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BAD BOY BIAS: LINGUISTIC BIAS IN THE LAW

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Abstract

This paper seeks to establish and put in use methodology capable of analyzing the significant linguistic bias found within American jurisprudence. It summarizes the limited preexisting empirical work done and adds a new original empirical study on linguistic bias in the courtroom. It examines a large number of cases through various software and examines the prevalence of certain labels (badges of bias). In doing so, this paper seeks to find the most common labels and seeks to determine the amount of emotional variability present within the courtroom. Based on these results, the paper provides recommendations, answering how best to efficiently minimize the effects of linguistic bias on jury impartiality.

The topic of bias has plagued American jurisprudence since the birth of the country. Significant biases color the decision-making process for every individual, and, unfortunately, “nothing magical happens when people enter a courthouse to serve as [legal officials]—those biases come through the doors with [them]” (Smyton, 2019). Although many individuals have acknowledged the biases within the American court system, only recently has courtroom bias become a major point of contention. Confidence in the U.S. Supreme Court and the criminal justice system are each down four points since 2020 and remain below their 2019 levels (36%; Brenan, 2021). That dour note comes from Megan Brenan, data analyst and research consultant from Gallup polls. Despite institutional trust being at lower levels partially because of the COVID-19 pandemic, there has been a consistent decrease in the American public’s institutional trust over time. According to long-term tracking by Gallup, average confidence in 14 various institutions continues to lag behind where it has been historically (Brenan, 2021). The numbers presented by Gallup may, in fact, be slightly optimistic, as other pollsters have found the number of Americans who have faith in the judicial system to be significantly lower.

A study conducted by Willow Research (2019) found that “only about one-third of Americans today express confidence in the courts and the judiciary in general”. Although there are several reasons for this low number, many of the individuals in the article cited the belief that “poor and minority individuals are at a disadvantage” as the reason for their lack of faith (Willow Research, 2019). This apparent distrust felt by the American public has sparked a movement to bring forth
significant judicial reform. Although this movement may not spark significant institutional change, it can, at the very least, increase the number of appeals and motions made within the courtroom. Some lawyers already make motions to challenge the verdicts of their trials, but it is not a guaranteed practice. Specifically, attorneys may make motions to amend, alter, or vacate verdicts when they believe the verdicts are contrary to the law, contrary to the weight of the evidence, unfair, or impartial (US Legal, 2022). There has been a sharp rise over time in the number of motions to set aside or motions for a new trial (Figure 1), with motions approaching a stable number over the course of the past two decades (Figure 2). Construction of these charts was done by setting a range in LexisNexis for the search phrase and then manually inputting the results into a graph.

Figure 1. “Motion to Set Aside” or “Motion for a New Trial,” 1766–2022

*Note:* Data came from searching “Motion to Set Aside” OR “Motion for a New Trial” in LexisNexis through various year ranges.
Evidence of Decreased Institutional Trust

Every incidence of an appellate opinion that contains the search criteria of “Motion to set aside” or “Motion for a new trial” corresponds to an individual case. Regarding the few times in which a case has been tried multiple times, LexisNexis and this paper would count it as a separate unique case owing to the fact that the new trial would not be identical to the prior, with unique evidence, motions, and testimony. Unfortunately, it is too early to determine the effects of decreased public trust in the courts on the number of motions and appeals made over time. In fact, relatively little work has been done to construct a complete picture of the courts’
current and historical processing of claims of alleged bias: how often biased language occurs, how motions and appeals are made as a direct result, how many motions and appeals are granted, and ultimately how those claims are resolved in court. This paper begins to fill these gaps in knowledge by gathering existing empirical work from the past two decades: the forms in which bias occurs and the effects of bias on various judges and juries. It also adds a new original study of the analysis of the types and results of bias in specific cases made within various U.S. circuit courts over a 70-year period (1945–2021). Unfortunately, none of this work is recent nor comprehensive enough to foment a clear understanding of bias within American jurisprudence; however, the research synthesized here enables an assessment of our legal system’s historical performance in addressing the problem of linguistic bias. It also provides an empirical method for the continued analysis of the court system’s ability to detect and mitigate linguistic bias in the courtroom.

**Paper Synopsis**

This paper roughly assembles the previous data on linguistic bias within American jurisprudence, then addresses the legal history of bias within the court system. It further addresses the types of bias most addressed within research and presents available data on the collection of cases with biased language; furthermore, the paper reviews previous empirical work on the courts’ handling of accent bias and racial bias more generally. Additionally, the paper describes the methodology and results of the Bad Boy Bias study, which looked at specific cases from 1945 to 2021. Finally, the paper concludes by discussing the implications of the available data on courtroom proceedings and seeks to provide general recommendations that can be implemented by judges to limit the presence of bias within their courtrooms.

**The Legal Framework and Incidence of Biased Language in Jurisprudence**

When the U.S. Constitution was ratified on June 21, 1788, it articulated a set of broad-reaching goals and standards, such as “in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed” (U. S. Const. amend. VI). Essentially, this amendment enforced the notion that the jury must not have any partiality and that the jury must not favor one party more than another and must be unprejudiced, disinterested, equitable, and just. As stated within the sixth amendment, the jury must remain impartial, which, “refers to a jury which is of impartial frame of mind at beginning of trial, is influenced only by legal and competent evidence produced during trial, and bases its verdict upon evidence connecting the defendant with the commission of the crime charged” (Garner, 1999, p. 752).
The responsibility of ensuring jury impartiality largely rests on the prosecutor and defense attorney and is accomplished by examination of jurors during voir dire through questioning. If a prospective juror demonstrates the presence of material bias, which amounts to having certain preconceived notions about the trial, that juror can be disqualified and eliminated from the pool of prospective jurors. To thoroughly examine the possibility of bias, trial courts may question jurors sua sponte or in response to a motion, and some jurisdictions allow for prospective jurors to be questioned directly by the parties or their attorneys. Questions propounded on prospective jurors must have a nexus to a potential material bias or an inferred potential material bias. For example, in *Ham v. South Carolina* (1973), the defendant was a Black activist who presumably protested against non-Blacks. In setting aside the guilty verdict, the U.S. Supreme Court held that questions related to racial bias were material but questions related to the defendant’s beard were not. Furthermore, generalized social group biases can be rapidly and unintentionally transmitted based on observational learning from nonverbal signals; essentially, if the jury consists of a large number of the same type of people, privy to the same biases, it can constitute the possibility of material bias. A potential material bias that can be reasonably described and linked to one of these categories will most likely support a demand to question these prospective jurors, but trial courts generally assume that prospective jurors are not biased or that prospective jurors’ biases are not material. The impetus behind this assumption lies in the fact that many trial courts are concerned that questioning prospective jurors may create biases or intensify biases that would not have been material if not for the questioning. It is here that this research is most significant. The results from researching these various biased terms in legal texts can serve to inform trial courts of areas of potential material bias that, until this point in history, have been hidden or disregarded as immaterial when, in fact, they are present and material.

Examples of Bias in American Jurisprudence

A recent example of these biased terms being mentioned in American jurisprudence occurred in the Kyle Rittenhouse trial. Kenosha County Judge Bruce Schroeder disallowed the use of the word *victims* to refer to those who were shot by Rittenhouse, instead ordering that other words, such as *rioters, looters, and arsonists*, could be used instead. Schroeder said that “the label ‘victim’ is a ‘loaded word’ and that even the use of ‘alleged victim’ is too close, telling prosecutors that ‘complaining witness’ or ‘decedent’ are acceptable alternatives” (Ortiz, 2021). It is these types of terms that the Bad Boy Bias seeks to address; Schroeder implied that words such as *victim* represent a significant opportunity for preconceived biases to color the jury’s decision-making process. The use of the word *victim* could have been used to foment a type of anchoring bias on behalf of the jury; in this hypothetical, they could have relied too heavily on an anchor (*victim*) and, in doing so, allowed their judgment to be
skewed and used *victim* as a starting point on which to base their judgment. This notion is further confirmed because “anchoring can even influence courtroom judgments, where research shows that prison sentences assigned by jurors and judges can be swayed by providing an anchor” (Chapman & Bornstein, 1996).

Despite the increased attention and awareness around bias in American jurisprudence, the issue went largely unaddressed via meaningful legislation until 2012, when the landmark U.S. Supreme Court case of *Williams v. Pennsylvania* held that a risk of judicial bias was constitutional. In *Williams*, the chief justice of the Pennsylvania Supreme Court, Ronald Castille, refused to recuse himself from a case in which he had a “significant personal involvement” (Wydra & Gorod, 2018). Castille had served on the prosecution team, and it was found that a trial prosecutor in Williams’s case had committed *Brady* violations (suppressing exculpatory evidence, in violation of the case *Brady v. Maryland*). As such, the Pennsylvania Appellate Court stayed Williams’s execution and ordered a new sentencing hearing. It was asked that the Pennsylvania Supreme Court, whose chief justice was former District Attorney Castille, vacate the stay. Williams filed a response, along with a motion, accusing Justice Castille of misconduct, asking Chief Justice Castille to recuse himself and, if he declined to do so, to refer the motion to the full court for a decision (*Williams v. Pennsylvania*, 2016). The accusation of misconduct on appeal was, unsurprisingly, thrown out by Castille, castigating Williams’s defense attorneys in the process. Essentially, without explanation, Castille denied Williams’s motion for recusal and the subsequent request for its referral, after which he joined the Pennsylvania State Supreme Court opinion vacating the appeals court’s grant of penalty-phase relief and reinstating Williams’s death sentence. Specifically, because of Chief Justice Castille’s authorization to seek the death penalty against Williams, this amounted to significant personal involvement in a critical trial decision, and Castille’s failure to recuse himself from Williams’s case presented an unconstitutional risk of bias. This landmark case represented the first meaningful major case law that would lead toward the goal of an unbiased court system. Christina Ford, the author of an article on *Williams v. Pennsylvania*, stated, “The court’s decision help[ed] to ensure that our justice system is an impartial one” (Wydra & Gorod, 2018). Unfortunately, despite the landmark decision, incidences and claims of bias continued to rise throughout the late 2010s and early 2020s.

The “Black Box” of the American Judicial System

Despite claims of bias stabilizing in recent years, they remained historically high despite increasing instances of case law like *Williams* and increased public scrutiny. (See Figure 3.) When discussing the incidence of bias in the courtroom, the most easily accessible source of information is appellate opinions found in databases such as LexisNexis (now known as Nexis Uni). These cases provide a summary of what happened in the courtroom, including motions, appeals, and other points of
interest; they are extremely useful in providing evidence and justification for any
decisions made during the trial. The other public alternative is PACER (Public
Access to Court Electronic Records). This electronic system provides access to
judges' orders as well as to pleadings and other documentation related to the courts'
dockets. PACER is not easy to search, however, with it acting as a sort of “black box”
to the inner workings of the American court system. Researchers who use the federal
database engage in the time-consuming task of combing through thousands of cases
to isolate the relevant ones. To make empirical projects that use PACER more
manageable, researchers tend to focus on particular courts.

Figure 3. Mentions of “Bias,” 1950–2000

Note. Data came from searching “Bias” in LexisNexis through various year ranges.

As a result, it is difficult to get an overall picture of what is happening in trial
courts across the country (Siegelman & Donohue, 1990). The issue, ironically enough,
lies in the fact that these appellate opinions are written by studied practitioners of
the law, which is demonstrated clearly within the case of Settlegoode v. Portland Pub.
Schs (2004). In Settlegoode, biased language was used by counsel during the closing argument of the trial, but it was argued that using some degree of biased language during closing arguments is a well-accepted tactic in American courtrooms. Specifically, it was noted that several of prosecutor Kafoury’s statements were close to stepping over the line, specifically when referring to the defendant, Winthrop, as “spiteful” and “cruel.” It was further noted that it is the job of the counsel to present their client’s case in the most sympathetic light; however, in Black’s Law Dictionary, more generally, biased terms have the potential to sway the jury’s decision because of some previously unaccounted-for material bias. The fundamental issue in American jurisprudence is that biased language is accepted within the courtroom, and as such, the reliability of appellate opinions when searching for incidences of biased behavior is difficult. The individual responsible for writing the opinion may not even mention the biases or biased language because, in their opinion, it was not worth mentioning because its presence had little effect on the outcome of the trial. It is therefore unknown exactly how many instances of linguistic bias occur in the courtroom, what proportion results in charges that go against the weight of the evidence, and which lawyers choose to pursue various methods to mitigate the effect of said language. Certain biased language is being used within courtrooms, however, and the individuals who claim they experienced bias may not be representative of those who were on the receiving end of biased language overall.

Addressing Biased Language: Processes and Data

When someone in the court system believes they are the victim of bias, they are able to file several motions in order to mitigate the effect of it, and this is done through the alleged victim’s counsel. Given the infancy of the field of linguistic legal analysis and the lack of available data, there are no comprehensive figures able to compare the receipts of various motions of bias over time. Ergo, logical assumption dictates that as mentions of bias become common, motions against it would also increase. Turning from these individuals’ inputs to their outputs, there are four general outcomes possible. (The remainder of this section speaks generally, as few data are available regarding the types of motion made and their corresponding outcomes.) Once a motion is made, the presiding judicial officer(s) can either choose to grant the motion or deny the motion, presumably based on the weight of the evidence. When a motion consisting of multiple parts can be partially entertained, the judicial officer(s) can accept or deny the motion in part. If a notice to appeal is made and sustained by the jurisdiction’s court of appeals, then a new trial may be granted; however, this logical path fails to take into account the possibility of an alleged victim receiving ineffective assistance from their counsel. Albeit hypothetical, there are certainly logical grounds for believing that an individual who was the victim of a verdict not in line with the evidence failed to file a notice to appeal because their counsel did not want to or failed to consider that as an option.
The fundamental issue with collecting data regarding these motions and the presence of bias is the lack of available data. Not every court case has a transcript available. Although free-to-use software such as Court Listener exist, they are incomplete and rely on individuals adding to their databases by spending their own money. U.S. policy dictates that all court cases are required to have an audio recording available, and through public software such as PACER, an individual can request to have the court audio recording transcribed into a written document that can be analyzed; however, converting these audio recordings into written documents requires significant sums of money, sometimes upwards of $3.50 per page. Even accessing the already-converted documents in PACER requires paying a $0.10 fee per page. A significant financial burden is thus required to do any sort of thorough analysis of the data, which means that little to no data analysis is done on a large aggregate of cases.

Previous Empirical Work

Accent Bias in the Courtroom

When discussing the previous empirical work done in the field of linguistic analysis in the courtroom, the infancy of the field cannot be overstated. Research into linguistic bias, specifically, is virtually nonexistent. The closest that has been found that holds some relevance to the Bad Boy Bias project was a study done in early 2021 discussing implications for bias stemming from the ways in which stenographers transcribed African American English. The study was simulated through an analysis of the accuracy of the transcriptions created by court reporters when faced with African American English. The experiment featured 13 different features of African American English and combinations of various features (e.g., “she always talkin’ ’bout ’why your door always locked,” which uses “talkin’ ’bout” as a verb of quotation, here analogous to asking, and deletion of verbal copula in the quoted question). The result was a survey instrument of 83 sentences with nine different voices, randomized across speaker, gender, and grammatical features. After the survey instrument was created, 27 court reporters from the official Philadelphia court reporter pool were selected, and they were administered a test consisting of audio at a comfortable, but loud, volume. A warning tone was then played, followed by a second of silence, the audio, another second of silence, a repetition of the same audio, and 10 more seconds of silence, for each sentence (Jones, 2021). They were then asked to transcribe what they heard, with unlimited time to edit and fix their transcriptions.

The results of the test were nothing short of shocking. Pennsylvania court reporters are certified somewhere around 95%–98%, depending on the certifying body, but this study found that no individual court reporter performed at or above 95% accuracy, no matter how accuracy was measured. Measuring by sentence, they
performed, on average, at 59.5% accuracy. Measured by word—closer to how they are evaluated for their certification—they performed, on average, at 83% accuracy. In other words, more than one in three sentences were transcribed incorrectly, and approximately one in every five words were transcribed incorrectly (Jones, 2021). Although paraphrasing is obviously part of the job of a court reporter, it was shown that they fundamentally lacked an understanding of the constructs surrounding African American English. Because of the court reporters altering the sentences in that manner, “31% of the transcribed sentences changed the who, what, when, where, or force of a sentence, effectively, changing an alibi” (Jones, 2021). These findings held true across both racial and political lines, with African American reporters and liberal reporters having no statistically significant advantage over their colleagues. The following policy recommendations were made based on the study: court reporter training should include training in different dialects of English, K–12 education should include more focus on the linguistic basics of dialects, and policy-makers should consider strengthening legal protections against linguistic discrimination.

The implications of this study are staggering. By showing that there is an unstated prejudice in the way reporters, and presumably stenographers, transcribe court cases, the study calls into question the accuracy of the transcripts and appellate opinions found on various platforms such as PACER and LexisNexis. In particular, appellate opinions are sometimes written by court officials reading the transcripts of trials, and Jones’s study brought into light the ability of court reporters to effectively remove or give an individual an alibi. Based on this study, in order to gain a more accurate understanding of what is going on within courtrooms, the future of linguistic analysis in American jurisprudence should be conducted via an analysis of the audio files of court proceedings.

Labeling Theory

One of the goals of the Bad Boy Bias project is to identify the various biased terms being used within the courtroom. The reasoning behind searching for these various badges derives largely from the criminological concept known as labeling theory, which seeks to examine “problems that emerge after the social environment has defined or typified the individual as a deviant” (Bernburg, 2009). Essentially, labeling theory seeks to examine the effects upon an individual and/or the perception of an individual when they have some form of label forced upon them.

Bernburg (2009) sought to examine the processes by which an individual can acquire a label, internal and external perception upon the reception of a label, and the consequences of receiving a label. The study found that acquiring a label can happen in several ways but that nearly all the methods involved an interaction with the state. The state was able to brand the individual as a criminal, deviant, or danger through the individual’s criminal record, or through the individual’s interactions with state
officials while in the corrections system. Bernburg found that receiving a label altered an individual’s perception of themselves and that “a perception [change] of oneself … may lead to a change in self-concept; the person may begin to see him or herself as a deviant person, taking on the role of the deviant” (Bernburg, 2009, p. 191). Essentially, Bernburg found that being given a label as a criminal offender or other similar label tended to trigger processes that reinforce or stabilize the individual’s involvement in crime and deviance, net of the behavioral pattern and the social and psychological conditions.

An individual seeing themselves as deviant or taking on the role of a deviant because of a label forced upon them by the state represents a serious failure of the corrections system. This failure is clearly present when discussing the associated stigma of an individual receiving a deviant/criminal label; Bernburg found that “the stigma attached to deviant labeling can stir up processes leading to exclusion from relationships with conventional others and from legitimate opportunities” (p. 191). Specifically, it was noted that this form of deviant labeling was not unique to individuals who were part of some registry (sex offenders) and was prevalent when analyzing individuals who had some criminal act on their record. This failure is further compounded when considering recidivism, as it was found that “formal adjudication increased the likelihood of recidivism, net of prior record, type and seriousness of the offense, and social demographic factors” (Bernburg, 2009, p. 194).

Obviously, any analysis of labeling theory is subject to the threat of omitted variable bias. The results from any study may be spurious because of important variables being left out of the analysis. Nevertheless, Bernburg’s findings pose several important questions with regard to the role of the state in fostering recidivism and fostering deviant behavior. The presence of these biased terms, or “badges of bias,” either formal or informal, represents a significant failure of the punitive justice system in America and the American legal system more broadly. Although certain suggestions were given within Bernburg’s study to combat the effects of labels, very little was mentioned about preventing their use in the first place.

It is through this study that the goals of the Bad Boy Bias project become more apparent. Despite the inevitability of labels, finding what labels are commonly used within the courtroom may help eliminate traces of material bias in the jury due to their preconceived notions of certain labels, or it may help the court system remove certain labels that will increase an individual’s likelihood to recede into deviant behavior.
Bad Boy Bias in the Law Project

Initial Study Methodology

The Bad Boy Bias in the Law project was conducted in collaboration with the University of Alabama at Birmingham (UAB) College of Arts and Sciences. The research was sponsored through an academic grant provided by the UAB Office of Service Learning and Undergraduate Research. The initial goal of the project was to determine, if American jurisprudence is based on evidence, why phrases like *bad man* and *bad woman* are so prevalent in case law. If the evidence does not prove guilt, for example, what difference does it make that the accused is a “bad” person from the court’s point of view? On the descriptive side, the next step was to determine how the phrases *bad man* and *bad person* were used and in what frequency they occurred. Making use of the legal database LexisNexis, an aggregate of 10,000 cases was created. After preliminary analysis, it was determined that the appellate opinions containing hits for the search phrases *bad man*, *bad woman*, *bad person*, *bad boy*, *bad girl*, and *bad dude* did not discuss biased language in the courtroom as much as they made mention that it was not the job of the prosecutor to portray the defendant as a “bad thing.” As such, the nature of the project shifted; the 10,000 appellate opinions from LexisNexis (Nexis Uni) were discarded and it was decided that, instead, the project would analyze court transcripts to remove the legal jargon that impeded the initial analysis.

Current Study Methodology

The focus of this project was to analyze a sample of available audio files on the Court Listener database to see what bias, if any, occurs and in what form it takes shape; Court Listener was chosen because it is the largest free-to-use database of American court data. PACER was not used in this study because of the financial backing needed to download every transcript in the database.

The previous empirical work done on accent bias drew concern, as it was believed that the stenographer’s transcription may lead to an inaccurate transcript. As such, audio files were chosen because of their inability to be manipulated by human error. In order to extract the audio files, the Court Listener API was modified into an application that can extract the aforementioned files any number of times, across any Windows operating software. In the future, this application can be utilized to extract new audio files uploaded to Court Listener, and it can be modified to extract the available audio or text files from PACER. Running the application resulted in a set of 205 audio files that were each 30–60 minutes long; the audio did not have specific inclusion criteria, but it was found that the audio files retrieved via the application were from the Circuit Court of Cook County, Illinois.
Unfortunately, little to no commercially available audio analysis software exists that can measure things such as emotion, tone, or word frequency. As such, the audio files were then converted into text files through Google Cloud Computing Services, making use of its Speech-To-Text API. After the conversion process, a folder was created containing 205 text files ranging from 20 to 40 pages. Despite the Speech-To-Text API being prone to certain errors resulting from a limited dictionary and garbled audio, it was accurate enough to provide a clear transcription of what was happening in the courtroom. In order to analyze the text empirically, the software Linguistic Inquiry and Word Count (LIWC) was used. Although LIWC is an admittedly crude instrument, it is one of the only commercially available linguistic analysis software and is sufficient for providing an overarching look at the presence of bias within the American court system.

Study Results

All 205 cases present within the Court Listener API were analyzed through the LIWC software for tone, positive tone, negative tone, positive emotion, and negative emotion. Figures 4, 5, and 6 analyze the tone of the transcripts looking at positive tone, negative tone, and overall tone.

Figure 4. Aggregate LIWC Tone Score

*Note. N = 205.*
When discussing the results of the analysis, one must understand exactly where these scores come from. LIWC reads a given text and compares each word in
the text to the list of dictionary words, then calculates the percentage of total words in the text that match each of the dictionary categories. For example, if LIWC analyzed a single speech containing 1,000 words using the LIWC-22 dictionary, it might find that 50 of those words are related to positive emotions and 10 words are related to affiliation. LIWC would convert these numbers to percentages: 5.0% positive emotion and 1.0% affiliation (LIWC, 2022). All scores are therefore the percentage of the number of words associated with the various criteria relative to the overall transcript. As stated earlier, however, LIWC is an admittedly crude instrument; no current capabilities exist by which the LIWC software can determine if a word corresponds to certain emotions given the context of a sentence. For example, in the sentence The defendant is not an angry person, the software would still consider angry as contributing to the negative tone score, despite the speaker’s clear intention otherwise. Despite that, LIWC represents one of the few nonmanual ways to analyze emotional context within a text and is sufficient for determining overarching trends of emotional language and for proving the presence of bias.

What immediately becomes apparent is the similarity between the scores of positive and negative tone. Both scores are within the range of 0 to 3.5, but the positive tone score aggregate given by the LIWC software centered in the range of 1.08–1.62, whereas the negative tone score aggregate centered convincingly in a range of 0.81–1.08. Interestingly, the shapes of the distributions are distinct, with the negative tone having a well-defined mean with the number of scores decreasing as the score gets higher, and the positive tone having a more or less equal cluster from 1.08 to 1.62 and then sharply tapering off. One can assess these results and realize that, in the context of a larger sample of cases, the resulting distributions of positive and negative tone would be roughly equal. Logically, this conclusion follows when one considers the nature of a courtroom, in which, the majority of the time, the defendant is trying to paint themselves in the best possible light and the plaintiff or prosecution is trying to convince the jury that the defendant is responsible for some illegal, therefore negative, action.

The stark difference in the range of the scores when comparing overall tone (Figure 4) to positive and negative tone is most apparent. Note that many LIWC-22 categories are organized in a hierarchical structure. All anger words, by definition, are categorized as negative emotion words, which are, in turn, categorized as emotion words. Also note that the same word may be categorized in multiple dictionaries. For instance, the word celebrate is in both the positive emotion and achievement dictionaries (LIWC, 2022).

With this knowledge, the reason for the disparity is clear. Within the LIWC-22 dictionary, several words can contribute to the tone of a statement, without being classified as positive or negative. The shape of Figure 4 resembles a positively skewed distribution; there is a well-defined mean, and the mode and median are less
than the mean, which means there are some extreme cases in which the tone of the specific transcript is an outlier from the tone of other cases.

Noting that some words were categorized into several different places, the next question pointed to the emotional context of the cases. The trends established in the aggregates could associate positive tone with positive emotion. As such, the cases were run through the LIWC software again, this time with the intent to analyze the emotional content of the cases. Figures 7 and 8 show the distributions of positive emotion scores and negative emotion scores.

Figure 7. Negative LIWC Emotion Score

*Note. N = 205.*
Unlike the positive and negative tone score distributions, there are several differences apparent within the positive and negative emotion distributions. Positive emotion has a significantly smaller range than negative emotion: 0–0.55, as opposed to 0–1.65. The similarities between these two scores, although not particularly shocking, do hold a glimmer of hope for American jurisprudence. On average, all cases within the sample had an emotional score, either positive or negative, less than 1, meaning less than 1% of all words used within the courtroom were considered to be emotionally weighted in some way. Both of these distributions are positively skewed, which makes sense. It is infinitely more difficult to ensure objective language than it is to allow any form of language within a courtroom. The trends across both emotion distributions are similar to those of their respective tone distributions, which shows that there is some correlation between the tone of speech in a courtroom and the type of emotional language used. At the very minimum, the fact that, in both cases, emotional scores are nowhere near as high as the tonal scores shows that emotional variability is somewhat reduced. The apparent bias found via these scores must be addressed in order to ensure an objective courtroom, however.

Finally, the overall emotional score of the cases was measured (Figure 9). Similar to Figure 4, Figure 9 seeks to measure the overall emotion present within these cases, rather than trying to show some form of emotional tilt. As stated previously, within the LIWC-22 dictionary, several words can contribute to the emotion of a statement without being classified as positive or negative. As such,
Figure 9 provides an insight toward the amount of emotional bias used within courtrooms, along with an understanding of the amount of emotional variability in a case beyond that provided by positive and negative emotion.

Figure 9 provides a distribution similar to those provided by Figures 7 and 8. The distribution is clearly positively skewed, but there is no well-defined mean as seen in Figures 7 and 8. The reason for this lack of well-defined mean is most likely the result of certain words not classified as positive emotion or negative emotion being present within these cases. The mean thus exists between the values of 0.28 and 0.80; on average, less than 1% of the language within these cases was construed as having some form of emotional bias. Given these results, the next step was to see if there were any similarities between the types of language used within these cases. As such, a composite text file containing the entire data set was made.

The composite text file was run through PDF Word Count & Frequency Statistics Software, which created a word frequency chart. After removing the noise (words such as the, a, for, and so on) from the analysis, a word cloud (Figure 10) was generated. Notwithstanding dozens of other words that could have been included, these 20 were the most common, mentioned and repeated in sufficient concentration to justify their inclusion.
Study Results: List of Biased Terms

Although word clouds do not provide sufficient information to support a detailed analysis, they nevertheless provide some access to the text’s main themes. Arguably, the word *risk* may not be justified in being included in the results, but upon closer examination, it was found that *risk* was occasionally used in the context of describing an alleged offender as a risk to a community or society. *Criminal*, while arguably one of the most used labels present within Figure 10, can evoke certain emotions—especially if someone is referred to as a criminal in reference to any prior crimes committed. The suggestion provided would be for judges to ensure that prior
crimes committed by an individual cannot be referenced unless directly relevant to the case, such as establishing a modus operandi. If a person is referred to as a criminal in the context of the ongoing trial, it should always be prefaced by alleged, as the standard of law for the accused in American jurisprudence is “innocent until proven guilty.”

The word reasonable appears slightly less than criminal. Although reasonable can be used within the context of proving someone guilty beyond a reasonable doubt or reasonable suspicion, there were some overtures made toward the defendant being a “reasonable” individual who would never commit the crimes in question. Given the ubiquitous use of reasonable within the courtroom, combined with its embeddedness in legal application, simply disallowing the word from being used would not be practical. Instead, an approach can be implemented by which individuals within the court are requested to avoid using reasonable to describe an individual, thereby limiting it to its intended legal function.

Aggravated follows a similar train of logic to reasonable; it can be used to describe an individual or can be used alongside various courtroom terminologies, such as aggravated assault. The suggestion to avoid the bias created by this badge of bias would be exactly the same as the suggestion for reasonable. Every following badge of bias follows the train of logic established by criminal, reasonable, and aggravated: ordinary, danger, willful, rational, irrational, predator, violent. Of the aforementioned terms, predator has the highest amount of emotional weight in the LIWC-22 system, being associated only with negative tone, and is the term most likely to sway the jury against an individual, especially if the individual fits into the stereotypical image of a predator. As previously stated, every term within Figure 10 was present across at least four cases. Retrospectively, predator as a badge of bias may have been a product of the limited sample size, but the results are clear: bias is present within the courtroom.

What, then, does this all mean for current American jurisprudence? More specifically, what are the implications of these results, on top of the aggregated results of previous research, for the enforcement of the law, for the supposed impartiality of the courts, and for the prospects for real and lasting judicial change?

Conclusion

This paper sought to summarize any available research in the field of courtroom linguistic analysis, along with laying the groundwork necessary to analyze large caseloads, transcripts, and audio files going forward, but the data set analyzed was so small that there could be significant sources of bias not even explored within the context of this paper. The field of linguistic analysis is in its infancy. This paper has established the first steps toward concrete methods of analyzing any language in the courtroom and is easily applicable to the larger data sets that the project intends
to analyze going forward, the impetus behind this being that potential biases must be identifiable and articulable before they can be addressed within the courtroom.

When discussing the impartiality of the courts, the data show what many have suspected for a long time: Courtrooms are extremely susceptible to bias, bias does occur, and it can occur in the form of various labeling and emotional-manipulation techniques. This does not even address the implicit bias that occurs when prosecutors offer nearly every individual a plea deal. Many are likely to take the deal, despite not being guilty, out of fear of a harsher sentence or an inability to pay the court costs necessary to launching a solid defense. The study conducted on court reporters’ ability to accurately transcribe African American English shows that even with the transcription process, bias occurs. As such, certain policy recommendations must be addressed.

The proposed policy recommendations as presented within this paper are meant to be very broad, simply because of the lack of data available in the Bad Boy Bias study. The first recommendation is to place significant emphasis on the reason for trial proceedings. When considering a motion to alter the proceedings, the judge must ask themselves why this motion was made, how the decision will look to an individual in the courtroom, and how the jury, and therefore the trial as a whole, will be affected by this change. The second recommendation is this: Accepting biased language, specifically within closing arguments, should no longer be tolerated. As stated within the appellate opinion of Settlegoode v. Portland Pub. Schs (2004), the opinion mentioned that biased language was used by counsel within the closing argument of the trial. However, it was further stated that using some degree of biased language during closing arguments is a well-accepted tactic in American courtrooms. Simply put, this can no longer continue. If the courts wish to regain their impartial status, significant efforts must be made to establish that charged and biased language can no longer be used within a trial.

A judge must remind the prosecution and defense that the case is meant to be based on the evidence alone, and linguistic flair cannot be tolerated. Labeling can no longer be tolerated, either; Figure 10 provides a list of labels that have been commonly used in various courtrooms. The effects of labeling theory, as presented in the paper published by Jón Gunnar Bernburg (2009), shows that these labels can have severe effects on the lives and futures of those unfortunate enough to receive them. In order to promote a less-biased jury and a more-justice-oriented courtroom, these labels and their associated phrases must be avoided at all costs.

Ultimately, a large portion of this responsibility must fall on the judge as the person responsible for managing the proceedings of a trial. The judge must make sure to keep an extremely alert ear for anything that can be construed as biased, and they must ensure that the jury will not be significantly altered by the presence of biased language. Simply put, the notion that biased language has no effect on the outcome
must be dropped altogether if the court wishes to establish itself as the nonpartisan, unbiased entity it once was.

Modestly, this work might be informative, designed to spread accurate legal knowledge about concepts of bias and due process. More ambitiously, this work might also be definitional, moving toward a communal understanding of the inner workings of American jurisprudence. Finally, and most ambitiously of all, this work could be transformative, whereby one acknowledges what is happening within the courtrooms of the United States and works to reinstate the public’s faith in the impartiality of the courts as well as the public’s belief that the courts are figureheads of justice in the corrections system. These 205 cases show one how far they still have to go and begin to show various paths for going forward.
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