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SUPPORTING JUSTICE REFORM IN JAMAICA THROUGH LANGUAGE POLICY CHANGE

Celia Brown-Blake

Abstract

This paper examines the nature of language communication in legal settings in Jamaica. In this Caribbean territory, English is the official language of the legal system, but many Jamaicans who interact with the system are not proficient in it. Their dominant language is a lexically related but structurally discrete vernacular language, Jamaican. Justice system reform experts, while recognising that language barriers impede public understanding of and access to the system, have recommended that plain language solutions be adopted. The paper argues that these recommendations overlook the precise nature of the language problem and thus do not adequately address it. Analysing data from actual legal cases, the study shows how the legal system currently responds to language communication difficulties and how some practices might affect the administration of justice. It suggests that bilingual approaches be institutionalised to enhance understanding of discourse in legal settings by vernacular speakers with limited English proficiency.

Keywords: language policy, Jamaican, language and the law, language and justice

Resumen

Este estudio explora los modos de comunicación en contextos legales en Jamaica. En este territorio caribeño, el inglés es el idioma oficial del sistema legal; sin embargo, muchos habitantes de este país no tienen dominio de este idioma. Su lengua primaria es el criollo jamaiquino, un idioma vernáculo, estructuralmente preciso, cuyo lexicón se relaciona con el del inglés. Expertos en la reforma del sistema de justicia, a pesar de reconocer que hay barreras lingüísticas que impiden el acceso y el conocimiento público del sistema, recomiendan soluciones muy elementales al problema. Este trabajo discute cómo estas recomendaciones no toman en cuenta la complejidad del problema del idioma y cómo no sugieren soluciones adecuadas. Mediante un análisis de casos legales reales, este estudio demuestra que se atestiguan dificultades de comunicación en el sistema y que algunas prácticas afectan la aplicación de la justicia. El estudio sugiere que se institucionalice el bilingüismo en el sistema para que mejore la comprensión del discurso legal por parte de los hablantes del vernáculo cuyo dominio del inglés es limitado.

Palabras clave: política lingüística, criollo jamaiquino, idioma y leyes, idioma y justicia

RÉSUMÉ

Ce document analyse la communication linguistique dans le contexte juridique de la Jamaïque. Dans ce territoire des Caraïbes, la langue officielle du système juridique est l'anglais. Cependant, un grand nombre de Jamaïcains qui doivent se servir du système n'ont pas les compétences adéquates en anglais. Leur langue dominante est le jamaïcain, une langue vernaculaire qui ressemble à l'anglais du point de vue lexical mais qui est complètement différente au niveau grammatical. Certains experts qui participent à la réforme du système juridique, tout en reconnaissant les barrières linguistiques qui empêchent le grand public de comprendre le système juridique et d'y accéder, ont pourtant recommandé des solutions linguistiques simples. Au sens de cet écrivain, ces recommandations ignorent la nature exacte du problème linguistique et, par conséquent, n' y apportent pas des solutions convenables. La présente étude examine des données provenant d'affaires réelles et montre la façon dont les problèmes de communication linguistique sont traités dans le cadre du système et étudie l'effet de certaines pratiques sur l'administration même de la justice. Elle préconise l'institutionnalisation d'une approche bilingue dans le contexte juridique pour améliorer la compréhension du discours de personnes qui parlent le vernaculaire et ont des compétences limitées en anglais.

Mots-clés : Jamaïque, langue utilisée devant un tribunal, locuteurs de langue jamaïcaine, communication linguistique, réforme du système juridique, politique linguistique

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Introduction

A 2007 report, the *Jamaican Justice System Reform, Final Report*, produced after a review of Jamaica's legal system by a government-commissioned task force, laid the foundation for a comprehensive reform of the country's justice system. The report identified weaknesses in the justice system and recommended changes to improve and modernise it. There is no discrete section of the report which focuses on language issues in the justice system, but there are several references throughout the document which suggest the need for changes in language practices in the system. The suggestions are largely

in the form of specific recommendations for improving public access to, and understanding of the justice system, the major aims of the reform. It appears that, prior to these developments, the concern regarding language problems in the Jamaican court system had traditionally surrounded the absence or unavailability[1] and/or competence[2] of interpreters for foreigners who come in contact with the system and who speak a language other than English. This perhaps remains an important concern, but the 2007 report has raised the question of a language-related communication problem between the local public and the justice system.

The present study examines the report's observations and recommendations regarding language and communication, and questions whether the recommendations adequately address the problem, given the nature of the language situation in Jamaica, particularly in the justice system. It first provides an overview of the language situation in Jamaica and positions the justice system in this wider context. Against this background, this work identifies the language-related observations and recommendations in the report and suggests that the report overlooks the precise nature of the situation regarding language communication. The situation involves speakers whose first language (L1/D1) is the vernacular language, Jamaican. Jamaican bears some lexical similarity to the official language of the legal system, English. It is, however, distinct from English, particularly at the morphosyntactic and phonological levels. As this paper subsequently explains, many speakers of Jamaican are not highly proficient in English, their second language (L2/D2). Presenting data from actual texts generated in the Jamaican legal system, this study investigates language communication across various discourse situations involving speakers of the vernacular language in their interaction with the justice system. It suggests the need for modifications to the language policy within the justice system in order to enhance communication with citizens who are currently disempowered linguistically in their interactions with the system. In this way, the paper contributes to an understanding of the position of L2/D2 speakers in the local legal context involving speakers of Jamaican.

2. Language in Jamaica and the justice system

English is the *de facto* official language of Jamaica. As a general rule, it is used in public formal domains including the justice system. Another language variety, called 'Patwa' by most Jamaicans, is also used in Jamaica. Patwa is an English-lexifier creole often referred to as Jamaican Creole in the relevant academic literature.[3] In this paper, it will simply be referred to as Jamaican. It is the first language of many Jamaicans and is widely used in private and informal situations. Some scholars (Winford

1985; Devonish 2003) have characterised Jamaica's language situation as diglossic in nature, English representing the H variety and Jamaican the L variety. This description, however, must be qualified in view of the fact that the use of Jamaican has intruded into public formal domains. This development arguably challenges the case for a diglossic typology, but it is noted that the use of Jamaican in public formal situations tends to be confined to the less formal sub-domains. English continues to be the acceptable variety for use in the more formal official sub-domains. For example, within the domain of the mass media, Jamaican is acceptable and regularly used in advertisements, but in the more formal sub-domain of news reports, English is the expected, unmarked variety. Though the language situation may incline toward diglossic traits, individual bilingualism in English and Jamaican is not particularly widespread. A 2007 national survey on language competence in Jamaica, conducted by the Jamaican Language Unit (JLU), indicated that 46% of respondents demonstrated bilingualism while over 36% of respondents were monolingual speakers of Jamaican.

Perhaps because of the lexical relationship between English and Jamaican, many Jamaicans have considered Jamaican to be a mere dialect of English (Devonish 2003), and there is expert support for this position (Stewart 1962; Görlach 1991). Other linguists, though, for example, Bailey (1966), Alleyne (1980), Winford (1991), Devonish (1998), agree that Jamaican is structurally discrete from English. These linguists recognise the existence of two different linguistic systems in Jamaica's language situation, English and Jamaican. In support perhaps of this position is that there is only partial mutual intelligibility between Jamaican and English (Smalling 1983). Linguistic convergence and mixing, however, have led to a multiplicity of intermediate varieties which themselves are difficult to isolate (Alleyne 1980:192). The spectrum of varieties in the language situation, from basilectal (most distant from standard Jamaican English) through intermediate or mesolectal varieties to acrolectal varieties of standard Jamaican English, has been described as a creole continuum (DeCamp 1971). Speakers typically command a range of varieties along this continuum, with fluency depending largely on the social groups to which they are exposed and/or with which they identify. Despite this individual competence in a span of overlapping intermediate varieties, many Jamaicans, as noted above, do not have acrolectal competence.

Many Jamaicans have traditionally harboured overt negative attitudes toward the Jamaican language. These include the view that Jamaican is not a language but merely 'bad English,' the idea that it is a sign of poverty, ignorance, and illiteracy when used habitually, and the belief that it should be relegated to private and folkloric use. Orthodox overt

attitudes are, however, changing. A 2005 national survey on language attitudes shows that nearly 80% of the sample believed Jamaican is a language. Furthermore, over two-thirds of the sample said that it should be made an official language, and there was considerable support (over 70% of the sample) for bilingual (English and Jamaican) schools.

The survey has also indicated, however, that some traditional negative attitudes persist. For example, 44% of the sample believed that a speaker of English would have more money than a speaker of Jamaican. This compared with just over 8% who said that a speaker of Jamaican would have more money than a speaker of English. This seems to reinforce the orthodox associations between consistent use of Jamaican and poverty. The survey results also show that over 61% and 57% of the sample believe that an English speaker is more educated and intelligent, respectively, than a speaker of Jamaican. This compares with only 6% who said that a speaker of Jamaican would be more educated, and about 7% who said that a speaker of Jamaican would be more intelligent. This may be reflective of the traditional correlation between habitual use of Jamaican on the one hand, and ignorance and illiteracy on the other hand. Arguably, however, it may also be reflective of a sociolinguistic reality whereby literacy, which is taught in English, is typically acquired via the education system. Predictably then, the acquisition of formal education implies some degree of proficiency in English and literacy.

Jamaican has traditionally been an oral language. It does not have a popularised standard writing system although a consistent writing system for the language had been developed since the decade of the 1960s (Cassidy 1961). This writing system has been modified by the Jamaican Language Unit (2009), which is attempting to popularise the modified orthography. The English writing system, however, has long been used to write Jamaican, but there is considerable variation in its adaptations for representing the vernacular language (Devonish 1996).

The justice system in Jamaica, like the country as a whole, does not have an explicit *de jure* official language policy. However, there is a strong implication of the nature of the official language policy of the justice system in legal instruments.[4] Under the Jury Act 1898, one requirement for eligibility for jury service is the ability to speak, read, and write the English language.[5] One could infer from this provision that the language of the courts is English. This is reflected in practice in, for example, judgments, summonses, indictments, oaths, pleadings and legal submissions by counsel, which are all in English. As expected, technical or formal legal language also figures prominently in many of these examples.

Because of the link between education and acquisition of English, it may be presumed that many monolingual speakers of Jamaican are not highly educated. Lack of education, and hence low or no competence

in English, tends to be a characteristic of many accused persons in the criminal justice system in Jamaica as well as some lay witnesses. Although English language proficiency is a legal requirement for eligibility for jury service, there is no linguistic screening in the jury selection process in Jamaica. This, coupled with the fact that the Jury Act exempts a range of educated persons from service, makes it likely that some jurors will not be highly proficient in English. These three groups, accused persons, (lay) witnesses, and jurors, have been highlighted in the 2007 report's discussion of reforms concerning the interface between the public and the justice system. The next section presents and comments on the recommendations contained in the report regarding language-related adjustments directed at improving interaction between the public, largely these groups of persons, and the justice system.

3. Language aspects of the 2007 Report

The Justice System Reform report has placed a high premium on customer accessibility (e.g., for witnesses, jurors, accused persons) and understandability of the system (2007:17, 28). In discussing the interface between the public and the justice system, the report acknowledges that language presents a barrier to public access to the system (2007:141 para. 356). In relation to witnesses, for example, it cites the linguistic formality, archaisms, and complexity of the form of the subpoena in current use as an impediment to securing their attendance and involvement in the legal process (p. 176 para. 450). The report recommends that "the form of the subpoena should be simplified and the use of easy to read and understand language should be considered" (2007:177 para. 452). Regarding jurors, the report suggests that the inconsistency between verdicts and evidence in some cases may be ascribed partly to "jurors' inability to understand complicated directions" (2007:195 para. 498). In relation to this difficulty, the report proposes the provision of judicial training on how to give "comprehensible" jury directions.

The report also seems to suggest that a language issue underscores the retention of the right of the accused to make an unsworn statement from the dock.[6] It states that this feature of criminal procedure "has been maintained in part because of the concern that some accused are unable to articulate their evidence in any other way" (2007:235 para. 589). The report appears to hastily dismiss this concern, recommending the abolition of unsworn statements from the dock and stating that the concern "should be addressed in other ways." It does not, however, offer any suggestion as to the ways in which the concern might be addressed. In relation to self-represented litigants in civil matters, the report recommends that "simplified plain language forms" be developed for small

claims in order to help such litigants present their cases more effectively (2007:290 para. 739).

The recommendations made in the report regarding language barriers centre on a plain language approach. While useful, these recommendations do not appear to take into account the language situation in Jamaica and specifically the language situation in the justice system. The 'plain language' suggestion for subpoenas and small claim forms does not appear to address the fact that Jamaican, not English, the official language, is the dominant language of many Jamaicans who come into contact with the justice system as witnesses, jurors, and accused persons.

It is interesting to note that the report indicates that "[m]any probationers[7] (more than 50%) are illiterate" (2007:243 para. 610). This is an important clue about the language competence of accused persons who subsequently get probation sentences. Because literacy may be used as a proxy for competence in English in Jamaica, it is reasonable to conclude that persons who are not literate are likely to be monolingual speakers of Jamaican or Jamaican-dominant speakers. This language proficiency issue perhaps throws some light on the concern highlighted in the report that in several cases accused persons deliver an unsworn statement because they are unable to communicate their evidence in any other way. An unsworn statement is a monologue given by the accused person of his/her version of the case and is an alternative to giving sworn testimony. The accused who opts to give an unsworn statement may not be asked questions by his/her attorney and may not be cross-examined on such a statement. The accused person who gives an unsworn statement is thus shielded from questioning by both the prosecutor and his own attorney and thereby avoids discourse and communication difficulties which may arise during such questioning. Such difficulties could diminish the effect of the accused person's evidence, for example, by weakening his/her credibility as a witness.

The justice reform task force, by recommending a 'plain' or 'simple' language model, seems to assume an English monolingual situation for Jamaica and the court system, or that Jamaican-dominant and monolingual speakers understand simple English. The plain language suggestion is reminiscent of plain language movements in jurisdictions such as the USA, UK, and Australia, which were designed to enhance comprehension of certain legal documentation or speech events. The focus in such jurisdictions has been on reducing legalese and technical jargon by employing more readily understood English structures and words in order to enhance comprehension which has had some success (Tiersma 1999:220-230; Gibbons 2003:173). The plain language approach then involves a shift from one register, albeit technical, to another within a given language. Because many citizens who interface with the justice

system in Jamaica are speakers of Jamaican with no or low proficiency in English, I suggest that the language difficulty in Jamaica's legal system is not merely one requiring a conversion from one register to another. Technical legal language is perhaps less problematic than the difficulties that may be posed by the linguistic distinction between English and Jamaican. The language communication gap between Jamaican and English which may arise from this distinction also needs to be bridged in the quest to improve public access to the legal system. The next section examines how the literature has addressed the treatment of L2/D2 in legal contexts.

4. Second language/dialect speakers in legal settings

Eades (2003) provides a review of studies concerning second language and second dialect speakers in the legal system. She observes (p. 119) that much of the research in the area focuses on speakers whose L1 is a language largely unrelated to English and who come to interface with a legal system which officially functions in English. The general legal policy adopted in response to the communication gap where persons are not proficient in the language of the legal system is that interpretation be provided.

A developing body of research highlights issues emerging from this requirement for interpretation. Berk-Seligson (1990, 2002), dealing with Spanish L1 speakers in the US, investigates difficulties and disadvantages that arise for partial speakers of English in English-medium legal settings and their interpretation needs. Berk-Seligson (1990, 1999), Hale (1999, 2002), and Rigney (1999) all focus on English/Spanish interpreting and discuss how interpreters and interpretation can modify the pragmatic effect of English discourse in court or in pre-trial interviews. Other problems posed by interpreter interference include conversations between the interpreter and witness or lawyer requesting clarification, and witness prodding, which change the nature of the discourse (Berk-Seligson 1990). In addition, Nakane (2007) who deals with English-Japanese interpretation, addresses problems regarding interpretation quality.

There appears to be comparatively less research on English medium legal settings involving speakers of language varieties related to English. A significant portion of this research has been carried out by Eades concerning speakers of Australian Aboriginal English (AE). Eades (2004:491) describes AE as being different "from Standard Australian English (SE) in grammar, phonology, lexicon, semantics, and pragmatics… [with] considerable variation in the varieties of AE spoken," ranging from those furthest away from SE to those closest to SE. Much of Eades' work has concentrated on pragmatic aspects of communication,

and addresses cultural distinctions which tend to affect communication between AE and SE speakers. In this regard, she has highlighted communication problems arising because of: a) gratuitous concurrence—the tendency to indicate agreement with a speaker irrespective of whether the hearer actually agrees with the propositions being advanced by the speaker—(2008:91-107, 2002:162-179); b) the directness in information gathering which typifies both pre-trial interviews and courtroom examination-in-chief/cross-examination in common law systems but which is incongruous with Aboriginal cultural norms (1994); and c) cultural differences in the way silence and eye-contact are interpreted in conversations (2008:107-116).

But miscommunication also arises because of linguistic distinctions between AE and SE. Eades (2008:119-121) and Cooke (2002 para 2.5.1) refer to comprehension problems involving the use of lexemes for AE speakers in the Australian legal system. Cooke (2002 para. 1.3) also hints at the possibility that language-related communication difficulties may arise between speakers of English and speakers of Kriol, an English lexicon creole spoken in the Northern Territory in Australia.

In relation to Caribbean Creoles, Brown-Blake and Chambers (2007) have reported on miscommunications arising from phonological and syntactic distinctions between Jamaican and English in legal discourse in the UK criminal justice system. Blackwell (1996) and Brown-Blake and Chambers (2007:276-278) also highlight problems that can occur in the transcription process when English-speaking transcribers are unfamiliar with an English-related language variety, like Jamaican, which has been used by a suspect in an audio-recorded police interview arising in the UK legal process. A number of newspaper articles[8] have also raised the issue of disadvantages arising for speakers of Jamaican in the American legal system because of language differences between Jamaican and English, and have suggested the need for interpreters to be provided in such cases.

This brief review of research on L2/D2 speakers in legal contexts indicates that communication difficulties may arise in legal contexts involving these speakers, including contexts in which the speaker's L2/D2 is lexically related to his/her L1/D1. This lexical relationship characterises many communication events in legal situations across several Commonwealth Caribbean Creole language jurisdictions, including Jamaica. The nature of language communication within legal contexts in these jurisdictions has, so far, received little scholarly attention. This paper provides further insight into the position of L2/D2 speakers in these legal contexts by examining language communication in the Jamaican context in which many citizens with limited L2/D2 proficiency interact with the justice system. The data and analysis presented will be

used to comment on the adequacy of the report recommendations and to inform suggestions regarding modifications to language policy and practices within the justice system.

5. The approach

Despite an official English monolingual policy in the legal system, monolingual speakers of Jamaican as well as Jamaican-dominant speakers have no choice but to use their language when they are required to participate in the system. I examine the language varieties used during the course of their interaction with the system, explore whether language communication difficulties arise in these situations and how, if at all, they are dealt with and resolved.

I examine actual case transcripts and depositions in order to study the nature of the language used in this interaction, focusing mainly on interaction in the system involving lay witnesses and accused persons. These are two of the main groups of people highlighted in the 2007 report as requiring particular attention. Although the report also addressed the possibility of communication problems involving jurors, I do not focus on this group in this paper. This is because, apart from the restricted scope of trials by jury, courtroom interaction with jurors is largely unilateral, and thus it is hard to evaluate their language performance/competence and possible communication problems on the basis of transcripts alone.

The analysis of interactions will be used to assess whether official language policy reform beyond the plain language approach is desirable to effectively enhance access to and understanding of the system on the part of speakers of Jamaican with limited English proficiency. I also consider, within the context of the literature on language attitudes in Jamaica, the degree to which various participants are likely to accept the kind of reform required.

6. Data and Discussion

For reasons indicated above, this study will focus on lay witnesses and accused persons. Thus, in collecting data for this study, I attempted to capture discourse situations in the legal system which are specifically directed to, or require the involvement of these persons. With respect of witnesses, I examine mainly examinations-in-chief/cross-examinations and depositions. In relation to accused persons, I examine their utterances in court. Although I focus on these discourse situations, the entire trial is important for an accused person who should ideally be able to understand all aspects of his/her trial. It is important then to ascertain how, if at all, Jamaican-dominant and/or Jamaican monolingual accused

are accommodated throughout the entire legal process.

The discourse situations identified above involve speech events which are reduced to writing. For this study, I rely on the written product, although I acknowledge the drawbacks, which include sanitisation of the oral text in the transcription process (Blackwell 1996) and the fact that transcripts in the legal system, though designed to be 'verbatim,' are not "'literal representations' of the interaction" (Eades 1996:241). At present in Jamaica, there is no routine audio recording of trials or any other discourse situation in the legal system. I have randomly selected official transcripts of criminal trials[9] at the level of the High (Supreme) Court and depositions of witnesses taken before a magistrate in preliminary inquiries in the Resident Magistrate's court. The names of the persons involved have been omitted.

I begin with an examination of interaction during trial involving a witness, defence counsel, and the judge.

6.1 Interaction at trial

The following is an extract from the examination-in-chief of a witness (WIT) for the defence in a case (*R v RS*) of illegal possession of a firearm and of ammunition. In this extract, the witness has just begun the non-formal part of his testimony, i.e., he has already supplied certain personal particulars—name, occupation, address—and has been led into testimony regarding his knowledge of the particular incident grounding the charge. The extract, containing utterances by the judge (J), begins with defence counsel (DC) asking an open-ended question typical of this discourse situation.

Extract 1

(1)	DC	While on your verandah, did anything happen?
(2)	WIT	Well, when I was on the verandah sitting down, all of a sudden I saw a police car and a jeep drove up, just about few chains from my house.
(3)	DC	Wait, wait. Remember what I said, loudly, slowly and clearly. Soh tek time now. You saw a jeep and a car drive up a few chains from your house.
(4)	WIT	Yes, sir.
(5)	DC	And what happened thereafter?
(6)	WIT	Well, when they pulled up, the policeman dem jump out of the car and jump out of the jeep.
(7)	DC	What they did after they jumped out of the jeep?

(8) WIT When they come out of the jeep and car, dem come through my yard and goh to the back of the house, that was on the right side of my house and where the gentleman was.

(9) J You said they come out and came through your yard and goh to the back?

(10) WIT Of the house, ma'am.

(11) J You said something about some gentleman, I never heard what you said.

(12) WIT No, I was saying the house where – they came through my yard, they came to the back of the house, where dem seh dem hold that gentleman, my friend over there. (Witness indicates)

(13) DC So when they came through the yard, what happened next?

(14) WIT Well, all of a sudden mi just hear gunshot start firing at the back of the house.

(15) DC And what happened after that?

(16) WIT When mi hear the gunshots start firing mi babymother and mi little pickney dem run in through the back door, soh mi lock up the back door.

(17) DC Wait. So you lock the back door and then what happened?

(18) WIT Well, we try fi secure wi self, because wi hear gunshot a fire, we try fi goh inside the wall, in the inside of the house, because we don't want any stray bullets coming from…

The witness appears to be a Jamaican-dominant speaker. As his testimony progresses, Jamaican forms dominate his responses, for example, consistent use in turns (14) and (16) of *mi* for the first person singular as well as for the first person possessive adjective, and use of the lexical item *pickney*[10] followed by the plural marker, *dem,* (English: 'children'). While the extract does not reveal any major language-related miscommunication or lack of communication, it does show that both DC and J make some adjustment in their speech behaviour from English toward Jamaican forms in some of their communication with the witness. However, apart from DC's use of the basilectal structure, *tek time*,[11] at (3), both DC and J seem to make only minimal shifts toward Jamaican, for example, J's use of the unmarked form of the verbs, *come* and *go*, in the context of past activity. On the other hand, the witness seems to make an effort to adjust his speech in the direction of English, for example at (6), (8), and (10) in which he uses English past tense forms. In several instances, these adjustments by the witness appear to come immediately after questions in the acrolectal or near-acrolectal variety have been put to him by DC or J. It would appear that the witness is motivated to adjust his speech behaviour in the direction of the speech pattern of DC

and J. There appears, then, to be some degree of mutual adjustment in speech behaviour whereby the parties attempt some degree of linguistic convergence. This attempt at convergence is perhaps explained within the context of accommodation theory which states that persons will adjust their linguistic behavior, either to show affiliation with, or detachment from, their interlocutors (Giles and Powesland 1975, LePage and Tabouret-Keller 1985).

The witness, despite several attempts at switching to an acrolectal variety, fails to sustain this language variety throughout his utterances. This perhaps suggests weak proficiency in this variety on his part. DC's and J's minimal shifts while using primarily English forms, even archaic ones, such as the use of *thereafter* in turn (5), may also be an indication of limited proficiency in Jamaican. This seems unlikely in relation to DC in particular, who produces basilectal Jamaican at (3). Another possibility that may account for the speech behaviour of DC and J lies in the ambivalence or tension in the signals of affiliation that they wish to convey. This is understandable given the duplicity of their positions and hence the need to switch the roles they perform. They are aligned with, and indeed representatives of, the legal system. By virtue of this, they are in positions of formal authority. This role would demand their use of English as the legal system's official language and the variety associated with formality. At the same time, however, they may wish, or feel the need to put the witness at ease, and try to achieve this by using or approximating to features of the witness' dominant language variety. This sends a signal that they are accommodating Jamaican and, by extension, the witness, in the formality of the courtroom.

It is not conclusively clear from the extract presented whether minor linguistic adjustments alone on the part of attorneys and judges play an appreciable role in enhancing communication. Arguably, DC's use of Jamaican at (3) might not just have been designed as a symbol of affiliation but also aimed at ensuring that the witness understood what was required of him. It may be that attempts at convergence help to facilitate communication in such courtroom interaction. Indeed, accommodation theory suggests that linguistic adjustment may be motivated by the speaker's need to enhance comprehension by the receiver (Giles and Powesland 1975). It is dangerous, though, particularly in courtroom interaction, to rely on such convergence for achieving effective communication since parties to the discourse may not command overlapping ranges on the continuum, and secondly, may not be socially motivated to affiliate. This latter point is perhaps significant given the ambivalence in the social positions of judges and counsel.

It appears, though, that some bilingually proficient judges and counsel switch almost completely to a variety of Jamaican when faced with

persons they assess to be Jamaican-dominant or monolingual speakers. The next excerpts, **Extract 2a and 2b**, taken from *R v AC*, reflect a part of the exchange between a judge (J) and an accused person/convict (A) who had been found guilty of gun-related offences, and whose antecedents were being considered by the court with a view to sentencing. When asked by the court registrar, the accused/convict does not admit to several of his previous convictions. This is apparently because he has confused the number of convictions with the number of times he was actually incarcerated, stating that he had been to prison only once. The following dialogue subsequently ensues.

Extract 2a

(1)	J	…When a man do that and I find out and that man say is not him and the expert say a him then that added onto whatever he is going to get. Anyway, let me tell you the second one, unlawful wounding on the 10th of June, Twenty Thousand Dollars or 20 days. You don't know nothing 'bout that?
(2)	A	No, ma'am.
(3)	J	Illegal possession of firearm, 23rd of September 1997, don't know nothing 'bout that?
(4)	A	Yes, ma'am.
(5)	J	You know 'bout that?
(6)	A	Yes, ma'am.
(7)	J	Is both of them you charge for, illegal possession of firearm and illegal possession of ammunition same day and you get five years for the ammunition that was in '97.
(8)	A	'97 the case finish try, ma'am.
(9)	J	Then a dat we a talk 'bout.

(An English gloss of this extract is contained in Appendix 1.)

The judge's language is replete with Jamaican language forms. These include the topicalisation marker in its basilectal form, *a*, in, for example, *the expert say a him* at (1) and *a dat we a talk 'bout* at (9), and in its mesolectal form, '*is*' at (7); the present continuous aspect marker, *a*, in *we a talk 'bout* at (9); and, the use of double negatives or negative concord at (1) in *You don't know nothing* and at (3).

It may be that the judge's positive question at (5) is intended to clear up the uncertainty which appears to have arisen by A's affirmative response at (4) to the negative question asked by J at (3). If this is so, the discourse arguably reveals the comprehension difficulty that tends

to arise with the use of negative sentences/questions generally, a phenomenon which has also been observed and studied in legal contexts involving the English language (Kebbell and Johnson 2000; Charles 1996). The difficulty arises because it is unclear whether an affirmative answer to the negative question (e.g., *You don't know about that?*) agrees with the truth of the negative proposition in the question (*Yes, [it is true that] I don't know about that*) or agrees with the polarity of the answer proposition[12] (*Yes, I know about that*). Thus, yes/no answers to negative questions without a clarifying qualification or proposition, as occurs in the extract above, tend to lead to uncertainty in communication. This uncertainty may perhaps be compounded where, as occurs in the Jamaican language, double negatives may be used to signal negation. It may be then that the very use by J of the negative concord feature of Jamaican in her questions to A contributed to uncertainty. The suggestion is that fluid or ad hoc code switching to Jamaican on the part of bilingual judges or court officers could impair rather than enhance communication and comprehension of courtroom discourse in some instances. In addition, the language-generated confusion associated with negative questions, if under-appreciated by a court, may also have an adverse impact on the credibility of the respondent because unqualified yes/no responses to negative questions may seem evasive.

At the end of J's exchange with the accused in which she uses the Jamaican language forms alluded to above, she code switches into English with:

Extract 2b

J All right, I will note what this accused says…

J All right, have a seat, your lawyer will speak on your behalf.

It is clear then that some bilingual judges engage in code switching and are willing to use Jamaican when directly communicating with persons they believe to be Jamaican-dominant speakers. This is a useful way of facilitating comprehension on the part of Jamaican-dominant speakers in court settings, but the analysis suggests too that language shifts may themselves contribute to communication trouble.

In addition to code switching, counsel and judges sometimes resort to simple explanations in English where there is a communication snag in the discourse. This is perhaps exemplified in the next extract, **Extract 3**, which is from the cross-examination by the prosecuting counsel (PC) of the witness (WIT) whose utterances also appear in **Extract 1** (*R v RS*). The judge (J) intervenes when the communication difficulty arises in an attempt to resolve the trouble.

Extract 3

(1) PC I'm suggesting to you that you have not told the truth today, sir, in evidence.

(2) WIT What are you saying, ma'am, could you repeat that, ma'am, I don't really quite understand.

(3) J She is not saying that you are not telling the true (sic), you need to say whether it is true or not true, if you accept that you are not telling the truth or if you saw, say no I am telling the truth.

(4) WIT I am telling the truth, ma'am.

The witness' failure to understand PC's suggestion appears to arise from his unfamiliarity with the lexical item, *evidence*. This item seems to present communication difficulties for Jamaican-dominant witnesses. In another trial (*R v OG et al.*), the transcript contained the following exchange between a defence counsel (DC) and a prosecution witness (WIT) whose testimony contains an abundance of Jamaican language forms.

Extract 4

(1) DC Not one piece of the evidence. I am suggesting to you what you gave in this court this morning is not the truth?

(2) WIT I don't understand.

(3) DC Nothing you said in this court this morning is the truth?

(4) WIT Everything I talk is the truth.

As in **Extract 3**, the witness' indication of his failure to understand comes after DC's use of some form of the term '*give evidence.*' Reminiscent of Eades' (2008:119-121) observations regarding the incomprehension of 'big words' by speakers of Australian Aboriginal English in legal situations. In **Extract 4**, DC responds by rephrasing the question in order to make her meaning clear.

It is noted though that J's explanation in **Extract 3** contains multiple negation, i.e. several instances of the use of the negative particle, *not*. Multiple negation, whether via the negative particle or via intralexemic means, is not an uncommon feature in language generated by legal professionals (Tiersma 1999:66-67). Like negative questions to which reference has been made in connection with **Extract 2**, multiple negation also appears to be problematic for discourse participants (Kebbell and Johnson 2000). It is uncertain, though, from the nature of discourse

in **Extract 3** whether multiple use of the negative particle by J in this instance confused the witness; however, it raises the question of whether multiple negation introduces additional complexities for a Jamaican-dominant speaker.

It is interesting too that at (3) in **Extract 3** J tells WIT that if he has told the truth, he should say "*no I am telling the truth*" in response to PC's suggestion, "*you have not told the truth today.*" J's direction to WIT conforms with the truth-based response system to negative questions, in the sense that, in this instance, the negative response, *no*, does not agree with the affirmative proposition which follows it, but instead denies the negative proposition advanced by PC (*no, you are not right in saying that I have not told the truth today*). This observation underscores the confusion, discussed above, that arises with the use of negative propositions in interrogation since speakers within the same speech community may not necessarily use negative or affirmative answers to negative questions in a consistent way. If, as indicated by SSWL, the Jamaican language adopts the polarity-based system and not the truth-based one, then the judge's guidance to the witness, despite the attempt at clarification, may have been confusing.

The data so far have indicated that attorneys and judges who have some degree of bilingual proficiency adopt several strategies to prevent or deal with communication difficulties in exchanges with monolingual speakers of Jamaican or Jamaican-dominant speakers. These adjustments include minor phonological and syntactic shifts in the direction of Jamaican as well as code switching to Jamaican. Code switching rather than minor shifts is likely to have a more significant impact on facilitating courtroom interaction where speakers of Jamaican are involved. In addition, code switching to Jamaican in exchanges with Jamaican-dominant or Jamaican monolingual witnesses and accused persons can be efficient in that it obviates the need for formal court interpreters. This avoids the difficulties associated with interpreter intervention alluded to above in Part 4. It also facilitates the recording of original testimony, as opposed to the interpreted version only, as is the convention in, for example, the US.[13] Despite these merits, the discussion has also shown that communication difficulties may arise on account of the ad hoc code switching practices combined with the fact that bilingual persons may not be aware of or particularly sensitive to linguistic structures which are likely to pose communication problems. We have seen that certain structures involving negation may introduce uncertainties which can impair communication.

The data have also shown that explanations in English are resorted to by counsel or judges when it becomes apparent to them that there is a communication failure on account of language. This latter strategy, while arguably resembling a plain language approach, may also lead

to communication difficulties. Use of this strategy seems to go beyond the scope of what may be contemplated in plain language approaches. **Extract 6** below shows, for example, how non-technical English lexemes may also be problematic for Jamaican-dominant speakers.

The communication strategies used by legal professionals in Jamaican courts are, to some extent, useful and effective. The extracts indicate that some communication failures involving Jamaican-dominant witnesses and accused persons are quickly repaired when recognised, or are perhaps avoided by effective code switching and, to a lesser extent, by speech accommodation. However, these strategies are employed on a completely *ad hoc* basis and, in some cases, add to or themselves create communication snags. Additionally, the justice system cannot rely entirely on the presence of bilingually competent judges and attorneys in court cases where communication in Jamaican may be required. The discussion has suggested that apart from issues of competence and the range of one's linguistic repertoire, is the problem of bilingual speakers' willingness to adjust their speech behaviour because of the social signals conveyed by use of the particular language varieties. Reluctance on the part of some individuals to identify with Jamaican-dominant or monolingual speakers and/or their desire to be perceived as belonging, for example, to an educated elite social group may constrain their linguistic behaviour. Communication trouble in courtroom discourse then may be missed or ignored for a variety of reasons.

6.1.1 The special position of the accused

It has been shown that adjustments are made in courtroom discourse in order to resolve or avoid communication difficulties which may arise for Jamaican-speaking witnesses and accused persons. Transcripts of cases show, however, that the language of many courtroom discourse situations (such as the testimony of police or expert witnesses, summation by judges and legal submissions by counsel) is largely English. Outside the discourse situations then in which there is direct engagement between the accused and court officers who code switch, or where Jamaican-speaking witnesses are testifying, a Jamaican-dominant/monolingual accused is at a linguistic disadvantage. There appears to be no formal facility to assist such an accused in understanding the relevant court proceedings. It seems that these accused persons must rely on their attorneys to keep them informed about what transpires during the proceedings.

This solution is unsatisfactory, again for reasons relating to individual competence and uncertainty regarding the willingness on the part of counsel to engage in speech accommodation and code switching.

Importantly too, legal standards of fair trial require that accused persons be cognitively present throughout their trial,[14] i.e., they must understand the proceedings. Language is central to the effective application of this fair trial right. In the context of the language situation in Jamaica, the right demands a sensitivity to the linguistic competence of accused persons and the possible need for language communication adjustments in the judicial process to facilitate comprehension by accused persons with limited competence in English of their entire trial.

6.2 Pre-trial situations: depositions and statements

An examination of depositions revealed, in some instances, considerable variation in the language of a deposition of a single witness. The following two extracts are from the same deposition—the first from the deponent's examination-in-chief represented in narrative form, and the second from her cross-examination transcribed in a question and answer format.

Extract 5a

> During the time I was assisting [name of deceased] I saw [name of co-accused]. She [co-accused] was at the side in the yard. At the time I was helping [name of deceased] she went into her house. After [name of deceased] left that day I did not see him again. At the time I was pregnant so I couldn't follow him to the hospital.

Extract 5b

> Q Can you recall occasions where you and [name of accused] had any differences?
>
> A Yes. One Sunday evening me son was round the front swinging on the ackee tree and me son come round crying. So me ask him what happen to him and him tell me say [name of accused] lick him. So me ask [name of accused] why him lick him. And him say dem round de ackee tree a swing. So me say yuh nuh haffi lick him yuh nuh could a jus talk to him.

(An English gloss of this extract is contained in Appendix 2.)

Extract 5a reflects a largely acrolectal variety of English. Notably, the first person singular subject is consistently represented by its acrolectal variant, *I*, and all past tense forms are appropriately marked in accordance with English syntactic rules. In contrast, the witness' response in **Extract 5b** contains unmistakable Jamaican forms. Among these are the first person singular subject consistently rendered in the

basilectal variant, *mi* (transcribed as *me* in the extract). This morpheme also signals the first person possessive adjective rendered in **Extract 5b** (*me son*). Other Jamaican forms appearing in the extract are *him* as third person singular subject (*him tell me say*; *him say*) and *a + V* (*a swing*) marking the continuous aspect. The deponent also uses the Jamaican morpheme, *fi*, which, in this extract, introduces the infinitive in *haffi lick* (English gloss: 'have to hit').

The use of the question and answer format in the transcription seems to trigger the recording of a variety which more closely resembles the speech behaviour of the deponent. The parts of the deposition in narrative format appear to have been constructed by the magistrate by combining the question asked of the deponent with the answer supplied by her. A mere affirmative answer, *Yes*, by the deponent in response to the question, *Did you see [name of accused] during the time you were assisting [name of deceased]?* might thus have been merged to produce the first sentence in **Extract 5a**. Where depositions are concerned, it appears that the transcripts, or at least parts of them, are generated in narrative form as a result of the amalgamation of question and answer pairs. For depositions given by Jamaican-dominant deponents, the language variety used in the narrative format tends to reflect more acrolectal forms when compared with the linguistic forms of the variety contained in the question and answer format.

Eades (1996:246) refers to the practice in Australian courts of transcribing Aboriginal English answers in Standard English. The situation in the legal system in Jamaica is more complex. Indeed, transcripts of testimony in superior court trials which are routinely recorded in a question-answer format, as well as those parts of depositions which adopt this format, reveal that efforts are made by the court reporters, despite the absence of a widely popularised consistent writing system for Jamaican, to capture the language behaviour of Jamaican-speaking witnesses. Where a deposition of a speaker of Jamaican contains predominantly acrolectal forms, it is not likely to be an English translation of what the speaker deponed, but the product of a weaving together by the presiding magistrate of questions put and responses given. This practice also appears to be employed, in part, in some pre-trial statements. Particularly when the witness provides minimal responses such as *Yes* or *No*, the product may hardly be described as the witness's own account since much of the language of the narrative will reflect that contained in the question asked by a lawyer or by an interrogating police officer.

Luchjenbroers' (1997) argument that attorneys, rather than witnesses, dominate in controlling and crafting narratives seems particularly applicable to the situations I describe regarding some depositions and statements. The weaving together of questions and answers to produce a

narrative may, of course, affect speakers of Jamaican as well as speakers of English. However, in the case of speakers of Jamaican, the narrative produced tends to be anglicised and thus linguistically disconnected from their speech behavior. This, perhaps, is sometimes a factor in witnesses or accused persons not subsequently owning up to parts of depositions or statements which counsel attempts to attribute to them.

The assumption by the legal profession seems to be that the product of the format conversion is a verbatim transcript. Eades (1996:243) suggests that for courts, verbatim recording does not necessarily mean that transcripts be strictly a word-for-word account, but that they must be a faithful written record of all relevant information. The extent to which this fidelity is consistently achieved is, however, questionable in narratives which weave together question and answer pairs, particularly when speakers of Jamaican are involved. This suggestion may be considered in the context of the following exchange between defence counsel (DC) and a witness (WIT), which has been extracted from the transcript of a murder retrial (*R v OG et al*). Upon DC's question, the witness confirmed that he recalled having testified at the previous trial. The cross-examination then continued as follows:

Extract 6

(1)	DC	… You recall that you were asked the question… Did you tell the police that in addition to the men here in court –
(2)	Judge	Repeat that back for me.
(3)	DC	Did you tell the police in addition to the men here, they were more a raiding party of gunmen. Your answer was, "Yes more man was there."
(4)	WIT	More man was there but they never have gun, is the six of them that I see have the gun.
(5)	DC	What I wish to get from you Mr [surname of witness], you were referring to the six men as part of a raiding party of gunmen?
(6)	WIT	I don't understand you. What you mean by raiding party?
(7)	DC	You used those words?
(8)	WIT	I don't know how to speak that word.
(9)	DC	Did you tell the police in addition to the men here in court, they were more a raiding party of gunmen?
(10)	WIT	The six of them.
(11)	DC	You said "Yes, more was there"?
(12)	WIT	Sir, I tell you what I did see, I can't tell no lie on them.

(13) DC That is so. I telling you what you say on another occasion.

It seems clear from turn (1) that the witness' pre-trial statement contained a reference to a "raiding party of gunmen." Upon being asked about this reference in the previous trial, the witness replied, "*Yes, more man was there.*" (English gloss: 'Yes, other men were there.') It is this question and answer pair on which DC is relying, the implicit suggestion being that several other menacing and potentially violent men, besides those on trial, were present when the incident occurred. Although the witness admits that other men were present, he does not accept (at turn (4)) that they were gunmen. When DC at (5) suggests that the witness had referred to the six men as part of a group of raiding gunmen, the witness (at (6)) indicates his lack of comprehension of the term, *raiding party*. DC suggests at (7) that the witness himself used the term, but the witness intimates at (8) that the term is not within his vocabulary.

In the context of the practice of weaving together question and answer pairs when producing statements, it is conceivable that it was not the witness, but the interrogator in the pre-trial situation, who supplied the description *raiding party of gunmen* in relation to the cluster of men seen by the witness during the incident. This perhaps helps to explain the witness' denial that he used the term despite its occurrence in his statement. It also points to the danger of adopting wholesale the assumption that statements and/or depositions constitute a verbatim (i.e., a faithful or reliable) record of what a witness said. DC seems to ground his insistence that the witness had <u>said</u> there was a *raiding party of gunmen* on the question and answer pair lifted from the transcript of the previous trial. In so doing, DC engages in the kind of conversion from question and answer to narrative format that magistrates sometimes perform when recording depositions. The witness' affirmative response then seems to be taken by DC as confirmation that the witness had told the police that there was indeed a raiding party of gunmen. In the context of such an interpretation, what the witness says thereafter (*more man was there*) is taken by DC as the witness reinforcing the fact that a 'raiding party of gunmen' was present.

There is, however, another explanation in the context of how statements are sometimes constructed. Studies (e.g., Eades 2002; Aldridge 2010) have shown that *yes*-responses and other affirmative responses on the part of witnesses may not always signal concurrence. In light of this, it may be that the witness' response in **Extract 6** ought not to be taken as illustrating agreement. Particularly since the witness indicates his unfamiliarity with the term, *raiding party*, it is possible that he was merely agreeing to having told the police that, in addition to the six gunmen (see turns ((4), (9) and (10)), other men were present. His words, *more man*

was there (at turn (3)) may thus be interpreted as weakening or neutralising the potency of the term, *raiding party,* suggested to him.

The semantic weight of the phrase, *raiding party of gunmen*, is substantially greater than that conveyed in a statement that other men were present, and the defence appeared to have considered this distinction important. DC thus relied very heavily on confronting the witness with words that had been lifted from the 'verbatim' deposition which contained the crucial term. I suggest, however, that in light of how discourse in legal settings is sometimes recorded, it is perhaps unfair to attribute the words in the deposition to the actual deponent or witness. The technique of converting question and answer pairs to a narrative which is then considered to be a verbatim deposition can be risky, especially in situations where speakers of Jamaican who are asked questions in English are likely not to understand some of the language used. Partial comprehension on their part of the question may produce responses which, particularly when encoded in a constructed narrative, ignore significant semantic nuances.

6.3 Whither the plain language proposal?

Proposals genuinely aimed at enhancing public access and comprehensibility of Jamaica's justice system should respond to the country's language situation. It has been shown that the justice system, for reasons of practicality, is already contending with difficulties it encounters where users of the system speak Jamaican and are not very proficient in its official language, English. A variety of arguably valuable responses currently in use have been identified above. However, difficulties have arisen with these responses. One drawback is the random application of the responses. Some, such as speech accommodation and code switching to Jamaican by bilingual court officers, overlook issues concerning individual linguistic competence and established sociolinguistic notions underlying speech accommodation. The data also suggest that code switching may introduce additional complexities, especially surrounding the use of negative questions and the affirmative or negative answers supplied in response to them. It appears too that the way in which statements and depositions are recorded needs to be adjusted in order to minimise difficulties of attribution and comprehension which may be particularly problematic in discourse involving Jamaican-dominant or monolingual speakers.

A plain language approach, involving as it does a shift from a technical legal register to more easily understood linguistic forms, does not take into account the differences between the official language of the legal system, English, and the language of many of its users, Jamaican.

It undervalues the communication trouble that may arise on account of the distinctions between the two language varieties. Consequently, it would ignore the attempts and adjustments currently being made by legal professionals to deal with these differences as well as the communication difficulties that these adjustments may themselves trigger in the discourse. The plain language approach may be said to be just one in a menu of responses which can be useful in dealing with the fact that many members of the public who interface with the justice system are not highly competent in its official language. However, the data and discussion in this paper show that such an approach, by itself, is inadequate given the realities of Jamaica's language situation and the discourse patterns in trials and pre-trial scenarios.

7. Implications for official language policy

It is tempting to resort to the wholesale provision of interpretation to solve interlanguage-related communication problems in Jamaica's justice system. This is, after all, the general legal policy in relation to such situations. The discussion indicates that the adjustments currently taking place in courtroom interaction may be helpful, though there is a need for caution and awareness of potential problems that these adjustments may themselves introduce. A weakness in the adjustments currently being adopted is the lack of universality of their application in all relevant circumstances. While the provision of interpreters in such circumstances would tend to plug this weakness, it is likely to defeat the advantages derived in situations where bilingual persons respond to communication difficulties or failures by code switching to Jamaican. An important advantage of this in legal contexts is the retention of original testimony in the official record.

Apart from the cost considerations involved in the provision of interpretation, the legal system would also have to routinely contend with the problems associated with interpreter intervention. The scale of these burdens, should extensive interpretation be introduced, may not be completely warranted given that there seems to be some success with the adjustments currently made in some circumstances to address the language problem. The challenge then is to find a strategy which would allow the benefits that obtain now to continue, but which would plug the gaps identified above.

Perhaps as a matter preliminary to trial or to preliminary enquiries in which depositions are taken, the court should raise and settle the language issue. The linguistic competence of witnesses, the accused, counsel and judge/magistrate should be determined. It should also be ascertained whether bilingual counsel and judge would be willing to use

Jamaican where it becomes necessary in courtroom interaction with witnesses and the accused. An agreement to proceed on the basis of the bilingual competence of the court officers (lawyers, judges) would bind the parties to make the relevant adjustments, and the judicial officer would function as an arbiter in ensuring that there was no exploitation of language-related disadvantages. In situations where language competences do not overlap or where the relevant persons are not willing to code switch, then an interpreter should be provided for the particular speech event. Because of the special position of the accused, it would be useful to explore the possibility of providing a communication facilitator who would be instrumental in assisting the accused throughout trial with any language related comprehension problems. Such a facilitator is likely to be particularly useful in those speech events during trial which tend to occur routinely in English.

A requirement that courts consider the treatment and management of Jamaican-speaking witnesses and accused persons in the court process is perhaps best supported by a change in the official language policy within the justice system. Adopting an official bilingual policy for the system provides a legitimate framework for the kind of linguistic management that this paper proposes. Such a policy would signal institutional acceptance of Jamaican as a language of the system, provide official sanction for the practices regarding language now being used by some court officers, and authorise the systematic adoption of the bilingual approaches currently used on an *ad hoc* basis. It would also allow for considered treatment of problems of access and comprehensibility that are grounded in the diglossic nature of Jamaica's language situation.

Where an interpreter is used, the question arises as to which language variety is to be represented in the record. Because of the primacy of the original testimony and the fact that linguistic nuances are sometimes not translated or are impossible to translate, I suggest that both the original and interpreted versions should form part of the record and that, in the event of disputes, the original version produced by the witness or accused should be the authoritative one. This would apply equally to questions and utterances made by attorneys and judges which have been interpreted.

I believe that the official adoption of a bilingual approach would set the stage for resolving problems encountered by the justice system that relate to corpus issues for Jamaican. It may be that some statement—or deposition—takers generate these documents or parts of them in English because their literacy in Jamaican is not developed. Linked to this is the fact that there is no popularised systematic way of writing Jamaican. In personal communication with the author, a court reporter working in the courts in Jamaica confirmed that one of the hurdles in

producing Jamaican text in transcripts is that the reporters do not have available to them a consistent way of writing the language. The transcripts from which the data for this study are taken have revealed several orthographic representations of Jamaican morphemes. For example, in **Extract 1** *mi* is used to represent Jamaican first person singular subject, and in **Extract 5b** this morpheme is represented as *me*.

Despite the challenge posed by the absence of a popularised consistent writing system for Jamaican and the attendant underdeveloped literacy in it, the data have shown that efforts are made to represent Jamaican speech in writing. This is likely to be connected with the overwhelming need in the justice system for verbatim records in relation to many aspects of court proceedings and the importance of authenticity, including linguistic authenticity. I suggest therefore that the justice system could be better served by a change in language policy which addresses the Jamaican language corpus issue. The adoption of a consistent writing system and the training of personnel in the use of the writing system would resolve orthographic disparities in the ways Jamaican words are currently being represented. It is also likely to facilitate a reduction in the tendency to anglicise depositions and statements given by Jamaican monolingual or dominant speakers. This tendency itself may generate doubts concerning attribution and the authenticity of these documents. Depositions and statements produced by Jamaican monolingual/dominant speakers would thus be recorded in Jamaican even when narrativised from question and answer pairs. Though difficulties of conversion or translation may arise in generating these narratives,[15] one important advantage is that when these documents are read back to the deponent or statement maker, as routinely occurs, the language variety is understandable and familiar to them. This puts Jamaican speakers in a better position to correct inaccuracies which might have been produced by the statement/deposition taker.

A 2009 handbook produced by the Jamaican Language Unit at the University of the West Indies presents a guide for using a consistent writing system, the Cassidy-JLU orthography, specifically developed for Jamaican. Designed with a view to popularising this writing system, the handbook constitutes a valuable tool for training court personnel in the use of this orthography. No formal training of court personnel in the use of this writing system has yet been undertaken. It is interesting to note, though, that the handbook was produced as a result of a charge to the University's Linguistics Department in 2001 by a former Attorney-General of Jamaica to carry out the language planning work that would lay the practical foundation for the introduction of a constitutional guarantee of non-discrimination on the ground of language (Brown-Blake 2008:32-33).

Orthographic development is just one of a number of corpus issues that needs to be settled. A second involves the selection and codification of a variety of Jamaican for use in the production of a text for subpoenas and other court forms, and the development of a style appropriate for such documents. Given the variation across basilectal and mesolectal varieties in the continuum, the selection of a variety of Jamaican for this purpose will require language planning decisions about the nature of the particular variety to be used. Formality of style is a key factor in the legal system which seems to depend on this to a certain degree in order to achieve an atmosphere of seriousness commensurate with the nature of court proceedings. Language planners should bear this in mind, both in variety selection and the type of register to be used in legal forms. In addition, lexical expansion of Jamaican would be required if the language is to be used in legal documents like subpoenas. Some of these corpus development issues, such as the creation of a glossary of legal terms in Jamaican, are being tackled by the Jamaican Language Unit.

Perhaps much of the success of the bilingual policy approach that this paper proposes depends on the level of receptivity to such a policy on the part of officers of the court and other personnel in the legal system. The 2005 Language Attitude Survey questionnaire did not address the legal system as a discrete domain for responses. However, the results indicate that significant majorities favour the use of Jamaican along with English in Parliament and the education system. This suggests a measure of public attitudinal preparedness for the adoption of a bilingual approach in public formal domains that include the legal system. In addition, it appears from the pre-trial and court practices discussed above that the legal system has, by its own practices, implicitly recognised that linguistic adjustments are indeed necessary to advance its work and output.

These factors augur well for an official adoption of a bilingual approach. However, given strong residual negative attitudes to Jamaican and its use in public formal situations, it would be useful to sensitise court officers and personnel to communication problems and disadvantages emerging in discourse involving speakers of Jamaican that can affect the dispensation of justice. An important factor that should be addressed is the communication problem surrounding negative interrogation and the ambiguity or uncertainty that results with *Yes*/*No* responses to these questions. Judges, in particular, who have oversight of the judicial process, should be on alert where such interrogation forms have been deployed and should ensure that any uncertainties arising from this form of questioning are appropriately resolved. The sensitisation programme for legal professionals would draw on the fact that officers of the court are already responding to some communication difficulties, and it would encourage the need to systematise and augment these responses.

Some jurisdictions, Wales and New Zealand, for example, have explicitly provided in legislation for the use of a language other than the traditional language of the legal system to be used in courts.[16] This is one way of signalling or even compelling the formal adoption of a bilingual policy in the legal system. However, it might also be useful to explore whether the policy may be implemented in Jamaica without resort, at least initially, to enactments. The non-legislative route seems distinctly possible in Jamaica where there is no explicit *de jure* official language policy.[17] The legislative introduction of a language policy change of the type suggested in this paper may itself spark strong disapproval from the traditionalist minority. This, in turn, may stall a change in policy and attendant benefits for the justice system. It seems clear, though, that if the justice system in Jamaica is to address seriously the Justice Reform Task Force's recommendation for enhancing public accessibility and understandability of the justice process, it must go beyond plain English strategies and adopt a Jamaican/English bilingual policy framework.

Notes

[1] For example, a newspaper article, 'Law trips over the languages', published in *The Gleaner* of 8 June 1996, reported the unavailability of a trained interpreter for a German accused person which contributed to significant delays in the matter being heard. According to the article, this has occurred in several cases involving persons visiting Jamaica from Europe who speak or understand very little English.

[2] In *R v Henry Rivas et ux* RMCA No. 33/2002 delivered December 20, 2002 (unreported) one of the grounds argued for one of the appellants, a Spanish-speaking Venezuelan, was that the interpreter provided at trial was not competent.

[3] For example, in Beryl Bailey's work, *Jamaican Creole Syntax.*

[4] Until 2011, when new fundamental rights provisions in the Constitution of Jamaica were passed into law, the Constitution carried a provision stating that an accused person is entitled to an interpreter if s/he does not understand the English language. This provision was replaced with one (s. 16(6)(e)) which states that an accused has the right to an interpreter "if he cannot speak the language used in court".

[5] Jury Act 1898, s.2(2).

[6] Usually, witnesses in trials give testimony under oath from the witness box. In Jamaica, the law allows an accused person the option to

give a statement from the dock, the designated place for an accused during trial, rather than sworn evidence from the witness box.

[7] A probationer is an offender for whom a court makes a probation order, which allows the offender to be released from custody under the supervision of a probation officer for the duration of the order under certain terms and conditions. Persons convicted of certain types of offences may be given probation sentences instead of sentences of imprisonment.

[8] See for example 'Patois as judicial problem', *The Gleaner*, December 28, 2002 and 'Patois and court woes', *The Gleaner*, January 30, 2003 and 'Patois in the courts', *The Gleaner*, February 3, 2003 p. A5.

[9] Typically in civil trials in Jamaica, no official transcripts are generated by court reporters. Judges, as well as attorneys, will make their own notes of the evidence.

[10] See Cassidy and Le Page (2002:348).

[11] See entry TAKE TIME in Cassidy and Le Page (2002:435-436).

[12] Jones (1999:8-14) discusses the truth-value based and the polarity based answering systems to negative questions.

[13] In *US v Anguloa* 598 F2d 1182, 1185 (1979), the court alluded to this practice, pointing out that the "reporter's transcript can only contain the questions in English and the answers after they have been translated into English" and conceding the difficulty this presented for an appellate tribunal to assess the correctness of interpretations.

[14] See*, Kunnath v The State* [1993] 1 W L R 1315.

[15] It may be that questions are sometimes asked in English. Particularly where answers to such questions are merely affirmative or negative, the statement-/deposition-taker may be inclined to produce narratives in English.

[16] In Wales, the relevant legislation is the Welsh Language Act 1993, and in New Zealand, the Maori Language Act 1987.

[17] A recent constitutional amendment in Jamaica, referred to in note 4, is arguably more accommodative of a policy which contemplates a recognised role for Jamaican. By referring to the 'language of the court' rather than 'the English language' it seems to open the possibility of Jamaican being used as a language of the court.

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Appendix 1: Extract 2a: English gloss

(1) J …When someone does that and I find out and that person says that it is not him and the expert says it is he, then more will be added to whatever he would have gotten [ie a harsher sentence will be given]. Anyway, let me tell you about the second one, unlawful wounding on the 10th of June, Twenty Thousand Dollars or 20 days. Do you know about that?

(2) A No, ma'am.

(3) J Illegal possession of firearm, 23rd September 1997. Do you know anything about that?

(4) A Yes, ma'am.

(5) J You know about that?

(6) A Yes, ma'am.

(7) J You were charged for both illegal possession of firearm and illegal possession of ammunition at the same time and you got five years for the ammunition charge. That was in '97.

(8) A It was in 97 that the trial ended, ma'am.

(9) J Then that's what we are talking about.

Appendix 2: Extract 5b: English gloss

A Yes. One Sunday evening my son was in the front swinging on the ackee tree and my son came back crying. So I asked him what happened and he told me that [name of accused] hit him. So I asked [name of accused] why he hit him. He said they were swinging by the ackee tree. I said, you don't have to hit him, you could have just spoken with him.

Dr. Fernando Picó, S.J. (1941-2017)
Foto cortesía periódico *Diálogo*/Ricardo Alcaraz