

Reaction to: “More Than What Meets the Ear: Speech Transcription as a Barrier to Justice for African American Vernacular English Speakers”

RUJUTA NANDGAONKAR*

Alger’s article focuses on the intersection of African American Vernacular English (AAVE) and errors in court transcription, which the article purports can result in a lack of due process for African American defendants across the criminal justice system. In her article, Alger suggests that inaccurate court transcriptions reveal biases among individuals who are unfamiliar with AAVE, and, further, that such mistranscription is just one of many factors contributing to the outsized representation of Black persons in the American criminal justice system. To illustrate her thesis, Alger examines linguistic aspects of AAVE usage, court reporter duties in practice, implications of erroneous transcriptions on individuals’ due process rights, and potential solutions to address these implications. I agree with Alger’s main arguments that linguistic bias can occur among individuals who are unfamiliar with a dialect like AAVE, and, further, that inaccurate court transcription can lead to the deprivation of due process rights. However, I am not convinced of the broad applicability of Alger’s conclusions due to (1) her failure to provide any empirical evidence to support her conclusion that the results of the Testifying While Black study are applicable to other court systems throughout the United States, and (2) her failure to address and refute the obvious counterarguments to her broad application of the foregoing results. I will address the strengths and weaknesses of Alger’s article in turn.

To start, Alger successfully demonstrates the problem her article sets out to explore by tying the history of linguistic bias in the criminal justice system to the importance of an accurate courtroom record and the potential obstruction of due process within this context. By examining the effects of Standard Language Ideology, Alger effectively demonstrates the causal relationship among the inaccuracy of court transcriptions, individuals’ implicit biases, and the negative implications resulting therefrom. For example, Alger first sets out the ways in which court reporter training fails to account for linguistic biases among court reporters, as this training is solely focused on “standard” English, and thus does not cover other dialects or variants of the English language. Next, Alger explains that because attorneys, judges, and juries rely regularly on the accuracy of the courtroom record, a transcription that fails to account for a defendant’s dialectal nuance has the potential to significantly sway a trial’s outcome. Lastly Alger explains that the implications of the inaccurate record have the potential to then reverberate along the defendant’s appeal path, leading to harsher and longer sentences faced by African Americans in comparison to other demographic groups.

* Staff Editor, GEO. J.L. & MOD. CRIT. RACE PERSP.; J.D. Candidate, Georgetown University Law Center, (L’22), © 2021, Rujuta Nandgaonkar.

At first glance, Alger's analysis appears to be logically sound. However, upon closer examination, it becomes evident that the evidence on which Alger's arguments rely is dangerously thin, and, consequently, Alger's reliance on the Testifying While Black study endangers the broad applicability of her arguments. For example, Alger fails to offer any empirical evidence to support her sweeping conclusion that the results of the Testifying While Black study are applicable to all court systems throughout the United States. The results of the study hardly constitute empirical evidence. The study involved an incredibly small sample size of participants (fewer than thirty court reporters), and, further, it consisted of participants from only one city's court system (Philadelphia). In view of this, Alger's claim that the study demonstrates that transcription errors occur at a statistically significant rate, ultimately, must fail; one very limited study does not equate to empirical evidence on which one may justifiably base broad conclusions regarding the American judicial system at large.

Alger's analysis is further flawed in that Alger fails to address and refute obvious counterarguments regarding the applicability of the Testifying While Black study to other court systems in the United States. For example, one could reasonably argue that due to the limited sample size and particularized geographical area used in the study, the disparity in accuracy between AAVE and "standard" English transcription may merely be unique to the Philadelphia Court System, or may only be present in court systems located in certain geographical areas, rather than throughout the American judicial system at large. By failing to address and refute counterarguments like this, Alger leaves the credibility of her argument open to significant criticism that should have been anticipated and addressed. In addition, despite Alger's attempt to use cases, such as *United States v. Arnold*, to demonstrate the growing acknowledgment of the significance of AAVE transcription errors on appeal, the credibility of Alger's arguments still falls short due to Alger's lack of empirical evidence to support the broad application of her conclusions to the American judicial system at large.

Alger concludes her article by suggesting solutions to address the disparate implications resulting from AAVE transcription errors, including: using AAVE interpreters, providing implicit bias training, and requiring dialect competency at similar rates to "standard" English competency. If the issue of AAVE mistranscription is indeed as statistically significant and widespread as Alger claims it to be, Alger's suggestions would provide appropriate and effective solutions to address the disparate implications discussed in her article. However, because Alger relies heavily on a very limited study to establish the broad application of her conclusions, Alger's solutions effectively become unnecessary because she has failed to prove that AAVE transcription errors are statistically significant enough to be addressed.

Although Alger sets out an interesting argument regarding the racially disparate implications resulting from AAVE transcription errors, Alger ultimately leaves the legal reader doubtful of the credibility of her conclusions. That is, due to (1) Alger's failure to provide empirical evidence to support her conclusions

regarding the broad applicability of the Testifying While Black study, and (2) Alger's failure to address and refute obvious counterarguments regarding the broad application of the foregoing study, the foundation on which Alger's arguments rely ultimately fails. Consequently, the legal reader is left unconvinced of the validity and reliability of Alger's analysis, as well as the proposed solutions derived therefrom.