Intersections of language rights and social justice in the Caribbean context

Edited by

Clive Forrester

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Preface

In the summer of 2020, the Society for Caribbean Linguistics (SCL) was scheduled to have its 23rd Biennial Conference at The University of the West Indies, St. Augustine campus in Trinidad and Tobago. Plans were already well underway from the year before and scholars from across the world were getting ready to make their usual trek to the conference in a warm and accommodating Caribbean destination. Abstracts had started coming in close to the end of 2019 and by February 2020 a rudimentary conference schedule had started to take shape, all the while news of some new flu variant was making the rounds on the news circuits. Then, almost out of nowhere, the world came to a screeching halt in March when a global pandemic was declared. The SCL executive committee hoped that a conference would have been a possibility by August, but we had to pull the plug a few months before. The 23rd Biennial SCL Conference was canceled.

I sent out a proposal for a panel on language and the law during the call for papers and received two abstracts to be considered for the panel. Along with my paper, the panel had three presenters when the conference was canceled. It occurred to me shortly after the cancellation that this would be a good opportunity to convert the panel into a publication focusing on language rights in the Caribbean context. I extended the invitation to contribute a chapter to a few more individuals and received two more positive replies, bringing the number of contributions to five. It became apparent fairly quickly that this was a good decision since a published volume could accommodate many more contributions than a conference panel that is usually capped at four papers, and a full publication would encourage authors to develop their ideas beyond the scope of what was expected for a conference paper. By the end of 2020, all the contributions were ready for peer review and SCL's Studies in Caribbean Languages book series hosted by Language Science Press was the obvious choice.

The summer of 2020 also saw a surge in the *social* pandemic of anti-black racism, sparked by a tragedy in the USA which then reverberated across the globe in the form of protests and rallies, but also in the form of policy changes. The timing of this volume is apropos as it gives us the opportunity to reflect on the anti-black racist origin of attitudes towards Caribbean Creole languages, and helps us forge new directions in the ways that we study and interact with these

languages. Linguists and other researchers interested in the connections between language and the law are likely to find the discussions in this volume useful, as well as individuals interested in the sociology of language, and advocacy in its broadest sense. The content is suited for a range of readers spanning senior undergraduates to established academics and could serve as targeted reading material for courses that have a language and law component or more generally, syllabi that highlight social issues surrounding Caribbean languages.

Several of the authors in the present volume have looked at communicative issues coming out of the courtroom context where a Creole-dominant speaker has had to interact with officers of the court who use a standard(ised) European language. This is a common site for investigation since there is a "safe" bet that a Creole-speaking member of the public is likely to encounter challenges regarding effective communication in an 'alien' discourse space such as a courtroom. There are, however, other adjacent areas of research that are concerned with language and the law in the Caribbean context, but not necessarily with discourse patterns and interpretation issues inside the courtroom. This volume focuses primarily on one of those areas – language rights. Each author interrogates the issue of language rights from a different perspective; whether through the lens of social justice, the right to an interpreter in court, or strategies for addressing linguistic discrimination, but we all converged on a singular observation – significant work is still needed in this area.

The present volume is the second collection of essays dealing with language rights in the Caribbean context. The first such collection was Brown-Blake and Walicek (2013), "Language Rights and Language Policy in the Caribbean," the second issue of the Sargasso Journal of Caribbean Language, Literature and Culture. They presented a snapshot of the status of language policies (or the lack thereof) in a select few Caribbean territories; most notably Jamaica, St. Lucia, Puerto Rico, and Haiti. The Brown-Blake and Walicek collection contained a mixture of original research and reflections from Caribbean linguists spanning three distinct generations. There was an interview with Mervyn Alleyne, one of the "older heads" in Caribbean linguistics, contributions from Hubert Devonish and Marta Dijkhoff, senior academics in the subfield, and chapters from Clive Forrester and R. Sandra Evans, newly minted PhDs at the time. The Brown-Blake and Walicek volume appeared only a year after the creation of the "Charter on Language Policy and Language Rights in the Creole-speaking Caribbean" was established at a meeting at UWI, Mona in 2011. The energy and expectations of the linguists and language advocates who met to draft the charter were high and the document represented the first attempt at articulating a fairly robust list of rights for speakers of Caribbean languages.

Ten years later, the energy and expectations are still high, but as the present collection of essays demonstrates, many of the challenges still remain; the spectre of linguistic discrimination is ever present, communicative issues in the courtroom persist, and policymakers are still reticent about defending indigenous languages in the region. If anything, what the present volume demonstrates is that even though the goals of the charter on language rights are yet to be fully realized, there are still opportunities for language advocates of all stripes to devise impactful strategies in the ongoing struggle for the recognition of language rights. Caribbean language advocacy has come a long way, but it still has a long way to go. This current collection of essays is meant to bring us slightly closer to that point.

Clive Forrester
Waterloo, Canada.

Introduction

It is not altogether clear how to categorize matters of language rights within their proper disciplinary foci. Is it a branch of linguistics, or a branch of law? Which set of researchers should ideally take charge of articulating the parameters and goals of this area? Linguists command expertise in language and communication but lack the depth of knowledge required to interrogate or critique human rights instruments. Lawyers are skilled at evaluating human rights legislation but lack proficiency in analyzing language issues in the micro- and macro-linguistic arenas. The linguist and the lawyer, proficient in their separate areas of research and cognizant of each other's blindspots, can bring a collaborative perspective to the emerging area of linguistic rights in the Caribbean region. This volume aims to accomplish exactly that, i.e., to provide researchers from these two backgrounds with a platform to engage in rigorous interdisciplinary dialogue on language rights.

Admittedly, the current volume is not a law book. It is decidedly oriented towards issues central to Caribbean linguistics, notwithstanding the fact that two of the contributors are trained lawyers (Brown-Blake and Murray). The goal in each contribution is not so much to point out the gaps in legislation in relation to language rights, but rather to highlight how current language-related issues in the Caribbean make it difficult for Creoles and other minoritised languages to be recognised as languages that should even be afforded rights. Indeed, the very idea of language rights is such a novel concept in the Caribbean that legislative gaps are to be expected even if we refuse to accept them in perpetuity. The contributors to this volume acknowledge what is absent from the legislative framework or the public consciousness as the case might be, and in turn, recommend strategies for ways in which full language rights recognition can become integrated both into the law as well into public life.

The first chapter (**Clive Forrester**) explores attitudes toward discussions of language rights from the standpoint of speaker perception. Forrester analyzes samples of comments to an online newspaper responding to an article on language rights in an attempt to define a role for the Caribbean linguist in bringing analytical expertise to these issues. Forrester goes on to argue that the role of the linguist as it relates to language rights is not so much to commandeer the process

but rather to serve the community interests from within the same community, and in the same discursive styles common in the community, as opposed to aloof, English-dominant, academic discursive styles as some online commenters suggest. This chapter is important in laying a foundation for the place of linguistic expertise in issues of language rights generally, but also specifically within the Jamaican context where language rights are seen as merely an academic preoccupation.

Kadian Walters highlights the issue of linguistic discrimination in Chapter 2 when she turns attention to the uneven service given to speakers of Jamaican Creole when interacting with public servants in government offices. Walters juxtaposes the use of Jamaican Creole in public marketing campaigns to promote civic duties such as recycling and safe driving, with linguistic discrimination from public servants when face-to-face with speakers of Jamaican Creole. This contrast is made all the more striking against the background of a recent language attitude survey that echoes a similar sentiment from the first survey done in 2006 – the public supports the use of the Jamaican language in public formal spaces. Walters argues that the government's failure to act on mounting research that indicates that linguistic discrimination occurs and that Jamaicans are in favour of seeing their language in formal contexts is tantamount to ignoring the people's "demand for justice".

The next two chapters handle different aspects of communication in the courtroom space. The first of these comes from **Celia Brown-Blake** in Chapter 3 with her examination of the role of the linguist in delivering expert witness testimony. She focuses on a case tried in the USA involving a speaker of Creolese (the English-related Creole in Guyana) and the use of an expert witness report – from linguist Hubert Devonish – in determining whether the accused individual was sufficiently competent in English to knowingly waive his Miranda Rights. Brown-Blake's discussion centers on two of the primary challenges with giving expert witness testimony for Creole speakers: (i) the perception that differences between English-related Creoles and Standard English are insignificant, and (ii) lawyers believe they are experts at language anyway and therefore need no further expertise to make a submission on a linguistic matter. Brown-Blake, being one of the two lawyers in this volume, manages to bridge the two competing issues of legal obligations when making an arrest and communicative obligations during the said arrest.

Robertha Sandra Evans' discussion in Chapter 4 explores the access to language-related rights afforded to speakers of St. Lucian French Creole – Kwéyòl. The data used for the discussion in this chapter comes from interviews carried out with St. Lucian police officers who were questioned about the procedure

used when interacting with a Kwéyòl speaker. Similar to the findings in Brown-Blake's presentation in Chapter 3, Evans highlights that the police officers take communicative competence in Kwéyòl for granted simply by virtue of having grown up in St. Lucia. This situation is compounded by the fact that, from the officers' own admission, efforts are made to ensure that speakers of Standard French get the services of an interpreter as stipulated in the St. Lucian Charter of Rights. Evans gives concrete examples from courtroom interactions on the kinds of misinterpretations that occur when Kwéyòl speakers are not extended the same kind of courtesy.

The final chapter closes this volume with an overview of the legal and socio-linguistic hurdles in the way of ensuring the recognition of Creole speakers' full linguistic rights in the courtroom context. **Murray and Anglin** focus their argument on Jamaica, but the similarities to the situation which exists in the St. Lucian legal framework are unmistakable. As such, many of the hurdles identified in this chapter, as well as the recommendations for overcoming them, are applicable to any Creole language situation. This final chapter is important since it is the sole chapter written entirely by non-experts in the field of linguistics – Murray is trained in the law, and Anglin is trained in advocacy – and affords the reader the opportunity to look at the problem from the perspective of law and social justice advocacy.

Chapter 1

#problematic: Using English for social justice advocacy in Creole-speaking societies

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University of Waterloo

Language advocacy in the Caribbean arguably has a fairly extensive history dating back to the colonial era when poets, storytellers, singers, and theatre practitioners started to disrupt the status quo and dared to create art using the local Creole languages in the region. This unwitting act of advocacy was bolstered by the fact that these same creatives managed to gain the approval of their communities in calling for the respect and recognition of Creole languages as "real" languages alongside their European counterparts. Once linguists took up the mantle and started to lobby the government for formal recognition of language rights, the support started to dissipate. Caribbean academics who engaged in language advocacy became seen as "elites", who were already proficient in a European language and were interested in "imposing" the local Creole languages on marginalized speakers.

This chapter investigates the dominance of the English language in matters of social justice even among societies where a Creole language is the national language. The data in this study comes from a corpus of reader responses in an online forum to newspaper articles dealing with language rights. Shielded by the veil of anonymity, and bolstered by social media style "up-votes", forum users are emboldened to be combative in their online commentary. I argue that in its attempt to seek equality and inclusion, social justice discourse instead fosters inequality and exclusion by alienating large, and sometimes vulnerable, portions of society who lack the dexterity in English to engage in social justice dialogue. I assess the *#problematic* implications of this paradigm for language advocacy in the Caribbean and propose a shift towards a social justice dialectic grounded in local Creole languages.

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1 Introduction

Social justice discourse, for better or worse, has taken on heightened importance in recent years and has been at the forefront of various advocacy movements all over the world in the last decade. A cursory glance at social justice movements between the Arab Spring of 2010 (The Editors of Encyclopedia Britannica 2015) and the George Floyd protests in 2020 (Taylor 2021), reveals how easily a protest that starts in one location can then emerge in several different spots globally. Social media is an ever-present arsenal in advocacy work and when combined with the twenty-four-hour news cycle it is not unusual that protests in far-flung regions of the world could be united around a singular concept, as expressed by a singular hashtag, even when advocates hail from different linguistic backgrounds. Jamaica, given its proximity to North America, is of course not excluded from these surges of social justice advocacy and it is not uncommon to see active and prolonged engagement with these issues on social media platforms. Indeed, Creole-speaking societies are all too familiar with tackling oppressive and discriminatory ideas, not least of which are concerned with language use. But how are imported social justice discoursive techniques, largely articulated in English, handled in predominantly Creole-speaking societies? How does this paradigm shape the attitudes of Creole speakers toward the very idea of social justice?

Given the multitude of ways in which Caribbean life and identity have been characterized by injustices, it would not seem necessary to go and *import* one, let alone one that did not already exist in the Caribbean in some shape or form. In fact, it is not the social injustice that is imported, but rather the discursive apparatus used to communicate and interrogate these issues. One such language-related social issue is linguistic human rights, which has entered the Caribbean discursive consciousness either through foreign media, but more likely through the work of local academics. Deliberations about language rights issues rarely, if ever, occur in the Creole language of the majority and are usually situated in contexts such as newspaper columns or editorials and in restrictive academic forums. The deliberations are meant to benefit the majority but do not incorporate their modes of communication nor sites of interaction. Devonish (2014) addresses this issue in an article published by the *Jamaica Gleaner* where he suggests that unless the government starts to communicate in the local language of the citizens, there will always be a communicative divide between the governed and the government. It is thus not accidental that discussions about human rights, social justice, intersectional privilege, and the like, are met mostly with ambivalence from the public at large. In worst-case scenarios, these same discussions are ironically seen as an external imposition, whether from foreign operatives or

local elites, meant to further oppress poor Jamaican citizens. This chapter argues that this occurs partly because there is no widely accepted, grassroots discursive apparatus to deal with aspects of human rights such as language rights. What presently exists is perceived as contrived, external, and an imposition.

2 What is "social justice language"?

Generally speaking, social justice language refers to the range of terms and phrases used to describe all the different areas of social justice. This could incorporate terms used to describe different forms of discrimination such as racism, ableism, and sexism; terms for platforms of advocacy like feminism; and theoretical paradigms associated with social justice like *intersectionality* (Human Rights & Equity Service, Dalhousie University 2021). Only a few of these terms would pop up regularly in casual conversation – most notably those related to discrimination on the grounds of sexual orientation or race – and the few that do would feature prominently on social media. The fact is, the use of social justice terminology is primarily restricted to niche academic audiences, who may or may not be actively engaged in advocacy, and who are usually operating in a linguistic context dominated by the standardized variety of a European language (Coppola 2021). Even if the concept of social justice is not foreign to Creole-dominant Caribbean communities, the modern discursive apparatus certainly is. Jamaica of course is no stranger to social justice concerns given its centuries-long legacy of colonialism. Every plantation revolt during the time of slavery, as well as the organized civil unrests shortly after slavery had ended, could all be considered acts of resistance to oppression. But it was not until the early 1930s with the emergence of Rastafari that one of the earliest, systematic, and indigenous social justice movements took root in Jamaica. The Rastafari arose as a decidedly Pan-Africanist movement with ideological influences drawn heavily from the teachings of Marcus Garvey and shaped by the harsh and oppressive socio-economic realities that working-class Jamaicans were facing at the time (Edmonds 2012). One of the main philosophical ideas of the movement is that all oppressed African descendants should actively seek liberation through the rejection of all things "Babylon"[1] and a return to the motherland of Africa (Chevannes 1994). What is most fascinating about the Rastafari is the development of a language – specifically, a discursive

[1] "Babylon" is broadly used to describe anything associated with former colonial powers. Institutions such as the government, school system, and church are treated as coming under the heavy influence of Babylon, the direct antithesis to the "Livity" (lifestyle) of the Rastafari.

apparatus – that is used to articulate and affirm the ideological stance of the movement.

Pollard (2009) treats the language of the Rastafari (or "Dread Talk") as a lexical expansion of the existing language of local Jamaicans, Jamaican Creole. Pollard (2009: 5) suggests, "What seems to be emerging is a certain lexical expansion to accommodate a particular, and for some people, a more accurate way of seeing life in Jamaican society."

The same phenomenon is described by Schrenk (2018) as a "reanalysis" of Jamaican Creole rather than merely a lexical expansion since "Rasta talk is predominantly based on calculated adjustments to perceived English lexical items." Whether expansion or reanalysis, what is certain is that the linguistic ingenuity of the Rastafari was prompted by two primary factors: (1) the Rastafari needed a deliberate style of discourse to simultaneously challenge oppression and uplift the consciousness of the individual, and (2) neither Jamaican Creole nor English could satisfactorily fulfill this role. A new code had to be developed to frame and negotiate social justice matters through the lens of the Rastafari themselves, and this gave rise to Rasta Talk.

The specifics of Rasta Talk, however, are not integral to the discussion here. What matters is the fact that the Rastafarian community noticed the linguistic vacuum for social justice terminology that was relevant to their perspectives, and went about filling that vacuum. Admittedly, though Rasta Talk has withstood the test of time, it has not evolved to a point where it could serve as the discursive apparatus for social justice on a national level within Jamaica. This is neither a criticism of the Rastafari nor their linguistic ingenuity, but instead a statement about the new linguistic vacuum created by the complex ways in which social justice reasoning has changed and has started to infiltrate Creole-dominant societies, specifically as it relates to language rights. Rasta Talk might have successfully equipped its speech community to talk about issues of socio-economic and racial oppression, and a need for consciousness-raising for all Black persons, but how would it deal with, for example, intersectional privilege? What discursive apparatus exists in Creole dominant speech communities to explain the privilege differential between a poor cisgendered heterosexual dark-skinned basilectal speaker, and a poor gender-nonconforming light-skinned acrolectal speaker? These are complex questions that are made all the more difficult to answer by the fact that they are laden with technical English terms.

In many ways, Creole-speaking societies have been haphazardly navigating these very issues from time immemorial. Intersectional identities and privilege dynamics are nothing new to Jamaica and the wider Caribbean—they did not

suddenly appear with the advent of social media. What is different since the explosion of social media and the mass consumption of North American content is that Jamaicans are now exposed to social justice concerns from the perspectives of the global north, in particular the USA and Europe *in the discursive apparatus* of those territories. In an ironic acceptance of the strong version of the linguistic relativity hypothesis, some Jamaicans seem to think that the social justice ideas that exist in the global north are non-existent in Jamaica, presumably because an indigenous discursive apparatus is not seen. This is not the case. Social justice issues related to various types of discrimination, intersectional privilege, and human rights have always been a part of Jamaican life. What has not been as prominent is a method of discussing these issues using the Jamaican language as opposed to English. This phenomenon, I argue, has resulted in attitudes ranging from ambivalence to hostility whenever these same issues are broached in society.

3 Language rights in the right language

Language advocacy has a fairly long, and checkered, history in Jamaica. Most Jamaicans would agree that the first bonafide language advocate for the recognition and appreciation of Jamaican Creole was the late Hon. Louise Bennett-Coverley, or "Miss Lou." Miss Lou was writing and performing original poems, stories, and folk songs in Jamaican Creole from as early as the 1930s up until the time she died in 2006. What set her apart from her contemporaries in music and poetry at the time was that for her, the language was not merely a vehicle to deliver her artistry, but in her eyes, an emblem of national pride and an artifact worthy of both study and promotion (Morris 2014). Her influence was as wide as the Jamaican diaspora, and she had the attention of all sectors of Jamaican society, from the head of state to the working-class woman in the city markets. She was simultaneously celebrated for elevating the status of the language and chided for moving attention away from Standard English, yet, through it all, her message remained constant and her position resolute – the Jamaican language is a legitimate language. Miss Lou was doing language advocacy work before it had a name (Forrester 2022).

There is however one area of language advocacy that Miss Lou's work did not explore in great detail, and that is the rights of the speakers of Jamaican Creole. Indeed, the idea that individuals could receive certain kinds of human rights provisions based purely on the particular language they used is a novel idea in Jamaican public consciousness and one which, even in the twenty-first century,

has yet to fully catch on. Miss Lou used Jamaican folklore, comedy, and literature as her tools in her campaign for language advocacy, and while her advocacy no doubt laid the groundwork for what later followed, it simply was not enough to break into the frontier of language rights. For that, it would take a more targeted lobbying of the government, using the language of the government, and supported by research-based evidence. Miss Lou's work was, and still is, paramount in this endeavour, but the next leg on the journey to language rights recognition was led by the academic community, most notably linguistic and literary scholars such as Hubert Devonish and Carolyn Cooper.

This is where the public support started to run dry. Even when the guardians of the Standard English status quo in Jamaica disagreed with Miss Lou's position on the validity of Jamaican Creole, she was at least humorous and therefore tolerable. From a political standpoint, Miss Lou was entirely non-threatening, and her primary domain of influence was from the stage. Academics like Devonish, however, meant serious business. He is an internationally respected full professor in the linguistics department who made a submission to the parliament to amend the Charter of Rights to include freedom from linguistic discrimination (Jamaican Language Unit 2011). Cooper, though she did not directly lobby the parliament, proved no less an annoyance to the establishment, with her weekly bi-lingual column, "(W)uman Tong(ue)" published in *The Observer* national newspaper, as well as delivering her inaugural lecture in Creole on the occasion of her promotion to full professor of literature. Both Devonish and Cooper, who have each published in Jamaican Creole, have consistently faced a level of public backlash and vitriol that would not normally be directed at Miss Lou.[2] This is in large part due to the fact that while Miss Lou only encouraged national pride in the language, academics like Devonish and Cooper wanted to take Miss Lou's advocacy to its logical conclusion and were calling for having the language constitutionally recognized, made official alongside English, and used as the language of instruction in primary schools. This was a pill that proved too difficult to swallow without the sugarcoating of Miss Lou's humour.

This brings us to the present state of affairs as it relates to language advocacy in Jamaica. It is an undertaking almost completely concentrated in the voices of a small group of academics, no more than ten, all of whom were mentored, trained, or influenced by Devonish. The public sentiment, based on comments posted on

[2]Devonish and Cooper are now retired professors but have left a legacy of work calling for the acceptance of Jamaican Creole in more formal domains of usage such as government and education. Additionally, they've supervised and mentored scores of graduate students and junior academics who have continued this advocacy in various forms of linguistic and literary research.

newspaper messaging boards and on social media, is that the present generation of language advocates (inclusive of Devonish and Cooper), comprise an elite academic cabal, themselves already adept at Standard English, who want to keep ordinary folk down by "forcing" Jamaican Creole into public formal domains. In an unusual turn of events, tangible realizations of language rights advocacy such as constitutional recognition and Creole use in education are seen as a pointless academic preoccupation and a "foreign" imposition that will disadvantage the very people it seeks to assist.

Devonish himself has spoken extensively about the derisive views of the educated elite in Jamaica as it relates to language rights. Devonish & Carpenter (2020: 55) state:

> The mass media in Jamaica, notably radio, television, and newspapers, over the last three decades at least, has been the arena for the "chaterrati" and their views on what has come to be labeled the "Patwa-English Debate." The educated elite, the chattering classes or the "chaterrati" whose views dominate the traditional mass media, have treated this topic as a form of blood sport, as a target for literate and literary jibe.

An interesting conundrum now presents itself. Devonish and Carpenter suggest that the views of the educated elite, or the chaterrati as they call them, have permeated the mass media in Jamaica and have transformed the discussions around language recognition and rights into a pointless combat of opposing opinions. Yet, one of the most persistent public criticisms of the new language advocates, in particular Devonish and Cooper, is that *they* are the educated elite hell-bent on using their academic machinations to force the Creole issue against the wishes of the masses. Both sides—the language advocates and their vocal public opposition—are accusing each other of elitism!

In the next section, I present a discourse analysis of an article written in one of the national newspapers, *The Gleaner*, that quotes a former head of state arguing that teaching Jamaican Creole in schools is a waste of time. The article is typical of the cantankerous language issue and how the media plays the role of the arena, referee, and fight promoter. The views of the "elites" from both sides are presented (albeit not very accurately from the academic perspective) and the public is left to judge which of the two has emerged as the victor. At the end of the analysis, I include excerpts from message board comments left on the newspaper's website to demonstrate how members of the public view the issues.

3.1 The data

The data for this chapter comes from a corpus of twenty-four newspaper articles dealing with the "Patwa-English Debate" published in *The Gleaner* between 2010-2017. I selected articles for the data set because of the topic it dealt with and the fact that it had at least three message board comments at the end. Some articles had as few as 3 or 4 comments, and others had as many as 95 or 144, with most articles having about 15 comments. There were 738 comments from the twenty-four articles in the data pool. The topics for the articles dealt with various aspects of the Creole debate including bilingual literacy, language standardization, making the language official, and language rights. The breakdown of authors includes editorial writers (2), politicians (1), teacher/education consultants (4), regular contributors (5), and professors/academics (6) (professors/academics were the only category of authors that had multiple articles from the same authors).

Message board comments from readers at the end of newspaper articles, while still largely understudied, present a fruitful site for analysis. With the advent of Web 2.0, "participatory journalism", as it has been coined, has grown in popularity internationally (Reich 2011, Hermida & Thurman 2008, Örnebring 2008) to the point where most audiences expect to be able to participate (Jenkins 2008). For the media house, this type of engagement is an indication of what kinds of issues the reading public is interested in, and the marketing team at the newspaper can find innovative ways to monetize this interest. For the social scientist, this engagement is as good as the kind of qualitative data that one would find in a survey with open-ended questions. The two language attitude surveys conducted by the Jamaican Language Unit (JLU) tell a story of overall positive language attitudes from the 1000 participants sampled in each study, but it is not the only story. Reader feedback to newspaper articles dealing with the language issue in Jamaica presents a different perspective and it is pertinent to at least be aware of it.

For this sample analysis, the article "A Waste of Time to Teach Patois – Seaga" published in *The Jamaica Gleaner* on April 11, 2011, will be used. This article, written by Keisha Hill, a staff writer at *The Gleaner*, was published in the Lead Stories section (online) and had the highest level of engagement of all the articles with 144 comments. Just below the headline, it features a prominent picture of Hon. Edward Seaga, former Prime Minister of Jamaica turned Distinguished Research Fellow at the University of the West Indies Mona, and Chancellor at the University of Technology Jamaica. The article is analyzed in terms of its recognizable journalistic components in the following order (i) headline, (ii) lede, and (iii) body of the story.

3.2 Headline analysis

The headline for the article, "A Waste of Time to Teach Patois", uses a direct quotation of Hon. Edward Seaga. The quote establishes the position of the former Prime Minister without presenting any specific details about whose time is being wasted, to whom Patois is being taught, and who is doing the teaching. His picture right below the headline captures Seaga focusing his attention to his right, as if responding to an interviewer or engaged in debate, with his fingers flexed in the familiar position of someone delivering a premise to support their idea. The details of the headline are not necessary for the cultural understanding of the specifics to which Seaga refers; all that matters is that teaching the language is a wasted effort regardless of context.

There is, however, interesting background to the idea of teaching Patois that can trace its roots all the way back to 2001 (and perhaps before) when the Ministry of Education issued its first language and education position paper where it outlined several potential options for responding to Jamaica's "language problem", one of which was the adoption of a bilingual model of education at the primary and secondary levels, where both English and Jamaican would be used as the language of instruction (MOEYC 2001). The Ministry of Education did not pursue this option, stating that the resources were not in place for such an undertaking, but Seaga here reiterates one of the most prominent public sentiments as it relates to this issue—it is a waste of time. Specifically, it is a waste of time (and by extension resources) for the Ministry of Education to develop a bilingual education curriculum for the primary and high school levels.

As a former Prime Minister *and* Minister of Finance himself, parliamentary positions with the greatest oversight of the national budget, Seaga would have a sense of what kinds of budgetary undertakings would be too cumbersome for Jamaica and bordering on wasteful. Seaga, however, isn't merely a distinguished politician but also a researcher of Jamaican culture who has published in the areas of Jamaican music and folklore[3], so he wields the authority to opine about what aspects of culture even deserve budgetary itemization in the first place. His considerable influence in the Jamaican political landscape has seen him presiding over significant constitutional changes in the form of the Charter of Rights, as well as important cultural milestones not least of which is the naming of Jamaica's first national hero, Marcus Garvey. Of all the stakeholders who could influence this discourse on teaching Patois, Seaga ranks high among them.

[3]Two of Seaga's most popular publications on Jamaican culture were "Revival spirit cults" (Edward 1968) and "Reggae Golden Jubilee: Origins of Jamaican Music" (Seaga 2012), a 100-track Reggae compilation to commemorate the 50th anniversary of Jamaica's independence.

3.2.1 The lede

The lede for the article departs somewhat from the canonical journalistic model of answering the five Ws— who, what, when, where, and why—and instead starts off by presenting the views of another prominent public figure who weighs in from time to time on the language debate, Prof. Hubert Devonish, professor of linguistics and then head of the linguistics department at the University of the West Indies campus in Jamaica.

The lede starts off by framing the context within which Prof. Devonish's comment is made:

> "In a renewed debate for recognition to be given to Jamaican Creole..."

It highlights the fact that this debate about the place of Jamaican Creole both in Jamaica's constitutional framework as well as the education system, has not only been ongoing but suggests that the debate somehow subsided and is now being reignited by Devonish with the new caveat that this time the recognition should come in the form of a constitutional provision. Of special note in the first few words of the lede is the fact that the label Jamaican Creole is used for the first and only time in the article, all other references to the language make use of the word Patois. This is worth commenting on since, while both terms refer to the same language, Patois is the label used by all speakers of the language in everyday dialogue, while Jamaican Creole is reserved primarily for academic usage. By using Jamaican Creole only in reference to the suggestion from Devonish, Devonish's ideas are presented as more of an academic endeavour.

This first portion of the lede is very important in establishing the ideological framework through which the discourse of language issues in Jamaica can be viewed. The idea of a "renewed debate" presents imagery of two opposing sides locked in a timeless battle punctuated by periods of heated exchange and prolonged silence. Indeed, the very presence of the word *debate* frames the issue as having only two sides polarized by divergent viewpoints when this might not in fact be an accurate description of the situation. The media, however, specializes in presenting matters as dichotomous, and as such, it is no surprise that the first section following the headline with Seaga's declaration that teaching Patois is a waste of time is Devonish's call for Jamaican Creole to be given constitutional recognition. The two most polarizing positions are highlighted very early in the article to establish clear demarcations on the issue.

The lede continues:

> [Devonish] has proposed that "language rights" should be recognised in the Charter of Rights.

There is a deliberate attempt to bring attention to the term language rights by way of inverted commas, not because it is a direct quotation from Devonish, but because the concept is novel and perhaps unusual. In reality, the concept is at least ten years old at the time of the publication of that news article, seeing that Devonish himself was the first to propose the initiative in 2001 when the Jamaican parliament met to amend Chapter 3 of the constitution which dealt with fundamental rights and freedoms. What Devonish proposed in 2001 was not a blanket "language rights" provision, but instead, the inclusion of freedom from discrimination on the grounds of language, as a means of ensuring speakers of Jamaican receive equal treatment when dealing with state agencies. On the one hand, this might have been an attempt by the newspaper to abbreviate Devonish's actual parliamentary submission, but their reductionist approach instead lumped the proposal along with the wave of other post-modern rights that have made their way into the Jamaican political landscape, not least among them LGBT rights. And just as how many Jamaicans think LGBT rights are an attempt by one sector to seek *special* rights for themselves, so it is that language rights might be viewed as speakers of a particular language accruing special rights for themselves. This is the ideological frame through which various branches of human rights advocacy are viewed — any qualification other than human, be it women, LGBT, disabled, or language is really an attempt at seeking preferential treatment rather than equality. Whether intentional or not, framing Devonish's parliamentary proposal in this fashion already assures disdain by some.

The lede concludes by pointing out:

> There have also been proposals for a Patois Dictionary, a Patois Bible and for the language to be used at the primary level in schools.

Of note is the fact that these three suggestions are without attribution—the report simply states that proposals have been made. But the mere fact that they occur adjacent to Devonish's *renewed* debate for language recognition, presents them as a continuation of his ideas. As if language rights were not enough, it appears that Devonish is pushing forward a Patois trifecta by proposing a dictionary, a bible, and a primary-level curriculum all in Patois (not the scientific label, *Jamaican Creole*, this time). In actuality, only one of these proposals—the use of the Jamaican language as the language of instruction—has been put forward by Devonish, after having done a pilot study no less. The other two proposals have nothing to do with his work; the Dictionary of Jamaican English was published in 1961, a decade before Devonish was an academic, let alone a Jamaican language advocate and the Patois bible was a private initiative by the Bible Society of the

West Indies. Devonish stands in as the default public face of language advocacy: he is presented as renewed and armed with a bevy of fresh language proposals. We now have the proposing team in the debate.

3.2.2 The body

Not surprisingly, the section immediately following the lead paragraph starts with a rhetorical shift:

> However, former prime minister and chancellor of the University of Technology, Edward Seaga, weighing in on the issue, says it would be a waste of the country's educational resources to teach Patois in schools.

It is crucial to point out here that this is entirely a constructed debate between Devonish and Seaga. There is no indication that both of these debaters were either in the same location or directly addressing each other's views when these comments were made. In fact, that could not have been possible given the timeline of proposals attributed to Devonish:

A. Constitutional recognition of the Jamaican language or "language rights" happened in 2001 when Devonish made a submission to a committee in parliament.

B. The Dictionary of Jamaican English, or the Patois dictionary as the newspaper puts it, was published in 1967 by a different linguist, Fredrick Cassidy.

C. The Patois Bible[4] was an initiative funded by the Bible Society of the West Indies which was first announced in 2008.

D. The Bilingual Education Project (B.E.P), or a move to make Patois the main vehicle of communication in primary schools[5] as the newspaper frames it, was piloted in 2004 by Devonish through the Jamaican Language Unit.

[4]The correct name for this publication is the Jamaican Diglot New Testament with KJV Bible, the "Patois Bible" is the term that most often appears in the media primarily because it is a more transparent label for the public

[5]This too is another mischaracterization of the B.E.P—the aim of the project was to provide bilingual education in both Jamaican *and* English, giving both languages equal time in the classroom across all subject areas.

Given that the current newspaper report is happening in 2011, all of the items in A-D above have been stitched together and attributed to Devonish as a coherent, *and* formidable position, ready to be challenged by Seaga and the other debaters present in the news report.

Returning to the opening rebuttal from Seaga, we notice that the reporter has included his status as the former Prime Minister of Jamaica and then current Chancellor of the University of Technology, thereby lending credibility to his contribution. Seaga's opening here is paraphrased by the reporter who presents it as *a waste of the country's educational resources*, indicating that the move is wasteful both in the form of human and capital resources. Last but not least, is the mischaracterization of the language education proposal: specifically, Devonish is proposing the use of Jamaican Creole as the language of instruction, but the newspaper presents it as teaching Patois in schools.

From the standpoint of the lay public, this difference is merely a semantic one—to use the language as the means of instruction is no different from teaching the language. The difference from a linguistic standpoint, however, is crucial. What Devonish and several other Caribbean linguists are proposing is rooted in decades-old research done by the United Nations Education and Scientific Council (UNESCO). It was documented by UNESCO that children who are instructed in their vernacular in the early years of primary education stand a better chance of successfully transitioning to a second language of instruction, usually a European language, during the latter part of primary education (Global Education Monitoring Report Team 2016). In this kind of bilingual education, all the different subject areas are taught in the vernacular, which is dramatically different from having the vernacular as a discrete subject area, which is how the issue is typically framed by the media and subsequently in the public perception. Either way, given the mixed public reception to the idea of even having Jamaican as a stand-alone subject, there is little doubt the objection would hold if *all* subjects were to be taught in the Jamaican language.

Seaga gives us the most common explanation for the public objection when he continues:

> "There is no standard way of spelling a particular word in Patois," Seaga said. "If you want people to be able to talk to one another in Jamaica and outside of Jamaica, it does not make any sense."

The idea that no standard spelling exists for the Jamaican language is a commonly perpetuated misunderstanding. It is correct to say that no standard spelling is widely *used or known*, but it is not in fact correct to say that no standard spelling exists. Fredrick Cassidy, the Jamaican lexicographer who did the

groundwork for the Dictionary of Jamaican English (DJE), developed a standardized phonemic writing system for the language in the 1960s. However, the one place that could ensure the widest public knowledge of the writing system, is the one place where the standard writing system is not introduced—at the primary school level. When influential figures like Seaga repeat this misconception, it further legitimizes the idea that incorporating the language into education is a futile project, since it lacks even the basic pre-requisite of a medium of instruction; a standard spelling and writing system.

The second part of this statement, "if you want people to be able to talk to one another in Jamaica and outside Jamaica," addresses the common, notwithstanding reasonable, concern of perpetual insularity. Seaga, like so many who discuss this issue, manages to link education in one's mother tongue with an inability to communicate in anything other than said mother tongue. It invokes the rhetorical strategy of suggesting that adopting one course of action (teaching Patois to children) will ultimately exclude all other courses (teaching any other language to children) since they are in competition. A cursory look at educational systems globally would reveal that this is not true—children can be educated in the vernacular languages of their speech communities and go on to be multilingual in several other languages. Children can learn more than one language at a time: a completely obvious and common sense axiom that somehow is not widely accepted in the Jamaican context when one of the languages is Patois.

Seaga then concludes by giving his opinion of the diglossic divide between English and Patois in the Jamaican situation:

> He added: "If you look at it, government and commercial papers are all in English. Newspapers are mostly in English with a few Patois articles and Patois quotations in English articles. Television and radio are mixed with English and Patois and popular culture such as songs, DJ lyrics, and roots plays are mostly in Patois."

He starts off by saying "if you look at it" which could mean if you are observant, you will notice the obvious. He goes on to list the domains of usage for English and Patois starting with the most prestigious and *purest*, government and commercial papers, since this domain is untouched by Jamaican Creole, then to the intermediate domains which have some overlap of both languages, and finally to the domains which are Jamaican Creole dominant – DJ lyrics and roots plays, domains holding the least prestige. Seaga urges us to "look at it" and observe the *natural* order of things as it relates to domains of use for languages in Jamaica and

to further preserve this reality. Interestingly, even in Seaga's own schema, Jamaican Creole is only reduced or absent in domains that are predominantly written. For Seaga, any attempt to disrupt the observed reality of Jamaica's diglossia is a waste of time, effort, and resources.

Dr. Ralph Thompson is introduced into the debate following Seaga's comments:

> Education advocate Dr. Ralph Thompson says it is important for teachers, especially at the early childhood level, to understand the language as many students speak Patois fluently, even though some are unable to read or write it.
>
> If the early childhood teachers speak standard English, of course first they have to be able to speak Patois as well because if you go into a classroom and can't speak Patois, you cannot connect to the kids," Thompson said.

Thompson, though possessing some sense of the nuance involved in language education at the early childhood level, is not as forthright as Devonish who is presented as arguing to teach Patois. Thompson, whose comments are legitimized by his status as an education advocate, merely wants teachers to use Patois as a means of *connecting* with students. Far from the actual recommendation of the use of the language as a means of instruction, or the Gleaner's framing of the issue as teaching Patois as a separate subject, Thompson favours the milder approach of using the language merely as connective tissue between teachers and students. Students would first be primed in Patois, and once they have settled down, *actual learning*, the sort that is done in English, can begin. This sentiment is reflected in the last two lines of the article:

> Said Thompson: The good thing for children between zero and six is their ability to learn and grasp information quickly. The teacher can get their attention speaking in Patois, but reinforce English in the same sentence and you will see how quickly they understand.

Though Thompson sees Patois as having a place in the education system, he treats it as a strategy for facilitating learning, rather than the vehicle or focus of learning (which would require the proper institutional framework to execute). The final voice in the debate channels Seaga's perspective and comes from then Prime Minister of Jamaica, Hon. Bruce Golding:

> Recently, Prime Minister Bruce Golding also weighed in on the debate. Speaking at a graduation ceremony at Kingsway High School, Golding said the debate about teaching Patois as a second language and translating the Bible into Patois signify an admission of failure. According to Golding, teaching Patois would be akin to saying, "We have failed to impart our accepted language of English, so we are giving up. This one can't work, so let us find another one that can work."

For the first time, an actual context within which the utterances are made is given. Golding's comments take place at the graduation ceremony of a private school in the country's corporate area, where he is addressing the gathering as a guest speaker. Like Seaga, Golding disapproves of any move to introduce Patois into the educational framework and further sees such an initiative as an admission of failure. He too adopts the idea that an introduction of Patois into the educational system means the exit of Standard English:

> We have failed to impart our accepted language of English, so we are giving up. This one can't work, so let us find another one that can work.

Of interest is how Golding frames his ideas as a dialogue among stakeholders involved in the decision-making process of language and education. No such dialogue could have happened without the oversight of his government. Golding essentially mocks those engaged in their defeatist dialogue—having failed at teaching English without real effort, they have to resort to something easier. The referent for the first person plural pronoun "we" at the beginning of Golding's statement is those supportive of the initiative to teach Patois – Devonish, and crew – but the referent in "our accepted language of English" is the entire nation of Jamaica. The "we" who want to teach Patois, is different from the "we" who have the good sense to accept that English is *our* language. Golding uses this strategy to great effect—the language advocates promoting the teaching of Patois appear to do so quite flippantly: English does not seem to be working, so let us discard it and try again with an easier language.

3.3 Summary

The article used in this analysis is typical of the kinds of articles published in *The Gleaner* which deal with language issues in Jamaica. There are usually two or more "talking heads", who may or may not be in the same location when giving their views, and who may or may not even be aware of the views being

expressed by the *opposing* debater within the article. *The Gleaner*, and media at large in Jamaica, simply arrange these ideas at polar ends of the discussion, even when the same talking heads do not see their ideas as being at odds with each other. The media has thus managed to consistently overlook nuance or middle grounds on this issue even when they exist: polarized positions are *easier* to understand and make for better reading material.

The situation is not helped by the fact that the media is not as precise as it could be when relaying the views of the linguists in this debate. No linguist, least of all Devonish, who proposes that Jamaican Creole should be used as the medium of instruction, thinks that children should not also be proficient in English. In fact, linguists who support the initiative see it as a means of achieving this English proficiency. This is rarely if ever expressed clearly in the media reports unless one of these linguists manages to publish a column in one of the major newspapers or does an interview on a public television or radio station. Perhaps linguists should shoulder some of the blame here for not being able to deliver their ideas in a way that the general public can easily comprehend, but the media, whose responsibility it is to do exactly that, also does a poor job of the communication by simple mischaracterizations and exclusion of important details.

Several themes emerge from this article that embody the public opposition to attempts at moving the Jamaican language into public official domains such as education and the constitution. They are:

1. The resources required to incorporate Jamaican Creole into the educational system would simply be a strain on Jamaican taxpayers and essentially a waste of said resources.

2. Jamaican Creole lacks the basic entry requirements to be considered as a medium of instruction (that is, a standard spelling/writing system and scientific lexicon).

3. The status quo already favours English and the languages already have their proper domains of usage.

4. Teaching Jamaican means abandoning English — Jamaican children would be distracted and possibly confused by having both languages in the educational system.

5. Jamaicans run the risk of political and economic isolation (from North America and the UK) if they learn their language in a formal educational setting.

These are just five of several themes which emerge whenever the language issue is presented in the media; the list above is not exhaustive, but merely reveals five of the more prominent themes. All of the themes listed above were extracted from the utterances of two former Prime Ministers of Jamaica, both of whom had considerable influence during their terms as government leaders (and even afterward at least in the case of Seaga).

4 Reader feedback

A sampling of the reader feedback to the article analyzed above, reveals that readers are mirroring some of the themes highlighted in the article. A few of the comments are presented below with the user name of each commenter as well as the number of "up-votes" (the equivalent of likes) that each comment received:

> Sample 1: Patois being taught in school is a total waste of time and money as it has no place in commerical (sic) business and it is of no use to someone who wishes to go to an overseas university. Some people are advocating patois because it is a means of stalling the advancement of our people. [RDL, 53 up-votes]

This comment above by user RDL neatly summarizes the most common objection to the use of Patois in formal domains—it simply has no place in those contexts, and worse, it is a useless addition for those who have their eyes set on overseas study. RDL also explicitly states that there is a more nefarious plot behind advocating for the language in these formal contexts, and it is to derail the social and perhaps economic advancement of Jamaicans.

> Sample 2: ... People like Carolyn Cooper was (sic) educated using the English Language. Many of those professors at the University of the West Indies, were at tax payers' expense, that is, your poor mother and father paid taxes so that they could be educated and now their contribution to society is to encourage further degradation of our children. [KarenFed]

Prof. Cooper, who was not mentioned in the article, is nonetheless dragged into the conversation via the comments section from the user KarenFed. This user raises the issue that impoverished taxpayers bankroll the education of professors, provide them with proficiency and mastery of English, and then these same professors, in an ungrateful about-turn, decide they will further "degrade" the nation's children with the Jamaican language.

> Sample 3: I wonder why we continue to have this continued thrust by Professor Hubert Devonish to force the Jamaican Creole upon the people... We need to resist every effort by Mr. Devonish and his group to drag Jamaica back to such an awful era... These people with too much time on their hands, too much public money to waste. Too much paid to them, too little fortitude to fight the good fight (to teach English...) [St. Marian, 27 up-votes]

St. Marian believes that Devonish and company are trying to drag Jamaica back to an "awful era" which, one can presume, is a reference to Jamaica's colonial past that gave rise to the emergence of Jamaican Creole. There is a caution to resist the efforts of this group who, despite an abundance of time and money, still lack the strength to "fight the good fight" and teach English.

> Sample 4: Thank you Mr. Seaga. I have been preaching the same thing for years. The only way a child can learn to read is to read, read, read. In China all children are now required to learn English and all govt workers in China are required to learn 10,000 english (sic) words or phrases. If the Chinese can do this then why can't our children who live in the third largest english (sic) speaking country in North America behind the US and Canada. [Keith, 31 up-votes]

Seaga receives a ringing endorsement from user Keith who is baffled that the largest English-speaking country in the Americas behind USA and Canada is unable to teach children English when China manages to do so effortlessly. Keith simplifies it for the academics who are forcing the bilingual education method and suggests instead that all children would need to do is to "read, read, read."

> Sample 5: There should be a law against this professor talking and proposing such nonsense. He really should be arrested for wanting to commit such crime against the English language and ultimately against poor people who are trying to speak so that they can be a part of the world. [Joe, 28 upvotes]

Devonish's advocacy, according to user Joe, should be punishable as a criminal offense. The victims, in this case, are the poor people of Jamaica and the English language itself. Poor people are merely trying to better themselves through the use of English and Devonish is determined to rob them of even that.

As is common in online platforms, commenters will occasionally engage in heated debate and the Gleaner newspaper's virtual message board is no different. Indeed, a small portion of the comments on this article was directly challenging some of the other users and showing support for the advocacy work of the linguists. Here is a response to Sample 5:

> Sample 6: My poor misguided Joe, it is beyond me how someone can commit a crime against a language, a system of communication... The same people of whom you speak are not allowed access to certain services because of how they speak. If you look back in history this was the case for the English language as well. If you never spoke French or Latin etc. but lowly English you were ostracized. They [sic] English has to fight for their status and one way they did it was to fight for their language. Why do we as a nation refuse to follow suite? Is it, Joe, that you will have us clinging to our colonial mother's breast until we commit homicide on our mother tongue? [ACS, 4 upvotes]

Linguists may well have the intellectual authority to articulate the practical steps that lead to linguistic rights recognition, but based on public sentiments expressed in the newspaper and elsewhere, we seem to have lost the moral authority. These same linguists, born in the Caribbean and themselves native speakers of Creole languages, are seen as separate from the communities they wish to serve and are actually invested in retarding the social and economic development of the members of these communities. It is not difficult to see how this accusation might get formulated: all the linguists involved in advocating for the rights of Creole speakers have already gained mastery of English, are comfortably insulated in high-paying university positions, and have the luxury of seeking employment on the international market. What is worse, academics receive merit-based promotions and salary increases even if our advocacy falls on deaf ears, as long as it gets published. There is no downside to engaging in this work – if it improves the lives of Creole speakers, good; if it does not, at least it resulted in a journal article. Such is the perception of the academic as advocate.

5 Discussion

Despite the precarious position the academic advocates find themselves in, there is still a role for linguistic expertise to address the issues outlined in the preceding discussion. Social justice concerns are increasingly a part of everyday Caribbean life, and in the areas where language and law intersect, there is evidence that linguistic rights are a potential area for which legislation will have to be drafted at some point in the future. But if the public at large sees the advocacy of linguists as working against the public interest, is there a path forward where academic expertise could benefit from public approval? I believe there is.

Devonish (2015) makes an insightful observation that echoes the earlier sentiment in this chapter that the original language advocates were, from the standpoint of the political establishment, largely non-threatening. He uses the example of Miss Lou from Jamaica, and Wordsworth McAndrew from Guyana, who, despite their vigorous and lifelong work in the promotion of the language and folklore of their respective territories, accepted the status quo which favours English as the language of "serious" business and the Creole as the language reserved for informal private communication. Their goal was more about consciousness-raising than disrupting or overhauling the system. Arguably, this made it easier for successive post-independence governments in Jamaica and Guyana to draw on the work of Miss Lou and McAndrew for promoting cultural heritage. It was also easier to confer national awards and accolades (sometimes posthumously) on these advocates. Folklorists like Miss Lou and McAndrew, even though they spent their lives promoting low-status Creole languages, have enjoyed a level of public approval and support that academic advocates of the same Creole languages have never received. Undoubtedly, a part of this is rooted in the fact that these original advocates were not perceived as challenging the status of English. But the other, more salient feature of these original advocates was that they *belonged* to the people. For all the awards they received later in life, and the training in British media they both received, Miss Lou and McAndrews were the embodiment of the grassroots. Any working-class Jamaican or Guyanese could see themselves in these two figures, because they talked with the people, about the issues of the people, and in the language of the people. Anyone who had the pleasure of meeting Miss Lou for example would recount how they came away from the experience feeling a newfound pride and appreciation for using their Creole language. The new academic advocates of Creole languages struggle to inspire this kind of pride in the grassroots communities.

Admittedly, as an academic now living in the Jamaican diaspora, I have the benefit of being one of the foremost resource persons on the Jamaican language simply by virtue of being one of only a handful of persons with expertise in the area. Whenever I have a public lecture for members of the Jamaican diaspora, it is almost expected that a portion of the presentation would be done in Creole, if not the entire presentation[6], to the delight of the audience members. There is a real and sustained interest in the diaspora communities to learn about the evolution and usage of the Jamaican language and members are usually willing to

[6]This was the case at a recent panel discussion to honour Miss Lou on the centenary of her birthday. My presentation on the journey of the Jamaican language from the plantation to lobbying the parliament for official language status was done entirely in Jamaican Creole.

invest time and money in acquiring proficiency in the language[7]. Such is the paradox of linguistic insecurity; the desire to use and promote the language appears strongest when the effort will have the least political impact. This is a large part of the reason why cultural practitioners are more successful at language advocacy than academics. Cultural practitioners can measure their success in hearts changed, but academics measure their success in policies implemented. It is no surprise then that Jamaican language advocacy would receive a warm reception from members of the diaspora since the impact on policy is negligible. Indeed, Jamaican Creole is not only a lower-status language in the various diasporas, but it is also an immigrant language of a minority, racialized group. And this, ironically, is why the academic advocate (or any language advocate for that matter) stands a good chance of garnering community support and approval in the diaspora.

This is what the late Mervyn Alleyne has to offer as a way forward for the language advocate:

> In all our work, I would stress one overriding need: we need an applied focus, with a partnership between linguist and community, not a divorce and separation. This may seem idealistic or unrealistic, but it should mean a serious purposeful campaign to train persons to study their own languages. (Alleyne 2004: 13)

Alleyne was delivering this recommendation to an audience of linguists at the opening plenary of the Society for Caribbean Linguistics in 2002 at the UWI, St. Augustine campus. This was years before the explosion of social media, and even before it was common to have an internet-capable device in your pocket at all times. Yet, Alleyne's own suggestion underscored a situation that has persisted until today, that is, the linguist is seen as separate and apart from the community they wish to advocate on behalf of. The comments at the end of the article in the sample analysis above, reflect this idea—language advocates attached to the university are seen as working against the best interest of communities.

It is important to add some nuance to these user comments. While I agree with Canter (2013: 605) who states "The nature of this type of comment participation is varied and some studies suggest that readers are mostly interested in discussing matters of personal interest or making abusive comments", it would be hard to

[7] I have several personal examples where this is concerned, such as the establishment of a Creole Heritage language program in Brampton, Ontario, a six weeks course in Basic Jamaican Creole run by the Jamaica Association of Montreal, and several other paid consultancies by lawyers who are trying to defend a speaker of Jamaican Creole in the Ontario court system.

dismiss all the negative comments on the news articles as simply outbursts from the ignorant. Some of these comments do indeed emanate from bonafide internet trolls, but when the same comments keep recurring over several years and from different readers it may be time to ask whether there is a kernel of truth. And, more importantly, what, if anything, can be done about it?

To its credit, the Jamaican Language Unit (first under the directorship of Prof. Hubert Devonish, and now led by Dr. Joseph Farquharson) has achieved significant strides in at least ensuring the "Patwa-English Debate" has a strong and data-driven perspective from the academic side. Devonish, and now more recently Farquharson, has spent a considerable amount of time engaged in public education both in forums that make use of traditional media, such as newspaper columns and TV interviews, but also in community meetings and online discussions. Even Prof. Cooper too, who has always frustrated the establishment with her use of literary subversion, and at times has shouldered the worst of the online battering (she is, after all, a woman), has also advanced the cause of promoting the Jamaican language. Language attitudes are not *as bad* as they once were, the government has gradually become more receptive to the idea that Jamaican Creole should play some role in education, and far more members of the public today are able to reference the work of language advocates in the ongoing debate. The language advocates, who have largely (and perhaps rightly) ignored comments on their newspaper articles, seem to be doing something right.

Despite the advances, there remains significant work to do. Advocacy work is soul-draining work; those who are engaged in it are few and usually a hair away from burnout, yet detractors are legion and are sustained by their ignorance. In an ideal situation, the language advocate has the expertise of Devonish and Cooper, the grassroots authenticity of Miss Lou and McAndrews, the community support and approval like what exists in the diaspora, but resides in the Caribbean where their advocacy is likely to have its greatest political impact. This is a tall order that has yet to be achieved. One of the important first steps in creating this ideal situation is for academic language advocates to devote some of their work to fostering community pride in Creole languages. And this needs to be done in the language of the community. Far from being an elaborate public relations campaign, the goal here is to ensure that the academic advocate is seen as a member of the community and is interested in the concerns of the community, specifically those which intersect with language, but also with those that do not. If, as the comments in online message boards suggest, the public sees the academic language advocate as out-of-touch elites, then advocacy will always remain an uphill battle. The linguist must strike a balance between being an agent

of the academy and a member of the language community for which the advocacy work is carried out. This, I submit, is the best strategy for sustained and impactful language advocacy.

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Chapter 2

We want justice: Linguistic discrimination in Jamaica's public formal domains and the people's cry for justice

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The proverbial cry of "we want justice" is usually echoed during demonstrations when citizens bemoan some instance of injustice usually committed by law enforcement officers. The demonstrators are often seen with placards usually written in Jamaican Creole (JC). Similarly, Jamaicans have been crying out for language justice for a number of years.

This injustice is manifested in the forms of direct and indirect linguistic discrimination in Jamaica's public formal domains. The former occurs in interpersonal settings when someone is treated differently and unfairly because of his or her language use, while the latter exists when information is provided for the general public in a language (English) that the mass of the population does not understand.

This chapter explores research in the area of linguistic discrimination as a result of this English dominance in the courtroom, government agencies, and the mass media. Since the National Language Attitude Survey (2005) subsequent surveys over a ten-year period have shown that the majority of the informants indicated a desire for Jamaican Creole to be used in a more serious manner in several domains. These include JC becoming an official language alongside English, being used to read the news both on television and radio, and by public service agents in government agencies. The chapter highlights the public's cry for the right to receive information and services in Jamaican Creole (JC) in a similar way it is given in English.

Kadian Walters. 2023. We want justice: Linguistic discrimination in Jamaica's public formal domains and the people's cry for justice. In Clive Forrester (ed.), *Intersections of language rights and social justice in the Caribbean context*, 27–58. Berlin: Language Science Press. DOI: ??

1 Background

1.1 Jamaica's public formal communication

In Jamaica's national communication system, the government and its institutions communicate with the public using one dominant language. Citizens have however demonstrated an increasing demand for basic language rights for speakers of Jamaican. This demand is indicated in the results of successive national language surveys discussed in this chapter. This signals a shift in the language ideology of the people, as previously held views that Jamaican is a broken and bastardized form of English, are gradually being eroded. Four unpublished language surveys reveal that Jamaicans desire their government to allocate more significant functions to their mother tongue in public formal domains: Jamaican Language Unit (2015); Language Use in the Court Room (2015); Language Use in Public Agencies (2016); Language Use in the Jamaican Media Survey (2017). Such domains include legal, educational, media, and government contexts.

In his message to commemorate the International Year of Languages, the then Director General of UNESCO reiterated that: "thousands of languages, though mastered by those populations for whom it is the daily means of expression, are absent from education systems, the media, publishing and the public domain in general" (Matsuura 2007). Some local political representatives have also agreed that Jamaican should take greater prominence in official contexts because it is the vernacular of the masses. Former Ministers of Education have both publicly stated that "Patois must be regarded as a first language for persons who have little exposure to the English language" (Reid 2017), highlighting that "Jamaican is the first idiom of the majority" (Thwaites 2018). Others have gone further to declare a push for official bilingualism: "We have our own language, and we need to 'officialise it', while at the same time we extol the virtues of the English language" (Smith 2012). Institutional bilingualism would see the government providing information and services in both English and Jamaican, in written and spoken form. Continued public education campaigns to teach the official writing system for Jamaican would be necessary before implementing a bilingual system.

Previous research shows that speakers of Jamaican experience discrimination in various domains (Linton-Philp & French 2001, Brown-Blake 2011, Walters 2016). Only a comprehensive national language policy and carefully planned implementation and enforcement can achieve fair, humane, and courteous treatment for Jamaican speakers. Such policy should consider Jamaican and English as the two dominant languages in Jamaica: one has numerical dominance of speakers and the other enjoys functional dominance in public formal domains. Regarding numerical dominance, most monolingual Jamaicans (36.5%) speak Jamaican

(Jamaican Language Unit 2006a), while most of the state communication takes place in English. Though Jamaican is the vernacular language of the masses, English dominates as the language widely used in formal contexts. Of course, this places the monolingual Jamaican speaker at a disadvantage, as they are unable to access information and services in a language in which they are competent. Each citizen supposedly has the "right to equal access to service and information" (Ministry of Commerce, Science and Technology 2003: 2) but this is clearly not the case for those with limited knowledge of English.

1.2 The Government of Jamaica's communication policy

Since the specific domain under investigation is that of public entities, it is necessary for us to look at the language situation in these contexts. Among public formal domains, services are provided for the public on behalf of the state within the judiciary, education, and the mass media. The public service includes all agencies of the state established by law to carry out the policies of the Government of Jamaica. It consists of those entities that are part of the civil service, public enterprises established by the Act of Parliament and companies incorporated under the Companies Act in which the State or one of its agencies has a majority or controlling interest – Canton Davis (Cabinet Secretary and Head of the public service) (2001).

Before we examine the language practices of the Jamaican state, let us review the Government of Jamaica's seven-year-old communication policy. This document gives the guidelines of conduct for various government entities (ministries, departments, and agencies) particularly during crises and emergency management through communication with citizens. It is the standard in communication policies for mention of specific languages to be used. In a complex sociolinguistic situation such as Jamaica's, it is unacceptable that Jamaican was mentioned once. Throughout the policy there is a focus on "effective" and "clear" communication:

> The policy places emphasis on the consistent use of clear, understandable language and messaging with respect to communicating information on the policies, programmes, services, and initiatives of the Government while underscoring the need to facilitate uniform and wide appreciation of current issues, strategies, and opportunities. (The Office of the Prime Minister 2015)

What is considered "clear understandable language"? Clear and understandable language for which subset of the population? Given Jamaica's linguistic landscape, this could present a few scenarios:

1. Clear and understandable language in English

2. Clear and understandable language in Jamaican
3. Clear and understandable language in both English and Jamaican

The phrase "clear and understandable" is vague and its interpretation is left to the respective government agencies. With the complexities of the language situation, such ambiguity should not exist in a national policy outlining how the government should communicate with the public. There are still no concrete guidelines on which language(s) ought to be used.

In its description of the context and situational analysis of Jamaica's public communication system, in Section I, the document fails to address the true nature of the language situation. The government cannot continue to deny the usefulness of Jamaican in communicating with citizens, as political representative Smith (2012) states, "We need to declare once and for all that the Patois is one of our languages".

National communication policies are usually detailed in specifying the languages the respective government should use and how they should use them. South Africa's Government Communication Policy (2018) outlines the official languages to be used. In Section 1.6, in addition to sign language and Braille, it lists the eleven official languages the government is expected to use in its internal and external communication. It stresses that consideration should be given to the linguistic preferences of the public:

> All departments must consider the usage, practicality, resources, regional circumstances and the balance of the needs and preferences of the public in deciding on the official language/s to use when communicating. (Government Communication Policy 2018: 9)

Further in Section 7.2.4 of the policy, language requirements are outlined with careful consideration of the language situation

i. All communication by government institutions must comply with the Use of Official Languages Act (Act 12 of 2012).
ii. Different audience segments have different communication needs. All marketing communication must consider the preferred official language of the segmented and target audience. (Government Communication Policy 2018: 45)

Despite the complex nature of the South African language situation, agencies are expected to observe the public's communication needs when developing messages for citizens. Linguists researching Jamaica's sociolinguistic situation have engaged successive administrations about the role of Jamaican in public formal domains. Despite this constant dialogue between government agencies and linguists, there is still no attention paid to how Jamaican should be used by government entities. Matsuura encouraged governments to develop "language policies that enable each linguistic community to use its first language, or mother tongue, as widely and as often as possible" (Matsuura 2007: par. 8).

While the policy mentions that the "diverse needs of the Jamaican people, whose communication skills and educational backgrounds differ, must also be recognized and accommodated in Government communication" (The Office of the Prime Minister 2015: 11), it does not outline exactly what this diversity is and how state entities should accommodate the same.

Further, Section III of the policy, which discusses issues and challenges, mentions that "cultural diversity needs to be consistently taken into consideration" (The Office of the Prime Minister 2015: 13). This is, in fact, the only section in which direct reference (though limited) was made to Jamaican (2015: 33):

> The communication needs of the diverse Jamaican public are not consistently considered with respect to:
>
> - determining the content or presentation of government messaging;
> - accommodating the use of the Jamaican language and cultural expressions in *certain* official communication activities (e.g., oral and dramatic presentations); or
> - the selection of media platforms to which the public has access.

In a national policy on communication, the aim of the government should be to utilize the languages used most by its citizens, not to simply accommodate them. In fact, the phrase "*certain* official communication activities" is also problematic, since this suggests that there are still some contexts in which the use of Jamaican should be deemed inappropriate. Some are of the belief that Jamaican should be restricted to theatrical presentations such as "oral and dramatic" and other similar contexts. Again, the government fails to officially acknowledge the communication needs of Jamaican monolinguals.

While this national communication policy was never intended to be a language rights document, it had the potential to afford Jamaican speakers the right to be served in a language they understand. The document took a "tolerance" approach

to the Jamaican language; while the language is acknowledged, its speakers are not catered for by the state.

1.2.1 Language Policy in Jamaica

In 2001, the Jamaican Language Unit led by Devonish was invited to make a proposal to the then Joint Select Committee that freedom from discrimination on the grounds of language and disability be included in the Charter of Rights (Devonish 2001). The proposal's introduction outlined the fact that the linguistic distance between Jamaican and English is like that between Spanish and Portuguese in the lexicon; Spanish and French in the phonology; English and German in the morphology and ranging from the distance between French syntax and Spanish to the distance between English and German (Devonish 2001). The proposal then went on to state that both direct and indirect forms of linguistic discrimination exist within Jamaica's sociolinguistic situation. Accordingly, the provision of services only in English was cited as an indirect form of discrimination and the form of discrimination that emerged in the study by Linton-Philp & French (2001: 3) was cited as evidence of direct discrimination. The main thrust of the proposal states that:

> Following on from Section 1, 24-(8) which currently reads, "In this section, the expression 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by gender, race, place of origin, social class, political opinions, colour or religion..." should have "language" ... added to the preceding list.

In its report on the proposal to include provisions against discrimination on the grounds of language in the Charter of Rights, the Joint Select Committee states that "the Committee does not have much difficulty with the matter of constitutional protection against the direct form of discrimination on the ground of language". (Joint Select Committee 2002: 26). Committee members expressed concern that most Jamaicans do not view Jamaican as a language in its own right" (Brown-Blake 2011: 5) and they also encouraged research to be undertaken in this area. This discussion presents some of the surveys conducted since that recommendation.

1.3 Direct and indirect linguistic discrimination

Linguistic discrimination is linked to people's negative language attitudes. Rickford (1985: 2) in describing general attitudes towards Creole languages states that:

> The standard view of language attitudes in a Creole continuum is that the standard variety is good, and the non-standard varieties (including the mesolectal and basilectal varieties which are often referred to collectively as "Creole") are bad. This view may be referred to as the standard one, not only because it is the orthodox one—the one usually reported in academic literature and the local press—but also because it assumes a positive orientation toward the standard variety alone.

Of relevance to this discussion are the concepts of direct and indirect linguistic discrimination which occurs because of the continued use of English in public formal domains. Direct linguistic discrimination occurs when an individual treats another less favourably or differently based on their linguistic attributes. An example of this is when a service representative (SR) treats a monolingual speaker of Jamaican unfavourably because of their language use. Walters (2017: 10) explains how SRs correcting speakers of Jamaican are similar to teachers correcting students in the classroom:

> SRs corrected the callers because they did not use the "acceptable" code. One way in which the SRs performed correction was by the use of the phrase "pardon me". The phrase "pardon me" and its variants "I beg your pardon" and "pardon" served as corrective markers that the SRs used when they attempted to correct the callers' use of Jamaican.

As Ferguson (1959: 329) states, the importance of using the right variety in the right situation can hardly be overestimated. This practice of using a language that citizens do not understand to communicate with the masses is known as indirect linguistic discrimination. When state authorities offer information in a language other than that of its citizens, indirect linguistic discrimination is the result. This is particularly problematic in Caribbean territories where the standard language is the lexifier language for the Creole. Jamaican is an English-based Creole and for many, they are unable to distinguish between the two while some take it for granted that if you speak Jamaican, you must understand English.

This common misconception that all Jamaicans speak and understand English, results in the neglect of the communication needs of monolingual speakers of Jamaican. In fact, one-third of the population encounters challenges when communicating in public agencies, where English is the dominant language spoken. The Jamaican Language Unit (2006b) revealed that 36.5% of the population sampled are monolingual speakers of Jamaican, with only 17.1% demonstrating monolingualism in English. According to the survey, less than half of the population is

competent in both languages as 46.4% demonstrated bilingualism. The implementation of institutional bilingualism will benefit all groups.

Smalling (1983) conducted a comprehension study with adults enrolled in a remedial program known as JAMAL, now known as JFLL, Jamaica Foundation for Life Long Learning. She found that new participants demonstrated only 50% comprehension of English material. Despite the date and nature of this study, it provides insight into the comprehension levels of monolingual speakers of Jamaican. The question of comprehension will be revisited in the subsequent section.

The state continues to violate the rights of Jamaican speakers, thereby denying them the opportunity to be functional citizens within Jamaican society. For monolinguals, the "Denial of the linguistic rights of the mass of the population means denying them the right to use the only language which they know in order to gain access to these important areas of their society" (Devonish 1986: 18). According to Phillipson (1992: 18), "The use of one language [in a society] generally implies the exclusion of others, although this is by no means logically necessary". Additionally, language plays a vital role in the process of production in any society. It is the medium by which production is organized and coordinated whenever more than one producer is involved (Devonish 1986: 16).

1.4 From traditional to transitional diglossia

1.4.1 Traditional diglossia (Ferguson 1959)

Ferguson's traditional diglossia holds that a superposed High (H) variety has greater prestige than dialects of H, considered the Low (L) varieties. The concept of diglossia expanded to include independent languages and multiple speech communities. An essential feature of diglossia is the functional allocation of the High and Low languages. This type of language situation is relatively stable with the H language usually reserved for more official and formal contexts, while the L variety is used in more informal settings. Traditionally, Jamaican was used in informal contexts and restricted to folklore, theatre and daily conversations. Today, we see the language being used in more formal domains. English has been the language of public formal communication and could be heard on the radio, television, and print media.

Ferguson (1959: 330) states that "many speakers of a language involved in diglossia characteristically prefer to hear a political speech or an expository lecture or a recitation of poetry in H even though it may be less intelligible to them than it would be in L". That was the case in Jamaica since people held this view

of English, holding it to a higher prestige since it is "the linguistic badge, which one wears when one wants to identify with a certain level of sophistication, of linguistic competence, and of having 'arrived' in a highly stratified society" (Pollard 1994: 9). These perspectives are changing, as we will discuss throughout this chapter.

1.4.2 Transitional diglossia

Though diglossia has often been applied to Jamaica's language situation (Winford 1985; Devonish 1986) there are newly emerging patterns of language use signaling a *transitional diglossia*. Walters (2016) describes this as an inclusion of Jamaican in all domains of public formal communication, previously reserved for English only. This shift will eventually lead to official institutional bilingualism. A precursor to this transition is an ideological shift in how people viewed the Jamaican language. The catalyst for this could possibly be Jamaica's performance during the 2008 Olympics, as the athletes excelled in the international competition which created a great sense of national pride. Increasingly, Jamaican monolinguals have been using their mother tongue in domains traditionally reserved for the use of English. These non-traditional domains in which Jamaican is now being used include traditional and social media, the classroom, parliament, and public agencies.

Not only do these practices signal transitional diglossia but a change in language attitudes as well. The results of the National Language Attitude Survey (Jamaican Language Unit 2005), discussed in detail below, indicate that there was a shift in the attitudes of Jamaicans regarding the use of Jamaican in public formal domains. Most of the informants indicated that they would like to see Jamaican used in parliament and the classroom (textbooks and language of instruction), road signs, medicine bottles, and pesticides[1]. This is a shift from the preference of Jamaican in only rum bar and roots play type contexts.

These attitudes indicate the people's desire for Jamaican to be elevated into other domains and influence the stakeholders (gatekeepers) to use the language in their respective domains. These gatekeepers include customer service representatives and teachers.

Today, there is no domain in which Jamaican cannot be found. Gone are the days when only English could be heard on the radio or the television. Apart from

[1]The sample was asked if they would like to see Jamaican written in a standard form on the following items: a) road signs, b) school books, c) medicine bottles, d) government forms, e) weed spray. 57.3% said they would like to see Jamaican written in standard form on school books. (Jamaican Language Unit 2005)

daytime talk shows which have traditionally used Jamaican, the language can now be heard on current affairs and news programs such as Beyond the Headlines, CVM Live and the Jamaican News programme "Braadkyaas Jamiekan[2]" on News Talk 93 FM. From eyewitness reports, vox pop segments and news headlines, Jamaican can be heard. Additionally, service representatives have demonstrated the practice of code-switching to Jamaican when serving Customers who speak Jamaican (Walters 2015).

Jamaican can now be found in all the domains that were reserved for English only. Citizens are proudly using Jamaican in various "sacred" contexts such as valedictory speeches, principal's addresses to students, and on social media. Public formal communication is far behind, and its practitioners need to incorporate the discourse practices of social media influencers and freelance journalists if they wish to communicate effectively with the masses.

Jamaican monolinguals are now using their language in such formal contexts since any attempt to use English in public contexts often leads to ridicule and mockery. This is the case when dominant Creole speakers try to use English, many tend to hypercorrect and are often subjected to taunting. What is necessary now is for Jamaican to be made an official language alongside English in order to provide equal treatment for monolingual Jamaican speakers.

2 The people's demand for language justice

2.1 National language attitude survey

Most Jamaicans express positive attitudes towards the language, though a subset of the population still rejects its expansion in other domains. In fact, "there still exists a minority within the speech community who still does not recognize JC as a valid code" (Devonish & Walters 2015: 225). On the one hand, Jamaicans view their language as a strong part of national and cultural identity, an indication of their rich African heritage and a unique source of pride. On the other hand, a few stigmatize Jamaican and ridicule others for their language use, particularly when they use it in formal domains. Language attitudinal research has shown that such attitudes can be "markedly polarized and tightly held – both institutionally and personally, openly and internally" (Beckford-Wassink 1999: 58).

The first comprehensive study of language attitudes in Jamaica is the Language Attitude Survey (Jamaican Language Unit 2005). The Jamaican Language Unit (JLU) conducted the study within the Western, Central, and Eastern regions of

[2]Broadcast Jamaican is a news programme produced by the Jamaican Language Unit.

Jamaica. Researchers surveyed a thousand (1,000) Jamaicans in the areas of Language Awareness, Language Use, Language Stereotypes, Education, and Writing in Standard Form. The survey was administered in either English or Jamaican, so questions were asked in one of the two languages depending on the informant's own language use. Regarding language awareness, 79.5% of the respondents reported that they recognized Jamaican as a language and 68.5% claimed that they supported Jamaican becoming an official language.

In reference to language use by public officials, 67.8% indicated that if the Prime Minister and Minister of Finance gave speeches in Jamaican, they would communicate better with the public. In the most recent budget debate, Finance Minister, Dr. Nigel Clarke, incorporated the use of Jamaican in his presentation. He code-switched particularly while demonstrating how to use the new digital currency JAMDEX application. During his presentation[3] he declared "Wach mi nou...it get sen....an wach ya nou" "yu kyan piyee yuself!".[4]

Regarding Jamaican in a standard form, 57.3% indicated that they would like to see Jamaican in textbooks and 49% agreed they would like to see the language written on road signs. Questions concerning language stereotypes revealed that 57% and 67% viewed English speakers as more intelligent and educated than speakers of Jamaican, respectively; despite some indication of change in the views about Jamaican discussed earlier. English maintains its position as the language of prestige, but Jamaican has gained many strides as a prestigious language. (Devonish & Walters 2015).

2.2 Current research: Four language attitude surveys

I have since collaborated with the Jamaican Language Unit in conducting subsequent quantitative surveys on language use in specific domains. These surveys have been incorporated into the Language Planning research course offered by the Department of Language, Linguistics and Philosophy at the University of the West Indies, Mona. The typical methodological approach has been to:

- Select a public formal domain
- Develop a questionnaire based on current issues in the selected domains
- Conduct a pilot study
- Revise questionnaire

[3] https://www.youtube.com/watch?v=_0t_feUoz2M

[4] "Watch me now...it has been sent...and watch here now" "you can pay yourself!"

- Conduct actual survey
- Code the data sheets
- Enter data in SPSS
- Run SPSS analysis
- Prepare survey report
- Engage stakeholders at public symposium

These surveys solicit the views of a wide cross-section of individuals who have their profession, working in a market or an office. We gather information from these respondents in regular everyday settings.

2.2.1 The language attitude survey remix

A follow-up Jamaican Language Unit (2015) was conducted to investigate the attitudes towards Jamaican and if there were any major changes. This took place within two regions of Jamaica, Western and Eastern in both rural and urban centers with approximately 900 informants. A key component of the four surveys was a petition for the government to establish laws to end discrimination on the grounds of language. At the end of the questionnaire, the question was presented in this form:

(1) *Language Rights Petition*

English

I call on Parliament to pass a law which adds 'the right to freedom from discrimination on the ground of language' to the Charter of Rights to the Jamaican Constitution.

Patwa

Mi waahn Paaliment fi paas wan laa we se 'piipl no fi get bad chriitment sieka di kain a langwij we dem taak' an put i ina di Chaata a Rait we de ina di Jamieka kanstichuushan (di big laa we se ou di konchri fi ron).

Signature: _____
Address: _____
Date: _____

Table 1: Comparison of language attitude surveys 2005 and 2015

	LAS 2005 $n = 1000$ yes (%)	LAS 2015 $n = 900$ yes (%)
Jamaican is a language in its own right	79.5	77.8
Jamaican should be made official alongside English	68.5	69.5
A bilingual school in which they teach children to read and write in Jamaican and English is best for the Jamaican child	71.1	70.0
Willingness to sign the petition.	–	71.3

This was attached to a separate sheet of paper and later included on the questionnaire of the subsequent surveys. The aim here was to see if citizens would be willing to take action in support of their language attitudes. The comparative results of both surveys can be summed up in Table 1.

Table 1 shows that attitudes have been positive towards Jamaican, and they have remained the same over a ten-year period. The majority agrees that Jamaican is a language, parliament should make it official, and that bilingual schools are better for Jamaican children. The consistency in the results also speaks to the veracity of the surveys. The majority of the participants (71.3%) signed the petition to safeguard against linguistic discrimination in Jamaica's public agencies.

In the four language use surveys previously listed in the introduction, most of the respondents have indicated their desire to see Jamaican being used in public formal domains alongside English. Year after year, the results represent the constant demand of Jamaicans for the use of their language to be made official. These surveys capture the heart of Jamaican speakers as informants are from all walks of life across the island. An effort was made to capture the views of residents in both urban and rural areas across a wide range of occupational groups. They serve as a more credible and scientific source than letters written to the editors of major newspapers and those who participate in online discussions about the great 'Patwa Debate'. Many of these 'debaters' already have at their disposal competence in the English language. While their voices might seem louder, they do not represent the voice of the common man who stands to benefit the most from an officially bilingual Jamaica. Let us explore the results of these language attitudinal surveys in the next section.

2.2.2 Language use in the media survey

We may begin by looking at official government communication using radio, television and electronic media, which mirrors the nature of the distribution of languages in Jamaica's other public formal domains. Both Jamaican and English share space in the Jamaican mass media. Public practices such as talk show hosts using Jamaican for a combination of "pragmatic purposes and/or acts of identity, and who thereby provide certain legitimacy for the use of Jamaican Creole in public/formal media" (Shields-Brodber 2022: 202), promote the use of Jamaican in domains usually reserved for English. Since the 1980s, Jamaican has been used in some public service messages and government broadcasts such as skits included in the Jamaica Information Service (JIS) Jamaica Magazine program to "ensure optimal intelligibility" (Akers 1981: 9).

The Jamaican government also uses Jamaican as taglines for advertisements and public education campaigns. For example, Westphal (2010: 35) cites a government advertisement promoting backyard gardening as using the basilectal variety of Jamaican to appeal to citizens who are of the "lower classes". As is typically the case with mixed language government advertisements and public service announcements, any dialogue between the characters takes place in Jamaican and the official information that refutes or corrects the beliefs of the characters is shared in English. Though Jamaican is used in the public domain, it is often assigned a secondary or an inferior role.

The anti-litter campaign of the Ministry of Tourism and Entertainment and the Jamaica Environment Trust (JET) launched in 2014 takes a similar approach. This is an example of how the government uses Jamaican to communicate with the masses. It is dubbed the "Nuh Dutty Up Jamaica" campaign and the logo in Figure 1 uses the unofficial or "chaka-chaka"[5] writing system as is often the case with such messages written in Jamaican.

All other subsequent posters in this campaign included a limited use of Jamaican as illustrated in Figures 2–4 and done to catch citizens' attention.

The phrase "big up" is often used in Jamaican when positively acknowledging someone or something, paying homage or respect to a particular target. Note the use of Jamaican "wi" as the possessive plural pronoun. This is a phrase we might hear in everyday conversation "big up yuself" "big up wi konchri" and so on. This resonates with citizens who can easily relate to the language used.

This repeats the slogan "Nuh dutty up" but instead of "Jamaica", it includes "di road". Note the use of the Jamaican definite article "di" instead of English "the". By

[5]The term "chaka-chaka" is used to indicate that something is disorderly and untidy.

Figure 1: Anti-Litter Campaign Logo (Jamaica Environment Trust 2016)

Figure 2: Big up wi beach (Jamaica Environment Trust 2016)

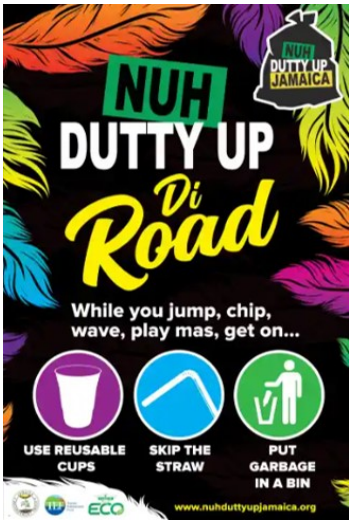

Figure 3: Nuh dutty up di road (Jamaica Environment Trust 2016)

Figure 4: Love where yu live (Jamaica Environment Trust 2016)

code-mixing Jamaican markers in English sentences or using short catch phrases in Jamaican, the phrase grabs the attention of the citizens.

For this sentence to be fully Jamaican, "where" would have to become "we" or the more popularly used form "weh". The limited use of marked words such as "di" and "yu" reflects a mere token usage of Jamaican.

Figure 5: Government road sign using elements of Jamaican (Dray 2010)

Another example of how the government uses Jamaican to transmit messages is in the form of road signage. Dray (2010) shows how the government uses Creole terms to convey important messages to the public as exemplified in Figure 5. Many SJE speakers now accept some of these Jamaican terms and see them as a part of the mainstream language (Christie 2003, Irvine 2005). The phrase "walk good" is from the Jamaican phrase "waak gud" meaning travel safely. As Dray (2010) points out, those responsible for the message on the sign considered the term to be English and not Creole.

Whilst we have seen the token usage of Jamaican, the government's use of the language of the masses may be what Fairclough (1994) classifies as "conversationalization". Drawing from Leech's (1966) notes on the "public-colloquial" style of advertising, Fairclough (1994: 242) describes conversationalization as the "...modeling of public discourse upon the discursive practices of ordinary life, conversational practices in a broad sense". Fairclough (1994) argues that this modeling represents a shifting of the boundaries of public and private discourse conventions, a technique that authorities use to give power to the target group. We also see these conversationalization practices during political campaigns. Political parties use linguistic manipulation of both English and Jamaican in political strategizing (Francis 2010). The Government's use of Jamaican in public messages, though minimal, is always strategic, using language to give power to and to take it back from the people.

Jamaicans have used their language on several media platforms but not always in any formal way. Jamaican has always been on radio and television and print media. The traditional manner was for Jamaican to be used to discuss lighthearted topics, humorous segments and for dialogue. When the serious topics were to be discussed, English would be used. For instance, 'Under the Law' is an educational program concerning laws surrounding everyday conflicts between citizens and the applicable laws of the land. The program would entail dialogue in Jamaican, for instance, two neighbours at odds over a broken fence or a fallen tree. After the scenario, the commentator would then point out the aspects of the law relevant to the situation, using English.

Though many of the national radio stations use Jamaican during talk shows, discussion forums and in advertisements, most of their newscasters use English to read the news. This of course is tantamount to linguistic discrimination in its indirect form.

Table 2: Language use in the media survey results

Questions	Yes	No	Not sure
Should broadcasters use Jamaican on TV and radio?	58.0%	33.4%	7.0%
Do speakers of Jamaican fully understand the news in English?	54.7%	35.1%	10.2%
Should the government provide information about what is happening in the country in Jamaican on their JIS program?	72.4%	26.7%	4%
Willingness to sign the petition	53.8%	46.2%	–

In 2017, a "Language Use in the Media" survey was done to ascertain how Jamaicans felt about the use of Jamaican in the Media. Approximately 900 informants were surveyed on the role of language in the media and the effectiveness of the Braadkyaas Jamiekan Nyuuz[6] program on News Talk 93 FM. The overall findings revealed that the majority of the respondents were in favour of Jamaican being used on various media platforms.

When asked if news broadcasters should use Jamaican to read the news on TV and Radio, most respondents indicated that they were in favour of this practice as

[6]Broadcast Jamaican News

58% indicated that they wanted broadcasters to use Jamaican to read the news on TV and radio. If radio stations were to follow suit, it is likely that most Jamaicans would begin to understand news content, thus becoming more informed citizens. Another 33.4% indicated that they did not wish to hear newscasters read the news in Jamaican and 7% indicated uncertainty.

In our earlier discussion of Jamaican speakers fully understanding information shared by the state in English, the question was posed "Do you think citizens who speak Jamaican fully understand the news when it is read in English?" On the matter of comprehension, the majority of those polled indicated that they do not think Jamaican speakers fully understand the news in English. If this is indeed the case, the existing language barrier prevents many monolinguals from understanding vital information shared in the news. This therefore leads to "a differential ability to understand the information being disseminated, particularly in rural Jamaica (Justus 1978: 42). A total of 54.4% were of the view that speakers of Jamaican do not fully understand the news while 35.1% felt that Jamaican speakers do understand the news in English. Those who indicated that they were not sure amounted to 10.2%.

2.2.3 Government media broadcasts

The Jamaica Information Service (JIS) is the agency responsible for government broadcasts and for informing the public of the various ministries' new policies and projects. It is intended to keep the public aware of the government's performance and to provide the information they need to access state services. The radio and the television departments within the JIS both transmit information in English. Their *Jamaica Magazine* is aired every day on television and radio.

The JIS is the official information arm of the Government of Jamaica and is mandated to disseminate information (in different formats and using all available media) that will enhance public awareness and increase knowledge of the government's policies and programmes. The agency utilizes airtime allowed under the broadcast regulations, for government programming (The Office of the Prime Minister 91, 2015) When asked if the government should provide information about what is happening in the country in Jamaican on their JIS program, the majority of the participants (72.4%) responded yes, 26.7% said no and 4% said they were not sure. This is of great importance since the JIS is "the voice of Jamaica" and is tasked with sharing valuable information on behalf of the state. Monolingual Jamaican-speaking citizens would receive the opportunity to become more aware of government policies and programs. This would contribute to the development of an informed society.

A change in language attitudes has resulted in Jamaican monolinguals desirous of being included in the communication of mainstream society. Monolingual Jamaican speakers have not been able to access information from the government in a language that they understand and as a result, they have been marginalized. There is great injustice in the national media system as Jamaicans who do not speak English do not have access to official government information.

2.2.4 Language use in public agencies

It has been established that linguistic discrimination exists in Jamaica's public sector. Walters (2015) found that direct discrimination also exists in Jamaica's public agencies. In a study of sixteen public agencies, she found that Jamaican speakers were twice as likely to receive negative treatment when they telephoned service representatives using Jamaican. The service representatives were more likely to be impolite and unprofessional and the information received was inadequate and, in some cases, inaccurate. Callers reported that when they called requesting information using Jamaican, they felt interrogated, belittled, dismissed, and ridiculed.

Public agencies provide official services on behalf of the government and citizens access their services on a regular basis. These agencies offer state services to citizens which cannot be accessed elsewhere. It is vital that one possesses basic competence in English to access these services. All official documents are published in English, and this poses a challenge to Jamaican monolinguals, as discussed earlier in Section 1. If a Jamaican monolingual wishes to get a Tax Registration Number (TRN) they must overcome the English language barrier in order to be successful. A typical experience of monolinguals is for them to be sent to the security guards for assistance. The security guard functions as interpreter who assists the individual with completing the necessary forms. I went to the National Insurance Scheme (NIS) office once and came upon a security guard assisting a young man complete a form. The security guard hurriedly asked me to continue assisting the young man as he had something else to tend to. In speaking with the young man, I realized that he was a monolingual Jamaican speaker. I had to act as an interpreter by translating from English to Jamaican. For instance, "place of residence" I asked, "we you liv" and so on.

As Devonish (2001) points out, one would only tend to find Jamaican in written form during role-playing when particular characters are being represented. In these cases, the chaka-chaka[7] writing system is often used to do so. This prac-

[7]The unofficial writing system developed overtime by those wishing to express themselves in Jamaican.

tice does not greatly contribute to accessing basic services from public agencies unless in rare cases, informational pamphlets containing dialogue are produced for the public in Jamaican. In such cases, English remains the dominant language used for communicating with the public.

Irvine (2004) denounces this inefficiency embedded in the continued functional dominance of English in public formal domains:

> It is also inefficient to continue presenting news, parliamentary proceedings, and all the information crucial to a functioning democracy in English only. If both were used, we would stand a better chance of having an informed public.

English of course, plays an integral role in service delivery in the public sector, while Jamaican "is not the language of serious business" (Irvine 2005: 218). Brown-Blake (2011: 4) points out that such practices demonstrate that the state has adopted an "English monolingual policy". Among the list of skills usually seen in job advertisements for employment with public agencies, particularly SRs, is having a good command of English. This is evidenced by the requirement of "acceptable passes in the subject in the secondary level qualifying examinations" (Brown-Blake 2011: 32). In her description of language use in a state agency, Irvine (2005) investigated the speech of what she calls "front line workers" at JAMPRO, as representative of what Jamaicans consider to be SJE. In her study, Irvine conducted 20–25-minute interviews with 104 members of staff, 82 of whom agreed to be recorded. Members of the front line staff believed that they were hired in these positions due to their English language competence, and light skin colour among other criteria (Irvine 2005: 271). Though JAMPRO is responsible for promoting brand Jamaica to international investors, the entity represents the ideal language requirements for similar employees of other Jamaican state agencies. Based on Irvine's findings, "the idealised member of this speech community is one who can manipulate both Creole and English" (Irvine 2005: 271). Now that we have developed a picture of the language situation in the public entity domain, we will now move on to look at the phenomenon under investigation, linguistic discrimination.

The "Language Use in Public Agencies" survey was done in 2016 to ascertain attitudes towards Jamaican being used in government agencies. The majority of the 882 respondents indicated that they wanted customer service to be offered in Jamaican public agencies. The public service encounter is one in which a service representative interacts with customers by providing goods and services or the

exchange of information. Whether one wants a driver's license, a voter's identification card, or a passport, one must participate in a public service encounter. It is the only means by which many citizens interact with the state and therefore forms a very integral part of the public formal domain.

Table 3: Language use in public agencies

Questions	Yes	No	Not sure
Should the service representatives communicate with customers in a language that he/she understands?	88.6%	11.4%	–
Do Jamaican speakers have difficulty in fully understanding Service Representatives when they use English?	55.3%	39.3%	5.4%
If there was a proper way to write Patwa, do you think that the government should provide agency documents in Patwa for Patwa speakers?	55.7%	44.0%	0.3%
Should Jamaican be used in parliamentary budget debates?	62.4%	32.7%	4.9%
Willingness to sign the petition	65.5%	34.5%	–

On the matter of the language used by service representatives, when asked 'Should the service representatives communicate with customers in a language that he/she understands?', most of the respondents, 88.6%, indicated that service representatives in public agencies should use the language of the people during service encounters. Only 11.4% said that service representatives should not use a language the customer understands.

On the matter of comprehension, when asked if they believe that Jamaican speakers have difficulty in fully understanding Service Representatives when they use English, 55.3% indicated that they thought that Jamaican speakers did not fully understand the service representatives. This can of course mean that monolingual speakers only understand half of what takes place during such encounters. Only 39.3% indicated that monolinguals have a full understanding of English service encounters and 5.4% indicated uncertainty.

Questions focused specifically on the language of the national budget debate as this is important for citizens to evaluate decisions on how the government

intends to handle the public purse. Coupled with the use of English is the use of financial jargon which the average English speaker does not understand. Terms such as 'consolidated fund', 'fiscal policy', and 'capital expenditure' have been listed in a glossary of terms on the website for the Jamaica Information Service (Jamaica Information Service 2020). The majority of the respondents were in favour of Jamaican being used in parliamentary budget debates; 62.4% indicated that the Minister of Finance should use Jamaican when explaining the details of the budget, 32.7% indicated that the ministers should use English and 4.9% indicated that they were not sure.

Regarding written documents, when asked 'If there was a proper way to write Patwa, do you think that the government should provide agency documents in Patwa for Patwa speakers?', 55.7% indicated that government documents should be printed in Jamaican, once there is a suitable writing system for the language. Another 44% said there should be no written documents in Jamaican and 0.3% indicated that they were not sure. In the language attitude survey results discussed in Section 2.2.1, the majority of respondents were in favour of Jamaican being written on government forms and road signs. The grassroots citizens have been demanding for their language to be used on official documents.

Figure 6 shows an example of what a bilingual sign would look like when Jamaican and English are used on signage in public entities. The National Housing Trust offers mortgage loans to Jamaicans who make monthly contributions to the fund. It is one of the most accessible public entities in Jamaica and serves people from all walks of life. Should Jamaica be declared officially bilingual, we propose bilingual signs such as in Figure 6

Figure 6: Proposed Bilingual sign for the National Housing Trust

We thought it pertinent to ask about language use in the Jamaica Information Service (JIS) in this survey since this is the agency that supplies citizens with

crucial information on government programmes. When asked 'If given the opportunity, do you think Patwa speakers should receive government information in Patwa during broadcasts such as the JIS) Magazine program?', again, the majority was in favour of Jamaican being used in such a domain. A total of 60.7% believe Jamaican should be used on JIS broadcasts, 33.0% said no and 6.2% said not sure.

Since the JIS communicates issues of national importance, why then isn't the national language used to relay such information? Though there have been some recent attempts to increase the use of Jamaican, these maintain the same conversatonalization practices discussed in previously. Short skits and dialogues are often done in Jamaican but when they return to the studio, the presenter uses English. Based on the survey results, the respondents are calling for the use of Jamaican in a more meaningful way.

2.2.5 Language use in the courtroom

The West Kingston Commission of Enquiry was publicized on national television and on radio. In 2010, the United States issued an extradition request for community kingpin, Christopher 'Dudus' Coke who was on the run. This standoff led to war between the national security forces and citizens in West Kingston. The aftermath left approximately 69 residents murdered and many others injured (Commission of Enquiry 2016). A Truth Commission was established in 2014-2016 to determine if police and soldiers were responsible for these deaths.

Walters (2017) discussed the results of focus groups and a survey that both solicited the attitudes of the average Jamaican but also eight witnesses who were dominant Jamaican speakers.

The results revealed that respondents preferred if lawyers used Jamaican with Jamaican monolinguals who serve as witnesses. This would mean that lawyers would have to formulate their questions in Jamaican and transcribers' notes would also be recorded in the same language. Additionally, respondents felt that interpreters should be provided if lawyers are not competent in Jamaican. While legalese is not easily understood by those outside of the profession, there is merit in translating it to Jamaican so that even a bilingual speaker may gain a greater understanding of the questions being posed.

Walters (2017) highlighted some of what the focus group participants had to say when questioned on the issue of language and comprehension:

> Nikila Brown: De aks wi wan kwestiyan aal sevn taim..an is WAN kwestiyan. Bot yu av tu lisn kierful an den se 'maam' 'sir' a duohn andastan..bring it

Table 4: Language use in the courts

Questions	Yes	No	Both
If witnesses give their statements in Jamaican, should they be written in Jamaican?	58%	37%	7%
Should there be interpreters for speakers of Jamaican in the courts?	65%	35%	–
Did the witnesses have difficulty understanding the lawyers' questions?	78%	22%	–
If the lawyers used Jamaican, would communicate better with the witnesses?	77%	23%	–

> dong tu mai levl. Kaaz dem de big, big, big word de mi no an- briek it op in silablz we mi kyan andastan den mi kyan se 'yes maam' 'no maam 'yes sor'
>
> [They ask you one question seven times...and its one question. But you have to listen careful and then say 'maam' 'sir' I don't understand..bring it down to my level because those big, big, big words I don't un- break it up in syllables that we can understand then I can say 'yes maam' 'no maam' 'yes sir'] (my translation)

The witness in giving her overview of the experience in court felt that the lawyers' repetition of the same questions was unnecessary and that big words should be broken up into syllables to facilitate understanding. It is not so much a breaking up of the words that is necessary but an explanation of what the words actually mean in a language she can understand. The consensus among the residents was that lawyers expected them to answer questions they could not comprehend (Walters 2016: 33).

Nikila's statement above exemplifies the demand of a people forced to try and understand crucial information being thrown at them in a language in which they lack competence. This is an example of the difficulties speakers of Jamaican face because others assume that they are competent in English. Bilinguals can smoothly transition from one language to another without giving it a thought. This is not the same for Jamaican monolinguals and dominant Jamaican speakers. In fact, research has shown occasions of lack of understanding and overall miscommunication when Jamaican speakers engage with speakers of English

and the possible consequences that may derive from such miscommunication (Brown-Blake & Chambers 2007).

It is not only the females who are demanding language justice, here's what a male witness had to say about the lawyers' language use:

> "Roshaine Grey: Wan a di biges prablem we mii fain wid di wie ou di laayaz in di inkwaiyeri..di-di dem puoz di kwestiyan tu di rezidens..ai woz wachin fram-fram-fram di staat an stof..an a get tu riyalaiz dat de aar yuuzin dier gud komaan af di Ingglish langwij agens porsnz uu duohn av a muor- duohn av a gud komaan a di Ingglish langwij az wel as dee duu..so de ten tu yuuz dat tu dier advantij..aahm- in di wie ou de puoz di kwestiyan..de puoz it in Standaad Ingglish an in a paatikyula wie tu mek di porzn an di stan luk STUUPID!
>
> [One of the biggest problems that I found with the way how the lawyers in the enquiry posed the questions to the residents..I was watching from-from-from the start and stuff..and I get to realize that they are using their good command of the English language against persons who don't have a more – don't have a good command of the English language as well as they do...so they tend to use that to their advantage..aahm- in the way how they pose the questions...they pose it in Standard English and in a particular way to make the person on the stand look STUPID!] (my translation) (Walters 2017: 34)

As we have seen in the Jamaican case, the public has added its voice to the debate in favour of Jamaican being used in the courtroom. In those same proceedings, some lawyers code-switched to Jamaican when it suited them to do so. Linguists and language rights advocates should seek to capitalize on this widespread interest in the use of Jamaican in the courts.

2.3 Comparison of the findings from the four attitudinal surveys

The findings from the previously discussed surveys are summarized in Table 5. It shows the consistency in the positive attitudes people demonstrated towards their language. Every year, since 2005, respondents have indicated that government should declare Jamaican an official language alongside English. This shows that Jamaicans wish to see their language in public formal domains.

Table 5: Twelve-year period of language attitudinal surveys. L: LAS, LR: LAS Remix, CR: Court Room, GM: Government Media, PA: Public Agencies

Question	L 2005	LR 2015	CR 2015	GM 2016	PA 2017
Should JC be made an official language?	68.5%	69.4%	63%	73%	68.8%
JC speakers do not fully understand in the domain	–	–	78%	35.2%	53.3%
JC should be used by officials in specific domains	–	–	58%	58.4%	82%

2.4 Discussion: A consistent message

The results from each survey all show that informants want to see their language being used in the government offices, the media, and the courtroom. The surveys have given the common man, whether from rural or urban Jamaica, a voice in the "Patois debate". Those who would not necessarily give their opinion on a social media post or write a letter to the editor were able to contribute to the ongoing discussion.

The message has been the same, regardless of the domain being examined and the year of the survey: the majority of the informants indicated a desire for Jamaican to be made a co-official language along with English. Lawyers and other members of the legal fraternity would have to use Jamaican when questioning speakers of Jamaican or employ the use of interpreters. Forms and recordings would have to be translated to Jamaican and SRs would be mandated to interact with Jamaican speakers using Jamaican.

On the matter of Jamaican speakers fully understanding messages within the domains, most of the informants in both the legal (78%) and public agencies (53.3%) indicated that they did not think Jamaican speakers fully understood the information shared. Only 35% of informants in the media survey indicated that Jamaican speakers did not fully understand. This could possibly be a result of Jamaican being frequently used on traditional and new media. There now exists a plethora of Jamaican bloggers on YouTube, giving the news in their own language and their own pace, hence the news is at everyone's disposal.

On the matter of officials using Jamaican, 58% endorsed this both in the courts

and the media. We would therefore see lawyers and broadcasters using Jamaican when carrying out their tasks. For the public agencies, 82% indicated that they would like to see SRs using Jamaican while interacting with customers.

Such practices would reduce and eventually eliminate both direct and indirect discrimination, as there would now be institutionalized bilingualism. Both Jamaican and English speakers would be able to choose the language in which they wished to communicate.

3 A petition for justice: Addressing the discrepancy between the petition and survey results

In 2019, the Jamaican Language Unit launched a petition for the Prime Minister to address the issue of Jamaican becoming an official language. Once any petition gains fifteen thousand (15,000) signatures, the Office of the Prime Minister would issue an official statement on the respective issues. If the attitudes are so positive, why was this not reflected in the petition? One would have expected that the petition results would reflect the positive attitudes from the four surveys discussed. The online petition did not mirror the positive results on the willingness to sign the petition.

This discrepancy could possibly be attributed to the fact that the petition was done online. Many Jamaicans do not have adequate access to the internet and would not have been able to participate. The online survey required a confirmation email, and most signees did not follow through by checking their emails and submitting their confirmation. Now that internet usage increased during the pandemic, the JLU should relaunch the online petition after observing the recommendations made in Section 5.

The four face-to-face surveys discussed throughout the article, have managed to capture Jamaicans from three regions and nine different occupational groups, thus giving a more comprehensive representation of those desirous of seeing Jamaican in government institutions.

Though the language petition did not gather the requisite numbers, the Prime Minister addressed the issue when it was posed by youth parliamentarians. Amidst citing concerns on the learning of English, he said that the use of Jamaican in official business is inevitable and that the "institutionalization" of the language "will happen" (Nationwide News 2019). With the public's attitude already aligned with the notion of institutional bilingualism, this should happen sooner rather than later. As Smith stated, "We need to regularise and formalise it

so that, as of this year, no Jamaican will feel inferior if he or she on the occasion that is necessary speaks Patois" (2012).

4 Recommendations

The overall positive results of the surveys offer a basis for linguists, language enthusiasts and advocates to continue engaging both the public and government representatives in a more strategic way. The push for Jamaican to be made official should take a bottom-up approach instead of the top-down approach used for several years. Apart from continued research, recommendations for the promoters of institutional bilingualism include:

1. Meeting with all Jamaican language enthusiasts, including linguists, public figures, social media influencers, journalists, and educators. Linguists should lead these brainstorming sessions on the role of the key players mentioned in mobilizing the public to engage in a unified "Jamaican Language Movement".

2. Mobilizing speakers of Jamaican by engaging citizens in all parishes, not just in Kingston and St. Andrew. The survey results show that informants in rural parishes tended to display more positive attitudes towards Jamaican becoming institutionalized. Advocates should capitalize on this by engaging monolingual Jamaican speakers through focus groups and town hall meetings. This is the group that stands to benefit the most from official bilingualism and they should therefore be adequately included.

3. Launching a major fund-raising effort by appealing to non-governmental organizations, seeking grant funding through international organizations such as UNESCO. Members of the public, including the diaspora, should also be invited to become sponsors of the movement. The "Jamaican Language Movement" requires finances to fund the projects suggested below.

4. Launching an intense awareness campaign to educate the public on the official writing system of Jamaican, which will help to prepare the citizens for the successful implementation of institutional bilingualism. The JLU has conducted reading and writing Jamaican workshops on the Zoom platform during the pandemic, which were well received by the public. These training workshops should take on a face-to-face format to have a greater reach.

5. Targeting ministers of government and heads of public agencies. Language advocates should continue to strategically engage heads of key ministries, such as the Ministry of Education and Youth and the Ministry of Justice.

These recommendations can serve to make a difference in the call for Jamaican to be made official and the implementation of official bilingualism.

5 Conclusion

Most survey informants declared that Jamaican is a language, it should be made official and that it should be used in public formal domains. ShahSanghavi (2017: 24) states that:

> With the world becoming smaller and coming closer, and with international relations ever increasing, creoles will win the debate and soon become the official languages and medium of instruction in the countries where most of the population uses them as their first language.

The language attitude surveys signal a demand for Jamaican to be used in public formal domains in a more serious and effective manner. Its speakers are no longer accepting the inconsistent and mediocre way the state uses its language. Monolingual Jamaican speakers deserve the opportunity to be served and to access information in their own language. This is their inalienable right, and the time has come for the Jamaican government to listen to the people and observe these language rights.

A top-down approach has not worked in mobilizing Jamaicans to seriously advocate for their language to be made official. Language advocates and enthusiasts must engage the public and employ a bottom-up approach to involve the grassroots people in the "Jamaican Language Movement".

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Chapter 3

Giving expert evidence in connection with Caribbean English vernacular languages: Lessons from *US v Kwame Richardson*

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This chapter discusses the legal rules governing expert evidence and how they may interact with the provision of linguistic evidence, particularly relating to speakers of Caribbean English vernacular languages, sometimes called Caribbean English creole languages. The case of *United States v Kwame Richardson*, in which the defence had initially planned to rely on expert linguistic evidence concerning a speaker of Guyanese, is deployed as a launch pad to the discussion. Although the expert's report was not ultimately relied upon by the defence in the court proceedings, the discussion indicates the legal roadblocks that may defeat the use of potential testimony by a language expert. The article stresses that it is important for linguists offering their expertise in forensic contexts to be acutely aware of the legal rules in order to meet, as far as possible, likely challenges to their methods and expert report or testimony. As the article shows, these challenges may include, in some instances, (mis)conceptions on the part of legal professionals about language in general, and the nature of Caribbean English vernaculars in particular.

1 Introduction

The US criminal case of *Kwame Richardson*[1] raises issues surrounding the provision of expert evidence in the context of Caribbean English vernacular languages.

[1] *United States v Kwame Richardson*, No. 09-CR-874 (JFB), 2010 WL 5437206 (EDNY Dec. 23, 2010).

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In this case, an expert in Caribbean linguistics, Hubert Devonish, was asked by the defendant's attorneys, the office of the Federal Defenders of New York,[2] to provide an opinion that bore on the defendant's language competence. The defendant, Kwame Richardson, who had been charged with drug-related offences, was a speaker of Guyanese Creole, also called Creolese (hereafter referred to as Guyanese). It appears that doubts were raised in the minds of his attorneys as to whether Richardson had understood the *Miranda* warning which had been told to him in English by a police officer, without the assistance of an interpreter, prior to interrogating him.

The *Miranda* warning is essentially the US version of the police caution.[3] In keeping with the US Supreme Court decision in *Miranda v Arizona,*[4] police officers who are about to question a suspect in their custody are required by law to inform the suspect of certain rights. This bundle of rights comprises the *Miranda* warning or *Miranda* rights, designed as a safety measure against self-incrimination. Although it is open to a suspect to waive his *Miranda* rights, US law also provides that such a waiver must be done knowingly, voluntarily, and intelligently. This means that a suspect must comprehend and appreciate the nature of the rights in order to validly waive the rights. Where it is established that a suspect did not understand and appreciate the *Miranda* warning administered to him or her by the police officer, then whatever the suspect said upon questioning by the police, including confessions or other implicating statements, cannot be admitted in evidence at trial. Defence lawyers seeking to exclude such statements from a trial will file a motion to suppress on the basis that their client had not understood the *Miranda* warning, and consequently could not have properly waived the rights.

Such a motion to suppress the post-arrest statements made by Richardson was filed by his attorneys. The court was asked to exclude those statements from

[2]The Federal Defenders of New York is an organisation in the USA devoted to representing persons accused of federal crimes who cannot personally meet the expenses associated with hiring a lawyer.

[3]In jurisdictions of the Anglophone Caribbean, police officers are obliged to administer the caution to suspects and arrestees whom they intend to question or who wish to give a statement to the police. The caution informs a suspect or an arrestee of his or her right to silence and warns them that anything they say may be recorded in writing and used as evidence in a trial against them for the contemplated offence. Failure on the part of police officers to caution a suspect or arrestee when required has implications for the admissibility of the statements made by the suspect or arrestee as evidence at trial. In addition to the right to silence and a warning that what a suspect says may be used against them in court, Miranda warnings include the right on the part of the suspect to confer with an attorney and to have an attorney present while he or she is being questioned by the police.

[4]384 US 436 (1966).

his trial because the defendant, a speaker of Guyanese, did not understand the *Miranda* rights when the police administered them in English without the intervention of a Guyanese language interpreter. The initial intention on the part of his attorneys was to support the motion by adducing expert opinion evidence from Devonish, then Professor of Linguistics in the Department of Language, Linguistics and Philosophy at The University of the West Indies, Mona Campus in Kingston, Jamaica.

Devonish was asked to tender an opinion as to whether the defendant, Richardson, could have understood the *Miranda* warning as told to him by the police officer. Although Devonish did prepare an expert witness report with a view to appearing at the hearing of the motion, ultimately he did not appear, and the defence did not use the report in support of the motion, which was heard without reliance on expert linguistic evidence. Despite this, Devonish's production of an expert witness report, the reasons advanced by the prosecutors for opposing the motion to suppress, and the judge's grounds for refusing the motion are arguably instructive for linguists. This may be particularly so for linguists engaged in providing expert opinions for English-medium judicial systems on comprehension by speakers whose dominant language is a Caribbean English vernacular. The fact that expert linguistic evidence was not ultimately used in Kwame Richardson's case, however, is perhaps a missed opportunity for the clarification of some key issues concerning Caribbean English vernaculars in a judicial context.

Against the background of the *Richardson* case, this chapter discusses the legal rules governing expert evidence and how they may affect the admissibility of, or the weight ascribed to, expert linguistic opinion of the kind submitted by Devonish. Before embarking on this discussion, I briefly examine the sociolinguistic context surrounding speakers of Caribbean English vernaculars in overseas justice systems in which English is officially used.

2 Caribbean English vernacular speakers in "farin" justice systems

Caribbean people have a tradition of journeying to "farin" – places beyond their home country shores, particularly the UK and North America, where relatively large Caribbean diasporic communities have developed. Many of these people originate from jurisdictions in the Anglophone Caribbean – territories in which English is the official language and where, invariably, English-lexicon vernacular languages, sometimes referred to as creole languages, are also widely used.

Many migrants from the Anglophone Caribbean are vernacular-dominant speakers with restricted competence in Standard English. Such speakers are therefore obliged to use their native vernaculars in their interaction with state institutions in the host country. Blackwell (1996) work is a recorded example of the use of Jamaican vernacular forms by an accused person in his statement to the police in a case arising in the UK.

Communication difficulties are likely to arise when Caribbean English vernacular speakers interact with host country institutions that officially operate in Standard English. These difficulties occur because, while the vernacular languages and their superstrate are phenotypically alike, i.e., their lexica are related, they differ considerably in their underlying grammatical structures. Although some of these communication difficulties have been documented – Brown-Blake & Chambers (2007) – the potential degree of the problem seems to be disguised, partly perhaps because of the shared lexicon.[5] Another probable factor in the communication difficulty is that these vernaculars are accorded little or no official recognition as languages in their respective home territories. The upshot of this, where vernacular-dominant speakers interface with "farin" criminal justice systems operating in English, is that there is an assumption on the part of these justice systems that they speak and understand English. Accordingly, they are usually not provided with the legal safeguard in such situations – an interpreter which is afforded to non-English speaking suspects and defendants. Anecdotal evidence in the form a letter to the editor of a long-established daily newspaper (Martin 2002) circulating in Jamaica lends support to the existence of language-related misunderstandings involving speakers of Jamaican in the US justice system and the possible attendant legal danger which may arise.

It is likely that, in the *Richardson* case, questions about the English proficiency of the accused arose as his defence team began taking instructions and themselves encountered communication problems. This would have led them to deduce that it was probable that he would not have understood the *Miranda* warning, itself a text, as studies have shown, that is likely to present comprehension difficulties for both native and non-native speakers of English (Rogers et al. 2007,

[5]It should be noted that though English-lexicon Creoles may share lexemes with their superstrate, the meaning of a particular lexeme in a creole language may vary or differ from the meaning ascribed to the cognate lexeme in English. Such meaning differences may, and indeed have, raised communication questions in court proceedings. By way of examples, see the Canadian case of *R v Douglas* 2014 ONSC 2573, para 34, regarding Jamaican, and the discussion in Eades (1994: 118) regarding Torres Strait Creole.

2008, Roy 1990, Pavlenko 2008, Pavlenko et al. 2019).[6] Despite a body of literature on the degree of comprehension of the *Miranda* warning and other jurisdictional versions of the police caution by native and non-native speakers of English, there seems to be little work carried out in the context of Caribbean English vernacular speakers. Communication and comprehension problems involving these speakers may not be very apparent for a number of reasons, some of which have already been alluded to here. It is clear, though, that Richardson's attorneys, at least initially, believed that it would be useful to support the motion to suppress with expert evidence as to the linguistic abilities of their client, as well as expert opinion on the likelihood of him understanding, and thus validly waiving, his *Miranda* rights. The degree of evidential value that a court may attach to such an expert opinion is governed by rules that prescribe certain conditions that should be satisfied by the specialist and the opinion he or she provides.

3 Law on expert evidence and its potential interplay with linguistic evidence

Increasingly, linguists are being called upon to apply their expertise in criminal cases and legal disputes (Levi 2013, *State of Western Australia v Gibson*, 2014[7]; Coulthard 2013; Tiersma & Solan 2002; Shuy 1993, 2005; Taylor & Weir 2009; Eggington & Cox 2013). As the literature indicates, expert linguistic evidence has been provided concerning a range of issues, such as authorship analysis, including speaker identification, the degree of similarity between competing trademarks, analysis of conversation to assess criminal intent/knowledge, interpretation, and meaning of texts, including legal texts, comprehensibility of texts, language proficiency and national origin questions.

Expert evidence includes, but is not limited to, opinions inferred from data by someone with specialist knowledge and experience.[8] In law, opinion evidence is exceptional in the sense that, generally, evidence in court proceedings must

[6] Research shows that police cautions used in other jurisdictions are also likely to pose language comprehension difficulties for both native and non-native speakers. See, for example, Innes & Erlam (2018) regarding New Zealand; Chaulk et al. (2014) regarding Canada; Fenner et al. (2002), Cotterill (2000) and Rock (2007: especially Ch.11) regarding the UK; Cooke & Philip (1998) regarding Scotland specifically; Heydon (2019: Ch 5) regarding Australia.

[7] *State of Western Australia v Gibson* [2014] WASC 240 in which linguistic evidence provided by Eades is reported in the judgment delivered by Hall J. See paras. 117–124.

[8] The need for these opinions to be given by someone with specialist knowledge and experience distinguishes it from lay opinions, which are permissible in certain circumstances. (In relation to US federal cases, these circumstances are specified in the Federal Rules of Evidence, Rule 701.)

be confined to facts, not opinions; and only those facts of which a witness has personal knowledge, i.e. facts personally observed or perceived by him or her. Given the exceptional nature of expert opinion evidence, there are a number of rules governing its use in judicial proceedings. In the US, the Federal Rules of Evidence (FRE) constitute the statutory basis governing the provision of expert evidence in federal cases such as the *Richardson* case under discussion.

3.1 The exclusionary rule of common knowledge: Not expert evidence if merely common sense

A fundamental principle is that the expert evidence must assist the trier of fact (the jury; or the court in judge-alone trials) to ascertain the facts in issue. FRE Rule 702(a) provides that an expert may give opinion evidence only if "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue". This has been interpreted to mean that an expert's evidence may not be directed to "lay matters which a jury is capable of understanding and deciding without the expert's help."[9] Thus, the proffered expert opinion must be beyond the common sense capacity of a lay person to be capable of admission into evidence. This rule has its counterpart in other jurisdictions, such as those in the Anglophone Caribbean, for example, Jamaica, where the law in the UK, particularly the English common law, has been influential. The law applicable in Jamaica is that the evidence must be necessary, in the sense that it must provide information beyond the scope of the "ordinary human experience,"[10] i.e beyond the common knowledge and experience of the trier of fact, and "be such that a judge or jury without instruction or advice in the particular area of knowledge or experience would be *unable* to reach a sound conclusion without the help of a witness who had such specialised knowledge or experience"[11] (emphasis added). Expert evidence therefore becomes unnecessary if the question to be determined is within the knowledge and experience of the tribunal of fact.[12] The principle is perhaps related to the

[9] *Andrews v. Metro North Commuter Railroad Co.* 882 F.2d 705, 708 (1989).

[10] *R v Turner* [1975] Q B 834, 841–842. In this case, expert psychiatric opinion regarding how the average person would likely react upon discovering spousal infidelity was ruled to be inadmissible to help establish that the defendant was likely to have been provoked in such circumstances.

[11] *Wilson and Murray v Her Majesty's Advocate* [2009] HCJAC 58, para. 58

[12] See the judgment of the Court of Appeal of Jamaica in *Bernal and Moore v R* (1996) 50 WIR 296, 361–364 which adopts the position in Canada and New Zealand. This judgment by the Court of Appeal was appealed to Jamaica's final appellate court, the Judicial Committee of the Privy Council (JCPC), which affirmed the Court of Appeal's statements of law on expert evidence. See judgment of the JCPC, *Bernal and Moore v R* (1997) 51 WIR 241, 252–253.

notion that an expert should not encroach on the domain of the trier of fact.[13] Where, then, a trier of fact, applying common intelligence and understanding, is competent on their own to figure out the issue, expert evidence will be precluded. It is the duty of the judge to decide whether the expert evidence being offered should be excluded. Judges thus perform this function of gatekeeping in respect of expert evidence.

This exclusionary rule assumes some importance in the context of the case of *Kwame Richardson*. Devonish's expert report addressed the question of the defendant's proficiency in English. The report opined that the defendant exhibited a "limited understanding of English". Documents[14] filed in court indicate that, at the hearing of the Motion to Suppress, the prosecution intended to rely on the argument that the defendant's ability to speak English was not an issue for expert testimony. This argument was grounded in the exclusionary rule – that the extent to which the defendant understands English was "an issue that the Court is capable of resolving without an expert's help"[15]. This issue, the prosecutors proposed, could be determined by the court itself on the basis of the testimonies of the agents who had interrogated the defendant, and on the basis of evidence from the defendant's family, friends, and acquaintances as well as the defendant's own evidence, should he elect to give it, as to his ability to comprehend English. The suggestion is that the court, as the trier of fact at the hearing of the Motion to Suppress, was capable of determining the issue without expert help,[16] by considering the nature of the agents' testimonies about the defendant's conduct during interrogation, and, possibly, evidence from the defendant as to his linguistic capabilities.

It is worth noting that the prosecution also intended to rely on this common knowledge exclusionary rule at the trial of the offence charged[17] at which the defence had also initially intended to call expert linguistic testimony. Such testimony would have been given in connection with the issue of whether the defen-

[13] H v R (2014) EWCA Crim 1555, para. 42, and *Bernal and Moore v R* (1997) 51 WIR 241, 253.

[14] The Government's Memorandum of Law in Opposition to the Defendant's Motion to Suppress, 9–10, *United States v Kwame Richardson*, No. 1:09-cr-00874 (JFB), Document 51, Filed 09/30/10.

[15] *Ibid*.

[16] It is worth noting that Jensen (1995: 133), in discussing an Australian case in which expert linguistic evidence was presented for a non-native speaker of English, reports that the prosecutor, in objecting to the evidence, submitted that the question as to the defendant's English proficiency was "a matter within anybody's capacity".

[17] See Letter from US Attorney for EDNY, 6–9, *US v Kwame Richardson*, No. 1:09-cr-00874 (JFB), Document 66, Filed 02/14/11 (the government's letter in support of its motion *in limine* to exclude the testimony of the defendant's proposed expert in which the prosecution outlines arguments against the admission of the expert's testimony *at trial*).

dant voluntarily gave the confession statements[18] he made to law enforcement officers. This issue differs in law from the question of the waiver of one's *Miranda* rights, which is heard pre-trial. If, during trial, the confession statements are ruled by the judge in a *voir dire*[19] as having been voluntarily made, and thus admissible into evidence, the evidence bearing on the question of voluntariness may also be presented to the fact triers. These would have been the empanelled jurors in the *Richardson* trial. When any evidence going to the question of confession voluntariness is heard by a jury, the jury makes a determination as to the weight that they should ascribe to it in arriving at their verdict. If expert testimony is to be part of the evidence bearing on voluntariness, the judge must first, as in all situations in which expert evidence is proffered, apply all the legal rules governing the admissibility of expert evidence.

The prosecution's suggestion that the intended expert linguistic evidence was dispensable on the basis of the common knowledge rule seems to be rooted in certain misapprehensions about language proficiency. Often, lay people misapprehend the fact that an individual who speaks English as a second or non-native language may display fairly strong competence levels in certain types of speech events. This, however, may belie the ability of such an individual to function equally competently in other types of speech events demanding higher levels of proficiency. Embedded in the concept of registers is the distinction emanating from the language education field between basic interpersonal communicative skills (BICS) and cognitive academic language proficiency (CALP, Cummins 1979). The former refers to linguistic proficiency in everyday social interactions, while the latter concerns the ability to articulate and understand abstract, specialised, more cognitively demanding notions typical of academic pursuits. Cummins (2008) states that BICS is often conflated with CALP so there is an assumption that speakers of a second language who display fluency and competence in everyday conversations possess comparable academic proficiency in the language.

Much of Cummins' research on BICS/CALP has been carried out within the domain of education, but Pavlenko's 2008 study extends the application of the concepts to the legal domain, specifically to the *Miranda* warning. Pavlenko analysed an actual interrogation by the police of a non-native speaker[20] of English

[18]The law requires that confessions by suspects and accused persons be made voluntarily. In US federal law, this rule is governed by 18 US Code § 3501. The principle of voluntary confessions is equally applicable in other common law jurisdictions such as those in the Anglophone Caribbean, for example, Jamaica. See *Peart v R* [2006] UKPC 5 (on appeal from Jamaica).

[19]This is a trial within a trial and is conducted in the absence of the jury.

[20]The speaker's first or native language was Russian.

who had received some of her education, including at the tertiary level, in US schools. The analysis led to the conclusion that although the speaker's English proficiency was "sufficient to maintain social conversations and minimal academic performance [it was not sufficient] to process complex texts in an unfamiliar domain" (2008: 26). This study substantiates earlier research by Brière (1978) involving a Thai native speaker which also indicates the superior levels of language proficiency that are necessary to understand the *Miranda* warning.

A more recent study (Hulstijn 2011) advances the notions of basic language cognition (BLC) and higher language cognition (HLC) in attempting to account for language proficiency among native (L1) speakers and non-native (L2) speakers, as well as between these two groups. Although BLC and HLC may approximate Cummins' notions of BICS and CALP respectively, Hulstijn (2011) suggests that L2 speakers are likely to have deficiencies in the skills relating to BLC. BLC essentially covers commonly used language forms at all levels – phonology, morphology, syntax, prosody, and semantics – in conjunction with the rate at which speakers process these forms. This rate will be so even in cases where speakers of L2, because of their academic and professional exposure, master forms associated with HLC which relate to uncommon morphosyntactic forms and lexical items, typically combining with topics which are not commonplace. This has implications for Caribbean English vernacular-dominant speakers, many of whom are not highly educated, which suggests low levels of HLC in their L2 (English), and, at the same time, indicates that their BLC in L2 is likely to be below the average BLC level of native speakers of English.

It is arguable that the misconception that personal interactive linguistic competence is directly correlative with academic language proficiency was at play in the *Kwame Richardson* case. As already indicated in this discussion, this misconception is signalled by the prosecution's suggestion that the court could rely on the interrogating agents' account of the defendant's conduct while he was being questioned. Although the expert's report did not come before the court for consideration as to admissibility, the basis for the judge's decision on the motion to suppress also suggests a failure by the court to appreciate the BICS/CALP distinction. The court's decision on this motion, contained in the Memorandum and Order, was that the defendant had "sufficiently strong English skills to enable him to have voluntarily, knowingly, and intelligently waive[d] his Miranda rights."[21] The decision was based on several factors, including the evidence provided by the interrogating agent that during the interrogation he spoke to the

[21] *United States v Kwame Richardson*, No. 09-CR-874 (JFB), 2010 WL 5437206, at *6 (EDNY Dec. 23, 2010).

defendant in English. The nature of the questions[22] put to the defendant in the interrogation, as reported in the Memorandum and Order, does not appear to demand the higher language proficiency levels associated with CALP or HLC and is rather in keeping with proficiency levels necessary for everyday social interaction.[23] The court's reliance on this evidence, then, seems to provide support for the claim that there seems to be a tendency on the part of laypersons, including judges, to conflate BICS with CALP. This is arguably in keeping with a general perception, including on the part of judges, that language is not a specialised field so laypersons are typically competent to decide on questions regarding language. This mindset is demonstrated in the US copyright case of *Mowry v Viacom International Inc*,[24] in which expert linguistic evidence was proffered with a view to supporting striking similarity between the works in question. The court stated:

> The Court has read The Crew and read and viewed versions of The Truman Show. *Unlike specialized areas like music*, the trier of fact can compare the works without the need of expert evidence.[25] (emphasis added)

This tendency is arguably compounded by the fact that law professionals tend to regard themselves as experts on language. This self-perception leads to a devaluing or facile rejection of evidence offered by linguists, as reported, for example, by Coulthard (2013: 300) concerning disputed text. Tiersma & Solan (2002: 223) comment that "courts shy away from linguistic testimony when it conflicts with certain beliefs about language and cognition deeply entrenched in the legal system". The implication is that there is a latent judicial resistance to expert linguistic evidence. This is a factor that may lead to the exclusion of such evidence, or its rejection where it has been admitted, or to flawed bases for making a judicial determination.

The overt similarity between Caribbean English vernaculars and English may also cause lay persons to believe that the speech of a Guyanese-dominant speaker,

[22] *Ibid*. at *1-*2. The questions include whether the defendant had come to the location in question by himself; whether he knew the type of drugs in the suitcase he had received; whether he knew the people who sent him to pick up the suitcase; whether other people were involved; whether he knew who in Guyana was supplying the drugs.

[23] The distinction in the nature of language proficiency levels is effectively demonstrated by Eggington & Cox (2013: 142–145) in their discussion of an actual case. In this case, the first author was asked to provide an expert opinion on whether the Spanish-dominant respondent, a candidate for elected office in the relevant city council, possessed sufficient English language proficiency, as required by statute, so as to be eligible for election.

[24] No. 03 Civ 3090(AJP), 2005 WL 1793773 (SDNY July 29, 2005).

[25] *Ibid*. at *13.

for example, is English and that the speaker is proficient in English. There are, arguably, hints of this confusion in the court's Memorandum and Order on the motion to suppress. The judge notes that "[a]lthough Richardson spoke with a thick Guyanese accent, throughout the course of the two interviews [with the Special Agent] he spoke in English" and that a "Pretrial Services' interview sheet for Richardson… indicates that Richardson is fluent in English as a secondary language"[26]. These assertions about the defendant's language skills, however, must be seen against the more equivocal statement in the Memorandum and Order that the bail report that had been prepared regarding Richardson indicated that his "primary language is Creole/English."[27] This suggests a conflation of Creole with English, notwithstanding that the bail report also indicated "that an interpreter was required."[28] The ideology that Caribbean English vernaculars are forms of English coupled with prevailing beliefs on the part of laypersons about communicative competencies of speakers of English as a second language are arguably enabling factors that bolster the view held by some legal professionals that they are capable, from a commonsensical perspective, of evaluating language proficiency and comprehension. This, in turn, would operate so as to encourage judicial invocation of the common knowledge exclusionary rule regarding certain kinds of expert linguistic evidence.

3.2 Exclusion of evidence on the basis of relevance

Documents[29] filed in the *Richardson* case show that the prosecution also intended to object to the use of some of the proposed expert testimony on the ground that it was not relevant. In law, all evidence, including expert opinion evidence, must be sufficiently relevant,[30] i.e., it must have some bearing on the probability or

[26] *United States v Kwame Richardson*, No. 09-CR-874(JFB), 2010 WL 5437206, at *2 (EDNY Dec. 23, 2010). It is worth mentioning that English (2010) shows how police assessments of English proficiency of non-native speakers of English are sometimes exaggerated.

[27] *United States v Kwame Richardson*, No. 09-CR-874(JFB), 2010 WL 5437206, at *2 (EDNY Dec. 23, 2010).

[28] *Ibid*.

[29] The Government's Memorandum of Law in Opposition to the Defendant's Motion to Suppress, 7–9, *United States v Kwame Richardson*, No. 1:09-cr-00874(JFB), Document 51, Filed 09/30/10; Letter from US Attorney for EDNY, 6, *US v Kwame Richardson*, No. 1:09-cr-00874(JFB), Document 66, Filed 02/14/11 (the government's letter in support of its motion *in limine* to exclude the testimony of the defendant's proposed expert in which the prosecution outlines arguments against the admission of the expert's testimony at trial).

[30] In US federal law, the FRE Rules 401 and 402 address relevance. In Anglophone Caribbean territories, the case of *Jairam v The State* [2005] UKPC 21, on appeal from Trinidad and Tobago, is the applicable law.

not of a fact in issue so that it would assist the trier of fact in understanding and determining the issue. It may be that an expert's opinion, while not running afoul of the common knowledge rule, is adjudged to be irrelevant.[31]

A dimension of the opinions contained in Devonish's expert witness report in the *Richardson* case was that Guyanese Creole is a language other than English and that the defendant was a speaker of a lower mesolectal variety of Guyanese Creole. It was suggested by the prosecution in certain court filings that this aspect of the opinion was irrelevant. The argument was that the fact that the defendant was a speaker of Guyanese Creole had no bearing on his English communication skills, particularly in view of the fact that the defendant had been living in the US for some five years at the time of the incident. It was also suggested by the prosecution in its filings that expert testimony regarding the "differences, if any, between 'Guyanese Creole' and English"[32] were not probative of the question of whether the defendant knowingly and voluntarily waived his *Miranda* rights. The Government's Memorandum of Law in Opposition to the Defendant's Motion to Suppress stated that "[t]he relevant question is whether the defendant understands English, not whether 'Guyanese Creole' differs in some way from English."[33]

It is useful for linguists offering their expertise in court cases to be aware of how legal rules relating to expert evidence may be deployed to craft challenges to such evidence which could threaten the use of their evidence. Such an awareness might inform the way in which their expert witness report and, where applicable, their *viva voce* testimony are configured and expressed. It is unfortunate that we do not have the benefit of judicial consideration and determination of the apparent intended arguments by the prosecution, and it is sometimes difficult to predict how a court may reason and decide on issues before it. I venture to suggest, though, that the intended arguments by the prosecution seem narrowly legalistic in the assertion that neither the distinctions between Guyanese and English nor the assessment of the defendant as a mesolectal Guyanese Creole speaker was relevant to the question of whether or not he understood the *Miranda* warning told to him in English. Both these aspects of the expert's report address and illuminate the confusion about the nature of the defendant's speech as reflected in the Memorandum and Order on the motion to suppress, to which reference has been made in section 3.1. The report tends to infer that the resemblance between the languages is deceptive to the layperson, whose perception of the defendant's

[31] See, for example, *R v Turner* [1975] Q B 834, 841.

[32] The Government's Memorandum of Law in Opposition to the Defendant's Motion to Suppress, 9, *United States v Kwame Richardson*, No. 1:09-cr-00874(JFB), Document 51, Filed 09/30/10.

[33] *Ibid*.

speech as English, and thus judgment about the degree to which the defendant understands English is likely to be erroneous.

The prosecution's intended argument that the fact that the defendant was a speaker of Guyanese did not rule out competence in English suggests the possibility of bilingual competence on the defendant's part in both Guyanese and English. This seems to have overlooked the specific question posed in the expert report that was being answered in the findings of the report: "Is the language *habitually* spoken by [the defendant], Guyanese Creole (Creolese), a language other than English?" (my emphasis). It appears, then, that it was not an issue that the defendant spoke Guyanese consistently, despite his time in the US. This, in turn, raised a critical question of whether his speech (Guyanese) was merely a variety of English. The findings contained in the expert's report that the prosecution sought to challenge on the basis of relevance thus provide information that would assist the trier of fact to widen his appreciation of the nature of the defendant's language proficiency. The trier of fact would be alerted to the fact that the defendant's speech only superficially resembled English and that the structure of the defendant's language distinguished it from English to the point where it has been regarded by language specialists as separate from English. These findings in the report also provide the context for the second dimension of the expert's finding – that the defendant showed limited understanding of English, a language that differs from the language habitually spoken by the defendant.

One English/Guyanese difference that seems to present comprehension problems concerns English lexical items which commence with the sound /a/ followed by a morpheme that can function autonomously. Examples of such English lexical items are *appoint, assign, and account*. In mesolectal varieties of Caribbean English vernaculars, including Guyanese, /a/ is a lexical item signifying the first person singular. English lexical items which are infrequently used such as the examples indicated are, in several instances, (mis)understood by Caribbean English vernacular speakers as first person singular (/a/) + verb (eg., /koʊnt/), English, *I count*, rather than the meanings associated with the noun or verb, *account*, in English (Brown-Blake and Chambers 2007: 279). This morphosyntactic-based confusion for habitual speakers of Caribbean English vernaculars is indeed relevant in the context of *Miranda* warnings. As Rogers et al. (2008: 130) point out, many versions of the warning contain the word, *appointed*.[34] It is relevant to note that the test administered by Devonish to Richardson for the purposes of his expert report attempted to simulate the linguistic structure and lexical nature of the *Miranda* warning. Devonish's report, in which there is a review of the interview he

[34]Rogers et al. (2008: 130) also state that despite the frequency with which the word appears in versions of the warning, it is often not understood by persons who have not achieved secondary level education.

conducted with the defendant, indicates Richardson's apparent comprehension difficulty with the English word, *assign*.[35] This lexical item occurred in the test administered to Richardson by Devonish who reports that Richardson "incorrectly assumed" that it was related to the need to sign something.[36] This kind of misunderstanding is analogous to the kind of confusion that can potentially arise in relation to *appointed*, a word frequently occurring in administered versions of the *Miranda* warning. The linguistic source of the confusion is connected with differences between English and Guyanese.

Another English/Guyanese linguistic difference pertinent to the nature of the language typically used in *Miranda* warnings concerns the construction of the passive form in English versus Guyanese and indeed in all Caribbean English vernacular languages.[37] The English passive construction occurs in parts of several versions of the Miranda warning.[38] A Guyanese-dominant speaker's unfamiliarity with this syntactic form in English arguably provides an example demonstrative of the English non-native speaker's deficiency at the BLC level which could contribute to comprehension difficulties. It may be that unfamiliarity on Richardson's part with the English passive form, a generally unexceptional structural form for native speakers of English, might also have compounded his misunderstanding surrounding the use of the word, *assign*, in the test.

The linguistic differences highlighted thus indicate the relevance of such information offered in the expert report, since they bear on the likelihood of the defendant's understanding or lack thereof, of the warning told to him in English. Thus, an appreciation on the part of a judicial officer of the nature of these linguistic differences, particularly within the context of the ramifications of the BICS/BLC and CALP/HLC distinction for L2 speakers, is capable of informing his or her decision-making on *Miranda* warning understanding and waiver.

It should be noted too that the report provides sociolinguistic information[39] that helps to explain the defendant's low proficiency in English despite the num-

[35]The report indicates that the following clause was put to Richardson as part of the test administered by Devonish: "One [a financial advisor] will be assigned to you...".

[36]Devonish's report indicates that upon Devonish reading the relevant sentence in the test text in the course of the interview, Richardson "commented, '*Asain...wa yu miin bai asain? A ga a sain it ar wa?*'" This was translated in the report as "Assign? What do you mean by assign? Do I have to sign it or what?"

[37]See, Devonish & Thompson (2010: 109–110) and Alleyne (1980: 97).

[38]For example, in the sentence, "[o]ne [an attorney] will be appointed to you."

[39]Such information includes the fact that the defendant lived in Guyana for the majority of his life and had had a rural upbringing there; that he had not completed primary education (the means by which native speakers of Caribbean vernaculars generally acquire English); that, during the time he lived in the US, he worked and socialised largely within a community of Caribbean English vernacular speakers. These factors combine to restrict the opportunities for the defendant to acquire a high level of proficiency in English.

ber of years he had spent in the US. It is worth mentioning that comparable sociolinguistic information regarding a partial speaker of English, an Aboriginal accused, in the Australian case of *Western Australia v Gibson*[40] was provided by Diana Eades, linguist, in her expert testimony in the case. Her testimony was relied upon by the Australian court, on the issue, among others, of whether the accused's language skills suggested that he understood the police caution. Arguably then, the expert's opinions which the prosecution seemed intent on challenging in *Richardson* on the basis of relevance were germane to the issue under consideration. They would have provided the trier of fact with information which bore on the crucial question of the defendant's probable understanding, and ultimate waiver of the *Miranda* warning administered to him in English only.

3.3 Legal test for admissibility of expert evidence

In the *Richardson* case, the prosecution also intended to challenge, at trial, the admissibility of the expert linguistic testimony on the ground that it was unreliable.[41] This ground emanates from FRE, Rule 702 which states that an expert may give opinion evidence, if, among other things, "the testimony is the product of reliable principles and methods" and if those principles and methods have been reliably applied by the expert to the facts of the case.[42]

The important opinion of the US Supreme Court in *Daubert v Merrell Dow Pharmaceuticals, Inc*[43], which itself triggered some of the current formulations of FRE, Rule 702, augments our understanding of this reliability principle. A trial judge must make "a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid"[44] and whether that methodology can be applied appropriately to the facts in issue. The *Daubert* court outlined four non-exhaustive factors that are useful for a judge to bear in mind in carrying out this assessment. They are, (a) whether the method or technique can be or has

[40] [2014] WASC 240, paras. 68–72.

[41] See, Letter from US Attorney for EDNY, 8–9, *US v Kwame Richardson*, No. 1:09-cr-00874(JFB), Document 66, Filed 02/14/11 (the government's letter in support of its motion *in limine* to exclude the testimony of the defendant's proposed expert in which the prosecution outlines arguments against the admission of the expert's testimony at trial).

[42] The issue of reliability is also a key factor in the law of Anglophone Caribbean territories on expert evidence. See, *Myers, Brangman and Cox v R* [2015] UKPC 40 esp paras 57–58, on appeal from Bermuda, in which the PC adopted the principles in *Ahmed v R* [2011] EWCA Crim 184. The *Ahmed* court accepted the proposition that the subject matter of an expert's opinion must form "part of a body of knowledge or experience which is sufficiently organised or recognised to be accepted as … reliable".

[43] 509 US 579 (1993).

[44] *Ibid*, 592–593.

been tested; (b) whether it has been subjected to peer review and publication; (c) the rate of error associated with the method or technique; and, (d) its general acceptance within the relevant scientific community[45].

In a US federal case, a judge, faced with proffered expert evidence, will likely use one or more of these factors or criteria[46] in evaluating whether the method underpinning the opinion evidence is scientifically adequate so that it generates reliable results. This evaluation is especially applicable to proffered evidence that is outside disciplines with a recognised history of scientific rigour (Durston 2005). The judge's evaluation will determine whether the proffered evidence is admitted or excluded. In performing this gatekeeping function, the judge must determine that the proffered evidence is appropriately grounded. In so doing, a judge must require proof, on a preponderance of evidence, "that the expert's specific theory or technique works; that is, that the use of the theory or technique enables the expert to accurately make the inferential determination that the expert contemplates testifying to" (Imwinkelried 2003: 759). As Kaye (2005: 480) more bluntly puts it in his discussion of the meaning of the first *Daubert* factor of testability, judges must determine whether a particular method "is worth betting on, and they would do well to place their bets on theories that are not only testable but that also are tested." The idea then is that scientific adequacy or validity, and hence legal reliability, may be established by offering proof of suitable and tried testing methods; certainly, a lack of robustness in the scientific method undermines its validity and will, in all likelihood, rule out its admissibility. US case law indicates that a judge, in his or her evaluation of evidential reliability, has discretion as to which *Daubert* factors, among others, may be applied[47]. It has been suggested in *Kumho Tires v Carmichael* that the particular criteria to be applied in a given case will depend on the facts of the case, the specific circumstances, the nature of the issue being determined, as well as nature of the expert's specialisation and his or her testimony. Generally, it seems that expert evidence regarding the language proficiency of individuals, particularly in the context of *Miranda*

[45] *Ibid*, 593–595.

[46] In the law applicable to territories in the Anglophone Caribbean, there is no enumeration of criteria similar to the ones itemised in the *Daubert* case, although reliability, as already noted at note 43, *supra*, is an important principle governing expert evidence in these territories. Courts of these territories, however, may have regard to factors akin to those listed in *Daubert*. See, for example, *Bernal and Moore v R* (1997) 51 WIR 241, esp 252–253, in which the Privy Council accepted the correctness of the trial judge's refusal to admit the evidence of the expert on polygraph testing. The trial judge was of the view that polygraph testing was not a recognised or sufficiently established area. This consideration appears comparable with the fourth criterion enumerated in *Daubert*.

[47] See *Kumho Tire Co v Carmichael* 526 US 137, 141, 151 (1999).

comprehension, has been accepted by American courts (Tiersma & Solan 2002: 27–228; Ainsworth 2006: 660) and thus, implicitly, has met the *Daubert* standard of evidential reliability[48]. This would tend to show that language proficiency testing is not unusual or novel and this general position would have favoured the admissibility of the expert evidence proffered in *Richardson*.

3.3.1 The purported challenges in Richardson

The prosecution in *Richardson*, however, intended to base their *Daubert* challenge to the expert evidence partly on the nature of the specific data used to arrive at the opinion that the defendant had a limited understanding of English and that he would have been unable to understand the main aspects of the *Miranda* warning told to him in English. They suggested an apparent paucity of the data used by Devonish and alluded to weaknesses in the quality of the data:

> Dr Devonish's opinions about the defendant's language abilities are based entirely on a telephone interview with the defendant that lasted approximately 30 minutes, and in which the defendant's wife was also participating. Dr Devonish had no opportunity to observe the defendant's demeanour.[49]

This, presumably, would have cast doubt on the reliability of the test employed to arrive at his expert opinion. The prosecution also intended to attack the expert evidence on the basis that the expert's testing method did not seem to compensate for the possibility of the defendant faking his level of proficiency:

> The defendant was in complete control of what he said and how he conducted himself during the interview with Dr Devonish. The defendant obviously had a strong incentive to speak in a manner that would lead Dr Devonish to conclude that the defendant does not understand English ...[50]

The testing method was also challenged by a collateral attack on the nature of Devonish's expertise:

[48] In the Anglophone Caribbean, there has, so far, been scant use of, or reliance on expert linguistic evidence in court cases (Steele 2009, Blake 2019).

[49] Letter from US Attorney for EDNY, 8, *US v Kwame Richardson*, No. 1:09-cr-00874(JFB), Document 66, Filed 02/14/11 (the government's letter in support of its motion in limine to exclude the testimony of the defendant's proposed expert in which the prosecution outlines arguments against the admission of the expert's testimony at trial).

[50] *Ibid*. at *8–9.

> Nothing in Dr Devonish's qualifications establishes his expertise in evaluating the English skills of others ... There is no indication in his report that he has specialized knowledge in reliable methods of testing language skills, particularly in situations where the subject has a powerful motive to skew the results[51].

These *Daubert* challenges were never actually argued and consequently, their legal cogency in terms of their impact on the evidence reliability *cum* admissibility question remains uncertain. They may, however, be instructive for linguists offering expert evidence in terms of plugging potential gaps that open the possibility of legal challenge.

3.3.2 Lessons for linguists acting as expert witnesses

Drawing on Meintjes-van der Walt (2019), it is conceivable that, under cross-examination, Devonish might have faced questions seeking to ascertain, for example, the extent to which the method he used in testing the defendant's proficiency has been validated in other studies; whether the test employed had been developed independently of the pending trial; how, if at all, the test offsets the possibility of the test taker faking his proficiency level, which raises the larger question of error rates; and the extent to which the method has been used or accepted by other language proficiency testing professionals. Questions such as these would have, arguably, been justifiable to probe the validity and reliability of the test used, since it appeared that Devonish had designed a language proficiency test that specifically contemplated the case. This could have suggested that the method employed was not adequately developed, tested, or established which, in turn, affects how courts assess reliability.

Given the possibility of such attacks on the reliability of the test method, a useful research inquiry may be how the testing method employed by Devonish compares with other language proficiency/comprehension tests,[52] particularly those that have already been used in legal or judicial contexts concerning *Miranda* comprehension. Such an academic inquiry might provide some indication

[51] *Ibid*. at *9.

[52] Some of the comparison points include the length of time over which such tests are administered, how they are administered (e.g. face-to-face, via telephone, electronically, written or orally), the material used (a version of the *Miranda* warning or other text), the precise test method (examinee required to explain in his own words, close tests, specialised vocabulary tests, etc), any special considerations to be applied where examinees speak a language variety related to the language in which the warning or caution has been administered and strategies for detecting faking of proficiency levels.

as to the possibility of Devonish's test passing judicial scrutiny against the reliability and validity factors, but it is beyond the scope of this paper. Tests emanating from the discipline of psychology, seem to have been used in US courts and to have had some degree of judicial acceptance even under *Daubert* standards (Ryba et al. 2007). Brière (1978) and Roy (1990) report the use, in the context of *Miranda* comprehension, of proficiency tests[53] arising largely from within the field of language education. It should be noted that these latter accounts of the use of proficiency tests pre-date the *Daubert* standard, and, in any event, Brière's test was not subjected to the prevailing pre-*Daubert* admissibility scrutiny since there was eventually no trial of the defendant in respect of whom the proficiency tests had been carried out.[54] All these tests, though, provide a methodological blueprint that can inform appropriate design responses to issues of reliability and validity for comparable tests for use with speakers of Caribbean English vernacular-dominant speakers in assessing comprehension of *Miranda* warnings or of police caution.

Linguists asked to provide expert evidence on the language proficiency of defendants should also be prepared for reliability-based challenges on the basis of the possibility that the defendant could be faking their proficiency and lack of understanding. The issue of faking low proficiency is central to validity – whether the results of the assessment are reflective of what it claims to test. Van Naerssen, a forensic linguist, states that a language expert testing L2 proficiency should assume the possibility of both deliberate faking as well as truthful performance, but she concedes that linguists "have not yet solidly demonstrated expertise in detecting deceit" (van Naerssen 2013: 1547–1548). While she has experimented with a test to detect deliberate faking (van Naerssen 2012), it remains difficult to assess deliberate underperformance. The approaches suggested by van Naerssen, require ample samples of text or communication produced by the L2 speaker[55] (van Naerssen 2013: 1548–1549), which is likely to make resorting to them impracticable in many real-life situations.

[53] Brière, in his evaluation of the English proficiency of a Thai native speaker, used the Michigan Test of English Language Proficiency, Form D, and parts of the Brown-Carlsen Listening Comprehension Test, Form Bm; while Roy, in assessing a Puerto Rican origin defendant, reports using the Language Assessment Battery (LAB) 1982 used in New York City schools to evaluate the English proficiency of non-native speakers. Roy also reports the use of a single feature focus test developed by him.

[54] Brière (1978: 243, note).

[55] The idea, according to van Naerssen, is that it is improbable that a speaker will be able to maintain intentional underperformance "throughout lengthy samples of unplanned communication, especially at different times" (van Naerssen 2013: 1548) without giving him/herself away.

Given that tests for detecting faking are in their nascent stages of development, it will be hard for language experts to vigorously counter suggestions put to them by a cross-examiner regarding the possibility that a defendant is deliberately underperforming their L2 proficiency. If faced with such suggestions, a language expert may perhaps be in a position to rely on his or her experience in administering L2 proficiency assessments which, over time, may have revealed types of discrepancies tending to indicate deliberate underperformance. The expert may, on the basis of such experience, be able to say that they noticed no discrepancies in the samples which would tend to indicate deliberate underperformance on the part of the examinee. Professionalism, objectivity, and independence would of course require that findings by an expert who may be adverse to the side who has consulted them be included in their report.[56] It is then up to the instructing lawyers to make strategic decisions in response to the nature of the expert's findings, including a decision not to rely on the expert's opinion and thus not putting the report in evidence or not calling on the expert at all to give evidence at trial.

The other dimension of the intended challenge by the prosecution in *Richardson* concerned the suitability of the expert's credentials for the task he was requested to perform. This goes to whom a court will regard as an expert in the field in which the relevant expertise is required. Based on FRE Rule 702, an expert is someone sufficiently qualified by knowledge, skill, experience, training, or education in the particular field at issue, so that their opinion on the issue is likely to assist in determining a fact in issue. This may be evidenced by qualifications and experience in the relevant field. It is clear that experts should only testify on issues within their field of expertise. However, issues may arise in practice as to whether someone who possesses general qualifications in a field has the acceptable credentials to testify on a matter relating to a specialised sub-area within that field. An automotive engineer, for example, could not testify whether it was probable that vehicle emissions would enter the passenger compartment while the vehicle was in operation because he had no expertise in aerodynamics.[57] Consonant with this, in a case arising from Jamaica, the evidence of specialist engineers was, given the nature of the issue in question, held to be preferable to that given by engineers without the relevant specialist expertise.[58]

The caution then to both the expert and the lawyer is that an appropriate

[56] In Jamaica, the Civil Procedure Rules, 2002, r. 32.4 expressly provide that an expert must consider, and ought not to omit material facts which could detract from his or her concluded view. This is also the position in respect of expert reports for criminal matters (*Myers, Brangman and Cox v R* [2015] UKPC 40, paras. 59–60).

[57] See, *Buzzerd v Flagship Carwash St Lucie*, 379 F App'x 797 (3rd Cir. 2010).

[58] *West Indies Alliance Co Ltd v Jamaica Flour Mills Ltd* [1999] UKPC 35, paras. 92–107.

assessment should be made of whether someone with specialist expertise on the matter in issue would be more suitable than someone with general expertise in the overall field. The expert is, of course, important to such an assessment because, with superior knowledge of the field, they will be in a position to advise on whether the matter in issue is within their core competence or whether it may be more beneficial to engage an expert with more specialist knowledge. Such an assessment would be useful not only in deflecting a challenge regarding the suitability of the expertise offered but would also be useful in decisions about how an expert's competencies are represented. The expert's qualifications and experience are a critical peg in judicial decisions on the admissibility of his or her evidence. Furthermore, where an expert strays outside his sphere of competence in giving evidence, there is little or no value to the evidence offered,[59] and the trier of fact should disregard it. It may also be the case that a cross-examiner may succeed in discrediting evidence from an expert on the basis of a lack of sufficient competence in the sub-field. In addition, where evidence of a specialist in a sub-field germane to the issue in question competes with evidence from someone with general expertise in the broad field, the former is likely to be preferred over the latter.

4 Conclusion

The discussion has shown that it is useful for language specialists offering expert evidence in court proceedings to be aware of the legal rules governing expert evidence. Such an awareness is likely to assist the expert in the preparation of his or her report. It should also help to alert him or her to the nature of the possible legal challenges to the evidence he or she plans to offer. Linguists will thus be in a better position to respond professionally to those challenges. As revealed by the *Richardson* case, some legal challenges to expert evidence may emanate from incorrect assumptions by laypersons about language in general, and specifically about the nature of Caribbean English vernacular languages. Linguists, particularly those offering evidence in connection with these vernacular languages in English medium courtrooms, should be prepared, where necessary, to confront such assumptions and misconceptions. Language experts, like all other types of experts, should be aware, however, that it is the trier of fact who determines the facts in issue.[60] Even persuasive evidence put forward by an expert may be rejected by the ultimate fact-finder. The expert's role, in this context, is to place

[59] *Price Waterhouse v Caribbean Steel Company Ltd* [2011] JMCA Civ 29.

[60] *Robinson v The State* [2015] UKPC 34, para.16 (on appeal from Trinidad and Tobago).

before the trier of fact relevant and reliable specialist knowledge which will provide perspectives not otherwise available, which can help the fact determiner to come to the most appropriate finding.

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Chapter 4

Assessing language(-related) rights in the criminal justice system in St. Lucia

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The creole languages of the Commonwealth Caribbean have seldom been the subject of language rights i.e. laws that directly or indirectly confer rights regarding the use of languages (Brown-Blake 2014). A possible reason for this lack of attention is that language-rights discourse has been mostly centered around the rights of persons belonging to distinguishable minority groups such as ethnic minority groups, indigenous minorities, and im/migrant minorities. However, in contrast to these minority groups, creole languages are spoken by the mass of the population in Commonwealth Caribbean territories. Yet, despite their wide currency, none of them has been the explicit beneficiary of language rights legislation (Browne-Blake 2014).

This chapter is concerned with the question of language rights legislation in criminal proceedings in St. Lucia. More specifically, it examines the language-(related) rights in St. Lucia's constitution and the ways in which they are implemented in police and court procedures. The findings revealed that the use of unqualified and untrained interpreters in the implementation of these rights to Kwéyòl-dominant speakers often compromises the protection that they afford, particularly in the magistrates' courts. The chapter ultimately calls for a constitutionally protected language rights regime and its proper implementation, which will enable Kwéyòl-dominant speakers to use their language freely in all criminal proceedings. The data used in this chapter were taken from the data pool of a larger study on the language use patterns and practices of the criminal justice system in St. Lucia.

1 Introduction

The literature on language rights i.e. laws that directly or indirectly confer rights regarding the use of languages (Brown-Blake 2014: 52), has been, for the most

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part, largely centred around the language rights of persons belonging to distinguishable minority groups such as ethnic minority groups, religious minority groups, linguistic minorities, indigenous minorities, and immigrant minorities (Capotorti 1991, Thornberry 1991, Tove & Phillipson 1995, Edwards 2003, Arzoz 2007, May 2014, 2012, 2011). Edwards (2003: 552) contends that it is hardly surprising that discussions of language rights often focus on minority groups since examining risks and rights naturally has more poignancy when the former are immediate, and the latter are in question. However, he further states that while issues of culture and language are of obvious or heightened salience in minority settings, they are important in *all* groups (Edwards 2003: 552).

In other words, the question of language rights is also applicable to other language groups that are situated outside of this concept of a minority. Aguilar-Amat & Santamaria (2000) point out that since the word "minority" implies a small number, minority languages are languages spoken by a relatively small number of speakers. Therefore, the category is based on a statistical notion of the number of speakers (Aguilar-Amat & Santamaria 2000) or refers only to the demographic weight of the relevant speech communities (Moeketsi & Wallmach 2005). However, Moeketsi & Wallmach (2005) contend that this interpretation of the concept is also inadequate to describe or label other types of linguistic situations e.g. in South Africa, where languages, which are the languages of the majority in their region, become minoritized and suffer from functional difficulties, not because of a lack of numbers or demographic weight, but rather as the result of historical events and socioeconomic conditions such as colonialism or a reorganization of territorial borders. Aguilar-Amat & Santamaria (2000) refer to such languages as "minoritized" languages. Moeketsi & Wallmach (2005: 78) note that this concept is more useful to describe and define these linguistic situations, for example in Africa, where African languages became minoritized through apartheid.

Another notable group of languages, that falls squarely within this bracket, is the Creole languages of the Commonwealth Caribbean, which have the widest local currency in their territories but continue to suffer from functional difficulties as a result of colonialism. In fact, an examination of the linguistic situation in Commonwealth Caribbean Creole-speaking territories would reveal that Creole-dominant and monolingual Creole speakers together comprise a majority of the respective populations in contrast to English speakers and/or functional English/Creole bilinguals (Brown-Blake 2014). However, despite the wide currency of these languages, and the fact that their speakers are the demographic majority in their territories, they are marginalized from effective participation and involvement in the domains in which English is the principal language of

communication (Brown-Blake 2014). Furthermore, there is no official protection for these speakers against linguistic discrimination given that no Bill of Rights in the Commonwealth Caribbean includes language as a basis upon which discriminatory treatment is proscribed (Brown-Blake 2008).

It is also noteworthy that language rights have rarely been applied to Creole languages, and they have only received scant coverage in language rights discourse to date. This is strongly supported by Eades (2010) who points out that there is little coverage in the literature on the language rights question in relation to Creole language speakers. The first and only notable attempt to address the issue of language rights for Creole speakers in the Commonwealth Caribbean was made almost a decade ago. In 2011, linguists, language planners, language rights advocates, and activists, put forward and agreed on the terms of a Charter of Language Policy and Language Rights in the Creole-speaking Caribbean at a conference held in Jamaica. This Charter sets out general principles and enumerates specific rights relating to language and language use in public formal domains such as education, public administration, and the courts (Brown-Blake 2014). It is a first attempt to confront the language rights issue at the regional level as well as a first step towards securing a raft of language rights across the region (Brown-Blake 2011). It was meant to be used to lobby Caribbean governments to endorse language laws in accordance with its concepts and general principles. However, as it stands, this plan has not materialized, and none of the Creole languages of the Commonwealth Caribbean have been accorded language rights through the law.

This chapter is concerned with the question of language rights for Creole (Kwéyòl) speakers in public domains in St. Lucia. More specifically, it examines the language-related laws in St. Lucia's constitution and their implementation in the criminal justice process. It also assesses the ways in which these laws are implemented to determine whether they provide Kwéyòl speakers adequate access to the rights to which they are entitled.

2 Language use in St. Lucia

Kwéyòl is one of three languages spoken in St. Lucia. The other two are English, the island's legacy from the British colonial period (St-Hilaire 2011), and an English-lexicon vernacular that embodies features of English and Kwéyòl from which it emerged. It has marked structural differences from English (Simmons-McDonald 2014). Regarding the social status, functions, and daily use of these languages in St. Lucia, English has always been the only official language and

the language that is generally required for use within institutions of the state and in formal situations. It is largely acquired by St. Lucians through formal education and very few St. Lucians speak it in daily life. The other two languages, which have no official status and are widely used in private and informal domains, both have wider currency than English in daily communication among St. Lucians. Many St. Lucians are not proficient speakers of English although many who speak the English-lexicon vernacular, which is lexically similar to English, do not regard it as a distinct language from English and often believe that when they speak it, they are speaking English. However, there is no such confusion about Kwéyòl, which derives the bulk of its vocabulary from French and is not mutually intelligible with English.

3 Language(-related) rights

The concept of language rights is defined in various ways in the literature. In legal and philosophical literature, they are defined as rights that protect the use of particular languages, namely one's mother tongue or native language (Pinto 2014: 233). For the purposes of this chapter, language rights are also regarded as being concerned with the rules that public institutions adopt with respect to language use in a variety of different domains including public services, courts and legislatures, and education (Arzoz 2007). These rules serve to regulate language conduct and procedure in these domains, particularly in bilingual or multilingual language situations where there is a single, dominant official language. Although in some states, these rules are explicitly stated in the constitution, in many cases, there is no constitutional formal recognition of an official language. However, Arzoz (2007: 18) contends that in these cases, there is no doubt about the existence of a *de facto* official language and public monolingualism in this language is simply taken for granted by citizens (May 2014). Therefore, whether the use of one official language is constitutionally guaranteed or not, a problem arises for speakers of other languages who lack proficiency in this language and do not have the right to access public services or to receive all or some of these services in their language.

Although language rights appear in constitutional documents around the world, they are commonly perceived as special rights that are distinctly different from fundamental human rights (Pinto 2014: 231). However, in cases where there are no constitutional language rights, the common practice in many states is for special accommodations to be made for persons who do not speak the official language of the state such as the provision of interpreters. Kymlicka & Patten

(2003: 8-9) make a distinction between two different ways in which speakers of non-official languages can be accommodated in public institutions. The first one is referred to as the "norm-and-accommodation" approach, which involves the predominance of some normal language in public communication. Special accommodations are then made for people who lack proficiency in this normal language and can take a variety of forms including the provision of interpreters, the hiring of bilingual staff, and the use of transitional bilingual and/or intensive immersion education programmes to encourage the rapid acquisition of the state language. The key priority is to establish communication between the public and individuals with limited proficiency in the state language so that the latter can access the rights and benefits to which they are entitled (Kymlicka & Patten 2003). The second approach is to designate certain languages as "official" and then to accord a series of rights to speakers of those languages (Kymlicka & Patten 2003: 9). Kymlicka & Patten (2003) further point out that in contrast to the first approach, this approach typically involves a degree of equality between the different languages that are selected for equal status. As a result, public services are received in both official languages, and the use of the second official language is not dependent upon or determined by a lack of proficiency in the first official language.

In addition to these two approaches, there is a third approach, which may be referred to as a "laissez-faire" approach that was not considered by citetKymlickaPatten2003. This approach is typically found in situations where English predominates in public institutions and there are speakers of nonstandard or non-mainstream English vernaculars or dialects (e.g. African American Vernacular English, Australian English) and speakers of English-lexicon Creoles (e.g. the English-lexicon Creoles of the Commonwealth Caribbean). These languages, which exist alongside English, are local or native languages of common communication which include "structures that are not mainstream or standard" (Wolfram & Schilling 2015: 16). They are spoken most frequently and fluently by ethnic minorities and/or by less educated working-class people, or poor people worldwide (Rickford & King 2016). However, since their vocabulary is largely derived from English, they are often dismissed as nothing more than "bad English" or "badly pronounced English" and are not generally perceived as being distinct languages from English. As a result of this misguided perception of linguistic homogeneity, in contrast to the norm-and-accommodation approach, there are hardly any measures in place to accommodate speakers of these languages. As such, their participation in public formal domains is left to take its own course. For instance, Rickford & King (2016: 951) note that interpreters are not generally provided for "dialects" of a language, only for foreign "languages." In the case

of English-lexicon Creoles, their speakers are normally presumed to be speakers of English. For example, Brown-Blake (2008) notes that the view that Jamaican English-lexicon Creole is not a distinct language from English persists to the current day, and relatively few Jamaicans believe they do not speak English (Brown-Blake & Chambers 2007). As a result, even though the Jamaican constitution (Chapter III Section 20 (6a)) guarantees individuals with little or no comprehension of English to solicit the services of an interpreter during the court trial, it does not appear to be enforced by the officers of the court nor requested by monolingual Jamaican Creole speakers (Forrester 2014). Forrester (2014: 228) further states that this constitutional provision gets clouded in a situation where either the court or the defendant does not see Jamaican Creole as different from Standard Jamaican English, and as such there is no need for an interpreter. This is in keeping with the situation in other Commonwealth Caribbean jurisdictions, where the language-related fair trial or due process rights are seldom if at all, invoked in relation to Creole-speaking nationals of a given territory (Brown-Blake & Devonish 2012: 4). They continue to opt for public monolingualism in English, requiring its use in all public/civic communication.

4 Data and methods

This chapter draws on data from a larger study, which explored the language use patterns and protocols in the criminal justice system in St. Lucia. These data comprise semi-structured interviews with major stakeholders at both levels of the criminal justice process including police officers, lawyers, magistrates, and clerks of the court. Direct systematic observations in the magistrates' courts and field notes also contributed to the data pool. Since this paper focuses on the implementation of constitutional language-related rights in police procedures and in the courts, the analysis is centred around interviews with the police and the clerk of the courts, who are ultimately their "implementers".

A total of ($n = 20$) face-to-face interviews were conducted with police officers who work at police stations and ($n = 7$) of 8 clerks of the court who were working in courts in the different magisterial districts in St. Lucia. Prior to conducting the interviews, I met with the inspector at each police station. I explained the purpose of my research and sought permission to conduct interviews with police officers. Once permission was granted, I proceeded to interview the police officers who were willing to participate and to be recorded. In the case of the clerks of the court, I contacted them directly after court sessions and explained the purpose of my research to them. Once they agreed to participate in the research,

I conducted face-to-face interviews with each of them about their experiences as court interpreters for Kwéyòl speakers in the magistrates' court. All the interviews were conducted on a one-to-one basis and each one ranged from 10-15 minutes with each participant. The interviews were recorded with the permission of the participants and they were later transcribed verbatim. Excerpts from these transcripts are used in this chapter. The analysis of this kind of qualitative data was based on the general procedures commonly used in qualitative research. To anonymise the participants, they were assigned a random identification number, for example, PO-1 (police officer 1, etc.), CC-1 (court clerk 1, etc.), and L-1 (lawyer 1, etc.).

5 Language-related rights in St. Lucia's constitution

Similar to the other constitutions in the Commonwealth Caribbean, language rights or any subjective rights regarding the use of languages are not expressly recognized in the constitution of St. Lucia. According to Arzoz (2007) there can be two constitutional sources of language rights. The first one is a provision proclaiming the official status of some languages and the second one is a provision awarding protection to other languages. In the case of St. Lucia, there is neither a provision that proclaims the official status of any language nor a provision that protects any language. In fact, no creole language in any Commonwealth Caribbean territory has been the explicit beneficiary of language rights legislation (Brown-Blake 2014). In a similar vein, Brown-Blake & Devonish (2012: 4) posit that if language rights are regarded as legal entitlements relating to language use, then very few Caribbean Creole-speaking territories can boast a language rights regime outside of the universal language-related fair trial or due process right.

However, although there are no constitutional sources of language rights in St. Lucia's constitution, like the constitutions of many states, it includes a number of constitutional rights with an explicit linguistic dimension, which are largely confined to fair trial or due process rights in the criminal justice system. They are found in three statutes: the first two pertain directly to law enforcement procedures and the third one concerns court procedures. The first one, found in Chapter 1 (3) (2), states,

> (2) Any person who is arrested or detained shall with reasonable promptitude and in any case no later than 24 hours after such arrest or detention be informed in a language that he or she understands of the reasons for his or her arrest or detention...

The second one, found in Chapter 1 (8) (2) (b), stipulates that,

> (2) Every person who is charged with a criminal offence
>
> (b) shall be informed as soon as reasonably practicable, in a language that he or she understands and in detail, the nature of the offence charged;

However, since the act of arresting and charging persons falls within the remit of police officers, the enforcement of these statutes is automatically their responsibility. In other words, they are the ones who must inform persons of the reasons for their arrest and the nature of the offence charged "in a language that they understand". This provision gives primacy to the language of the arrestee or the accused.

The third language-related statute, which is found in Chapter 1 (8) (2) (f) in St. Lucia's constitution, pertains to court procedures. It states,

> (2) Every person who is charged with a criminal offence
>
> (f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand the language used at the trial.

The right to a fair trial requires that the accused persons understand the accusation. If they do not understand the language of the court, they must be accommodated through the assistance of an interpreter. Yet, researchers continue to warn that the right to an interpreter is not a language right, but a well-established human right, to which anyone facing a criminal charge is entitled. For instance, Lubbe (2009: 385) warns that language rights should not be confused with the right to a fair trial, a universal right. Similarly, Gonzáles et al. (1991) assert that the right to an interpreter is not a language right but simply guarantees the right to equal access the legal system. In addition, Arzoz (2007: 5) contends that this right does not aim to afford tolerance, protection, or promotion for any language or any linguistic identity. Its rationale lies somewhere else: in securing trial fairness. The sole objective of the right is effective communication; it does not independently value (Arzoz 2007: 5) or give primacy to the language of the accused.

6 The implementation of language-related laws in the criminal justice system in St. Lucia

As mentioned previously, police officers in St. Lucia are responsible for the implementation of language-related laws that pertain to law enforcement procedures.

The law requires them to address language barriers by informing arrestees and suspects with limited English proficiency of the reasons for the arrest and the nature of the offence charged, in a language that they understand. However, although the provisions stipulate what must be done, they provide no information on the required method of delivery (whether orally or in writing), by whom (the police or an interpreter), or the consequences of failure to uphold these rights (protection of the rights). In other words, as it stands, the law allows police officers to exercise rational choice in its enactment (Evans 2019). Therefore, not only are they at liberty to take on the responsibility themselves, but they can also seek the assistance of an independent party of their choice, to provide interpreting assistance.

In St. Lucia, there are two possible groups of non/limited-English speakers, namely Kwéyòl-dominant speakers, and speakers of foreign languages such as French and Spanish, who would have to be provided with the requisite information in a language that they understand. In the case of Kwéyòl speakers, the data revealed that the general practice is for them to be informed of the reasons for their arrest, in Kwéyòl, by a Kwéyòl-speaking police officer, in the same way that an English-speaking person would receive the relevant information in English, by an English-speaking police officer. This is explained by police officers in the following excerpts:

1. PO-18: We handle them [Kwéyòl speakers] the same way we would handle English-speaking persons. The same way they speak Patwa you have to speak Patwa to them.
2. PO-1:
   INT: Have you ever arrested a person who only spoke Kwéyòl
   PO: Yeah
   INT: So, pretend that you are arresting me and I can only speak Kwéyòl
   PO: Ok first I will identify myself to you and I would tell you "so and so moun sa la fè an wapò kont-ou èk ou pa oblijé di ayen si ou pa vlé mé ayen ou di n'y matjé'y" (that person made a report and you do not have to say anything if you do not want to but anything you say I write it).

Therefore, when police officers speak to Kwéyòl speakers in Kwéyòl, it is not regarded as a special accommodation; it is regarded as the normal or natural thing to do. This practice is rooted in the commonly held ideology that since Kwéyòl is the local language of St. Lucia, police officers, who are St. Lucian, are or

should be, bilingual in English and Kwéyòl. This was expressed by the following police officers:

3. PO-6: Well, you see most police officers speak both languages…where Patwa is concerned we can all speak.
4. PO-7:
   INT: So what happens when you have to deal with a Kwéyòl speaker?
   PO: It's very simple you see all our police officers are St. Lucian.
   INT: OK all?
   PO: Yes and they all speak Creole they were all born and raised in St. Lucia so we speak the Creole language very fluently.
5. PO-11:
   INT: So if you go to arrest somebody who is a Creole speaker what would you do?
   PO: OK so if this person is a Creole speaker I would speak to them in Creole. I would tell them x, y, and z made a report. You say for example "Misyé Harrow mwen vini oti'w am Mafa fè an wapò an station-an a koté ou kwashé an fidjay-li èk pou sa mwen vini mwen kay awété'w pou lapéti sa (Mr. Harrow I came to see you and Martha made a report in the station that you spat in her face and for that I came and I will arrest you because of that).

These comments confirm the general practice for dealing with Kwéyòl speakers. The main issues with this practice, which may have adverse implications for Kwéyòl speakers, is that not all police officers, some by their own admission, are competent in Kwéyòl, and for the ones who may be competent, their actual proficiency in spoken Kwéyòl is not ascertained. In fact, there is no basis for determining levels of proficiency for speech in Kwéyòl or English in St. Lucia. Therefore, in the absence of testing or proof of competence, one cannot say with any certainty that they are doing a good job of providing Kwéyòl speakers with the rights to which they are entitled. In addition, although police officers may be fully bilingual and may have a good command of English and Kwéyòl, researchers argue that despite the pervasive myth that if a person is bilingual they can interpret, bilingualism or the ability to speak two languages is not synonymous with interpreting ability (Gonzáles et al. 1991). In fact, De Jongh posits that bilingualism, or fluency in two languages, is only the starting point in interpreter training (285).

The data revealed that police officers use a different approach to dealing with foreign language speakers. Unlike in the case of Kwéyòl speakers, they employ

a norm-and-accommodation approach and outsource persons to interpret and provide them with the requisite information in a language that they understand. This is explained by police officers (2) and (4) below:

6. PO-2: ...if you arrest a foreigner and you cannot speak the language you can get somebody from an embassy to translate in cases like that.
7. PO-4: If the person does not speak English, let's say French you cannot speak to the person if there is not a translator a French translator.

Note that the translator to whom PO-4 is referring is not a trained translator/interpreter, but someone who speaks French such as a teacher (Evans 2019) or as was mentioned by PO-2, an embassy employee.

In contrast to the first two provisions, the one which pertains to the court does not mandate that a person be tried "in a language that he or she understands." Instead, it gives primacy to the language of the court and requires persons who cannot understand this language to be provided with an interpreter, free of charge. However, there is no safeguard included in the provision about the kind or quality of interpreter that should be used and as a result, virtually anyone can serve as an interpreter without violating the law (Berk-Seligson 2000, 2002, Herráez et al. 2008). In the context of St. Lucia, there are two groups of persons, namely Kwéyòl-dominant speakers and foreign language speakers who would need interpreting assistance in court. The data revealed that in the case of Kwéyòl speakers, the clerk of court is the "resident" interpreter (Evans 2012) in the magistrates' courts. They are not trained interpreters, but they are chosen by both local and foreign magistrates to perform the task because according to one local magistrate, "of their knowledge of Kwéyòl." However, the actual nature of this knowledge and how it qualifies them to interpret remains unclear, especially since they were selected in vastly different ways and specialized training was not a prerequisite for their appointment as is evident in the following excerpts from the data:

8. CC-1: I was called by the senior magistrate to hold on for three months and was encouraged to stay after that.
9. CC-2: I sent an application and was interviewed by the senior magistrate and had to translate a charge form into creole.
10. CC-3: I did computer studies, went on job training and started doing clerk work.
11. CC-4: I got promoted from office clerk to clerk of the courts.
12. CC-5: I was an ex-police officer and became a clerk of the courts.

13. CC-6: I was a bailiff and began to the work of the clerk of the courts.
14. CC-7: I sent an application through the public service. I was interviewed in English and was asked to speak about myself in Kwéyòl.

The data clearly show that there is no systematic, institutionalized procedure for becoming a clerk of the court/interpreter in St. Lucia. Therefore, for the interpreting requirement of their job, the clerks in St. Lucia are very much left to their own devices and initiatives since their role as interpreter is largely undefined. This is due to the fact that they receive no training in interpreting and they must function in the absence of standardized procedures. Nonetheless they must bear the responsibility of interpreting well in the face of numerous difficulties. Some of them expressed some of the difficulties that they experience as court interpreter.

15. CC-1
    I: So in which area would you say you have encountered the most people who needed you to interpret for them?
    CC: More likely in Choiseul
    I: Ok
    CC: I think that's where I had the most difficulty interpreting
    I: Why would you say it was difficult?
    CC: Because some of it you see it does be difficult I mean like when the person speaks to pick it up one time and just interpret it to the magistrate. Sometimes you have to look for the right words in English
    CC: In which cases would you say you encounter the most problems?
    CC: When you have these like sexual carnal knowledge matters especially if there have a doctor and then the defendant does not understand the English and I have to interpret it from English to Patwa that is very difficult.
    I: Ok
    CC: There have been times when I just I actually had to tell the magistrate I don't know. For example "interest" paid by the bank or "interest" paid on hire purchase. I just did not know it.

Another clerk expressed difficulties translating technical jargon in the following excerpt:

16. CC-5
    I: What is the most difficult part of interpreting?

CC: It's a bit difficult to do on the spot translations; sometimes I don't understand words or phrases in Creole.
I: What do you do when that happens?
CC: I look around I seek help from lawyers and police officers.
I: Do you interpret sentence by sentence?
CC: One, two or three sentences hardly ever one sentence.
I: Which cases you find are the most difficult to interpret?
CC: Rape cases it is a little embarrassing and too raw at times especially when doctors are giving evidence. When I do not know the word in Creole I put *la* after the English word for example *swab-la*.

Note that *la* is just a form of the definite article 'the' and it would not help a Kwéyòl speaker to understand the meaning of *swab* in any way. In both of the excerpts above, the clerks expressed difficulties with medical and technical jargon and any misinterpretations could have implications for Kwéyòl speakers, particularly in cases in which a foreign, non-Kwéyòl speaking magistrate is presiding. This was expressed by one lawyer in the following excerpt:

17. L-1: ...and so you have had situations where the court clerk the interpreter did not interpret exactly what the person said and what compounds the problem is if the magistrate is not a Creole speaker and so you have miscarriages of justice which would be fundamental, they could be found guilty of an offense which they really ought not to have been found guilty about.

Another area that the clerks generally had difficulty interpreting is swear words. For instance, in a matter involving two women, the complainant said that the defendant called her *manman salop*, which the clerk interpreted as 'mother scunt' instead of 'whore' or 'slut, trollop' (Mondesir 1992). However, the St. Lucian magistrate who was presiding at the time interjected and said *salop is not scunt, salop is nasty*, which would produce 'mother nasty'. Although *salop* also means 'nasty' (Frank 2001), this meaning is not appropriate in the context. Therefore, both are inaccurate interpretations of *manman salop*, which means 'mother whore' or 'original whore or the whore of all whores'. Both misinterpretations are instructive because they underscore the fact that neither the clerk nor the magistrate seemed to understand the illocutionary force of the insult in Kwéyòl. This could have a negative impact on the complainant's case since neither one captured the intended meaning and force of the insult. It is crucial that the intended force of the insult be maintained in the interpretation since the use of

insults is an offence in St. Lucia. This is stated in St. Lucia's Criminal Code as follows:

Insulting, abusive, or profane language,

> **534**. Any person who, in any place utters any abusive, insulting, obscene, or profane language, to any other person, is liable on summary conviction to a fine of one thousand dollars.

Therefore, the misinterpretation of an insult could ultimately result in the dismissal of a legitimate case. This example is consistent with several studies that have found that interpreters sometimes make the mistake of interpreting the semantic meaning only, the "fixed context-free meaning" (Cooke 1996: 29), ignoring, misunderstanding or simply not conveying the pragmatic meaning of utterances (Hale 2004). This is also supported by Eades et al. (1999: 4) who state that more attention is required concerning the transference of pragmatic meaning rather than merely semantic content, in the interpreting process. In other words, an expletive in one language can be interpreted semantically in another, but the intended meaning (that of an insult) and the intended force (the seriousness of the insult) may not be equivalent. According to Hatim & Mason (1990: 76), equivalence is to be achieved not only of propositional content but also of illocutionary force. Thus, interpreting at the semantic level and not the pragmatic level will inevitably lead to misunderstandings, especially in cases where the magistrate is not competent in one language, as in the case of foreign magistrates. In sum, court interpreting is a complex interpersonal communication activity that entails far more than replacements of words, phrases and sentences in one language with equivalents in another (Moeketsi 2001: 133).

Although the court interpreter is meant to allow the non-English individual to enjoy due process and equal protection under the law (Arzoz 2007), these examples show that an ad hoc or untrained interpreter who does not always provide accurate interpretations could have the opposite effect. Moeketsi (2001) asserts that accuracy in court interpreting is one of the most important requirements for court interpreters and given their pivotal role of facilitating communication in court proceedings, as well as the potentially adverse repercussions on the rights of the accused, they must be thoroughly prepared for their assignment. Yet, formal training is rarely a requirement for employment as a court interpreter (Hale 2004).

7 Conclusion

This study sought to examine the language-related provisions in St. Lucia's constitution and the ways in which they are implemented in practice. The responsi-

bility of implementing these provisions, which are largely confined to fair trial and due process rights, falls on stakeholders in the criminal justice system. In the pre-trial phase, police officers are responsible for providing non-/limited English speakers with their right to information, that is, the right to be informed of the reasons for arrest and the nature and cause of any charge or accusation in a language that they understand. The data showed that in practice, the police officers adhere to the law by speaking to Kwéyòl speakers in Kwéyòl and for foreign language speakers, they seek the assistance of persons who speak their language, such as an embassy employee, to administer their rights in their language. The main issues that arise in the case of police practice in relation to Kwéyòl speakers is one of unknown competence and lack of formal training in interpreting. Although most of them claim to be bilingual or competent in Kwéyòl, this is not ascertained. Evans (2019) found that not all police officers are competent in Kwéyòl and they sometimes have to seek assistance from another police officer. Therefore, in order to guarantee that the rights of Kwéyòl speakers are not jeopardized by a lack of, or inadequate competence, and different degrees of bilingualism, the oral competence of police officers who work at police stations in Kwéyòl should be tested. In addition, researchers continue to raise concerns about the use of police officers as interpreters in police procedures for reasons such as impartiality and conflict of interest (Berk-Seligson 2000), so if they must be used, they should at least receive professional training in interpreting in order to provide Kwéyòl speakers with the best chance of accessing justice. Another, perhaps more effective, alternative would be to hire independent qualified interpreters to interpret police procedures. This would help to ensure that Kwéyòl speakers' access to justice in these procedures does not lie completely in the hands of the police, who are essentially facilitators of the justice process.

There is an even bigger issue at the court phase of the system where the clerks of the court are appointed as "resident interpreters for Kwéyòl speakers". The data showed some of the ways in which misinterpretations could have adverse effects on a Kwéyòl-speaking suspect, particularly in cases where foreign magistrates preside. Since the clerks are not trained or qualified in interpreting, they encounter various challenges on the job. However, all of these issues could be circumvented through a constitutional language rights regime that guarantees Kwéyòl speakers the right to use their language freely in court. If this is not practical, as in cases where foreign magistrates are presiding, then proper interpretation services should be provided, by persons who have the requisite training and qualifications in interpreting. A comprehensive language rights regime, which must be constitutionally secured, would no doubt serve to separate language rights from other rights in which they are merely implicated and provide Kwéyòl

speakers with a better chance of enjoying the fundamental rights to which they are entitled.

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Chapter 5

Swearing-in: Language, class, and access to justice in Jamaica

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Access to Justice as a cornerstone of the rule of law is complicated by the language situation in Jamaica. In a country where the striking majority of persons are either basilect-dominant or bilingual speakers (Jamaican Language Unit 2006) and the language of the courts remains Standard Jamaican English (Smith 2017), communicative problems arise for those who are basilect-dominant as they seek to navigate courtrooms either to profess their innocence or seek to obtain redress for wrongs against them. Both Eades (2003) and Brown-Blake (2017) have documented the challenges associated with second-dialect and basilect-dominant speakers in courtrooms, a situation complicated by the existence of legalese as a specialized lexicon of law and the tendency of lawyers to use "deceptive ambiguity" when interrogating witnesses (Shuy 2017).

This chapter briefly examines the Jamaican Language situation and underscores the challenges that basilect-dominant and monolingual speakers are likely to face when navigating courtrooms. It discusses the nexus between Language and class a precursor to the legal discussion of what is possible within the 2011 Charter of Rights. While the researchers acknowledge that as worded, linguistic discrimination may conceptually be justiciable under sections 13(3)(g), (h) and (i) of the Charter, they are doubtful of whether this will obtain in courts due to the difficulties in proving indirect discrimination and current judicial approaches to responding to other forms of discrimination which seemingly places a heavy burden on claimants. The researchers, therefore, argue for the officialization of the Jamaican Language among other strategies to preempt recourse to the Charter.

Glenroy Murray & Suelle Anglin. 2023. Swearing-in: Language, class, and access to justice in Jamaica. In Clive Forrester (ed.), *Intersections of language rights and social justice in the Caribbean context*, 103–120. Berlin: Language Science Press. DOI: ??


> When the voice of authority speaks back to the "masses" using the language of authority, English, much, if not all, of that message is lost. We truly have a dialogue of the deaf. This, however, is societal and self-induced deafness since there is none so deaf as (s)he who will not hear. (Devonish 2014)

Conceptually, access to justice is generally treated as a constituent element of the rule of law with its promise of equal treatment of all by state institutions, particularly the courts (Agrast 2008). Rhode (2004) traces access to justice back to the Magna Carta with its promise not to sell, refuse or delay right or justice in clause 40. Ghai & Cottrell (2010) discuss access to justice as having two possible meanings, the traditional narrow meaning and the more contemporary broader meaning. The traditional conception is exemplified by UNDP's (2005) formulation as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards." This formulation focuses on what happens procedurally within courts and similar institutions, and the individual's knowledge and experiences navigating those procedures. Dias (2011: 5) critiques this conception as being limited, noting that "the mere fact that a formal judicial system exists and that people have a right to access it, may not translate to individuals having access to justice in reality."

The more expansive conception of access to justice is defined by Dias (2011: 5) as encompassing "a much broader bundle of issues which may impact or affect the ability of individuals or communities to seek redress for perceived wrongs through legitimate means and these may transcend the formal judicial system." This more expansive conception therefore concerns itself with the establishment of institutions and procedural rules for granting access to all as well as the substantive laws themselves, and the empowerment of individuals to obtain justice (ibid).

Notwithstanding the strength of the latter, this chapter will be focused on a state-centred narrow conception of access given the nature of its key inquiry, i.e. what happens to Jamaican language dominant/monolingual speakers in Jamaican courts and what response is provided by the 2011 Jamaica Charter of Fundamental Rights and Freedoms. Formulations of access to justice within its broader conception will not be considered given the limitations of this chapter as well as the absence of legal and policy strictures which mandate the use of Standard Jamaican English (SJE) in any of these activities. The chapter will use the traditional understanding of access to justice as its frame – centring around due process rights as protected within international, regional, and national human rights legal instruments.

1 Access to justice, language and the Jamaican situation

Within international, regional, and national laws, a clear relationship is established between access to justice and language. Brown-Blake (2006), in analyzing British common law, identified the nexus between access to justice and language as being rooted in principles of natural justice. As a consequence of natural justice requiring "that a person be given prior notice of the charge against him and an opportunity to meet that charge," a person who does not understand the case being brought against him, by virtue of a language barrier, cannot mount a proper defence to said charge (Brown-Blake 2006: 393). Put differently by Ng (2009: 98) the integrity of the court process would be compromised if "litigants were unable to communicate with or understand the judge, witnesses or opposing parties or counsel." This is why the Jamaica Charter of Fundamental Rights and Freedoms requires that when a person is being arrested or charged, it is communicated in a language they understand and that an interpreter be provided by the state in criminal trials where there is a language barrier.

In Jamaica, the language situation has been characterized by Winford (1985) as being a diglossic Creole continuum in which a hierarchy is produced with SJE being considered prestigious and fit for formal occasions, with Jamaican Language being understood as socio-culturally and linguistically inferior, and only fit for informal situations. This is exemplified by the fact that although there is no *de jure* official language in Jamaica (Brown-Blake 2017), the Supreme Court of Judicature of Jamaica Criminal Bench Book establishes [Standard Jamaican] English as the language of the court (Judicial Education Institute of Jamaica 2017). The fact that 36.5% of the population are monolingual Jamaican Language speakers, with only 17.1% being monolingual SJE speakers and the rest being bilingual (Jamaican Language Unit 2007) means that this policy of the language of the court being English has implications for whether basilect-dominant and Jamaican Language monolingual speakers are able to adequately navigate the court system.

It is critical to acknowledge that the specialized lexicon of law (legalese) poses difficulty for the layperson as noted by Shuy (2017). Solan & Tiersma (2005) illustrate the challenges for plain language speakers when they engage the criminal justice system. They discuss how the nuances of plain language are not often taken into account by the court, and as such, statements by officers like "May I search your car" are treated as requests, using a literal interpretation, which a civilian may legally refuse, making the subsequent search illegal; rather than seeing them as commands given the power differential and the frequent use of commands veiled as requests in ordinary everyday speech (Solan & Tiersma 2005: 32–42). They also note the unwillingness of some courts to see expressions such

as "I think I need a lawyer" in the context of police interrogations as an invocation of the right to counsel, thereby making every subsequent question illegal (Solan & Tiersma 2005: 58).

The gulf between legalese and plain (English) language is further complicated by the use of what Shuy (2017) calls "deceptive ambiguity". Shuy (2017) indicates that within a courtroom setting, lawyers, police and judges have a disproportionate level of power compared to the layperson in using language to shape particular narratives. He notes that "[a]ttorneys can request, warn, threaten, complain, and give directives, but their hearers are limited to reporting their answers to the questions that the powerful speaker asks" (Shuy 2017: 44). With this power in mind, Shuy argues that lawyers and police are often intentionally ambiguous to deceive defendants and witnesses to validate the narrative lawyers construct, which often implicates witnesses and/or defendants in criminal activity (Shuy 2017: 59–60). Courts tacitly accept the use of these strategies that often place laypersons at a disadvantage because of their limited command of legalese, which only increases distrust in the system.

If the challenges are so significant for plain English speakers, this reality is doubly so for Jamaican speakers. This is illustrated in the Australian context by Diana Eades's (2003) analysis of the treatment of Aboriginal English in Australian courts which points out that, as a result of the non-recognition of and prejudicial attitudes towards Aboriginal English, the pragmatic features of their communicative style are often misinterpreted or go unacknowledged—greatly impacting their dealings with the law. Brown-Blake & Chambers (2007) illustrate this challenge for Jamaican speakers by looking at the challenges they face in the UK criminal justice system. The most poignant example they use is the transcript of an interrogation of a witness by the police, in which the Jamaican states that after hearing gunshot noises, *mi drap a groun* – meaning 'I fell to the ground'. The written transcript had "I drop the gun" (Brown-Blake & Chambers 2007: 276–277). While this mistake was caught before any action was taken, the translation error could have turned the witness to a crime into a perpetrator by way of a purported confession.

Importantly, the approximation of SJE to British English means that the barriers that are being discussed by Brown-Blake and Chambers may very possibly arise in the Jamaican courtroom context. However, this is often mitigated by the bilingual judicial officer or police understanding the language being used by the layperson. The challenge occurs when the former addresses the latter in SJE, particularly using legalese. This is exemplified in a case analysed by Brown-Blake & Chambers where the Jamaican dominant speaker struggles to understand the

caution being given by a customs officer before an interpreter is provided (Brown-Blake & Chambers 2007: 280–285).

Similar challenges in understanding courtroom communication in Jamaica have been documented by Brown-Blake (2017). In her review, she considers the accused and witnesses being questioned by defence counsel and by the judge, and she notes that where there is difficulty understanding the language being used by the Court, there is a practice of code-switching to Jamaican Language on an ad hoc basis. This should not be taken as her approval of the situation, however, as she remains critical of the lack of formalization of this practice (Brown-Blake 2017: 200). The need for code-switching practices is critical because of the diglossic situation. Brown-Blake goes further to point out that a Jamaican language dominant/monolingual accused may not always be able to follow the dialogue between witnesses, attorneys and judges (ibid). This goes to the very heart of the need for interpretive services so that the accused can be considered present for material evidence being given, allowing them to prepare a response.

In addition to the identified barriers is the deployment of linguistic correctness in courtroom spaces. Linguistic correctness is more of an issue in a language acquisition environment where speakers must work to fulfil the requirements of the official language and is one of the ways in which holders of power in Jamaican society display language discrimination. Correctness is used as a tool of power that allows acrolectal speakers to show dominance and, it can be argued, manipulate information – as seen in the Commission of Inquiry into Tivoli Incursion in Jamaica. Linguistic correctness occurs when speaker 1 makes an utterance that is deemed grammatically incorrect and speaker 2 responds with the corrected version of said utterance. Urciuoli (2008) talks about the tension between linguistic correctness and cultural identity. In a Jamaican context, utterances made in the Jamaican language often differ from the SJE counterparts in both syntax and semantics. Consequently, the use of linguistic correctness by English language speakers can, arguably, manipulate the meaning and intent of said utterances by Jamaican language speakers. Language discrimination negatively impacts speakers of the Jamaican language as it limits authentic forms of expression and participation in national and critical forms of discourse. Similar to deceptive ambiguity, linguistic correctness can be used to discredit witnesses or otherwise make them look unreliable. This is particularly evident as it relates to written statements that witnesses "make," which are discussed further below.

However, two other immediate issues arise. The first is the ability of jurors to understand clearly all courtroom proceedings because of their own language limitations. The legalese used in a Judge's directions would pose a challenge for acrolectal jurors, and even more for those dominant in the basilect and mesolect.

Additionally, there is the question of how a juror will regard a witness or accused who is unable to answer questions being asked because of the language barrier that exists in Jamaica's diglossic context. It is possible that said jurors could either find the witness or accused to be unreliable because of perceived evasiveness or prejudices in favour of or against Jamaican speakers.

The second issue is the practice by court officials, attorneys and police officers of either translating Jamaican Language into English for court transcripts, depositions, witness statements and police reports or "legalesing" (used here to mean converting either English or Jamaican into a specialized lexicon of law) these documents. This practice has been noted by Eades (2003) and Brown-Blake (2017). Nelson (2019), in his personal account of reporting an incident, described the practice as "worryingly problematic and inhibitive of securing justice". This also has implications for how a defendant or witness is received by the jury, particularly where the fluency and literacy in English of the witness/defendant is limited if they are denying the use of words they sign to.

Given the complicated situation this potentially poses for Jamaican speakers, this chapter now seeks to explore the potential for the relatively new equality and non-discrimination protections in the Charter of Rights to provide a solution. Before the legal analysis, however, the chapter will consider the relevance of this analysis of the relationship between language and class.

2 Language use and social class in Jamaica

One of the most frequently used descriptions of the Jamaican language is that it is a broken language – one that has no syntactic structure or lexicon. This ideology does not represent a present-day belief, but one that has been intentionally, and carefully curated through interconnected agents of socialization such as the family and the school. The English Language gained official status in Jamaica in 1655 at the onset of British colonialism and was followed by a rigid process by plantation owners to enforce English monolingualism to diminish African dialects and cultural ties. This introduction of English to Jamaican society by the British was the first step in establishing a hierarchical language system among speakers in the country. Jamaica, which is described as a diglossic Creole continuum environment, has speakers who can fulfil the syntactic functions of the English language as acrolectal speakers; those who use language forms which combine English and Jamaican as mesolectal speakers; and those who use language forms farthest from English and closest to Jamaican as basilectal speakers (Irvine-Sobers 2018). This hierarchy creates negative attitudes to and perceptions

of the Jamaican language and the association of prestige, wealth and access to more beneficial opportunities with acrolectal speakers and associated poverty and a lack of education with basilectal speakers. Notably, using a Matched Guise experiment, Rickford (1985) conducted quantitative and qualitative analyses of the language attitudes of working-class field workers on a sugar estate and lower middle-class sedentary workers in Guyana. The results showed that both groups associated the use of Standard English with higher-paid jobs and social mobility (1985: 149-152). This aligns with Justus' (1978) analysis which notes that in the Jamaican context, SJE is a mark of social class, education, economic standing, and urbanization.

The ongoing conversations about the Jamaican language and appropriateness continue, as the use of the language in particular contexts is considered acceptable but challenged in others. August 6, 2022 marks sixty years post-independence for Jamaica, and there are still deliberate acts to uphold the prestige associated with the English Language. Consequently, there is an enforced separation of the physical spaces in which SJE on the one hand and Jamaican on the other are considered socially acceptable. Professor Hubert Devonish of the University of the West Indies made an excellent point about the language divide when highlighting the difference between the Jamaican Language and the SJE used in the local media. In an editorial piece, Devonish (2014) noted:

> For those who have power, as a result of their education, their wealth or by virtue of having been elected to exercise power, English is the only legitimate language in which to address power. Thus, a year or two ago, in the Senate, Mark Golding was upbraided by the then president of the Senate for using the Jamaican-language phrase, *Rispek dyuu*, on the grounds that THAT language was not allowed in Parliament.

In the same article, Professor Devonish argued that broadcasters and publishers only used excerpts of people using the Jamaican language for comedy and/or sensationalism of specific issues. This deliberate practice of language divide reinforces the negative colonially-derived attitudes toward the Jamaican language: that it is inferior to SJE and only to be used in less formal settings. Critically, the associations of SJE with a particular social class, though a matter of perception, means that there exists a link in the minds of Jamaicans about what a person's language suggests about their socio-economic status. The Jamaican Language Unit, in its 2005 survey, noted that 61.7% of respondents felt that English speakers were more educated and 44.7% felt that English Speakers were richer. This

at least creates the possibility that linguistic discrimination and class discrimination run parallel, given that, to quote a colleague, Tracy Robinson (personal communication) "there is no greater proxy for social class than language". This nexus between language and class creates an avenue for what the Jamaica Charter of Rights prohibition of discrimination could mean for basilect speakers.

3 The Charter of Rights and Linguistic Discrimination

Within the 2011 Charter of Fundamental Rights and Freedoms of Jamaica, there are guarantees of equality and the prohibition of discrimination. Specifically, section 13(3)(g) guarantees to all Jamaicans the right to equality before the law; section 13(3)(h) guarantees the right to equitable and humane treatment by a public authority, and section 13(3)(i) prohibits discrimination on the basis of being male or female, race, place of origin, social class, colour, religion or political opinions. However, these provisions have largely been untested in Jamaican courts and as such the full scope of their protection is yet to be determined.

Notwithstanding this, section 13(3)(g) has been confirmed in case law to be focused on equality in the content of the law and its administration in the Courts. In section 13(3)(h), there is little case law, given that the terms, "equitable and humane treatment" have not been given much judicial attention. "Equal treatment" was decidedly avoided by the Joint Select Committee of Parliament of Jamaica recommending changes to the then Bill of Rights which the Charter of Rights replaced on the basis that equal treatment may not be appropriate, as treatment would differ according to the circumstances. Moreover, the direction of case law on this right is unclear. The dicta of the three judges in *Rural Transit Association Limited v Jamaica Urban Transit Company Ltd and Others* make it clear that "equitable and humane treatment" does not mean equal treatment. Justice Beswick, in assessing whether the claimant's rights under section 13(3)(h) were breached, found that "the evidence displays unequal treatment of RTA by the police, not inhumane and inequitable treatment." Justice McDonald offered this distinction between the words equal and equitable – "I find that the words equitable and inhumane are to be read conjunctively. Guided by the dictionary, I interpreted the word equitable to mean 'fair'/'just'. It does not mean equal." By contrast, two of the judges on the Full Court in *Sean W Harvey v Board of Management of Moneague College and Others* have endorsed the test for the equality of treatment guarantee in the Trinidadian Constitution used in the case of *Bhagwandeen v Attorney General of Trinidad & Tobago* as the appropriate test for whether section 13(3)(h) has been violated. The potential for section 13(3)(h) to address discrimination at the hands of public actors remains unclear.

Important to this discussion, sections 13(3)(g) and (h) have no status-based list while section 13(3)(i) has a closed list. Petrova (2013) explains the closed list as "narrowly constru[ing] the right to equality to apply to a limited range of protected grounds, or classes, and respective personal characteristics, while an open list usually explicitly lists grounds of discrimination but, in addition, opens up the list through the expressions 'such as', 'other status', or 'any status such as …' which enable new grounds of discrimination to be prohibited by law," (2013: 494-495). Neither section 13(3)(g) nor (h) has a list and thus falls within what Fredman (2011) considers the second model of formulating prohibited grounds of discrimination, "a broad open-textured equality protection." This is the reality in Trinidad where similar provisions have no prescribed list and as such discrimination on a specific status-based ground is not required for the sections to apply. The situation is different for 13(3)(i) which has a closed list. The following sections will analyze the potential for addressing linguistic discrimination under section 13(3)(g) and (h), with a look at the analogous ground approach, as well as under section 13(3)(i) using the concept of indirect/disparate impact discrimination as developed in the United States, Trinidad & Tobago and Canada.

4 Linguistic discrimination as an "analogous ground"

In the United States, where there is no enumerated list, the focus is placed on the level of scrutiny given by the Courts when assessing a claim of discrimination (Fredman 2011: 118). Where the ground of discrimination falls within a 'suspect category' (race, alienage and ancestry) then strict scrutiny is applied, meaning there must be a compelling state interest to justify any differentiations made (Fredman 2011: 120). For other grounds, all that is required is that the differentiation is "rationally related to a legitimate state interest" (Fredman 2011: 118). In Trinidad, section 4 of the Constitution guarantees constitutional rights to all regardless of race, origin, colour, religion or sex. The suggestion has been made to treat discrimination on one of these grounds as, a fortiori, violative of the guarantee of equality before the law. If applied in Jamaica, this could mean that the enumerated sub-sections in sections 13(3)(i) could be regarded as already prohibited grounds of discrimination under sections 13(3)(g) and (h), and other grounds would be capable of being added. In Canada, there is a practice of recognizing additional grounds of discrimination that are analogous to those that have been explicitly protected. This has seen the addition of sexual orientation to the provision's non-exhaustive open list of grounds which prohibits sex discrimination.

On the matter of linguistic discrimination, it is completely open to Jamaican courts to add this as a protected category of discrimination under section 13(3)(g)

and (h), whether treating it as an analogous ground to social class given the connections between language and class or using the US approach of not requiring specific grounds. It should be noted that in the Trinidadian case of *Paponette and Others v Attorney General*, differential treatment between separate categories of taxi drivers was found to be captured by the guarantee of equal treatment by a public authority. This, therefore, means that sections 13(3)(g) and (h) do not have to be read as exclusively contemplating immutable statuses, but interpreted as considering any type of unjustifiable differentiation as being within the rubric of those sections. This raises questions about the practical implications of the sections, which are analyzed more closely in the section on the possibilities within the Charter.

5 Linguistic discrimination as indirect discrimination

Across human rights law, discrimination is generally regarded as being capable of being both direct and indirect. Hatzis explains the difference as follows:

> In its direct form, discrimination occurs when a person is singled out and targeted for negative or less favourable treatment because he has a particular characteristic. Indirect discrimination, on the other hand, is about neutral, or even benign, measures, [the] effect of which on people having a particular characteristic is more burdensome than their effect on people who don't have it. The focus of indirect discrimination law is on the disparate impact a policy may have on certain people in comparison to the impact on others. (2011: 287)

In the repealed 1962 Bill of Rights of Jamaica, section 24(1) prohibited a law which was "discriminatory either of itself or in its effect". The terminology "in its effect" suggests that indirect discrimination, which looks at the impact of laws that are neutral on their face, was being contemplated and prohibited. In the new dispensation of the 2011 Charter of Rights, freedom from discrimination is broadly guaranteed without any references to whether the discrimination needs to be direct or indirect. Given the approach of the constitutional of using a generous interpretation to human rights protections in the Charter, it is likely that the Charter will be interpreted as prohibiting indirect discrimination. Indirect discrimination provisions consider how persons in a particular group are disproportionately impacted by neutrally framed laws. A useful example is the Belizean case of *Wade v Roches* in which a rule ostensibly prohibiting staff of a

Catholic school from fornicating was considered to be discriminatory on the basis of sex since unmarried women who show proof of fornication via pregnancy would be disproportionately affected while unmarried men would not.

Section 13(3)(i) only prohibits discrimination on seven grounds, one of which is social class (which is a new addition to the Charter). There have been no Jamaican cases claiming discrimination on the basis of social class. The question of how one proves membership in a social class remains to be determined by the Court. However, as discussed in earlier sections of this chapter, there is a socially understood link between perceptions of social class and language. The use of Standard Jamaican English or Jamaican Language serves to construct an identity in the public domain (Campbell. 2007). As such, the perceptions of the usage of SJE as being emblematic of one's wealth, education and background – ostensibly one's class – means social class discrimination is very likely in Jamaica's diglossic context to involve value judgments and perceptions wholly or partly based on the individual's use of language. Additionally, differential treatment on the basis of language used may, at least some of the time, disproportionately affect those who are more likely to use a particular language.

Research into perceptions of bias in Trinidadian courts already reveals a correlation between wealth and language in terms of how people perceive they are being treated (Kerrigan et al. 2019). In this quantitative study involving 160 members of the public, 110 judicial staff, 22 judicial officers (judges/magistrates etc.) and 68 attorneys, 66.6% of the public and 60.3% of attorneys indicated a belief that the use of English will lead to better treatment in Court. Additionally, 87.3% of the public, 79.4% of attorneys and 65.1% of judicial staff indicated a belief that a person who appears wealthy will receive better treatment (ibid). The nexus between wealth, class and language must be borne in mind when reading these statistics as language helps to shape perceptions of wealth.

It is important to note that in the American context, structural linguistic discrimination has already been found to be a form of indirect racial discrimination. In the case of *Martin Luther King Junior Elementary School Children v Ann Arbor School District Board*, a class action suit was successfully brought against the school district board for failing to provide professional development opportunities that would help teachers understand the challenges faced by Black students who spoke "Black English" (or African American Vernacular English) as their first language and equip teachers with the language and skills to remove barriers in their teaching practices. The consequence was that Black students in the district experienced significant difficulty in developing literacy skills in Standard English. The District Court recognized the linkage between the failure to

see and treat Black English as a legitimate dialect and racial inequality. The aforementioned case, at the very least, establishes a precedent that a Jamaican court can follow in coming to a determination that a rule requiring communication in English caters only to SJE-dominant and bilingual speakers and excludes, by implication, basilect-dominant and monolingual Jamaican Language speakers, the latter being 36.5% of the population. The question then becomes whether this constitutional possibility would bear actual fruit.

6 Productive possibilities in the charter

Starting first with the case of indirect discrimination, Mercat-Burns & Holt (2016) has noted that the nature of redress for indirect discrimination is redistributive, i.e. it is centred around eliminating institutional mechanisms, rather than simply awarding damages to victims. In the case of access to justice for Jamaican speakers, this means taking positive steps to remove language barriers that exist in the courtroom. The possibilities include Jamaican interpreters for both civil and criminal trials, recognizing Jamaican Language as the second (or radically, the first) language of the court or the establishment of Jamaican-only courtrooms.

The feasibility of these forms of redress is discussed below; however, the first barrier is proving indirect discrimination. In the United States, as well as in the United Kingdom and other jurisdictions, there is heavy reliance on statistical evidence to prove the "disparate impact" required to show that neutrally framed laws are indirectly discriminatory (Barnard & Hepple 1999). Against the background of the language challenges discussed in this chapter, proving disparate impact would involve demonstrating that Jamaican speakers who access courts are disadvantaged at a disproportionate rate compared to SJE-dominant and bilingual speakers. Proving the disadvantage becomes even more complicated when we consider that perceptions of acquiring justice may differ from the procedural guarantees of justice constitutionally enshrined. Put differently, the general inaccessibility of legalese means that Jamaican speakers are not able, without assistance from an attorney, to fully appreciate whether the procedures which are themselves written in SJE are being followed, and so their perceptions of justice are inevitably affected by the fact that rules of justice are not spoken or written in a language they generally understand. There is also the question of whether courts will be willing to accept the linkages between language use and class, given the ubiquitous nature of Jamaican Language in Jamaica. Though conceptually possible, the practicality of bringing a claim of linguistic discrimination as indirect class discrimination is complicated. Moreover, nothing has yet been

said of the dearth of local legal authority on how one establishes one's social class, and whether the claimant, though a Jamaican speaker, would have to be regarded as a member of the poorer classes—those regularly associated with the dominant or exclusive use of the Jamaican Language—in order to benefit from this prohibition of indirect class discrimination.

Even with the possibility of linguistic discrimination being considered justiciable under the broadly framed sections 13(3)(g) and (h), there are other significant challenges to its adjudication. The first question is whether courts are prepared to treat the Jamaican language as a discrete language capable of being discriminated against. Eades (2003) notes this very problem as existing for Indigenous communities in Australia who are second dialect speakers. In her analysis, the right to an interpreter is not enforced in favour of second dialect speakers because of bias against the language as well as non-recognition of same. Critically, the Jamaican language has still not been legally recognized by the government as a language despite growing public support (Jamaican Language Unit 2005).

Even if the courts are minded to consider Jamaican as a language capable of being discriminated against, there is the second question of whether linguistic discrimination will be recognised given the refusal of the Parliament to include language as a basis of discrimination, despite substantial submissions made requesting same (Joint Select Committee of Parliament 2002). As noted by Wheatle (2012), Jamaican courts do not generally defer to what the framers intended but rather what is meant by their express words. In this case, however, there are no status-based grounds to guide the court, and while the Trinidadian precedent requires no status, the possibility exists that the court could consider the section as not including linguistic discrimination.

An additional barrier that must be considered is the approach taken by the courts in Sean Harvey where the court placed a high burden on the claimant under section 13(3)(h) to show that the body breaching the right was a public authority acting in the exercise of its function. The court not only required the claimant to go beyond establishing that the body was established by law but also required that the claimant go further in establishing its status as a public authority by considering the nature of its functions, its receipt of government funding and other matters. While this may not be a matter for the courts, which are generally covered under section 13(3)(g) when they are administering law, this has broad implications for linguistic discrimination at the hands of schools, police, hospitals and other ministries, departments and agencies of government.

Taken together, whether there is a claim of linguistic discrimination as indirect class discrimination or linguistic discrimination under broad equality provisions, there will be an uphill task in establishing the justiciability and applicability of

the right, particularly in the context of access to justice. But even if the prohibition of linguistic discrimination is recognised and the non-recognition of Jamaican is deemed as a breach of that prohibition, there is still the question of whether that non-recognition will be considered demonstrably justified in a free and democratic society per section 13(2) of the Charter.

This section has been interpreted as necessitating the test of rationality and proportionality laid out in the case of R v Oakes. Put simply, there must be a good reason for limiting the right, the legislative measure taken must be rationally connected to that reason and the measure must limit the right no more than is necessary. Within the balancing exercise that takes place here, external considerations such as the financial cost of securing the right come into play. Since the established orthography of Jamaican has not been widely disseminated or taught in schools, there would be considerable costs in complying with a prohibition of linguistic discrimination. This involves the potential cost of recording Jamaican Language interpretations of legislation for public dissemination to increase the accessibility of legislation or otherwise formally establishing "Jamaican Language only" courtrooms with stenographers trained in properly translating spoken Jamaican Language into written English. The related costs may result in the prohibition of linguistic discrimination to be held as not including a right to access law in the Jamaican language. The unwillingness of courts to supervise costly initiatives has led to Brown-Blake's skepticism of the prohibition of linguistic discrimination being able to address the challenges highlighted (Brown-Blake 2008).

7 Conclusion: So what then?

Instead of resorting to constitutional redress, the intervention of a judge in the case of Jamaican speakers becomes the singular most important act in ensuring a trial is at least procedurally fair. However, as noted by Brown-Blake (2017), this is not mandated and only happens on an ad hoc basis. The Jamaican Justice System Reform Task Force (JJSRTF) has acknowledged that there are language-based challenges within the justice system (2007). The recommendations have largely been to *de-legalese* or to simplify English which does nothing to address the needs of the aforementioned speakers. Furthermore, the likelihood of a courtroom interpreter being employed is low because of the high levels of bilingualism in Jamaica and the prohibitive costs of doing the same. Even if they were to be used, both Eades (2003) and Ng (2009) have noted several challenges with the use of interpreters which will not be explored here.

Even with the potential prohibition of linguistic discrimination, whether using existing provisions, or through the process of constitutional reform to include this explicitly, there are limitations. The justiciability of linguistic discrimination within the existing provisions reveals a complicated reality requiring (currently unavailable) statistical evidence in the case of indirect discrimination and general hurdles to establishing that the Jamaican Language amounts to a language that can be discriminated against or that the provisions should even extend to including linguistic discrimination. Brown-Blake (2008: 53-54) has noted the unwillingness of courts to award remedies that would involve monitoring state action. In Jamaica's case, the court would be monitoring itself by either ensuring the presence of interpreters or the existence of dedicated Jamaican language courts with trained officials. Both measures require institutional change and/or an influx of resources, which the court may object that providing any such remedy would be too burdensome and therefore not doing so would be "demonstrably justified" within the meaning of section 13(2).

One way to address the hurdle of Jamaican language not being seen as a language is through officialization. But officialization by itself is not enough, as noted by Brown-Blake (2014: 65). She indicates that officialization in the Seychelles and Vanuatu of non-dominant languages did not lead to greater use in court proceedings as there is a tendency to legislate the primacy of the use of dominant languages in that arena (Brown-Blake 2014: 148). It stands to reason, therefore, that to produce the outcome that is best suited to Jamaican speakers, there would have to be a combination of officialization and political will to mobilize the necessary resources that would preempt the need for a constitutional claim. Anti-discrimination litigation is notoriously challenging and as such, a proactive rather than a remedial response from the State would be more impactful.

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Intersections of language rights and social justice in the Caribbean context

This volume brings together the work of six authors who explore various dimensions of language rights and how they intersect with social justice in the Caribbean context. Language rights advocacy has been an ongoing issue in Caribbean linguistics since at least the 1970s when the Society for Caribbean Linguistics was established and linguists started to turn their attention to the marginalised status of Creole languages in the region. This continued into the 1990s when dismal scores in secondary school English resulted in governments singling out Creole languages as the culprit and linguists had to get involved in shaping language policy for territories across the region. By 2011 the role of linguists was cemented in the language rights debate with the creation of the Charter on Language Rights in the Creole-speaking Caribbean. Using examples from Jamaica and St. Lucia, the current study examines the challenges that still persist ten years after the Charter, specifically in the areas of language advocacy, linguistic discrimination, and communicative hurdles in the courtroom.