

## RACIAL IDENTIFICATION BY SPEECH

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The second voice that you heard sounded like the voice of a black man; is that correct? [Christopher Darden, *California v. Orenthal James Simpson*]

Racial identification based on speech captured public attention during the O. J. Simpson trial in 1995, when Simpson's African American attorney, Johnnie Cochran, objected forcefully to the assertion that one can deduce racial identity from speech.

Mr. Darden: When you heard that voice, you thought that that was the voice of a young white male, didn't you?

Mr. Cochran: Object to the form of that question, your Honor.

Judge [Lance] Ito: Overruled.

Mr. Cochran: Speculation, conclusion.

Judge Ito: Overruled.

Mr. Cochran: How can he tell if it was a white man, your Honor?

Judge Ito: Counsel, overruled.

In 1999 the Supreme Court of Kentucky enlisted linguistic profiling to convict an African American appellant who had been overheard by a white police officer. At the trial, Officer Smith testified that, as a police officer for 13 years who had spoken with black males on numerous occasions, he believed he could identify one of the voices that he had heard as that of a black male. On cross-examination, the following colloquy occurred between Smith and defense counsel:

Defense counsel: Okay. Well, how does a black man sound?

Smith: Uh, some male blacks have a, a different sound of, of their voice. Just as if I have a different sound of my voice as Detective Birkenhauer does. I sound different than you.

Defense counsel: Okay, can you demonstrate that for the jury?

Smith: I don't think that would be a fair and accurate description of the, you know, of the way the man sounds.

Defense counsel: So not all male blacks sound alike?

Smith: That's correct, yes.

Defense counsel: Okay. In fact, some of them sound like whites, don't they?

Smith: Yes.

Defense counsel: Do all whites sound alike?

Smith: No sir.

Defense counsel: Okay. Do some white people sound like blacks when they're talking?

Smith: Possibly, yes. [*Clifford v. Kentucky*, 7 SW3d 371 (Ky 1999)]

In his ruling opinion, Justice William S. Cooper of the Supreme Court of Kentucky noted that “an opinion that an overheard voice was that of a particular nationality or race has never before been addressed in this jurisdiction.” Citing *People v. Sanchez* (492 NYS2d 683 [NY Sup Ct 1985]), Cooper noted that “a lay eyewitness to a fatal shooting was permitted to testify that immediately prior to the shooting, he overheard the victim and the killer arguing in Spanish, and that the killer was speaking with a Dominican, rather than a Puerto Rican, accent.”

Returning to the Kentucky case in question, Cooper observed that “no one suggests that it was improper for Officer Smith to identify one of the voices he heard as being that of a female. We perceive no reason why a witness could not likewise identify a voice as being that of a particular race or nationality, so long as the witness is personally familiar with the general characteristics, accents, or speech patterns of the race or nationality in question, i.e., so long as the opinion is ‘rationally’ based on the perception of the witness.” Thus far, *Clifford v. Kentucky* affirms the legality of racial identification based on speech by a lay witness.

Whereas RACIAL PROFILING is based on visual cues that result in the confirmation of or in speculation concerning the racial background of an individual or individuals, LINGUISTIC PROFILING is based upon auditory cues that may be used to identify an individual or individuals as belonging to a linguistic subgroup within a given speech community, including a racial subgroup. Hearers frequently practice linguistic profiling, including drawing racial inferences from small amounts of speech (Purnell, Idsardi, and Baugh 1999). Cooper asserts that laypeople can indeed confirm the race or nationality of an individual based on his or her speech, whereas Simpson’s attorney protested that basing racial identification on speech is overtly racist and should not be permitted in a court of law. Although Cooper accepted that many laypeople draw racial inferences from speech, many defendants in housing discrimination or insurance redlining cases deny that they can make any determination of the race or ethnicity of prospective home buyers or tenants based on speech during, say, telephone conversations.

Linguistic profiling has been accepted as legal in some instances and illegally discriminatory in others. The U.S. Supreme Court has yet to rule on linguistic profiling *per se*.

I have intentionally focused on the United States in this discussion, but there is abundant evidence that linguistic profiling is both global and ancient. Based on our keen auditory skills as a species, I believe that linguistic profiling will exist as long as human language exists. The challenge is to have the wisdom and patience to tolerate others whose linguistic backgrounds differ substantially from our own—to accentuate the benefits

of preferential linguistic profiling while discarding the tradition of discriminatory linguistic profiling that fans the embers of racial discord, to the detriment of fairness.

#### NOTE

This essay, demonstrating the potential legal implications of identifying a speaker's race on the basis of speech, is part of a larger research project with collaborators Thomas Purnell and William Idsardi. I am also grateful to Shanna Smith and Robyn Webb-Williams of the National Fair Housing Alliance for their encouragement and enduring faith. Research on this and related topics has been supported by funding from the Office of Educational Research and Improvement, the United States Department of State, the Austrian Academy of Science, and the Center for Applied Language Studies and Services in Africa at the University of Cape Town, South Africa.

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