

# Linguistics and the law: how knowledge of, or ignorance of, elementary linguistics may affect the dispensing of justice

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**ABSTRACT** Ignorance of elementary linguistic concepts may have a bearing on justice. This thesis is drawn from the conviction appeal of a Haitian-born American sentenced to prison for 12 years for dealing cocaine. The verdict was based in part on a surreptitious recording of the drug deal. Although the drug dealer on the tape spoke a dialect of American Black English, and the defendant speaks English with a Creole accent, the State persuaded the jury that the Haitian disguised his voice by purposefully dropping his accent. His ability to perform this feat was attributed in testimony to the fact that he had been an interpreter for the United States Army in Haiti, and was therefore a linguist, and therefore understood 'sound change', and therefore could disguise his voice by dropping his foreign accent. This absurd chain of non sequiturs, and the resulting miscarriage of justice, is the result of linguistic naiveté, and would not have occurred if the court knew that an interpreter is not necessarily a linguist, and that sound change refers to the historical development of languages.

**KEYWORDS** linguistics, law, legal profession, justice system

## **INTRODUCTION**

Language and the law, once a subfield of sociolinguistics, is now a robust, independent area of study, where lawyers and linguists collaborate to deepen their knowledge. It has spawned associations such as the International Association of Forensic Linguistics (IAFL) that sponsor conferences and journals in which an ever-growing body of scholarship explores the multifaceted effect of language on legal matters.

Most of the work in this field approaches the topic from the point of view of the use of language. For example, trial lawyers learn to avoid language usage that introduces unwarranted assumptions, such as 'When did you stop beating your wife?' They do not learn about the logical structure of language and the notion of presupposition, which is the technical term for implied assumption. That is linguistics: the science that describes and explains language.

This approach is for the most part correct. When interpreting testimony spoken in an uncommon dialect, the focus is on what the words mean in that dialect, not on linguistic questions of what dialects are, where they come from, whether they are social or regional, and so on. Linguists may inform jurists that speakers of uncommon dialects are not inherently

ignorant, and that their form of speech is not inferior or degraded. They do not usually explain that all 'languages' are composed of dialects, and that from a linguistic viewpoint the 'standard language' is a dialect, no better or worse suited for communication than any other.

I was surprised, therefore, when I found myself consulting in a case in which linguistic matters, not language usage *per se*, had a bearing on the outcome. A jury tried a Haitian man arrested for allegedly selling three-tenths of a gram of crack cocaine to an undercover police detective. The sole evidence of the prosecution was the testimony of the detective, who attested that he sold the drug to the defendant, whom he recognized in the courtroom. The basis of the defence was a tape-recording of the transaction made clandestinely by the detective. The defence claimed that the voice of the drug dealer on the tape was not the voice of the defendant. The jury found the man guilty and the judge sentenced him to 12 years in prison.

In an appeal of his conviction, the defendant asked me to analyse the tape-recording of the drug deal that allegedly contained his voice as the dealer. In doing so, I used some recorded testimony from his trial as part of the analysis. (That gave me voice exemplars of both him and the arresting officer to compare with those on the tape.) The content of the testimony caught my attention when the prosecution told the jury that the defendant had been a linguist in the army. Though he spoke English throughout his trial with a foreign accent, the prosecutor claimed that because he was a linguist he was therefore capable of disguising his speech and speaking the African-American English heard on the tape without a foreign accent.

I asked for the entire written and spoken transcript of the trial to see if the excerpt I heard could be interpreted in a sensible way, since I did not think linguists, or nearly anybody for that matter, could willingly speak without their foreign accent when the need suited them.

In reading the transcript, I discovered several paragraphs of testimony where a lack of knowledge of elementary linguistic concepts and definitions had a bearing on the outcome of the trial. The weakness in the prosecution's case was that the voice of the defendant, and the voice of the drug dealer on the tape, sounded different. The defendant spoke English with a distinct accent indicative of his native language of Haitian Creole. He had begun to learn English at the age of 18. The drug dealer spoke a common dialect of African-American English. It is widely accepted by linguists that a second language learned after a 'critical age' – said to be around 13 plus or minus a few years depending on the individual – can rarely be spoken without an accent that results from 'interference' from the native language. This point was never made in the course of the trial.

### THE TRIAL

In this section I quote from portions of the testimony and point out where the lack of elementary linguistic knowledge in the courtroom bore on the case and the ultimate verdict.

In testimony:

Defence attorney: And the subject [drug dealer] had no foreign accent whatsoever; is that right?

Undercover detective: From listening to the tape, none.

This establishes for the record that both sides agree that the drug dealer did not speak English with a foreign accent.

Before his conviction, the defendant had been in the United States Army and 'was assigned to linguist . . . duties', according to court records. He was with the army during its presence in Haiti in 1994, and served as an interpreter.

In testimony, where the prosecutor is cross-examining the defendant:

Prosecutor: You were assigned as a linguist in the Army, is that fair to say?

Defendant: Yes.

Prosecutor: I wasn't sure what that meant, so I looked it up in the dictionary. Would you agree with me that linguistics is concern [*sic*] with the system of sounds and language, especially sound change?

Defendant: I know I was a translator in the Army. What you asking me[,] do I agree with you? No.

Prosecutor: I just looked up the definition of linguist and linguistics, and I'm referring to the Webster's Dictionary, it says, 'Linguistics is concerned with the system of sounds of language, especially sound change.'

Let me suppose here, and for the remainder, that an observer of these proceedings has the knowledge that a first-year college student might acquire from an introductory course in linguistics. Let's call him Daniel – 'A Daniel come to judgment'. What does Daniel observe so far?

He notes that the term 'linguist' is misused. It is applied to a person who is a self-described translator though more technically he is an interpreter. Ordinarily, this is not a troublesome confusion, but in the

circumstances of a trial, more preciseness in definition is mandatory, and the defence should have demanded it.

Daniel may also note that *historical* linguistics is concerned with how the sounds in a language change over time – which linguists refer to as ‘sound change’ – but he would hardly say that this is an especial concern of linguistics in general. Moreover, he would know that the use of the words ‘sound change’ have nothing whatsoever to do with a speaker’s ability to disguise his voice or not speak with a foreign accent. This, too, went unchallenged by the defence.

If he had some legal sophistication, Daniel might wonder why the defence did not object to the prosecutor’s asking the defendant to agree or disagree with a dictionary. He might also, if curious, check the various dictionaries of English associated with the name Webster. He would be unable to find any mention of the words *sound change* in the entries for *linguist* and *linguistics* in any of the Webster’s or Webster’s-derived dictionaries less than 50 years old. He would find the following definition in *The Universal English Dictionary*, edited by H. C. Wyld in 1952:

Linguistics: Philology, esp. that side which has to do with phonetics and changes of sound.

It is possible that the prosecuting attorney is using the term *Webster’s* as a generic term to mean ‘dictionary’, just as we use *Xerox®* as a generic meaning ‘photocopy’, so he may have found the definition he gave in court in any number of dictionaries not associated with Webster. It is also conceivable that he happened upon a very old dictionary that preserved the nineteenth-century definition of *linguistics* that might well include a reference to sound change. However, even an 1896 edition of Funk and Wagnall’s does not mention the words *sound change* in their definition of *linguist* or *linguistics*. In any event, the whole matter went unchallenged by the defence, and one can imagine that with a little knowledge of linguistics and its subfield of historical linguistics, the defence might have pursued the issue to his client’s benefit.

The defence also neglects to observe that interpreters often speak one or more of the languages they interpret with a foreign accent that one assumes they would prefer not to have, and would not have if it were all that easy to lose.

If notions of historical linguistics were abused by mis-defining ‘sound change’, notions of sociolinguistics are equally trashed.

In testimony:

Prosecutor: You’re not trying to tell this jury, are you, that when you’re out on the streets in the west side of A., you talk to people the same as you talk to Father Bob, are you? You’re not trying to tell the

jury that, are you?

Defendant: No. When I'm in the street, I'm talking to peoples. We use a different language. But when I'm talking to a . . . [sic] when I'm in a different language like, you know, a couple of curses might go out and stuff, but when I'm talking to the priest, you know, he's a priest so he's different.

Prosecutor: Sure. So the tone you take with him and the things you say are a little bit different than you do on the street? I understand what you're saying.

Defendant: No, no, no, no, no. What I'm saying is like, okay, over here he's an official capacity. I'm not going to curse or anything like that. But when I'm in the street, you know, I'm talking, you know, like to friends, like you know, peers and stuff like that, you know, we talk different.

Prosecutor: You would never think to [sic] saying to father Bob, 'This is some good shit, man.' You wouldn't ever said [sic] these words to Father Bob, would you?

Defendant: Would I say to Father Bob 'This is some good shit, man?' Why would I say that to a priest?

Prosecutor: You would never say that to a priest, would you?

Defendant: No.

If Daniel remembered his sociolinguistics, he would observe that this testimony has to do with what linguists call 'style'. Most speakers are capable of speaking their language more formally or less formally depending on the situation they are in. For this reason styles are also referred to as 'situation dialects'. The phenomenon is easily observed. People speak informally to their intimates such as relatives, friends, members of the same social class, etc. They speak a more formal form of the language – one with less slang, less vulgarity, less contractions, more learned words, etc. – with people who are not perceived as intimates, or are perceived as having a higher social status. Certainly, one generally speaks more formally to members of the clergy. There are languages, Thai for instance, in which a panoply of expressions are reserved solely for communicating with members of the Buddhist clergy or royal family (Fromkin and Rodman 1998: 426).

Unaware of this, the defence attorney is unable to counter the prosecution's imputations that the ability to style-shift, owned by every speaker,

does not endow the defendant with the ability to eschew his accented English and speak an unaccented dialect of American English. Interestingly, Daniel sees that the defendant, despite his broken discourse, aptly describes the phenomenon of style-shifting and is naively perspicacious when he comments: ‘Why would I say that to a priest?’

In testimony:

Prosecutor: You speak French, you speak Italian, you speak Spanish, you speak English.

Defendant: I speak French fluently, I speak Creole fluently, I speak Spanish some kind of fluently, and Italian because of the Spanish relation, it’s like Italian is, you know, like a Spanish cousin, you know, so I can understand, I can speak a little Italian.

Prosecutor: And obviously English?

Defendant: Yeah.

Prosecutor: Obviously. You were assigned as a linguist in the Army, but you told Mr L. it would be simply impossible for you to speak without that accent. No matter who you’re talking to, whether it’s Father Bob or whether it’s KF, it’s impossible for you to speak without an accent.

Defendant: Yes, it is impossible for me to speak without an accent.

Daniel recalls learning about second language acquisition and the critical age hypothesis. He finds it sensible that the defendant, who began to learn English at age 18, would speak with an accent, and sees that the other languages he speaks have little bearing on whether his English is accented or unaccented.

Here again the defence is hopelessly uninformed and cannot rescue the defendant and convey to the jury the relatively simple concept of ‘critical age’. This might be done by citing well-known and highly respected individuals such as Secretary Henry Kissinger, who learned English in his teens, and who retains his German-accented English, which, one is fairly certain, he would willingly lose.

In the State’s final argument, the prosecuting attorney argues, must argue, that the voice of the drug dealer, who speaks unaccented English, is the voice of the defendant. He can achieve this goal only by convincing the jury that the defendant disguised, as it were, his voice to imitate a native speaker of a common dialect of American English. Here is an excerpt of his argument:

Prosecutor: . . . Fluent in English. Fluent in French, Fluent in Creole. Speaks Italian. Fluent in Spanish. US military linguist . . . He acknowledges all of this, fluent in five languages, US military linguist, goes by several names, and he's willing to say to you, if you will recall my last question to him, 'You can't possibly speak without that accent, can you?' 'No, sir, I can't.' 'It's impossible for you to speak without that accent?' 'Yes it is.' Fluent in five languages, several names including his Spanish name, TM, but it's impossible for him to speak without this accent. Please, that's a guy who's willing to say anything to get out of hot water.

Daniel is unimpressed. He recognizes the non sequitur, the basis of which is an ignorance of elementary linguistics. Were Daniel the Public Defender he would point out to the jury that the state has not established the fact that the defendant can speak unaccented English. He could show that none of the linguistic arguments hold water. Other arguments were possible. The prosecutor might have tried to establish that the defendant once took acting lessons, or studied phonetics, or had formal language training. Perhaps he was a Haitian Eliza Doolittle in the hands of a Fagin-like modern day American Henry Higgins, who trained him to speak a dialect of African-American English for the purposes of conducting illegal drug transactions. Any of these might arguably lead to the ability to speak a native sounding dialect of English. But he did not attempt to make any of these arguments.

### THE NEED FOR KNOWLEDGE OF LINGUISTICS

We have an instance in which a small amount of linguistic knowledge, obtainable in an introductory course, or from any of several introductory books (e.g. Fromkin and Rodman 1998, O'Grady *et al.* 1993), might have altered the course of justice. With the absence of that knowledge in the jury box and at the defence table, the prosecutor was free to argue speciously that the defendant could speak English without an accent if he wished. This obviated the unaccented English of the drug dealer on the 'buy-tape' (this is the proper legal terminology for the recording made during the drug transaction), which should have cast reasonable doubt on the guilt of the defendant.

A person with elementary knowledge of linguistics, such as our hypothetical Daniel, would know the difference between *linguist*, *translator* and *interpreter*. He knows that being an interpreter imparts no special ability to speak without an accent.

Daniel knows that knowledge of *sound change* is knowledge about the historical development of language, and has no more to do with speaking skills than knowledge of how to cook a soufflé. The Public Defender did not.

He also knows that the ability to switch styles is a sociolinguistic skill possessed by all speakers, and does not endow a person with the ability to imitate a dialect not already known. Indeed, there is some evidence that second language speakers are less able to style-shift in their second language, a fact that vitiates the State's argument that style-shifting abilities are linked to the ability to conceal a foreign accent. The Public Defender was unable to mount this form of defence.

Daniel knows that when a language is learned past the *critical age* of puberty, it is almost inevitably spoken with interference from the native language, that is, with a distinct non-native accent. Here, too, the defence proved to be uninformed.

While the role of the judge varies widely among the various venues in the 50 states of the United States, one also wonders whether the judge perceived the specious arguments, and if so, whether he was lawfully enabled to question them. Whatever the case, one hopes that judges, above all legal practitioners, would acquire the elementary linguistic knowledge to recognize specious arguments and know when juries are being severely misled.

Should we conclude, then, that part of a legal education should include elementary knowledge of linguistics? Perhaps. But I would rather advocate that part of a *general* education should include the fundamentals of linguistics. Why should it not? Elementary understanding of chemistry and physics are part of a general education, and such knowledge is arguably no more relevant in today's global society than linguistic knowledge (Spring *et al.* 2000). Were this the case, pertinent language and *linguistic* concepts could be reviewed at some point in law school.

The defendant has been incarcerated for nearly three years. He is unlikely to win his appeal, according to his new attorney. He is probably innocent of the crime for which he was convicted. He is a victim of ignorance, and of a particular kind: ignorance of the basic concepts and definitions of linguistics. Here is an excerpt from the final argument for the defence:

Defence: . . . LH's voice is not on that tape. You've heard it time and time again. His voice is not on that tape. His voice isn't on that tape. He didn't make the buy. You cannot fake an accent. You may be able to speak lots of different languages, but that does not make you able to fake an accent. He was born in Haiti. He grew up in Haiti. He speaks with a Haitian accent. Even when he become [*sic*] angry on the stand, he speaks with a Haitian accent. He's been over at the M C Jail where they could have brought any officer in that they wanted to if they heard him speak in anything other than a Haitian accent. They didn't do that. They didn't bring anybody from the street in to say sometimes he speaks in something other than a Haitian accent.

Please put your common sense to work here. People cannot – although they may be able to speak a different language – they cannot speak it without an accent. Does not happen. I went to college with a man who grew up in a German [*sic*], with German parents, and he could speak fluent German and English without any accent. Two different languages. Larry can speak different languages, but he cannot – I think, I don't know why – he cannot talk in an American accent. And why would he I mean, it just doesn't make any sense. He talks the way he talks. He lives on the streets. He says the thing he says in the only voice that God gave him, and that's the one you heard on the stand. The prosecutor talked about Father Bob, and he tried to make a big deal about he uses a different language with Father Bob than he does on the street like somehow he turns this on and turns it off. He was talking about swear words. You know he was talking about swear words. He wasn't talking about, 'With Father Bob I use my Haitian accent. With the people in the street, I talk some way other than that.'

Is it not sad when the defence attorney has to say, 'I think, I don't know why', and can only defend his client by an appeal to the Deity? How much better than this pathetic argument would it be if the defence attorney had reviewed his class notes from Linguistics 1 and said something like:

The defendant did not begin to learn English until the age of 18. It is widely accepted that such an age is beyond the age where a person can learn to speak a foreign language without an accent. Being an interpreter does not mean a person can speak a language without an accent. Interpreters of English at the United Nations mostly speak English with an accent. The prosecution stated incorrectly that the defendant is a linguist. An interpreter is not a linguist. He then stated that a linguist knows sound change. Sound change, ladies and gentlemen, is how the language changes over time. It means that Shakespeare pronounced words differently than we do. That's all. It has nothing to do with the ability to disguise a voice or conceal an accent. As far as speaking differently with the priest, don't we all do that? Don't you and I speak in a different manner with our clergy than we do with our kin? Of course we do. Everybody does. There's a name for that. Linguists call it style-shifting. Everybody does it. Does that mean that everybody can disguise their voice with an accent, or by dropping an accent that they already have? Certainly not. And this defendant is no exception. The science of linguistics teaches us that a person cannot willingly drop a foreign accent in a language that is learned as an adult. The science of linguistics tells us

that there is little likelihood that the voice of the drug dealer is the voice of the defendant, and therefore little likelihood that the defendant is the drug dealer, little likelihood that he is guilty.

## CONCLUSION

The argument that legal professionals ought not to be linguistically naive is based on this single case study. Whether there are similar cases is unknown to the author, and perhaps unknowable in a practical sense. Readers of this report are encouraged to share relevant knowledge.

If a person were convicted of a crime because a jury was convinced of a geocentric solar system, or of the phlogiston theory of combustion, or of the four humours, there would be outrage, and the conviction would (one prays) be overturned. Yet the chain of linguistic non sequiturs that allowed the Haitian to be convicted is no less absurd, no less naive in today's society, than these once highly respected ancient theories.

If it is believed, as I believe, that 'Injustice anywhere is a threat to justice everywhere', then we, as forensic linguists, are obligated to encourage more learning of linguistics – the science of language – among those who practise in the legal professions. That is the lesson of this one case history, and of this report.

## LINGUISTIC CONCEPTS THAT BORE ON THIS CASE

*Dialects*

*Foreign 'accents' (interference from native language)*

*Critical age hypothesis*

*Linguist versus polyglot*

*Linguist versus translator*

*Linguist versus interpreter*

*Sound change*

*Code-switching*

*Styles*

*Registers*

*Situation dialects*

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