everyone in the courtroom, reminding attorneys of

their professional conduct responsibilities, calling out attorneys who display disrespect, and striking prejudicial or stereotypical remarks. In addition, judges can take other measured steps grounded by the law and facts instead of quick impressions to lead the decision-making process. Some of these purposeful measures that judges could take that could indirectly reduce implicit bias, include: 1) not rushing rulings to avoid resorting to stereotypes, 2) good self-care to break, eat, and rest, to reduce judgments by intuition, 3) use objective standards and relevant checklists for more structured and critical thinking 4) write thoughtful opinions (when feasible), and, 5) make tentative rulings to allow others' feedback (Donald et al. 2020:79). Judges can also take direct measures to reduce the influence of implicit bias, including: 1) participating in implicit bias training and encouraging other members of the court to participate, 2) remember the commitment to fairness and impartiality under law, 3) encourage diversity in judge's chambers and within the court as a whole, (9) consider and imagine the defendant or witness is white before making a decision, and, (10) receive constructive feedback on their judicial performances (Donald et al. 2020:79).

7.3 An Administrative Approach to Dialectal Due Process

While there are likely correlations between prejudice against AAVE and larger underlying racial prejudice, especially in the legal system, the *Harvard Law Review* (2023) article primarily focuses on the resulting errors and solutions due to the linguistic differences of this variety of U.S. English. Specifically, the *Harvard Law Review* (2023) recommends having the view that the errors are mistakes in the due process methods and steps. This streamlined viewpoint allows people to identify an administrative approach to identifying judicially manageable possible solutions.

7.3.1 *Recognizing Dialect/Variety, Recording, and Seeking Resources and Tools*

Identifying the dialect or variety of U.S. English involved in the case and clearly noting it on transcripts and legal records would help others better review the document and provide a more complete record. (Harvard Law Review, 2023:1965). This procedural remedy has the

potential to prevent misinterpretations by increasing linguistic awareness by judges, attorneys, police officers, and court reporters as they review or transcribe legal documents. In addition, audio recording testimony of nonstandard or varietal English provides more opportunities for generating accurate transcriptions and conducting appellate reviews (Harvard Law Review, 2023:1969). Also, if the legal case is in an English dialect or variety is explicitly noted on the records and unfamiliar to key people in the process, it might encourage them to seek primary linguistic resources, reputable interpretive tools, or support with transcripts or recordings.

7.3.2 *Judges' Instructions to Jurors*

A low-cost and judicial administrative remedy is including explicit jury instructions that witness testimony's credibility or defendant's potential guilt cannot be determined based on someone's accent, dialect, or variety of standard English. For example, the judge could inform the jury that the testimony they are going to hear is spoken in AAVE, which is a valid English variety with grammatical rules and is not an incorrect, mistake-laden version of SAE. While many people have implicit bias against spoken vernacular English, the judges' explicit refined instructions can caution jurors, increase their bias awareness, and encourage their self-awareness to avoid linguistic prejudices.

7.4 An Academic Approach to Reducing Linguistic Discrimination

By creating more awareness, education, and training in the classroom, I propose we provide a path to reducing linguistic discrimination in the courtroom — involving cross-disciplinary and interdisciplinary learning, education, and application between Linguistics departments and law schools.

For example, in its most general overview, Linguistics PhD students could teach and provide lectures for law school students to introduce the topic of issues related to language and linguistics in the legal system and the resulting linguistic discrimination. Conversely, perhaps having 3rd year Law School students teach Linguistics graduate/PhD students

being able to take a course on basic legal system processes and terminology to incorporate ways for the two disciplines to collaborate inside and outside the courtroom.

Additionally, further research and study are also warranted to implement the proposed potential solutions recommended in this paper and in other research towards the most significant goal of reducing and eliminating in linguistic discrimination of African American Vernacular English and other varieties of U.S. English both inside and then outside the courtroom. In addition to the legal system, a similar cross-disciplinary educational model could also be applied to other areas of life in America like the educational and healthcare systems where linguistic disparities and language discrimination exist.

8 Conclusion

The issue of what variety of English is spoken in the courtroom impacts the legal process and highlights the lack of equal justice under the law. In courtrooms, speakers of "vernacular" dialects of English often have to put themselves and their language on trial. This research focuses on investigating the courtroom impact of language and linguistics (lexicon, syntax, phonology, etc.), and how a court's mistakes or a lack of knowledge or resources can negatively impact judge instructions, juror decisions, transcription accuracy, witness credibility, and consequently, case results. The consequences of societal biases favoring Standard American English, lack of dialectal or linguistic interpreters in many courtrooms, and dialectal/vernacular biases, prejudices and miscomprehension can lead to unjust or wrongful outcomes and verdicts.

With pervasive linguistic discrimination of vernacular English in the courtroom tipping the scales of (in)justice, more work should be done, including linguists' involvement in the legal court system. Beyond Rickford and King's 2016 study: further research, case studies, and inquiries into discrimination related to speakers of vernacular English, especially of AAVE, are needed to consider, explore, and implement the short- and long-term potential solutions identified and recommended in this paper to eradicate this language discrimination issue and balance the scales towards equal justice.

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