

Litigation and Literacy: The Black English Case

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Though it began with far different objectives, the litigation generally known as the "Black English" case ended in July 1979 with a decision that had as its central issue the distinction between spoken and written English. At first, the plaintiff children and their supporters wanted to draw attention to the disparity between school achievement and social class. As has long been recognized, children who are poor and black are less likely to do well in school than children who are not poor and not black. The "Black English" case began in 1977 with the plaintiffs' hope that the courts would address that issue.

Since it was opened in 1969, the Martin Luther King Junior Elementary School in Ann Arbor has been a model of what many parents and children hope their schools will be. Housed in a handsome, modern building in a suburban setting, the school is a racial mirror of the Ann Arbor community. In 1977, 13% of its 500 students were Black, 7% Asian and Latino, and 80% white. Some children live in University of Michigan student housing, and many of them speak a language other than English at home. Children of students at the University of Michigan live in an environment where school and school values are highly prized: their parents have profited from education, whether in the United States or abroad, and most are working toward post-graduate degrees at the University. Children from the student housing area generally do well at King School and add interesting diversity to its population.

The majority of students at King come from affluent homes. Most of the housing in the immediate neighborhood of the school was constructed after 1970, when single-family houses began to be constructed on a lavish scale. One school administrator described his feelings during a visit to King School on a parent's night: the casual, after-work clothing of the parents, he said, was more elegant than his professional garb, and he liked to arrive early so he would not suffer the comparison between his well-used automobile and the "second cars" of the King parents. A central figure in the Black English case, this administrator had grown up in a large family in a poor urban neighborhood; but he did not recognize poverty because all his school friends came from similar circumstances. Even with a doctoral degree and a salary of \$30,000, he felt acutely the difference between his income and that of most King parents.

As a consequence of affluence, many King School children have taken vacations throughout the United States and Europe. Their homes are well-supplied with books and magazines; most of them have visited museums, attended

theatrical productions and athletic events; they feel at home throughout the Ann Arbor community; and are eager to learn in school, where they find parent volunteers to help them with extra tutoring, should they have difficulty, and a rich variety of extra-curricular scouting and club activities.

One group of children is a dramatic exception to the general pattern of affluence among students of King school: children from the "scattered site" public housing development located within the King boundaries. All of the children from this project are Black; most of them come from single-parent families; nearly none of them has had either "enriching" travel or the resources in the home that are routinely available to their schoolmates. Since the housing project is isolated from surrounding residential neighborhoods by a four-lane highway with no nearby traffic light, small children from the project are unlikely to have spent much time visiting and being visited by children they meet in school; and are less likely to participate in scouts or clubs. They do play regularly, of course, with their neighbors in the project, those with whom they share common experiences and a common language, Black English.

Parents from the housing project have typically not completed secondary school, and at least some of them regard the schools with a mixture of fear and animosity. But a few of the parents place a very high value on education and see it as a means by which their children may escape from the cycle of poverty. Most of them, like the school administrator, are daunted by the affluence that prevails at parent-teacher meetings, and they are sometimes reluctant to press teachers for explanations of decisions made about their children's educational progress. Since designating children for special treatment opens opportunities and resources for extra help, the school moved to "label" many of the project children in the hope that extra assistance would improve their performance. Of the fifteen plaintiff children in 1977, three were categorized as "learning disabled" and two were identified as "emotionally impaired." Still others were being given speech therapy or experienced extra help from community volunteer tutors. Because their children were not doing well in school, despite the special attention given to them, four parents from the project accepted the help of the Student Advocacy Center and Michigan Legal Services Corporation in bringing the "Black English" suit in 1977. The schools, they felt, *could* help their children; the litigation would compel them to do so.

In 1978, after a series of legal maneuvers, the federal district court denied those arguments brought by the plaintiffs that

would oblige the schools to eliminate "cultural and economic barriers." Nothing in the cited statutes, wrote Judge Charles W. Joiner, required schools to address the disparity between the affluent majority and the impoverished minority in the King School population. With that intermediate decision, the issue of "Black English" emerged as the principal issue to be litigated.

In 1972, as part of a series of amendments designed to eliminate busing for racial balance, President Nixon had sent to the Congress a series of prohibitions concerning the denial of equal education opportunity, among them "the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." Eventually enacted into law in 1974, this provision was not immediately cited in suits brought on behalf of children whose "language barriers" impeded their educational progress. Most court decisions concerned with bicultural and bilingual education followed a different tradition, usually the "Lau Guidelines" that were issued by the federal government as a consequence of the Supreme Court's ruling that special help must be provided for children entering school with "no knowledge of English." The legislative history of the statute invoked in the Black English case did not specify precisely what "language barriers" were to be "overcome," and the Ann Arbor case was one of the first to provide a judicial interpretation of the language of that law.

In deciding in favor of the plaintiff children, Judge Joiner recognized that they suffered from the effects of "language barriers." As testimony by experts and the children themselves made clear, the children from the project used Black English in the home and in speaking to friends. It was the spoken language in which they were "most comfortable." In school, the children had variously mastered the skills of "code-switching" that enabled them to speak in a more formal style of Black English generally intelligible to their teachers, a variety of English sharing some features with nonstandard varieties held in low esteem by most educators. While placement tests were not a major subject of argument in the case, specialists at King School had made use of tests that increased the likelihood that the children from the project would be given speech therapy or labeled "learning disabled" or one of the other categories that would lead to their being given "special treatment."

In working with small children, teachers are confronted by the differences between spoken and written English in a way that is different from the issues presented to teachers of older children and adults. When tested for reading readiness and "special needs," young children can be reached only through their ability to articulate in speech their responses to oral and visual stimuli. Teachers who are unfamiliar with Black English or other varieties of English that differ systematically from their own speech must be particularly sensitive to the difference between "errors" or "miscues" and the systematic features of language that differentiate dialects. This distinction is even more crucial for reading teachers who assist children in discovering the "alphabetic

principle" of our written language. The "language barrier" identified in the Black English case consisted, then, of two parts: the use of Black English by the children and the uncertainty of teachers in interpreting the English they heard from these children in their classrooms. As Judge Joiner recognized, "the problem in this case revolves around the ability of the school system, King School in particular, to teach the reading of standard English to children who, it is alleged, speak 'Black English' as a matter of course at home and in their home community."

As Lee Hansen explains elsewhere in this issue of *forum*, the remedy designed by the Ann Arbor schools in response to the Judge's opinion involved in-service training for teachers to make them aware of the feature of Black English and the interactional styles that promote good learning. As one of the children said in interviewing her younger brother, the issue ultimately resolves itself to the answers to these questions: "Do you be respectin' your teachers?" "Do your teachers be respectin' you?"

The main source of argument and ruling in the Black English trial involved the interpretation of the statutory phrase, "language barriers that impeded education opportunity." Less noticed, however, is the fact that the defendants in the case were not school personnel but the Ann Arbor Board of Education. The decision rested on the Board's responsibility as an "educational agency" to provide teachers with current "knowledge" that bears on the ability of educators to open educational opportunities to all. As a precedent, the case has implications for Boards and administrators: they must make good faith efforts to keep teachers abreast of ideas and innovations that will make education more effective.

In his decision, Judge Joiner noted that the remedies to the problems raised in the case "involve pedagogical judgments that are for educators and not for the courts." Presumably, any reasonable course of action proposed by the Ann Arbor School Board in response to the decision would have been accepted by the court. A more recent case involving "language barriers" — *U.S. v. State of Texas* (506 F. Supp. 405 (1981)) — mandates a more stringent standard: the "appropriate action" must be effective. As the court said in the case, "good intentions are not enough. The measure of a remedy is its effectiveness, not its purpose." The Black English case, then, is part of an emerging interpretation of a statute that will profoundly affect teacher training and in-service programs, our understanding of the nature of "language barriers," and the means by which we provide equal educational opportunity for all children.

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Major documents involved in the Black English case and important interpretative essays by educators and community leaders are gathered in *Black English and the Education of Black Children and Youth*, edited by Geneva Smitherman. The book is available for \$8.00 from the Center for Black Studies, Wayne State University, Detroit, Michigan 48202.