

background paper 2

Caught in the middle: Indigenous interpreters and customary law

Michael Cooke*

Part I: Introduction	78
Part II: Background to Indigenous languages interpreting in Australia	79
The need for interpreters versus alternative strategies for overcoming language barriers	79
What is an interpreter?	80
The role of the modern interpreter	81
Part III: In their own words	82
Methodology	82
Interview in Alice Springs at the home of a former interpreter	83
Police officer discussing interpreter intimidation and interviewing procedures	87
Avoiding blame: get someone from another community	88
Discussion held with interpreters at Alice Springs Magistrates' Court	89
Legal Aid lawyer reports community objections to use of interpreters	91
Perspectives from Arnhem Land	92
Perspectives of a non-Indigenous interpreter	96
Group discussion involving interpreters, candidates and trainers	98
Interview with Chairperson of the Kimberley Language Resource Centre	104
Interview with David Newry, Chairperson of Mirima Dawang Woorlab-gerring Language and Culture Centre (Mirima Council Aboriginal Corporation)	105
'Our pride falls on us': facing the need for interpreting assistance	106
Interpreters belonging to country	107
Helping out with language – not trouble	107
Some defendants don't want interpreters	107
Suggested two-stage interpreting process	109
Western Australian Magistrate	109
Discussion with a Western Australian Aboriginal Legal Aid lawyer	111
Interview with a senior sergeant of police	113
The KIS perspective	114
Part IV: Discussion	115
Misunderstandings about the legal interpreter's role	115
Implications of customary law on the Code of Ethics for interpreters	118

* Dr Michael Cooke, BSc, Dip Ed, Dip App Ling, PhD. Dr Cooke is an interpreter and translator in Djambarrpuyngu (Aboriginal language spoken by the Yolngu of North East Arnhem Land), conferred in 1991 by the National Accreditation Authority for Translators and Interpreters. Dr Cooke has been a consultant for the Northern Territory Government (2000-01); CEO/Council Clerk at Elcho Island in the Northern Territory for the Galin'ku Community Inc (1999-2000); and a linguistic consultant/educator (1998-99) specialising in cross-cultural awareness training, forensic linguistics, legal interpreting, interpreter training and language education.

Part I: Introduction

In addition to the mental gymnastics required to interpret between parties who share limited cultural, linguistic and conceptual common ground, Indigenous interpreters may face overwhelming tension between their professional role and the effects of their responsibilities and restrictions under customary law. There are also associated pressures from having their relatives as clients, together with false community perceptions about an interpreter's role. As a result, there are instances where interpreters cannot be found for particular cases or where competent and experienced interpreters refuse to work in legal contexts where these tensions emerge most severely.

With the recent increasing formalisation of interpreting services in Aboriginal languages in the Northern Territory and Western Australia, and with increasing opportunities for Indigenous interpreters to meet together for training and professional development, reports of these tensions have been emerging. These reports include examples of interpreters experiencing personal danger.

In July 2002, a group of Indigenous languages interpreters from across Australia discussed these issues at the conference of the Australian Linguistics Institute held at Macquarie University. The session began with a presentation from the Kimberley Interpreter Service (KIS) on how standards of professional conduct for interpreters can often be compromised for community-based Aboriginal language interpreters due to cultural and linguistic differences between European and Aboriginal societies.¹ The sharing of experiences by interpreters who were present indicated a possibly systemic problem requiring further investigation and the development of strategies not only to address occupational health and safety concerns but also to ensure the integrity of the Indigenous interpreter's formal role.

The purpose of this background paper is to expose and explore these issues relating to the impact of customary law upon the work and welfare of Indigenous interpreters operating in legal contexts, with the primary focus here being the criminal justice system. It documents a field-based investigation based on interviews and discussions with a range of people who have experience or knowledge of the challenges facing Indigenous interpreters operating in legal contexts, and who are generally well placed to consider what can be done. These people include:

- experienced Indigenous interpreters in Western Australia and the Northern Territory;
- non-Indigenous interpreters of Indigenous languages to compare and contrast experiences;
- trainers of Indigenous interpreters and providers of interpreting services; and
- lawyers, police and a magistrate who have extensive dealings with Aboriginal people of a non-English speaking background.

Priority is given to documenting stories and comments from interviewees in their own words through edited transcriptions presented below in Part III. The reason this material forms the bulk of this report is that, while interpreters have recently been raising these issues in a number of quarters, substantial information on the topic has not been documented. Furthermore, by giving voice to Indigenous interpreters themselves (as well as other Indigenous and non-Indigenous informants) the risk of misrepresenting their concerns, priorities and suggestions can be significantly averted.

At the same time, it is acknowledged that the modest scale of the project means that many other people with significant stories to share on the subject have not been heard. However, a high degree of commonality was nevertheless revealed in identifying the nature and extent of the problems, for instance that misunderstandings about a legal interpreter's role can lead to their being blamed for the outcome of criminal justice proceedings. Similarly, in respect of suggestions for improvement, there were repeated comments that community education is needed on the Indigenous side and that more substantial cultural awareness training is needed by those working with Indigenous people and interpreters. These common expressions from diverse sources suggest that the primary issues may have come to the fore. Furthermore, they accord with my own experiences as a practitioner, researcher and trainer in the field since 1989.²

The discussion section of the paper (Part IV) collates and considers many of the ideas that are documented in Part III under two main headings: 'Misunderstandings about the legal interpreter's role'; and 'Implications of customary law on the Code of Ethics for interpreters'.

1. The most widely used code of ethics in Australia was developed in the early 1990s by the Australian Institute of Interpreters and Translators (AUSIT) in conjunction with the National Accreditation Authority for Translators and Interpreters (NAATI). Olive Knight (KIS Interpreter) and Siobhan Casson (Kimberley Language & Resource Centre, Halls Creek), who gave this presentation as part of the Interpreting and Translating program (11 July), focussed on how the central ethical tenets of confidentiality and impartiality may be compromised by customary restrictions or obligations, while accuracy may be compromised where interpreters are constrained to literal translations (for example, in respect of a concept which has no equivalent in the other culture and which must therefore be explained).

2. The author's background includes experience as an interpreter and translator in Djambarrpungu (a Yolngu dialect of North East Arnhem Land), as a trainer of interpreters in Indigenous languages, and as a researcher in the field of Indigenous languages and the law.

Part II: Background to Indigenous languages interpreting in Australia

Recognising that some readers may have a limited background in interpreting and intercultural communication matters, this part of the paper is intended as an introduction to the Indigenous interpreting issues raised in this paper.³

The need for interpreters versus alternative strategies for overcoming language barriers

Given that contact between people from different language communities has occurred throughout history, the concept of an interpreter is old indeed. However, multilingual situations do not always necessarily require an interpreter.

The use of a lingua franca, such as French became in diplomatic circles in Europe, is one alternative. General multilingualism among a population is another. The emergence and use of pidgins⁴ as contact languages are also possible (as with Pidgin English in Australia).

In pre-European Australia multilingualism among Indigenous groups was prevalent, as it is in many Indigenous communities today. Indeed, many present-day Indigenous interpreters are fluent speakers of several distinct Indigenous languages and, in some cases, a variety of related dialects as well.

The spread of Europeans across the Australian continent in the 1800s and early 1900s saw the emergence and spread of varieties of Pidgin English as a contact language between (mainly) Anglo and Indigenous Australians. It appears that Aboriginal Pidgin English became prominent as a language of European/Aboriginal communication by the 1880s, and was even used in courts. The following example is from a 1913 Darwin murder trial⁵ where the judge is administering the oath to an Aboriginal witness, Ada:

Judge: Now, Ada, you savvy those blackfella there? (pointing to the defendants)
 Witness: Yaas, me savvy.
 Judge: You see those white gentlemen there? (pointing to the jury)
 Witness: Yaas, me see 'em.
 Judge: All right, Ada. Now, you tell those gentlemen all you savvy about those blackfella. And you talk straight fella.
 Witness: Yaas.
 Judge: And loud fella.
 Witness: Yaas.
 (Ada then proceeded to give her evidence.)

Aboriginal Pidgin English is spoken by few people today. Rather, pidgin dialects developed in two different directions. In a number of remote communities they came to displace traditional language as they expanded into creole languages⁶ to become the first language of community members. Kriol, which exists as several regional dialects, is spoken widely (but not universally) in northern parts of Australia including the Kimberley. In other places, particularly urban or rural areas, pidgin dialects strongly influenced the development of Aboriginal English as a dialect of English that retains many distinctive Aboriginal features.⁷

The significance of Aboriginal Pidgin English in the past, and Aboriginal English and Kriol today, is that they can be used in some contexts as lingua franca for those Aboriginal people who speak them. However, there also remain many traditional language speakers who are unable to communicate effectively using either Aboriginal English or Kriol.

Figures for Western Australia derived from the 1996 census reveal that 17 percent of its Indigenous people spoke an Indigenous language at home and that this figure rose to 51 percent in some rural areas. Of these, only three-quarters claimed to speak English well or very well.⁸

3. For a more detailed consideration see: Cooke M, *Indigenous Interpreting Issues for Courts*, (Melbourne: Australian Institute of Judicial Administration Inc, 2002).
 4. A pidgin language can be defined as a limited contact language made up of words from various languages and with simplified grammar, and used in restricted contexts such as trade transactions between groups of people who do not share a common language.
 5. Harris J, *Northern Territory Pidgins and the Origin of Kriol*, Pacific Linguistics, Series C – No. 89 (Canberra: Australian National University, 1986) 347.
 6. A creole is a full language which develops from a pidgin when people start to use the pidgin as a general means of communication, and a first generation of children emerges who grammaticise and standardise the pidgin based on input from the languages they hear around them and thus become first language speakers of the new creole. The several Australian creoles combine characteristics of English, Indigenous languages and other languages.
 7. For further information on Aboriginal English and its relevance to criminal justice proceedings see: Eades D, *Aboriginal English and the Law* (Brisbane: Queensland Law Society Inc, 1992).
 8. Australian Bureau of Statistics, *Census of Population and Housing: Aboriginal and Torres Strait Islander People, Western Australia, 1996*, cat. no. 2034.5 (Canberra: ABS, 1998).

Thus, while most Indigenous people from remote regions do not speak English as their first language, they usually have enough to 'get by'. They may be able to answer simple questions about their background or family, ask for things at the shop, and hold short conversations about everyday topics like weather or sport. They may even be able to respond to quite complex propositions if expressed in a leading form, in which case the tendency of Aboriginal⁹ interviewees to answer *yes/no* questions in the affirmative may promote the illusion of effective English communication. (This form of suggestibility, now termed *gratuitous concurrence*, occurs as a sociolinguistic characteristic which has long been recognised as a feature of police and courtroom interviews involving Aboriginal people.)¹⁰

Further masking of English insufficiency during interviews occurs when the interviewer provides language assistance in the form of verbal *scaffolding*, such as by finishing an interviewee's hesitant or incomplete answers, or by prompting with suggested answers in the face of long silences.

These patterns and strategies have led many police and lawyers to believe that they can conduct their interviews without interpreters as long as they stick to 'simple' English. The problem, of course, is that the interviewee may have little understanding of what they have agreed with, and will not have had the opportunity to say what was on their mind.¹¹

It is still the case that the use of interpreters during the criminal justice process remains rare; even when the low level of English spoken by many Indigenous suspects, defendants and witnesses would appear to warrant interpreting assistance. The use of untested, ad hoc 'interpreters', such as relatives or a 'prisoner's friend' (as provided under the Anunga Guidelines), also remains as an unfortunate practice.¹²

What is an interpreter?

Many people use the term interpreter to include anyone who is bilingual. Unfortunately, this commonly results in deployment of inappropriate and incompetent 'interpreters' even in important matters such as police and courtroom interviews.

In addition to being able to communicate fluently in their second language (including being able to understand puns and idiomatic expressions), the interpreter requires sufficient cultural knowledge to be able to interact appropriately among native speakers of that language and to operate appropriately in respect of its social and political structures, organisations and institutions. More specifically, he or she requires knowledge of the processes and terminology particular to the semantic domain within which an interview is taking place.

These attributes are required simply in order for the interpreter to process an utterance in terms of what meaning the speaker is conveying and what their intended message is. Then the interpreter is challenged to work out how that meaning/message can be rendered appropriately (i.e. with equivalent nuance, force and effect) in terms of another language and culture. This can be daunting where the conceptual framework within which the original utterance is embedded may not exist or may be radically different. Often the interpreter must explain *about* what was said in cases where it is not possible to meaningfully say *what* was said. (Interpreting Aboriginal kinship terminology into English commonly requires this.)

Even where the meaning of an utterance can be interpreted easily in conceptual terms, the interpreter requires the skill to constantly make choices to overcome linguistic impediments to accurate interpreting. For example, Aboriginal languages have a far greater inventory of personal pronouns than does English. Thus, the English word *we* will be represented by four alternatives (or maybe more, depending on the language) which serve to specify whether two people or more than two people are being referred to and, for each of these alternatives, whether the speaker is including or excluding the addressee. The interpreter needs to be able to infer the required information from the English speaker's utterance in order to choose the right alternative. If unable to do so, the interpreter must decide if the matter warrants interrupting the interview to request clarification from the English speaker. Alternatively, the interpreter might choose to deal with the English term's ambiguity by including the range of possible meanings in the Aboriginal language translation.

9. References to Indigenous people and issues are sometimes marked here by use of the term *Aboriginal*. This indicates that the statement may not (or may not be known to) apply to Torres Strait Islander situations.

10. See, for example, the comment by Kriewaldt J from *R v Aboriginal Dulcie Dumala* (1959) NT 274, quoted in McCorquodale D, 'Judicial racism in Australia? Aborigines in Civil and Criminal Cases' in Hazelhurst K (ed), *Ivory Scales: Black Australians and the Law* (Sydney: UNSW Press, 1987) 30–59, 33.

11. These matters are discussed in reference to a Western Australian police interview and trial in: Cooke M, 'A Different Story: Narrative Versus "Question and Answer" in Aboriginal Evidence', (1996) 3 *Forensic Linguistics* 273–88.

12. Although the Anunga Guidelines specifically provide that a prisoner's friend may be used as an interpreter there is a strong argument that this is inappropriate on several counts: trained and accredited interpreters are now available; the prisoner's friend cannot be assumed to be a competent interpreter; and there is an inherent conflict of interest between the partisan role of a prisoner's friend and the impartiality demanded of an interpreter. These issues are discussed in Mildren D, 'Redressing the Imbalance: Aboriginal People in the Criminal Justice System' (1999) 6 *Forensic Linguistics* 141–42.

In making these choices, the skilled interpreter must assess the interrupting effect of seeking constant clarifications against the potential miscommunication arising from ambiguous interpretations. Then the interpreter must decide how far to inform each party of their intervention in order to counter any impression that he or she is adding information or otherwise interpreting inaccurately. (If the interpreter is explicating the inherent ambiguity of an English word to the Indigenous party, or else explaining a word that has no direct equivalent, then the interpretation may be significantly longer than the original English and lead to suspicion about the interpreter's competence and/or intentions.)

On top of this, the competent interpreter requires a range of capacities and skills including a good concentration and short-term memory, confidence to speak up, a clear voice, and a solid grounding in the ethics of the interpreting profession.

The role of the modern interpreter

The difference between an interpreter and translator lies in the medium of communication: spoken versus written. An interpreter enables speakers of different languages to communicate orally while a translator works on rendering written texts from one language to another. (North Americans, however, often refer to interpreters as 'translators'.) As a profession, translation began in antiquity with translators (often church officials or scholars) working on religious and other significant texts.¹³ The formal role of the interpreter is far more recent.

International conference interpreting was the first distinct interpreting role to emerge, following World War One.¹⁴ Simultaneous interpreting (i.e. where the interpreter follows the speaker a clause or two behind) in multiple languages was enabled by development of technology providing interpreters with separate booths equipped with appropriately connected earphones and microphones.

Liaison interpreting (also known as community interpreting or dialogue interpreting) developed following World War Two in quite different circumstances. The high levels of post war refugees and immigrants in many countries, including Australia, led to interpreting as a generally ad hoc response to the needs of either minority language populations or mainstream institutions. While at first, bilingual family members, friends or acquaintances were used to help interpret messages, over time the role of professional interpreter emerged. In Australia, government departments and other mainstream agencies dealing with large numbers of migrants came to recognise the need to address issues of standards, training and levels of accreditation. There was also pressure from migrant groups themselves, concerned by the dangers and disadvantage arising from inevitable miscommunication which results from using bilingual non-professional interpreters.

The provision of interpreting services by some governments in the past several decades is also a reflection of increasing recognition of the crucial role of interpreters in permitting the smooth functioning of our social and economic systems. A noteworthy irony is that it has taken the influence of migrant issues to achieve these outcomes while the blight of endemic miscommunication between mainstream institutions and their non-English speaking Indigenous clients was tolerated for two centuries.¹⁵

The development of interpreter services and codes of conduct for modern interpreters in Australia has proceeded largely without input from Indigenous languages interpreters or particular consideration of their situation. This has led to some problematic outcomes regarding Indigenous languages interpreting. For example, in 1986 the Standing Committee of Attorneys-General set guidelines governing the use of interpreters in the Australian legal system. They required each jurisdiction to ensure, amongst other things, that interpreters 'be independent of litigants'.¹⁶ Yet this is, of course, generally an impossible stipulation for Indigenous interpreters who would personally know most, and be related to all, members of their speech community. Given the prominence of Indigenous litigants in many jurisdictions it is unsatisfactory that the situation of Indigenous interpreting was neither recognised nor addressed.

13. As an aside it is interesting to note that, even then, translators recognised the futility of trying to carry over, all at once and without distortion, a text's semantic content, register/style and structures. The Roman, Cicero, articulated the tension between translating words and translating meanings: 'If I render word for word, the result will sound uncouth, and if compelled by necessity I alter anything in the order or wording, I shall seem to have departed from the function of the translator' (quoted from Bassnett-McGuire S, *Translation Studies* (London: Routledge, revised ed., 1991) 43). Unfortunately, the notion that interpreters should be able to provide meaningful literal translations still has some currency in legal circles.

14. Two of the prominent leaders at the Versailles peace talks—the British Prime Minister and the US President—were unable to speak French. Military officers were therefore conscripted as interpreters: see Gentile A, Ozolins U & Vasilakos M, *Liaison Interpreting* (Melbourne: Melbourne University Press, 1996) 7.

15. The Commonwealth's Telephone Interpreter Service (TIS), used extensively in Western Australia (in the absence of a state interpreting service), has been operating for over 20 years and covers over 100 languages; however, it does not cover any Indigenous language. The only jurisdiction to set up an Indigenous languages interpreter service is the Northern Territory which established their Aboriginal Interpreter Service in 1999 after years of intense lobbying.

16. Commonwealth Attorney-General's Department, *Access to Interpreters in the Australian Legal System*, Report (Canberra: AGPS, 1991) section 2.1.2.

The Code of Ethics for Interpreters and Translators, developed by the National Accreditation Authority for Translators and Interpreters (NAATI) and the Australian Institute of Interpreters and Translators (AUSIT), incorporates eight principles:¹⁷

1. **Professional conduct:** Interpreters and translators shall at all times act in accordance with the standards of conduct and decorum appropriate to the aims of AUSIT, the national professional association of interpreters and translators.
2. **Confidentiality:** Interpreters and translators shall not disclose information acquired during the course of their assignments.
3. **Competence:** Interpreters and translators shall undertake only work which they are competent to perform in the language areas for which they are 'accredited' or 'recognised' by NAATI.
4. **Impartiality:** Interpreters and translators shall observe impartiality in all professional contracts.
5. **Accuracy:** Interpreters and translators shall take all reasonable care to be accurate.
6. **Employment:** Interpreters and translators shall be responsible for the quality of their work, whether employed as freelance practitioners or by interpreting and translation agencies or other employers.
7. **Professional development:** Interpreters and translators shall continue to develop their professional knowledge and skills.
8. **Professional solidarity:** Interpreters and translators shall respect and support their fellow professionals.

Of these, the principles of impartiality, confidentiality and accuracy frequently raise difficulties for Indigenous interpreters. Impartiality is problematic when the interpreter is related to the client. Confidentiality is an issue where an interpreter is pressed by elders for information. Accuracy is challenged where customary law demands the use of a particular speaking style by an interpreter to a client that may not reflect how the non-Indigenous interviewer is addressing that client.

Nevertheless, a uniform standard for defining the role of interpreters is welcome for providing a basis for the development of strategies to protect and support Indigenous interpreters operating in legal contexts. For example, appropriate community education programs could help counter misconceptions of an interpreter as advocate, legal adviser or mediator, while fostering understanding of their role as a skilled and impartial communication facilitator.

The interviews documented in the next part will illustrate some of the cultural, family and community pressures which challenge the capacity of Indigenous interpreters to follow their profession's code of ethics. They also raise some interesting possibilities for resolving them.

Part III: In their own words

The airing of experiences, opinions and advice of Indigenous languages interpreters in respect of the particular challenges they face is the focus of Part III, which also includes contributions from others who work closely with Indigenous interpreters – including police, lawyers, a judicial officer, trainers and interpreter service administrators.

Methodology

In researching this paper I recorded some 20 interviews/discussions between September and November 2003. The interviews were held in Alice Springs and Darwin where I was conducting interpreter training during September and November, and in Broome during the 2003 international conference of the Foundation for Endangered Languages (22–24 September). Western Australian delegates included Indigenous interpreters and language workers from the Kimberley, Pilbara and other regions, as well as delegates representing relevant Indigenous organisations such as KIS, the Kimberley Language & Resource Centre (KLRC) and the Mirima Dawang Woorlab-gerring Language and Culture Centre.

Interviews took the form of open-ended, informal discussions with individuals, pairs or small groups, where people were invited to share their experiences, insights and suggestions about challenges facing Indigenous interpreters.

Most of the interviewees are Indigenous interpreters (or former interpreters) representing language groups from across the Northern Territory and Western Australia. Some of these people hold other positions including leadership positions in communities or Indigenous organisations (e.g. ATSIC, language centres).

17. Taken from the 'summary version' of the AUSIT Code of Ethics. See: <<http://www.ausit.org/ethics.php>>.

Other interviewees included non-Indigenous interpreters of Aboriginal languages, interpreter trainers, administrators and managers of three interpreter services (KIS, the Aboriginal Interpreter Service, and the Northern Territory Interpreter and Translation Service¹⁸), two police sergeants (one each from WA and the NT), two Legal Aid lawyers (one each from WA and the NT) and a magistrate (WA).

In order to facilitate open communication, I explained to prospective interviewees that I had no need to name them within this report. Thus, only basic categorical information is given in respect of the identity of those whose comments are recorded below. However, there are three exceptions: interviews with the chairpersons of the Kimberley Languages Resources Centre (KLRC) and the Mirima Dawang Woorlab-gerring Language and Culture Centre (KIS is a joint initiative of these two organisations), and with the Coordinator of KIS.

The interviews have been edited in respect of length with the symbol (...) indicating where text has been excised. They have not been edited in respect to style in recognition of the fact that Indigenous interviewees commonly moved between Standard Australian English (SAE) and Aboriginal English (AE). However, notes are sometimes given to assist those not familiar with AE dialects. Details about specific communities, languages and people are usually masked or omitted. Interviews are presented broadly in chronological order. The three interviewees who are named had the opportunity to review their contributions and some clarifications and other minor alterations resulted.

The choice of prospective interviewees was governed by who was available or present at the respective locations at the time, and by advice from those with whom I had contact. As a result of this somewhat opportunistic approach, the viewpoints of some valuable potential informants may not be represented. On the other hand, the openness and forthcoming responses from all interviewees yielded rich data with a number of consistently voiced concerns and some innovative strategies to address them.

Interview in Alice Springs at the home of a former interpreter

Int1 is a multilingual central-Australian woman whose work includes explaining legal issues to families in communities. *Int2* is an older multilingual woman from central Australia who used to work as an interpreter. She is a community leader holding a senior position in a national Indigenous body. *MC* (the present author) is the interviewer.

The recording began with *Int1* recounting the difficulty of providing cultural information to outsiders without specific authority. Subsequent discussion covered the following issues:

- Indigenous interpreters are required to observe customary law governing the form and style of language to be used with Indigenous clients as well as restrictions upon verbal communication in particular circumstances. Relevant considerations include ceremonial status, kinship position, age, gender and the topic of conversation.
- Interpreters may be blamed for the outcomes of court proceedings in which they work and as a consequence many are afraid to undertake legal interpreting.
- Community education about the role of an interpreter is urgently needed to correct misunderstandings and lawyers require training in cross-cultural awareness and communication.
- Interpreters must sometimes *explain* terms and concepts, and not just translate, if understanding is to occur.
- It's hard for young people to be interpreters because they don't yet have the required community standing and respect.

Int1: We went down to do family report. ... the court counsellor ... couldn't understand why young man have two wives. So I had to tell him it's either through men's ceremony or just through love, you know, they can have two wives.

And then I sort of thought, you know, have I got the right to say that, because [tribe X] people might get offended if I talk as a woman.

...

MC: Like you're speaking out of place because that's not your tribe?

Int1: No, [that] mob not my tribe ... they're different tribe ... but I'm just talking from my experience as an Aboriginal person ...

18. The Northern Territory Interpreter and Translator Service was established in 1986–87 to provide interpreting assistance in non-Indigenous languages.

Int2: And there's certain ways, as you get experience ... going through ceremonies, through law, the language changes about how you address certain people. And you have to then use that language whether you're interpreting inside a hospital or inside a court.

...

[T]he language is the most important thing and you learn that as you go through different ceremonies at different stages in your life. When you go through Aboriginal ceremonies [there are] certain ways that you talk to elders, certain ways that you talk to other people that are related to you through ceremonies.

...

Once you go through different stages of ceremonies, of law, there's different ways of addressing certain people inside your tribe.

... (MC raised a separate matter of how language forms change when Aboriginal people address particular relatives, using the example of Yolngu languages where a man will use the more formal plural pronoun when addressing his sister.)¹⁹

Int2: Same in our language. When you talk to your elder brother you gotta speak differently, like you're addressing that one person. When you talk to your elder sister it's like you're talking to more than one person.

...

MC: But that's different from what you just said before about going through ... ceremony ...

Int2: That's different. That classifies how much power you have within the community like, I'll use this example: ... [My aunty's] daughter took my nephew in law (i.e. in marriage) so ... even though she's my first cousin, I can't talk to her as a cousin any more. So I have to talk to her in an avoidance way. I can still talk to her, but in a different language.

... (Int1 and Int2 have a brief discussion in language together with other older women who are sitting close by about a recent instance of inappropriate communication between relatives in an avoidance relationship.)

MC: And when people drink, they forget it don't they?

Int2: There was an incident [where] we just went through law and within a couple of days, the person who wasn't supposed to speak to me come and just mentioned my name and [said] 'Give me money and give me cigarettes!' They just forget it.

Int1: That's what I always tell my kids, 'See those old men walking around here? These people law people, but you know what? They're losing it because alcohol is number one now.'

...

Avoidance relationship, you know, that's our law and they know that but through alcohol they forget it. So sometimes we've gotta remind them and shame them and tell them.

...

Int2: See, my daughter works at the hospital [and] I teach her all the things ... She might ring me up or she'll come home and say, 'So-and-so's in hospital'. I say, 'Well that person relates to us in this way and there's certain ways that you as a young person, a young Aboriginal person, you use a different language to that person because if you use the common language it's offensive to that person because, you know, that person's an elder.'

MC: So if you're interpreting in court you have to follow those same rules too, don't you?

Int2: Yes, Yes.

MC: So that also brings up the problem of ... working as an interpreter for someone you call brother; it mightn't be your full brother but someone you call brother. If it's about break-and-enter or something easy, and you are a woman, maybe you can do it—

Int2: —You can do it, but not rape and things like that. No way! Nothing! Rape and things like that should be left to men ...

I used to do a lot of interpreting in my early stages, you know, because I got NAATI certificate ... and I used to do a lot of interpreting out at [community X] and in courts here when I first started. And I used to completely refuse to do any rape cases with men. I used to say, 'No, I'd prefer it if you go and get a man interpreter for that man.' Because it's just not culturally appropriate for a woman to be interpreting in that situation.

...

MC: When an interpreter is blamed for taking sides, how does that come about?

19. It is important to bear in mind that for Aboriginal people, the term *brother* or *sister* refers not only to biological siblings but to certain cousins and certain other blood relatives, and others in classificatory brother/sister relationships (e.g. through the subsection or 'skin' system).

- Int2:** ... I'll use an example that happened many, many years ago ... a whitefella was the interpreter ... but right up till this day, because the bloke is still alive – I mean he's come out of jail after he got convicted – he still blames [the interpreter] for putting him in jail, and he was a white man.
- And I refused to do that case because the family is still blaming people for putting you in and ... if the court finds no evidence and dismisses that case and that person goes free, you're still blamed for allowing that person to go free.
- MC:** So if you're not blamed by one side—
- Int2:** —That's right, you're blamed by the other.
- MC:** So what's the solution to that? How can we get around it?
- Int2:** I think ... the important thing is to educate people that interpreters are there just to make the thing easier for the victim or for [people who are] going through court ... I think that the hardest part is that people just don't understand what the interpreter's real role is.
- MC:** Would it help if the judge or magistrate, when an interpreter is being used ... introduced the interpreter to everybody there so that everybody can hear, and explain what the role of the interpreter is, that they're there just in the middle and they're not on this side or not on that side?
- Int2:** That's right. They're not on neither side; they're not sticking up for people. They are there just to explain to the judge what the person is saying and to that person what the judge is saying.
- MC:** So that might help if the judge or magistrate did that every time?
- Int2:** Oh, absolutely. Because definitely the role of the interpreter is just not understood widely by Aboriginal people. You know. They think they're there ... (*Int2* briefly discusses the blaming issue in language with other women present) ... and then they have a fight, see?
- That's why you get a lot of people, community people, too scared to do that kind of stuff, and especially court. You know, if you approach them they'll say 'No way! I don't want to be blamed for something.'
- I know I gave up interpreting because of all that stuff.
- ...
- MC:** What about interpreting in the police station, is that the same problem?
- Int2:** No! Police station [is all] right, you know, when they taking kids in, they just go and pick up family and stuff to help them. That's all right but, you know, court ... important things like murder or rape or something: too big!
- ...
- MC:** When did you make the decision to stop?
- Int2:** Oh, I stopped doing court interpreting years ago.
- MC:** Had you had one experience that made you stop or was it just time after time.
- Int2:** Oh just time after time you know ... like going back and people saying, 'What happened?' They just didn't really understand what the interpreter's role was, and I just got sick of sort of being blamed, you know, for allowing people to go free or putting people in.
- MC:** Do you find that people refuse to—
- Int2:** —I'm telling you! People are absolutely scared in communities. If they go up and they get asked to go and interpret in court – Wiya, wiya! They'll say 'No, no, no!' They'll blame (i.e. nominate) someone else.
- MC:** ... If everybody refuses, then what do they do? Do they get someone else ... somebody from out of town?
- Int2:** Yeah.
- ...
- Int1:** Some people will tell you, you know, they prefer someone outside.
- Int2:** That's right.
- ...
- MC:** You've talked about education, the importance of education, so people understand the role of an interpreter; do you also mean community education about that?
- Int2:** Yeah ... educating the community to understand the role of the interpreter.
- MC:** How could that be done?

Int2: ... Most communities nowadays have [community broadcasting] systems where they've got one hour live broadcast ... You could get someone to talk about those issues.

...

MC: When you realise that most Aboriginal interpreters know personally, and are family to, the people they are interpreting for, it puts them in a really hard position, because that witness will talk to them like family.

Int2: Yes.

MC: They won't talk to them like an interpreter?

Int2: No.

...

Int1: So sometimes I think people gotta be cautious of who they use as interpreters too.

Int2: That's right.

Int1: Not just get someone because they understand the language and [are] good at English and able to do the job. You have to have—

Int2: —Trust in that person too.

Int1: Yeah. Yeah.

...

Int2: ... We had an incident where ... the police were using ... a police aide to interpret ... and he wasn't even doing a good job ... because he was just telling the judge and the police what he thought, his personal opinion ... because he worked for the police.

MC: Well he's got a conflict of interest: he can't be impartial if he's a police aide.

Int1: So they are the sort of things our people gotta be educated in, you know? ... They're the community education things that have got to come out.

...

Int2: But the police are really cunning, I'm telling you! They ask the same question five different ways, and they don't get five different straight answers, because, you know, you just don't use that kind of language (i.e. discourse) in our language.

Int1: That's the hardest part – trying to find a language word that will fit an English word, so sometimes we've got to tell it like a story so people understand it.

MC: You can't just interpret word for word?

Int1: Yeah. That's the most important thing.

Int2: That's not interpreting because in our language you have to go around to get to it.

Int1: You have to sit down and try and tell the story, you know? Get all of the missing things out of it, out of that story, to get the whole picture.

Int2: And to get to that one word you might have to use a whole paragraph to get the meaning of that word.

MC: Yeah, well that introduces another problem because then sometimes the lawyer will say, 'Hey, what's going on here?—

Int2: —You're going too far.'

MC: Yeah – 'You're doing too much because I just asked you a simple question'—

Int2: —That's right, 'that needed a yes-or-no answer'. But there's no yes-or-no answer in our language.

Int1: We gotta explain it a different way to them.

Int2: You going to get that person in big trouble if they say yes or no, either way, because the question is, um, what they call it?

MC: Ambiguous?

Int2: That's right, yeah.

Int1: And the other thing too, because English is a third or fourth language for our people and they don't understand it and we have to tell it to them like a story ... to explain what this white person wants, you know, what answer they want.

So ... when you're talking about education, it's not just about educating Indigenous people; educating the white people too, how they set their questions.

...

MC: To be an interpreter do you think it's harder to be man or woman or harder to be young?

Int2: I reckon woman and being young—

MC: —Is hardest?

Int2: Yeah.

...

Int1: Our men can sometimes turn on us too.

Int2: That's right because ... you don't know whether that person has just come out of bush camp (i.e. ceremony) or things like that and you can't talk to them.

...

Int1: We might not know too much about that person, you know? Even though we're neutral people and can speak the language ... we gotta get a bit of background too about people.

MC: Why is that, why do you need the background about them?

Int2: Especially, you know like if they've just come out of ceremony and stuff: you know, they shouldn't even be near women ...

MC: And why do you think it's harder for young people: because they don't have the respect?

Int2: Well they don't have the standing in the community.

Int1: You gotta have that respect from people in the community, you know, have some sort of authority to be able to speak. Like we say ... young people, they can gain that by learning, you know, discipline, respecting ... It's like going to school: you learning as you go along. And you're gaining that respect from people in the community.

...

MC: What sort of education do you think the legal people need?

...

Int1: They need cross-culture. That's number one. If they are dealing with Indigenous people, black Australians, then they need cross-cultural awareness, number one. And not just to go and do training for five minutes [but] to understand and acknowledge and respect our ways.

...

And just because we're all Aboriginal people doesn't mean we all speak the same language. We've got different practices; all that too, [and] variations in culture.

...

(The discussion then turned to looking at contrasting completely different funeral ceremonial practices in the Central Australian communities compared with Arnhem Land.)

Int1: It's taboo to see a dead person in our way ... see they do dances and that up that way, you know, the widow dance and all that, aye? – which is different to our way.

Int2: See, they can't even have a look at the coffin – the widow's gotta be covered up even at the church. And in [tribe X] and [tribe Y] way the widow and her relatives are not even allowed to go to the church ... Early in the morning before that body gets flown in they have to go out bush and stay out bush until after the burial.

...

Int2: In [tribe Z] culture, it's different again: after we come out of the church the coffin is there. We've gotta go and place our hand on the coffin.

Police officer discussing interpreter intimidation and interviewing procedures

This story of intimidation of a female interpreter by a male suspect is reported by an Alice Springs police sergeant (*P1*) during discussion with a middle-aged multilingual female interpreter (*Int3*) from the Tennant Creek region, and *MC*. *Int3* also raises the value of the presence of a prisoner's friend as witness to the interpreter's impartiality.

P1: We arrested a person at [community X] for grievous harm. We transported the person to Alice Springs because the offence of grievous harm carries in excess of seven years imprisonment so we needed videotaping facilities and audio-taping. The only place they're available is in Alice Springs – so we transported the prisoner to Alice Springs ...

We then had the conversation with the person ... It became apparent to us that they needed an interpreter. We obtained the interpreter through the Aboriginal Interpreter Service and she came into the police station. Half way through ... the interview we were conducting in relation to the grievous harm matter, there was a short exchange between the suspect and the interpreter and the interpreter asked to leave the room.

We suspended the interview; we took the interpreter out. She told us that he had threatened her and told her that if she assisted the police any further that there would be repercussions to her family and she felt as though she couldn't go on. We had to suspend the interview at that point and allow her to leave.

We then had to make arrangements to get another interpreter to come in, which took some considerable time ... That interpreter came in and was a male interpreter ... We recommenced the interview with the new interpreter and we found from that point on that—how could you say it?—the tone of the interview was totally different.

It was quite obvious to us that the suspect had been intimidating the interpreter from the very beginning. She, I understand, later resigned as an interpreter. She wouldn't continue any further. The experience really shook her up.

...

What we now do, now as a matter of protocol, when we book the interpreter through the AIS we tell them who the suspect person is so that when the administrative part of the interpreter service goes to get the interpreter, they can say who this person is and the interpreter can refuse on the basis that they are a close relative or someone who they can't culturally be involved with, or a person they feel uncomfortable being involved with.

(This excerpt follows directly on. In the context of a Police Record of Interview (ROI), *Int3* suggests that a prisoner's friend may give protection to the interpreter against subsequent accusations of bias. *MC* then followed this up by asking *P1* whether the interpreter's role is specifically explained during ROIs.)

Int3: With the prisoner's friend as well, because if that person [is] in with the interpreter – at least that prisoner's friend know what we saying. Because when we go back home and that prisoner *don't have to say* (i.e. *mustn't/can't say*)²⁰ ... 'She or he put me in there because she was on the police side' ... because that prisoner's friend either can be family or they can go back and tell them ... I wasn't taking sides. I was just there to let them know what you (*Int1* is addressing *P1*) were saying and let you know what they were saying so you two can understand each other.

...

If you get the prisoner's friend who speaks the same language they'll understand where you coming from.

...

MC: Is it the case that in the record of interview ... the interpreter is asked to explain her role to the prisoner so that the prisoner understands what the interpreter's role is?

P1: Yeah, we will say to the interpreter: 'Can you please tell the suspect that you are an interpreter and your only role is to tell the police what it is he or she is saying' ... We usually say something like: 'You're not there to give advice. You're simply there to translate his words from whatever language it is into English language and English language into his language.'

Avoiding blame: get someone from another community

This discussion took place during a training session for legal interpreters that I was conducting in Alice Springs. *Int1*, a guest speaker, explains the need to sometimes use an interpreter who is distant from the community where Indigenous parties to legal proceedings come from. Also, as in the discussion with *Int1* above, *Int1* emphasises that interpreting may involve the need to explain and not just translate. *T1* is a non-Indigenous interpreter trainer from Alice Springs.

Int1's professional role includes providing advice to Indigenous families involved in family law issues. This work may take her to communities whose language she does not speak and so she herself must sometimes engage an interpreter.

Int1: When they're interpreting it would be expected that he favours this family here because he knows this family ... And then the other family feels like, you know, they're being left out and there's um – what do you call it?

MC: Conflict of interest?

Int1: Yeah, conflict of interest then—that's the white man's term—because he comes from the community.

...

20. In some AE varieties and in Aboriginal Learner's English, *don't have to* means *must not*.

It's not so bad taking an interpreter from here (i.e. Alice Springs) down there because that interpreter don't live there and we have to explain the role of the interpreter – like, you know: 'This person is a neutral person, even though this person might have family ties in these communities or with some of the people. But it's important for you mob to understand – this interpreter is coming from Alice Springs so [there's no need to] use someone from your community who knows all about that business.'

It's best to get somebody to come from outside; to come in and just interpret and be neutral on both sides.

T1: So in that situation there would be yourself and the interpreter, and then the family, and you'd be explaining all that to the interpreter ... and the interpreter says exactly what you say to the family?

Int1: Well that's another tricky thing about interpreting. When we do interpreting there's sometimes words, these legal words, that may mean nothing to us in our language. So we've got to tell it like a story, so that people understand or get the gist of ... what this business is all about. So sometimes it's really hard to use legal words too when we're interpreting; so we've got to tell it like a story, to get the story right and to do it right.

Discussion held with interpreters at Alice Springs Magistrates' Court

This interview was recorded inside the courthouse at Alice Springs in a room that is set aside as a 'home room' for use by Indigenous interpreters between their interpreting assignments. The three interpreters (*Int3*, *Int4* and *Int5*) are all experienced legal interpreters. I began the interview by asking about significant challenges for Indigenous interpreters. Discussion tracked through the following matters:

- the challenge of remaining detached and objective when interpreting for relatives;
- going through ceremony to gain endorsement and protection *as an interpreter*;
- community disharmony increased where customary law is prevented from operating because of the precedence of the criminal justice process;
- misunderstanding the role of an interpreter as a mediator;
- the effect of an interpreter's gender and age and kinship position relative to a client;
- interpreting in sexual matters; and
- the utility of non-Indigenous interpreters.

Int4: The hardest thing for me ... has been to stay objective and detached where, say, you came from a clan of a thousand people or eight hundred people. Everyone of those are involved with your day-to-day life ... because you are a cog in that wheel, the whole of that wheel that's the community.

The hardest thing has been to stay, as I said, detached and be objective in interpreting. The pains are great, the emotional stress is great and one of the things that we [need] ... is a place where we can debrief ... and it really is difficult because emotionally, you are involved.

The other thing that is peculiar to our traditional customary practice is that older people are to be utilised rather than the younger people ... as interpreters ... [*Int5*], from her community, has the trust, the blessing and the authority, and that goes for me as well.

Lately, because I have taken on interpreting for the Northeast and especially [Community X], [Community Y], [Community Z] and further ... the old people felt I had to be put through a ceremony to receive my shield, my coolamon, with my story and the poison story as well: the story that gives me real authority to be able to speak. [At Community X], my uncles put me through ceremony. I have to go back into ceremonies this summer, hopefully after Christmas.

...

And that was quite a big step in your personal life but it also puts the onus and responsibility on you and it's incredible how laden you feel. You feel as though the whole world is on your shoulders.

MC: What kind of experience makes you feel like that?

Int4: I think experiences where there has been homicide. Homicide usually—well according to customary law—that person was brought into the middle there if it happened, and that person did not flee, he didn't run away after committing that.

Usually people who accidentally kill other people, with alcohol or whatever, they'll say, 'I have done the wrong thing ... I'm guilty!' And they present themselves at the community level; they sit down. And the procedures of sorry business or payback starts then.

Payback to me is a horrible word. It's not payback, it's atonement for your action. Like you go to confessional in the Catholic Church and you say, 'Forgive me, Father, for I have sinned'. It is exactly the same thing only it involves the whole of the clan or group. It might even involve another clan group.

But with us the frustration is—like with the Aboriginal community—is police come and remove that person. And he's put in custody to await trial.

So usually the old people come in and say, 'We've got to have that person' because he has brought disharmony to maybe a thousand people, maybe two thousand people. [They say:] 'Can you please, tell judge or whoever, that we've got to have that person back to cleanse that; then they can have him.'

MC: So are they asking you because you're an interpreter and they know that you go to the courts a lot? So that they think that your role is—

Int4: —Mediator.

...

MC: So what do you do when they think you are a mediator [while] you know that really you are there just to do the communication between those two sides?

Int4: Well, usually, the accused will ask—from my area and from my experience—he will ask, through the interpreter, the lawyer, if he can be released on bail to face his obligations under customary law. Then they can do whatever they want with his body.

The first thing an Aboriginal person from my community will ask is to face [the community] and to clean up and then come back into jail.

...

Everyday things, you also find you've got to correct people. They'll say, 'You'll fix this for me'. And we've got to make that clear line that, 'No, no, no – I'm the voice of you when you talk to me in your language and then when that whitefella talk, that white person talk, then I put his word into our language. And I'm just the invisible one'—that's the ideal—'I'm not your lawyer!'

Int5: I've often said that too ... Sometimes they come and shake my hand, and they offer us money. [We say:] 'We can't have money.'

...

Sometimes when we go down there, they can't understand, especially the old people, you know ... I've had a couple from west there and I've sat them down, you know, talking over and over to them so they can really understand what I'm about, you know. And what the lawyer is about.

MC: Both of you, do you think that being older helps you as interpreters? Do you think that if you were young, say in your twenties, that you would be having a hard time?

Int4: I definitely would be – I say that without any hesitation because I wouldn't have the authority from the people that I'm interpreting for. If I am younger, I would not be able to do some of the rape cases. If I was younger, I would not be able to do the murder cases, the homicides. I would have to keep it [to] just petty things: drink driving and things like that.

...

[Even] if I was a brilliant interpreter, I would not have respect from those back there [in my community] if I was doing that kind of thing. Unlike, I guess, the dominant culture which is the European culture here. With age [for us] comes respect and protection as well.

...

MC: What I was interested in was in the cases like domestic violence or rape or something where ... they have to start talking about the real detail, how do you go then if you're interpreting?

Int4: I do very well because, at my age, I am considered by my traditional group to be almost genderless. I am no longer a young woman. I have had men who have committed rape. I have had men who have violated their own daughter who was under-aged. And I've talked to them. And I've talked to them in such a way that they did not feel uncomfortable.

I have had a nephew who was charged with rape and when it got down to the real nitty-gritty, I, because I am an older person, have said: 'Now Nephew, he's gonna ask you about how you did it to that girl. Now if you want me to sit here and help you, I will. But if you want to tell him—because you got enough English there—you can, and then you can call me back. You do it with your lawyer. You can talk to him.'

So it's up to the interpreter also to use discretion and also for the interpreter to be aware of protocols within his or her traditional social behaviour.

- MC: What about if that man is like a relation that's normally an avoidance relationship—say he's a man you might call *brother*—what do you do then?
- Int4: I have talked with brothers because I am usually the older sister. I am able to do it, to interpret for him. But also, knowing my language, [it] doesn't have the sordidness that English has got ... You put it another way.
...
- MC: (addressing *Int3*) You wouldn't interpret for a brother under any circumstances, is that what you just said?
- Int3: If it's a rape ... a female interpreter can't interpret for male.

I mean you can go if ... you've got a female that has been raped ... yes, fine. But in that skin system also you gotta be careful who you're talking about.

... (At this point, *MC* raises the issue of a special male/female kinship category which may be designated a 'teasing relationship' where sexually explicit banter is a feature (while actual sexual contact may not be) and asks *Int3* if she could interpret for a man in that kinship relationship with her.)
- Int3: In brother-in-laws you can tease and that.
- MC: For someone in that relationship, could you interpret for them, if they were in trouble for rape?
- Int3: All depends if that male asks for you. It all depends. Sometimes it is very, very hard ... in our culture, even if it's a grandson.
- Int4: But I can't relate being a 30 or 40 year old – I can't put myself in a picture where I could have interpreted for men here ... I couldn't interpret for men in that situation if I was a younger person.

The ones who teach you how to flirt, how to talk dirty, and all that, are to us ... we call that one our *aperwl* – that's your husband line ... If I were to talk dirty to him, whether he is a 16 or 17 year old ... I can. I can say, 'I'm going to run away with you! I want young husband now!' ... That's that one now.
- Int3: Yeah we all do that.
- Int4: ... My paternal grandmother's brother line. 'Though I used to think they were filthy old men when I was sixteen, but they taught you how to protect yourself, how to ... talk back and how to be cheeky ... That's part of our training.

...

To be a good interpreter also, you have got to be so steeped in your own law, in your blackness, before you can make sense in that court. Because people will say a different philosophy; it's so different. People will say things that a white person wanted to hear, and it's not necessarily what he really means.

Legal Aid lawyer reports community objections to use of interpreters

This is an excerpt from a discussion involving a Legal Aid lawyer (*L1*), *Int3* and *MC* where *L1* reports an occasion where a community objected to the use of interpreters in a criminal case; and where *Int3* stated the need, on occasion, to use non-Indigenous interpreters.

- L1: There can be a funny perception within the communities for interpreters. We recently had an unlawful death in Alice Springs: someone was murdered – or killed. There was a number of people arrested; about four people were arrested. There was a big meeting out at [Community X] and then someone rang up our senior lawyer at [Legal Aid] and he said, representing [Community X], he said, 'Look, we had a big meeting out here in relation to those people that have been charged and the outcome of the meeting is we don't want any interpreters involved.' And we don't know why.
- Int3: That's the reason why.
- MC: What's the reason why?
- Int3: ... They're probably thinking that interpreters might put words into those people's mouth ... They might think you're adding on something to help with that person to get out.
- L1: That seems to be a common perception, which is unfortunate.

... (*Int3* initiated a discussion about using non-Indigenous interpreters.)
- Int3: But on the other hand, you know, like for, because of conflict of interest and all that. You know like, which is good to have people like *Kwementyay* now (referring to *MC*) – he talk in Top End language and for [person X] that talks Warlunpa, and for her other half ... he speak Warlunpa, which is good and I think he also speak Warlpiri. You know if you can't get anyone in, maybe if that person don't understand, maybe you *can*

get a European person to talk because them mob can't say nothing. Because they know he's a whitefella; he won't take sides. He'll be in the middle ... You know what I mean?

MC: Yes sometimes I've been in the situation where I've been asked to be the interpreter, not because I've got better language skills but because I'm a white person and from outside the community.

Int3: Mm. That's what I'm saying.

Perspectives from Arnhem Land

This is a discussion recorded with a group of five Yolngu (*Int6*, *Int8*, *Int9*, *Int10* and *Int11*) from NE Arnhem Land communities who were preparing to sit for their NAATI interpreter accreditation examination (three are already experienced interpreters). Also present were: *IS1*, an officer of the Northern Territory Interpreter and Translation Service, and *Int7*, a bilingual non-Indigenous doctor who was also seeking interpreter accreditation.

This was a wide-ranging discussion which explored the following issues in some depth:

- attributes required for community acceptance and recognition of Indigenous interpreters;
- dangers and pressures facing Indigenous interpreters; and
- strategies for protecting Indigenous interpreters, including educating communities about the interpreter's role.

First to be addressed was the matter of who is a desirable interpreter. *Int6* comes from the position that everyone is related, 'like a map', so an interpreter is needed who is respected by both sides in a dispute to prevent exacerbation of discord. Her example was the case of a restraining order, which tends to raise conflict between families of the parties involved:

Int6: Because in the community everyone is in the ... kinship system. Everyone is related. It's like a map ... Everyone is related through that system. So if something like that happens (i.e. a restraining order application), it's like ... cutting a line of division of both families ... It's very hard because the other family doesn't relate to the other one properly.

MC: Does that involve an interpreter sometimes?

Int6: It does, sometimes, yeah.

MC: How does it involve an interpreter?

Int6: Have to get someone who's respected in the community – ... where the person is coming from (i.e. understands) the background [of] what their family issues are. And often they have misunderstandings about why that person is representing the person but, that's how they think.

MC: So you are saying that they misunderstand the role of the interpreter.

Int6: Yes.

MC: Are you also saying it's better to have an older person as an interpreter in that situation?

Int6: Yes, I think so.

MC: And is it better to have somebody who is connected to the families or someone who is separate from the families?

Int6: Well I can't say (i.e. answer) that because everyone's related.

MC: Yes, but you know how you can be closely related or—

Int6: —Someone who is a good model in the community, who is someone we can look up to, an elder, someone to trust.

MC: Even as an interpreter between the ... whitefella and the Aboriginal person?

Int6: Mm.

MC: Well that's interesting because that shows that you don't see the interpreter in the same way as ... Europeans see the interpreter, because the Europeans see the interpreter as completely separate – just like a machine ... but you see the interpreter as ... having some larger role—

Int6: —Someone who is more, um, looking at both sides really, balancing the both, both cultures.

...

Int7: So, if you're going to court ... then the interpreter who goes to court has to be a special person?

- Int6:** Not more (inaudible) special but someone who understands both systems, you know? ... Even when they have arguments afterwards, they would say, 'No, *this* is how that law goes in the western side and *this* is our law'.
- MC:** I see, so you're talking now about cultural broker—
- Int8:** (*Int8* is a younger woman who speaks partly in her language, partly in English. Her contributions have been translated as required.)
— If you got me as an interpreter [in my community] or somewhere else, they would regard me and say, 'Who is this? She not a recognised person.'
- Int6:** Because often there's people who goes as interpreter, but she's not respected in the community.
- Int8:** Also an interpreter is not respected. Here in Darwin you people recognise my role as an interpreter because I have a certificate. When I'm out there in my own community, and family, sometimes they reject me and leave me out.
- ...
- (Discussion then turned to the question whether an interpreter is seen by Yolngu as a mediator. *MC* explained the technical differences between these roles and then asked whether the two roles should be distinguished in practice.)
- MC:** ... Can you have the one person doing the two jobs [of mediator and interpreter] or do you want two people doing the jobs separately?
- Int8:** Probably the Yolngu see the two jobs together: mediator and interpreter. They seek someone who has strong language and someone who is recognised under our law. Someone who is recognised in the community.
- ...
- Int9:** In this case [of the] restraining order ... using a ... [sacred] proclamation, that would be good, if she is under restraining order, so the husband could not go near her – under the Yolngu system. So one who has the knowledge of Yolngu *rom* (law) and one who understands *balanda* (European) *rom* together—
- Int8:** —So they can use the two laws together in that area.
- ...
- MC:** ... Are there any other situations where the interpreter is in a hard place?
- ...
- Int8:** In the situation of avoidance relationships—
- Int6:** —And dialects.
- MC:** So when people speak different dialects there can be some confusion.
- Int8:** Sometimes the dialects are pushing against each other – when people are speaking in different dialects.
- Int10:** And also our accents.
- ...
- MC:** What about the age of the interpreter and the gender ... and whether the interpreter is Aboriginal or non-Aboriginal? ... In the community, when people are looking at interpreters what do they have in their mind?
- Int9:** They (the Aboriginal client) should ring up and inquire ... they should tell the interpreters—the main office— 'I want an Aboriginal woman about the age of – ' because they might think she's got more knowledge of both sides, or they might want someone younger.
- ...
- Int6:** Someone middle aged ... and someone who has got that understanding and cultural background.
- ...
- Int10:** How do we achieve recognition in our community if we are interpreters? That's my question ... Because there's a lot of interpreters out there, through to Bible translators—they're all interpreters—as well as us here ... How will the picture be carried onto communities throughout central and east Arnhem Land?
- MC:** That's a very good question. So what ideas do you have?
- Int9:** Let the person go through the thing and let them be the judge.
- MC:** Let the interpreter be tested ... and let the community be the judge?
- Int9:** Mm.

Int11: Yes.

Int10: Because we're looking at murder, child abuse, sexual assault, lots of things.

Int6: And everything is connected through the kinship system – and if you are not recognised, there's big trouble.

Int10: It's up to us to explain ourselves to the community and tell them what the role is for us.

MC: And when do you do that talking and how do you do that talking? Do you get up on the community loudspeaker? Do you talk to the people in the court, or to the families?

Int6: To the families. Go and tell the family what our role is so they understand. But there's other things beyond that point. For example, with a big crime it's a really complex situation where something happens and everyone is affected.

...

And then, if the interpreter is interpreting that story from someone else the outside community will say, 'Okay, she knows the information now'. And they turn around and point (i.e. accuse) her or him who is doing the interpreting.

MC: And what do they say about that person?

Int6: Well, it's not saying, sometimes actions and sometimes something happens.

MC: For example?

Int6: Murders, killing, arguing. Attacking through sorcery. And that's a big thing, that people doesn't want to do it.

MC: ... Why would they blame her just because she's heard the information?

Int6: Because of other issues that's happened before.

MC: I see – they might think of family history?

Int6: Mm.

MC: And how the interpreter is related to those other people?

Int6: Mm.

MC: So are there times when ... people in the community prefer to see a non-Yolngu interpreter?

Int6: ... And that's when they make a decision, 'Okay, I'll move away and let someone step in who is not Yolngu, not of this community.'

...

(MC cited a court case in Alice Springs involving a serious crime where no local Aboriginal interpreter could do the job and so another Aboriginal interpreter, who spoke the language concerned as a second language, was brought down from Tennant Creek. MC asked the group if, in the case of serious crime, it would be okay to deploy a Yolngu interpreter from another community.)

MC: So sometimes, for example if there is big trouble at [Community X], it might be better for an interpreter to come from another community ... That's my question.

Int6: He could, only if it's someone fighting or something happened or accident but not big – not for murder.

...

Int8: There is fear around.

...

MC: ... Do you see that it's sometimes needed to have a [non-Aboriginal] interpreter?

Int10: That's good, we need non-Aboriginal interpreters for Yolngu—

Int9: —To protect us from what the families might think – in the wrong way

...

(For a minute or so, there was animated discussion with several people talking at once in Yolngu languages about how Yolngu interpreters might be protected. MC recounted the story given by *Int4* in Alice Springs about her going through a ceremony in her community that was like her shield of protection. The consensus in this group was that the community should give their approval for interpreters in recognition of their language skills and professionalism.)

MC: How do we get that agreement from the community, what steps do we take?

...

(Again, there was overlapping discussion, with a number of clear points coming through:

Int8: Approach the community council to organise a council meeting and then a community meeting to have the issue discussed;

- Int10:** All names of Yolngu accredited interpreters should be presented and accompanied with an explanation of the training they have been through;
- Int8:** Teach them so that in the future they won't look at us and ask, 'What are you doing and what is your work?' (*Int11:*) 'So they don't accuse us of telling stories when we are working.' (*Int8:*) 'The first thing on people's mind is that we are telling false stories.'
- MC:** Okay that's one kind approach. What about another kind of approach like when court's on ... bush court. What should happen then, before the court case? ... How can we get people to recognise what your role is?
- Int9:** Victim's family or accused's family—
- Int6:** —Get the family together and go and get the interpreter and tell them she or he is here to help interpret and what is the role of the interpreter.
- MC:** ... [*Int6*]'s suggestion was go and see ... the families involved. Who is that someone?
- Int6:** A lawyer and with the person, the interpreter, go and see the family.
...
- IS1:** That sounds good [because] it's not just the interpreter saying, 'I am the interpreter', because sometimes that doesn't work; but everybody there meeting with the lawyer, with the family and interpreter there ...
- Int9:** That covers the immediate family or the extended [family] and later, when the court opens, probably give one or two minutes just to let everybody in the court know, what the role of the interpreter is, so they don't get misunderstanding.
- MC:** And who should give that information?
- Int9:** The lawyer, defence lawyer, prosecutor, magistrate.
... (This provoked overlapping discussion with the point being made that the defence lawyer and prosecutor are adversaries. All then agreed that the magistrate should give this information.)
- Int9:** What happens ... if anything happens to the interpreters, what happens then? Like if someone gets up from family and starts throwing stones or saying something bad. Where do we go? What do we do? Do we get any protection from the court?
...
- MC:** Yeah I see what you mean, and that has happened before ...
...
- Int6:** And once that happens, the conflict is in the family system, in the community, and then the new generation grow up and it carries on.
...
- MC:** Do you know anybody who doesn't like to or refuses to do legal work or police or court work because they are frightened?
- Int6:** A lot of people don't want to do legal work.
- Int10:** I would only do interpreting for shoplifting and minor offences.
- Int6:** There is a difficulty with time. In health work you have time to think about going from ... English into Yolngu. And they get frightened because on this side (i.e. legal work) ... we have to do it quickly.
- MC:** A lot of interpreters prefer to do hospital work or health work ... and I want to know what the problem is with court work. Is the problem—what you just said now—that it's actually harder – you need more skill, because there's more pressure and so on, or is the problem that people are frightened? ...
- Int9:** One is to the standard English ... academic or legal words; they are probably frightened to stop and say, 'What's the meaning of this word?'. The other one is family conflict.
- Int11:** (Translated from Yolngu language:) And even if the interpreter knows the academic words that will be used in the court, he/she could be there in court and the lawyer could say something for the interpreter to translate to the client and the interpreter might make a mistake and the people in the court will hear him/her and someone will say, 'What is he/she, stupid?'.
- MC:** So, fear of shame, of making a mistake in public—
- Int8:** —Or criticism ...
- Int6:** But even when that Yolngu interpreter has learnt a lot of skills, still that he or she is scared, inside. 'Cause he or she is thinking about the family, what's going to happen later.

- MC: So do you know of anybody who's been a court interpreter or a police interpreter and who's then said no more ...
- Int6: Yes, my brother did. He used to be an interpreter and he worked at Legal Aid here, and he just finished ... It's Yolngu politics.
- MC: ... You know this confidentiality rule that you're not allowed to tell what happened? Is that also a problem that some Yolngu think that that interpreter is spreading stories around? ...
- Int6: Mm, maybe. Some [information] can be pushed outside through the family way: Yolngu politics. Like we were saying the other day: policeman can't get information. I zip up my mouth, not say anything, and then the police will probably try another one ... and makes the person talk. Same on the Yolngu side.
- MC: I see, you can force the story out—
- Int6: —Force it out of my mouth!
- Int8: And by making us hurt with accusations and challenging the interpreter to justify themselves by reporting what they said. And saying things like, 'Did your relative hurt that person?' ...
- ...
- Int11: And even old stories will be forced out! Even if you stamp on the story with your foot it will still come out.
- ...
- MC: And sorry, Sister, what was that?
- Int9: [I would say]: 'I'm under oath and I won't tell anyone'—a [sacred] proclamation (i.e. in the Yolngu way)—through this path we can be assisted. Same like swearing on the Bible, that we won't tell. Like it's a [sacred/secret] story.

Perspectives of a non-Indigenous interpreter

Int12 grew up in a coastal Northern Territory Aboriginal community close to the Western Australian border and learned to speak one of the local languages. He later trained and worked as a lawyer but now, in his early thirties, works regularly as a legal interpreter.

The transcript begins with a recount of an occasion where some teenage boys requested him as an interpreter ahead of Indigenous female interpreters who were already on standby. The discussion covered matters including:

- factors affecting clients' choice of interpreter;
- the difficulty in remaining objective and dispassionate;
- an interpreter's age and ceremonial status in determining community acceptance; and
- the advantages of being a non-Indigenous interpreter.

- Int12: [I've had experience of] being required to interpret where an Indigenous interpreter didn't want to [in] the situation ... where young boys at [Community X] ... were confronted with female interpreters who had been working all day at the court. And when they were asked if they wanted them to be interpreting for them, they didn't reply at all—just didn't say a word—clearly indicating that they didn't want that female interpreter working on their behalf. And then, when they were asked if they would like me to do the job, then that was fine. They just nodded their head and walked away from the female interpreter and I was brought in and the job went ahead absolutely fine.
- MC: ... Was the issue, as far as the boys were concerned, that they were going to be talking about sexual issues?
- Int12: No, no. These weren't sexual issues. These were even simple break-and-enter, stealing matters and [they] still didn't want the older female interpreter interpreting on their behalf – which I hadn't struck on occasions previously.
- MC: You said female, but how do you know it's not that ... those interpreters were too close to the bone in terms of family relationships? ...
- Int12: I don't know that for sure. I don't think that the interpreter concerned was too close in that sense. I think in some ways that the reputation that I have, the boys may have actually wanted me because they'd seen me working in court before; they'd heard me having a good reputation working with a lot of the older guys and so, 'No, we don't want so-and-so ... we want [Int12] to be interpreting for us in court. Yeah. I think that has a lot to do with it sometimes – people often ask for me before they will ask for the others, even though the others are there far more often ...

MC: ... Have you come across any conversations with any [interpreters] where this has come up ... where interpreters find themselves in an interesting or difficult or challenging situation – apart from the linguistics?

...

Int12: It's probably more been on the positive front where they've been involved in, say a court matter, and they've had relatives who will especially ask for them to do that job because they know them; they trust them. To me that then throws up another issue of whether ethically they really should be doing that because they are too close.

Others are, when people are interpreting in ... hospital and they've found it extremely difficult dealing with a situation where a relative of the person that they are interpreting for is dying and so they're dealing with that in a hospital scenario – just the emotional aspect of that fact that somebody's dying in front of you. Very, very difficult! And trying to stay independent, trying to stay impartial ... inside, all the emotions are churning away – they know both people involved. They're trying to do the interpreting on behalf of the Aboriginal people there and the doctor. They're sad, they're angry and they (i.e. the interpreters) perhaps in some instances don't understand what's actually going on until the entire interpreting scenario has unfolded ... because the doctors haven't given a briefing prior to the case taking place.

...

MC: Do you get any sense that it's easier to be an interpreter if you are older rather than younger? Do you see youth as a disadvantage?

Int12: Yeah, that's a really interesting question. The instant thought that popped into my head then was yes, I think there is a greater advantage being older. It seems ... to me that many people look on the older interpreters with more faith, more trust; that they actually deserve to be in that position, whereas the younger ones are still going through that stage of growing up, in effect. And just because we, as non-Indigenous people, look at somebody who is 25, 28, 30 and look at them as being a mature adult, in an Indigenous context ... 30 is nothing in some ways.

They seem to reach adulthood earlier than what we do but adulthood doesn't mean maturity. Adulthood doesn't mean being entrusted with things that require great respect and so interpreting, and dealing with legal matters and dealing with difficult medical matters – it would not surprise me to have somebody do interpreting training when they're in their mid-twenties or early thirties ... and in ten years' time be a sensational interpreter ... totally trustworthy, respected by the community, and do a fantastic job. I think the maturity side of things or the trusting and respect actually comes later, even though their version of adulthood would come earlier from a ceremonial point of view than what it does for us as non-Indigenous people.

MC: ... so Aboriginal people perhaps would think that this is not just about language skills – so what's the other part?

Int12: The other part is age and respect from the community—actually having knowledge 'Aboriginal way'—not just being able to mix in a non-Indigenous sense. So yeah, it is that – it comes back to the bicultural aspect of yes, being acceptable from a non-Indigenous point where all we are really concerned about is—okay, we're talking in a medical sense—being able to speak your own language properly, being able to speak English well, having a knowledge of the medical system and we're happy! We're away! We want to engage that person as an interpreter because we can talk to them in English – they understand the system that we want them to work in. But then the other side of it is, from an Indigenous community factor, having that person actually fit in from their cultural point of view. Are they entitled at their age or level of ceremony, to be talking about those things to certain people? Maybe with children they're able to, maybe with people younger than them they're able to, but are they able to do it at any other level?

...

MC: Does this need to have older interpreters indicate a misunderstanding of the role of the interpreter or a different view on the value of the office?

Int12: I think the potential need to have an older interpreter probably requires a different view of what the office entails; an understanding of what the office is. I think at times I'm preferred because, while I'm accepted as one of the community—I'm a part of the community at [Community X]—at appropriate times of their choosing I can step outside of the community as well. So I'm very much seen as independent, and in fact as an outsider in a sense because of the colour of my skin. But then at the other times that can switch off straight away and I'm back inside again. So in that sense I'm seen as independent and seen as outside of whatever rules there are. Other people may still be seen as within that and perhaps – perhaps at any time too close until they are reaching that older level.

...

I know that in some communities in Arnhem Land, from speaking to interpreters at the court, they still have extreme difficulty in saying, 'No, no, no! I'm not working for you against the police; I'm not working for the

police against you.' Maybe because of some of the work that I've done out at [Community X] over time and because I've done a fair bit of work in here for the younger boys, that doesn't seem to have been an issue out at [Community X] so much. I've never had anybody come up to me and say, 'Oh you're working for the police, aren't you?'

I have in the one committal hearing, interpreted on behalf of the witnesses and then, even though I felt extremely uncomfortable at the time, walked straight outside and then explained to the defendants what was going on. A group of very, very tough, strong looking young fellows and for the first time ever as an interpreter I thought 'Hello, what is going to happen here? How are they going to view me?'—because I've just been interpreting some pretty heavy stuff—and they were totally fine: up close with me, talking, asking questions. Not a problem at all! And to me they really did seem to appreciate, they really appreciated the fact that I was totally independent and that I was simply helping people understand and communicate in the courtroom context, whether it was witnesses on behalf of the police, or for them as the defendants. They didn't have a problem with it at all. So for me the age part hasn't been a barrier but the fact that I'm white, I think has been more a positive than a negative.

Bringing that back then to community interpreters, I know, speaking to one of the interpreters at Alice Springs, the fact that she is an older interpreter—she's a very experienced interpreter—she is accepted very much so within her community and elsewhere. And, in fact, I was with great interest listening to her tell a story of how she went through a particular ceremony to indicate that she was now no longer considered to be either female or male—obviously she's female—but she was considered to be totally neutral, she was gender neutral. So people from her community, no matter what gender they were, were permitted to utilise her and she was permitted to act as an interpreter on their behalf, which then shows the importance that they put on that role and obviously her age and position. I found that stunning! I'd never heard anything like that before. Never! Really interesting.

Group discussion involving interpreters, candidates and trainers

Present at this discussion at the premises of the AIS in Darwin were: *Int13*, an experienced female Arnhem Land interpreter (who is also a NAATI examiner); *Int14*, a male candidate for an upcoming NAATI accreditation test; *T2*, coordinator of interpreter training for the AIS (he is also a lawyer); and *MC*.

MC opened by asking *Int13* to speak of the challenges she faces as an interpreter. Subsequent discussion included the following issues:

- the need for non-Indigenous users of interpreters to adequately brief interpreters and to explain their jargon;
- community perceptions of a legal interpreter as some kind of police officer or lawyer;
- a process for resolving an accusation that an interpreter put an Indigenous client into jail;
- the need for interpreter service representatives to visit communities and explain the interpreter's role;
- growing interest in a few communities in interpreting work;
- community wishes for legal professionals to undertake community based cross-cultural training and to learn about customary law;
- poor utilisation of interpreters by lawyers in taking instructions and advising clients;
- dealing with requests to interpret for close family or a person in an avoidance relationship;
- gender and age of interpreter in respect of the Indigenous client; and
- introducing the interpreter during court proceedings.

Int13: Last time when I was interpreting at the hospital I found it very hard that some doctors or the other health workers weren't listening to the interpreters ... when they come to see the patient. And they knew that there were some interpreters there, then they had to ignore us. They were being rude and they actually didn't give us a chance by, you know, they didn't wait for the interpreters to explain properly to the patients. And we didn't know what to do because, on our first assignments, like the first ... jobs, we were a bit nervous and there was no-one there to, sort of, encourage us.

But then each day when I went back to hospital ... I started realising that there was something wrong and I thought I have to see the people who work at the hospital, like Aboriginal liaison officers, and explain to them that what we finding here is very hard and it's not making us happy. And I felt really bad, especially for the patients. And at first it was a bit embarrassing that we were being ... ignored and it was like, being rude. They were being rude [by] not actually sitting with us and explaining exactly what these big words are. It's like they

just sit with you probably five, ten minutes and then just get up and walk away like they in a hurry – in a hurry to do something important.

And that's where it actually upsetted most of us. Even the patients knew that they were being mistreated, and they did tell us, but then we didn't know where to turn and who to explain to.

But then, four weeks later, we've had some people like coordinators and other Aboriginal liaison workers who actually cared for us, both the patient and the interpreters. They come up and sat with us and started telling us and explaining that if you have difficulty or a problem, just come and see us and we'll probably go see these people and tell them.

And that's where I started being strong. I thought for one interpreter like myself, I thought maybe ... I'm wasting my time looking for people because it's a big hospital and when you are looking for one person like Coordinator or someone who is looking after you, if you don't catch them because they [are] elsewhere. So I thought it's time I have to be strong. I have to stand up and just tell them myself. So one day I did practice on that. One of the Indian doctors came and was interviewing this patient and then he talks fast and I looked up and I said, 'Excuse me. I'm an interpreter; she's a patient. What I actually need to let you know is if you're a doctor and if you really want to help this patient, I think you need to help both of us. It's time I need to tell you that you need to explain to me clearly and simply because I've just started and I need to learn. There has to be some good communication between you, me and the patient. So, because if you're rushing around, running around, I might be giving the patient a wrong stories.'

... (*Int13* now turns to speak of experiences as a legal interpreter.)

First time when I was in—this is another part now in legal service—when I was doing interpreting, I found it a bit hard too, you know. I think I made couple of mistake. I was being asked, 'You have to sit and wait here if (i.e. in case) someone needs you'. So, that's 'cause I didn't know and nobody told me what was I really supposed to do. So what I did was I just go up, sit down, and just stare at people going up and down – and couldn't get no information. So I sit down, and that's why I was being ignored. Then people say she must be here for court, you know, and without knowing that I'm an interpreter. That's because I made a ... mistake for not introducing myself to them. So, anyway, a couple of days later I was being encouraged – again I went back and I said 'Hey, look, I'm an interpreter. If you need me I'm waiting. The language is [X] and I'm for East Arnhem. So I sat down and this one lawyer come up and he said, 'Would you like to help me? I need an interpreter.'

I said, 'I'll be happy.' But then when we went to see this person, and ... I started interpreting, and this lawyer was a new person who had come all the way from, probably Sydney or Adelaide. He could not give me a chance. He could talk fast and look at the paper, just like this, quickly! And he said, 'How are you and what else do you want?' And then he just ignores me like I'm just a – his secretary or something, you know just sitting around there listening to him. And he couldn't use me as an interpreter for two days.

But then later when we come out I met the same lawyer and I said, 'Excuse me, Sir, but could I have a word with you?' So he said, 'Okay.' I said, 'Listen, if you need me next time, I have to remind you next time if I go with you, try not to read too fast because you might be giving false stories to the judge'. You know, I had to remind him. And he said, 'So what do you want me to do?' [I said] 'Maybe next time if I go with you, just have a look at the paper and ask questions and, you know, find out the cultural background where this person is and I'll probably interpret for you properly. We have to remind each other how to help each other. That way we can help this person in prison and he could probably give Judge the right stories.' So anyway, there was a bit of encouragement and we talked and talked and he said, 'That's a good idea. Look, I'm sorry, I didn't mean to be so rude but ... I was just in a hurry to do other things'.

I also did at the [court]. You know, I was sitting here (pointing) and there's a defendant, there's the judge and there's a lawyer. He's using ... bigger words. And then I was already told, 'Look, if it's difficult just raise your hand'.

So I did, I raised my hand. I said, 'Could you please, Lawyer, explain that in a simple English so as I can understand and I'll give this person a right story; *I don't have to* (this means *must not*) give him some wrong stories'.

So when we come out and I said, 'Could I see you, Lawyer?'.

He turned round: 'Okay. Yes what can I do for you?'.

'Look, if I'm sitting there, you have to look at me because I am Aboriginal and try to use simple words.'

So, I was only trying my best to stand up, to be confident, not causing trouble, but to be honest and tell them straight, how I feel and so I said to him, 'Look, if I was an Italian or a Greek you could use that word, but just look at me because I'm Aboriginal and try to use a simple English. That way I can understand'.

And so [he said], 'I'm really sorry', you know. And then later he realised. Then he said, 'I'm really sorry about it.' So that's how I find it hard sometimes [and] sometimes easy. It will actually help the lawyers themselves or the field officers if I remind them and explain. You know there's a lot of times I meet with the defendants, even if I'm interviewing I have to also explain about my role.

So, did that make a bit of sense there?

MC: Yeah, what you've explained fully, and it's been very interesting, is the problems you've had on the *Balanda* [European] side. Now just turn over to the Yolngu side and think of when you've had trouble, argument, complaint, uncomfortableness, when you've been frightened, or unhappy – or when you've been very happy –whatever—with the Yolngu side.

Int13: Okay. In Yolngu side, as I went on interpreting, people started looking at me as if – the community started looking at me as if—without understanding—they thought I was some kind of a police woman or a lawyer. What they didn't know, that I was only an interpreter.

...

And there was a bit of problem while interpreting at the legal service. I've had trouble from the communities. There was a confliction between me and the community. So I thought [that] I couldn't call the police or make complaint to the police. I did tell the interpreter service, 'Look, hey look! I'm involved because of this'.

And one time I did ask the interpreter service employees, 'Can one of you or two of you come with me to community and we'll probably talk to the community'. But then, I understood that they were a bit scared there could be trouble; you know, they could get involved. But then I thought, 'Oh well it's better for me to go over to the community and face the community themselves'.

So I went there in person, alone. It was a bit risky and it's dangerous to face people angry and who can blame you for, you know, when you're interpreting what the police, the lawyer (says) and this person goes to jail and you can get blamed for it.

MC: What were they blaming you for?

Int13: Well they thought I put this person in jail. There was a missed understanding. What they didn't know, I was only interpreting. So I got the blame by the family. They said, 'Okay it was [Int13] because she was there and she might have put this man in jail'.

MC: Did they look at the family history and is there some problem before, old problem between your family and their family? Were they looking at it that way, or—

Int13: —They did. They did. They looked at an old five-years-back problem which my father and his young brother made a mistake—not mistake—there was still a missed understanding in the community because my father, he was actually an honest man, and he always tried his best to help the community understand because he worked for the Council. Now there was an old death because they fought—my father and his brothers before—so anyway I had to go to the community and face the problem.

MC: Did you face the family. Was it a community meeting or family meeting?

Int13: I had to bring the family and the whole community to witness. Then because I had two other tribal people which was my father's family, they had to witness it and because they knew that old death what my father did. They knew that it was been settled already through cultural law. So I've settled [a] few things. So I thought is the only way I can face them.

MC: To prevent that sort of problem in the future, what can we do? ... What can the Aboriginal Interpreter Service do? What can I do as a trainer, or what can [T2] do as a trainer?

Int13: Well, as a trainer, sometimes it would be a good decision that we could have people like [T2] or someone to fly *bala* (to) community, visit the community and sit with few other peoples like, people like chairperson or president. But they more helpful, or like clan leaders. Speak to them, explain to them what the interpreter's job is and what the roles are. Yow. (Yes.)

And they mostly – they really understand about people these days and they can actually accept people like [T2] or many other lawyers; like in Yolngu customary law, when they look at Balanda come in, and they say, 'Okay, stop. No trouble. We'll have to show this person a lot of respect'. Just bring the whole community, sit down and we'll listen to this person, what they are going to explain. Yow.

MC: And do you think that over time, more and more people within the community are coming to understand what an interpreter really is or do you think they still misunderstand what the interpreter is?

Int13: Well actually, I spent three months in community [recently] and what I seen are people are really understanding and communicating now, and lots of community people are interested in doing interpreter work. A lot of them.

But in outstations I have found interpreters are being treated like we're lawyers. They think we are lawyers now. But I visited three outstations and publicly spoke to them that I am not a lawyer, but an interpreter and I am nobody's, on no-one's side. I'm just a public servant²¹ and I actually help interpret just to get the message across. And there was a lot of understanding these days and I've seen lots of people are now interested in doing interpreting these days. Even the older, older men are asking to do that job with some legal service like Legal Aid lawyers. They also ask, 'Okay, interpreting is good but can you also have those people come visit our community and do the cross-cultural [training]'. That's what they're crying out now, crying out for, is they rather have some lawyers and judges and everyone from city – welcome them and teach them the customary law and do cross-cultural.

MC: Which places have you heard that feeling expressed, where people have said that they're interested in having the cross-cultural side growing? Which places?

Int13: I've heard it at ... (*Int13* names four major NT coastal communities).

...

T2: Yeah I agree with a lot of what [*Int13*] has said – it is a problem. The feedback that you get from the communities is that there's a lot of pressure put on interpreters to do – fulfil other roles, other than what they are really there for, to be an interpreter, including to give some legal advice, to become almost, ah, a bit of a health expert because they've been working up at the hospital doing interpreting and because you've been working up at the hospital you must be – you must have medical expertise. So then you give advice on health matters, you know.

And there's been talk, particularly when we visit the Centre (Central Australia), about people being blamed for, you know, maybe supporting the prosecution if somebody is in court. I personally haven't seen any of that happen here in the Top End especially, and I'm not aware of it, but then obviously I wouldn't be aware of it because I don't have that, you know, the ramifications of what the community think of me. I just see people working but I don't see what happens when they go back to the community. But it appears just from my observations that it is, that it seems to be more of a problem around the Centre. I'm not saying that it doesn't exist here, it does, but it seems to be more prevalent in the Centre.

In terms of – just going back to the Balanda side of things that [*Int13*] was talking about before, I think that there is—there has been—I've noticed a little bit of a shift, particularly in the hospital. I thought at first at the hospital they were very, a little bit arrogant towards the interpreters; there was, you know, comments made that, you know, how can they interpret if they don't know about medical procedures or terminology or whatever. You know: 'They're more dangerous than they would be of use because they could misinterpret.' And I know ... that that's sort of swung around a little bit, in part because like, you know ... (*T2* names a health interpreter trainer) is there; but other things as well have happened. There's been sessions have been conducted with the hospitals and also the realisation that yes, they aren't experts on medical terminology and procedures but in terms of what they were getting over to their patients. The message they were getting over compared to what they can now get over is, you know, a hundred percent.

On the legal side unfortunately it's been—it's probably been more difficult—even though that this whole interpreter service almost stemmed from the legal services and that's where the initial push was (was to get people adequately represented in the courts) there's a little bit of a reluctance still to use interpreters. I think when [*Int13*] mentioned before, one of it has got to do especially with the way the Darwin Magistrates' Court is set up. It's really badly designed for using interpreters in the sense that there's nowhere for the interpreters to go to be identified as interpreters. They basically just hang around in the public area and to be quite honest, you do look like another client waiting for Legal Aid to speak to you. You sit outside Legal Aid's office with all the other defendants or witnesses or whatever ... and no-one there, apart from a few of the lawyers, are even aware that interpreters are there.

It's not like, say like at Alice Springs, you go into the court and there's physically an office where the interpreters go. When you sit in that office—and I've sat in that office quite a few times with them ...—it's a constant flow of traffic between the interpreters, the lawyers. They know exactly where to look for them. They come down: 'Well, can you do this? This is the language. Can you come in, it's about such-and-such.' And they're off!

...

But also too the fact that I think, with the lawyers, from my observation is that they're too obsessed with the court and that's where the whole problem is. They think the interpreters should be used in the courts, whereas I sort of think that really, the court is, in a lot of the matters, particularly you know, Magistrates' Court matters, almost irrelevant [for interpreters]. They should be there doing instructions with them, finding out what happened before they go in. And they seem to think, 'Oh well, you know, you hang around here and when he goes into court I'll grab you'. And then you go into court: 'How do you plead?' 'Not guilty.' Bang, bang, bang!

21. Interpreters working for the Aboriginal Interpreter Service are, in fact, employed as casual public servants.

There's really nothing for you to do. You know, for all intents and purposes you can almost get by without having anyone there and then as the person comes out you tell them what happened.

So until they get this idea of trying to use them pre-appearance, I don't think it's ever going to work and, also too, they're still badly organised in the sense that we've had so many calls for interpreters for matters which they know would have been set down at least a month ahead. And the other day we had a call for a Warlpiri interpreter; they were in court already! [It had] been set down for nearly five weeks before. They rang up on the morning. It's a lack of recognition of their, anyone's, professionalism. It's like, 'Hey, get one in here quick!' Whereas, when you see from ethnic interpreters, when we were at Nhulunbuy one time there was Legal Aid working with the one Indonesian interpreter. They went and stayed there the night before. She was there, both of them were there. They spoke at length that night before – she was fully aware of exactly what was going on in the case. She was introduced to all the defendants. They sort of worked out exactly what was going to happen in the court.

And then ... the next day, when we went to court, you know, I saw one lawyer there click his fingers and call up this interpreter, this Aboriginal interpreter, saying, 'Quick! Get up here!', you know? But there's never any discussion beforehand with them. You know, I mean they're sort of like, there's a recognition that this lady was a really good interpreter—which she was, she was a brilliant interpreter—but then it was sort of almost like well if we need one this guy's here, but there's not that same recognition. I don't know what it is because I think often they just think it's not that crucial that you need an Aboriginal interpreter there when you plead not guilty anyway – why don't we just get through it?

...

To be quite honest, if people said, 'Is it changed? Could you sort of really observe the change?' I would say, 'No'. Over this year I've seen very little change from when I first started to now in terms of use, particularly in circuit courts. Like so often in circuit courts we go out there, interpreters are lined up, they'll sit there for three or four hours – no one even talks to them.

MC: What about you, [Int14], do you want to say anything about your experience as an interpreter about any challenges?

Int14: Yeah, the only challenge I find is trying to learn the jargon of the hospital or the courts. Yeah. Interpreters probably have to work on that, yeah.

MC: And another question, this is about males and females ... you know how the issues with brother and sister, the kinship issues, the avoidance relationships and that sort of thing. Then there's when you're talking with a woman interpreter, interpreting for a man's health problems, or a man interpreter interpreting for a woman's health problems; or interpreting in a court or police where there's some thing, some sexual assault has happened – all those sorts of things. How do you manage with those issues?

Int13: ... If I interpret for a male defendant, like if he's done something like rape matter or whatever ... a person if I don't know him, he could be a distant relative from other community like [X] or [Y], um, I'd ask him and ask the police if it's all right, whether he needs me to be their interpreter. And I have to make sure [and] ask him is it okay if I talk this and that when the police says (i.e. speaks).

MC: So in other words, you ask permission; you check up first.

Int13: I have to check first. So I think it's okay for a distant relative. You can interpret for a male but not the close relations like the avoidance, like [poison] cousin²² or a brother.

...

Some of them can be a, what you call ... conflict of interest.

...

I've actually done that with my very close cousin, very close family of mine. [He] was involved but then I had to let the police know, and I have to tell the interpreter service this is very close family of mine. But then they couldn't get another interpreter ... so they used me and I said ... 'I'll just interpret whatever questions you give and I'm not here to help her'. And I told my sister, 'I'm not here to help you. I'll just interpret *nhungu matha* (your speech), and for the police. And that's it.'

...

For example, if a clan leader with grey hair comes in for a court—maybe he's smuggled gunja, cannabis or something—and if he's caught by the police, it would be better not for the young lady interpreter to be there for him ... because all the cultural background that every young woman has to respect that elderly man and keep away.

22. Int13 is referring here to a man who is, or who is categorised as, a woman's paternal aunt's daughter's son. Such a man is eligible to be her son-in-law.

MC: So, in other words, you don't want to be there when it's trouble, but if he was giving a speech at a meeting, then what about having a young woman?

Int13: Well, if a speech is made, *balanya nhakun* (such as) conference meeting, then it's up to him really to choose whether he needs that young lady to interpret for him.

MC: It's not so much a problem there, you're saying it's more of a problem when he is in trouble—

Int13: —When he is in trouble.

MC: When he's embarrassed?

Int13: Yep, yeah.

T2: And this is what happened in Alice Springs the other week where quite an old man was on a charge and he went off and just abused the interpreter – it was basically, 'How dare you interpret for me!' And [he] sat down on the floor and wouldn't get up until she was out of the room. And it was like, you know, 'This is an insult that you come in' and – so that was it. She was off and there was no interpreter there – couldn't find anyone to do it, so that was it. But he was adamant that there was no way that she was going to interpret for him.

Int13: But these days, today what we find—I've experienced this—this year I've, every time I walk across and I see this one elderly man, he's an old fella, he looks at me and he walks straight towards me and I thought I was in trouble. So he comes up and he—I was just sitting there and I didn't want to see his face—he comes up and said, 'Hello', politely: 'Get up!'. And I had to get up. I thought I was in trouble but then he shook my hand: 'It's good to see you do public work'.

And that was really good, and then he tells me, 'You're most welcome to go to the outstation, get what you like – geese or clams, collect what you really like, cause I'm just happy to see you work.' Yow ...

T2: Can I just bring up one issue, sometimes with this question of blame—like in the court set up—you've got the prosecution and then you've got the defence – so that like defence is maybe NAALAS²³ or another legal aid organisation, and then you've got prosecution which is like the police. And then the interpreter is asked to work for either the defence or for prosecution – and then the problem is sometimes when they're working for prosecution, and that person then is found guilty and gets put into jail ... One of the things that has been raised to try and get over this idea of who you appear to be working for is that the interpreter simply works for the court and interprets for everybody; doesn't matter whether they're interpreting for the prosecution or for the defence, or even if the magistrate wants them to do some work, they interpret for the magistrate.

Int13: Yow.

T2: So that they're seen then just like people like the court orderly or somebody who belongs to that court and not someone who belongs to, like the police or anything like that.

Int14: Yes.

...

T2: What interpreters have said to us ... is that, when they're sitting in the court, they often have family come in and the family come in and see them sitting near the police or see them—if it's say a violent sexual assault crime—they see them sitting with the defence lawyer getting that person off at the expense of that woman's family.

MC: What about if the magistrate or judge, just before the interpreter is being used, introduced the interpreter to the court and said, 'This is [Int13]. She's an interpreter for this one. She's not connected with the police, she's not connected with the lawyer, she's just interpreting'. So if the judge said that everybody would understand.

T2: ... We've started to implement that in some circuit courts. Some magistrates obviously are more accommodating than others – people like for example [Magistrate X] will say 'We have an interpreter here from the Aboriginal Interpreter Service. They are assisting us to—', like that sort of thing. That is a help.

...

Like we've suggested a few things. Say like for example, before I start work you know if like I'm in court ... you've got to stand up and say 'I'm [T2] for the defendant, Your Worship'. But no one ever bothers finding out who the interpreter is. So what we are trying to say is, okay, even just in small things like that, 'And we have such and such as the court interpreter' so everybody knows and it's recognising them as another professional member of the court.

23. Northern Australian Aboriginal Legal Aid Service.

Interview with Chairperson of the Kimberley Language Resource Centre

The 2003 Broome conference of the Foundation for Endangered Languages was organised with the assistance of the KLRC which is chaired by June Oscar, a speaker of Bunuba. The conference was well represented by speakers of Western Australian Aboriginal languages including language workers and/or interpreters from the Kimberley, Pilbara and Western Desert regions. As such, the conference presented a good opportunity to interview a number of participants interested in the issues which are the subject of this paper.

Given that the Kimberley Interpreter Service is the only Aboriginal languages interpreter service in Western Australia, I took the opportunity to interview the heads of both of the Aboriginal organisations which set up KIS: the KRLC and the Mirima Dawang Woorlab-gerring Language and Culture Centre in Kununurra.

The main points covered in this interview with June Oscar (JO) were that:

- officers of agencies which use interpreter services require training in how to work with interpreters;
- interpreters require interpreter training in specialist areas such as health, law, education and welfare;
- an Indigenous person's identity and reputation within their community impacts on how they are perceived in their role as an interpreter; and
- with trained interpreters now available, they should be used more often by all agencies.

JO: The people from agencies who engage the interpreter to assist them – they ... need to know what the interpreter's role is ... and how to use them properly. So yeah ... that's a critical issue, and from advocating for languages and proper communication in terms of interpreting ... that, whilst we are putting a lot of effort into Aboriginal people to become skilled at facilitating that proper communication ... we need to be also looking at how we can get ... the agencies and their operators skilled as well – to use interpreters. So it's not just ... placing the responsibility on the interpreter to be the one that stands and ... delivers well on the day. It has to be on both sides; the side that we ... keep missing ... is in the education, awareness-raising and training of the professionals within these agencies, such as police, magistrates, lawyers and health professionals ... to really fully understand and know how to work with interpreters.

...

MC: In which part of Western Australia—which town or community—are interpreters used often?

JO: I can only speak as a Kimberley person living in the Kimberley that interpreters aren't being used in many of the areas. You hear of certain individuals in the Aboriginal communities being asked to come and provide interpreting support; ... people who could speak English and their own language are often asked to interpret on a very 'as needs' basis and very ad hoc and so no organisation ... And no training necessarily for any of those people ...

Then recently people were made aware of what was happening in the NT and what Batchelor [Institute] was offering...

Then with the work that Dagmar Dixon and Eirlys Richards and others had done through Karrayili Adult Education Centre, which was able to provide interpreter training here in the Kimberley, in the mid '90s I think, and so there were a few people who went along to that course to train as interpreters in Kriol and Walmajarri ... And then gradually different people became interested and wanted to provide that support as interpreters and so then people enrolled at Batchelor. The Karrayili training was once-off and the funding came through the Department of Justice in Western Australia.

...

So it wasn't until recently that more people went along to become trained and accredited to operate as interpreters with some level of skills and ... professional development. Proper communication is something that is crucial and is very needed in the Kimberley, not just in justice but in all the service areas.

...

MC: Do you know of any interpreters who've stopped interpreting on the law side because of problems—wherever they come from—that they can't overcome?

...

JO: No-one has raised it with me directly ... Untrained users of interpreters can also create problems within a situation which is problematic already and so they create more pressure for the interpreters ...

MC: And in general terms is KIS well understood or well received by the authorities ... in terms of the way they are towards you? ... Do you find them supportive with their words?

JO: Most of them are supportive. Most of the agencies we met with were agreeing with the need for interpreters ... The follow-up of making sure that they use interpreters, and how they use interpreters, is the difficult part.

...

We need more people helping us and advocating for the proper use of interpreters because of the fact that people speak languages other than English, and to look at ... changing, implementing and drafting policies within their own organisations; and then to work with people within their own organisations to create the learning and the changing of attitudes and the changing of approaches to really working with Aboriginal people in the programs and services that they provide and the programs they administer.

MC: And ... what are your priorities?

JO: In order of priority I think the skilling-up of the current interpreters so that we can create a pool of people with specialist skills to be able to provide interpreting support in health or in the legal justice system, in education and in the social or welfare area.

... (At this point the tape finished and this passed unnoticed. Upon changing tapes, *MC* recounted *JO*'s answers to the question of who is best to work as interpreter in Indigenous contexts.)

MC: In [respect of] age and gender you said that it depends on the circumstances: that sometimes it's more appropriate to use a man; that sometimes it's more appropriate to use a woman – it depends on the sort of situation ... Then we spoke about whether non-Indigenous interpreters could or should be used and you said again, it depends on the situation, the circumstances, but that as a matter of normal priority the Indigenous interpreter should be used ahead of the non-Indigenous interpreter for reasons that it provides recognition and it's their own language; and it provides employment and a source of esteem and a source of acknowledgment in the community and giving that language some respect ...

Then what were we talking about, the qualities of an interpreter?

JO: ... people should also be mindful of the factors that might influence choice of interpreters, and the qualities of interpreters, how people interact with other persons within their community and with everyday interactions and life in the community ... because people don't just forget what you do and what role you have in their community just for the time that you might provide the interpreting job.

...

For Aboriginal people, it's difficult to operate in that other way where you forget that that person is this-that-and-the-other within their community; whether it is good or bad, people look at you and that's who they see. And so really in working and developing interpreters to be respected, that needs ... to be a consideration when people are putting their hand up to be interpreters.

...

MC: Are there enough people who are willing to put their hand up to be interpreters?

JO: ... We can find that out by promoting the role of interpreters ... how interpreters are an important part of people's lives when they're in situations and they need that support; how interpreters, through their role, can make a difference; and, that if people can see interpreters at work and really appreciate their roles and understand it, then that might help in promoting and creating the interest and the motivation for people to want to do interpreting. People have got to see—both Aboriginal people and the agencies ... —interpreters making a difference ... and they can only do that by being used.

Interview with David Newry, Chairperson of Mirima Dawang Woorlab-gerring Language and Culture Centre (Mirima Council Aboriginal Corporation)

Circumstances did not permit the audio-recording of this interview. The following summary was prepared from notes which were taken at the time.

Discussion with David Newry centred on challenges facing Indigenous interpreters and strategies to deal with them. Mr Newry, an interpreter himself (the 15th interpreter to be interviewed), made the following points:

- The fact that an Indigenous interpreter will be related to other speakers of the language means that a pool of interpreters is needed. This provides choice in matters where particular interpreters (such as relatives) may be inappropriate.
- The relatives of a client may raise objection to a particular interpreter being used and it may be necessary to gain family permission about the choice of interpreter in legal cases, even for minor crimes.

- People do not understand the interpreter's role. A common assumption is that interpreters are there to help the defendant get out of trouble.
- If the interpreter's role was clearly explained to families of witnesses/defendants then there would be much less concern about the identity of the interpreter: 'If someone running the show explained to people, it would be much easier, you know ... I get someone to explain my role each time I interpret for the Land Council.'
- In Land Council contexts, delegates (who are mainly elders) prefer local interpreters who they know will understand the context of the discussion. 'They choose me for Land Council because they know me; they respect me in a tribal way.'
- There may be difficulties using young people: 'If they just come out from high school, they're too green. [Instead], they pick someone who they know can translate the words, examples and ideas in a way that elders can understand better ... [it's] knowing how to put things in a cultural way.'

'Our pride falls on us': facing the need for interpreting assistance

Int16, an accredited interpreter, is now a language development officer and works occasionally as an interpreter. She was interviewed in the presence of the Coordinator of KIS, Lesley Baxter (*LB*). The interview began with the question of what challenges Indigenous interpreters face. The conversation centred upon views expressed by some elders in response to interpreting assistance.

Int16: Well the first thing ... we get stuff from ... old people because they've never been exposed to interpreters' roles ... They come from a background of coming out of their own traditional country and then coming into the Western world and then trying to communicate with *gardiya* (i.e. non-Indigenous people) ... [For] them to think that they can't fully understand what is happening – we got pride, aye? Like our pride falls on us.

They tell us ... 'I been working with *gardiya* all my life. I know what they are talking. There's really no need for you to come here!'—not saying it out—but the impression we get is, 'There's no need for you to do it. I been working with *gardiya* before you were born. I understand English.' You know, we come across that problem.

...

We're saying [that] ... us as young people really don't understand the English too, but we're out in the open with it ...

MC: Do you think it's important if you're an interpreter to be an older person or a younger person or a man or a woman?

Int16: Of course, we have to have man and woman. Have to have that.

MC: ... Do you know any young interpreters?

Int16: Our youngest would be [X].

LB: ... she would be about 43.

MC: That's interesting ... I know very few interpreters who are under thirty ... I think it's because ... they find it a bit hard to be young and an interpreter.

Int16: Exactly, because our culture says we always gotta listen to our elders and this is something like saying, 'Okay well we know more than what you do'.

MC: Putting yourself higher.

Int16: Yeah! Exactly. And we've always been in the role of growing up – always respect your elders and your elders' words ... And now, until such time as we educate all our people about ... the role of interpreters ... and you do get elders, like Mum, when I did that course with interpreting—lucky I been bring all the tapes back ... and videos we been do in Batchelor—and I said to Mum, 'This is what I been doing' ... and she sat and watched – 'Oh yeah', and she been getting the idea, 'I see now what you mob are doing' and that's good.

...

They look at it in another way with interpreters. If it's court work they'll say (translated from Kriol): 'Oh leave that family to speak for themselves because they've been to school ... to learn high English' ... but not thinking that for an interpreter it's more in-depth, you know?

Interpreters belonging to country

Int17 is a non-Indigenous language consultant who, as an Indigenous language speaker, is called upon to facilitate communication between traditional owners and a mining company in Land Council discussions. Her role is to both give assistance to the Indigenous interpreters and to alert participants to intercultural miscommunication.

Int17 highlights the issue that Kriol interpreters may not feel comfortable working outside the context of their own country (bearing in mind that Kriol is spoken widely across many communities and clan groups).

MC: You were talking about two people who had trouble being Kriol interpreters because they didn't feel they represented the—

Int17: —they said that they were from another country and they didn't belong to the country where the job ... was, so that they felt obliged to get up and apologise to the people and ask permission if they could work there, and because they didn't actually belong there. And I said to them, 'Look this whole meeting is full of whitefella experts from thousands of kilometres away and you're only from Halls Creek and Kununurra' ... But still, that's how people feel and it's how some people who belong to country feel.

...

People think of Kriol being the same throughout the Kimberley. The problem is that there are words which for—at those meetings I went to—there are people from both Kununurra and ... Turkey Creek end, and there are ... English words that are perfectly acceptable for the [tribe X] mob, which the [tribe Y] mob find unacceptable to be used ... Because I have [tribe X] people living in my house all the time, I hadn't even realised ... that you couldn't say the words *law* and *ceremony* in public from the [tribe Y] side, but the [tribe X] side don't care. You know, they say them all the time on the verandah ...

...

Because I understand [tribe Y language], [tribe X language] and Kriol—but I would not describe myself as a fluent speaker of any of those—but none of the people engaged to be interpreters are also fluent speakers – truly fluent speakers of English, and their understanding of really difficult complex terms in English (mining terms and land ownership terms) are just – it's very hard for them ... Basically my job is to listen for misunderstandings ... on all sides and jump up if there is such a [misunderstanding] and use whatever language. Sometimes I use [Y language] or [X language] to explain. You know, it depends on the context ... who I'm speaking to about what.

Helping out with language – not trouble

This excerpt is from a brief interview with an older male accredited interpreter (*Int18*) who recounts an experience of being misunderstood as an advocate rather than a communication facilitator:

MC: Do you find it easier because you are an older person? Do you think it would be hard for a young person to be an interpreter?

Int18: Young fella might be shamed ... I stand up one time when I had a problem where this wife and her son were in court; ... he was feeling ashamed with me – he didn't talk up ... I was the interpreter but he wouldn't talk. And all the family come visit in there (i.e. court) and the family said, 'Hey, you helping him out, now'.

[I said,] 'No, no, I'm not here to help ... If you've got anything problem – you can't understand ... talk to me and I can listen.'

Some defendants don't want interpreters

This interview with *Int19* (who is from the Fitzroy Crossing area) is also conducted with the assistance of Lesley Baxter (*LB*), Coordinator of KIS. *Int19* interprets mainly in hospital, community and land council contexts. This interview is remarkable in revealing that some Indigenous defendants see an interpreter as potentially causing adverse outcomes for them in terms of criminal justice proceedings. This problem is discussed in the context of the under-utilisation of interpreters and the need for community education about the interpreter's role.

MC: How were people seeing you as an interpreter?

Int19: People don't mind – we're from that land.

...

Sometimes at a big meeting I say, 'I can't interpret because I want to be part of this meeting too.'

...

- MC: Do the police, when they go to your community (near Fitzroy Crossing) use interpreters at all?
- Int19: No ...
- LB: Do you reckon they should?
- Int19: They should. They should at all times ... They should use interpreters. Then again, I find out like, you know, when we were training to be interpreters, when we come back from Batchelor, we used to do our training at the police station (in Fitzroy Crossing) too, you know, just go and sit down and listen. And there's that lawyer come up there, and we wanted ... to go and do some things there ... we wanted to go and sit down there and listen and we was there with the lawyer, ... and we find out from the people themselves – like they thought that we were somebody like a lawyer, you know ... They felt shame, frightened, you know. They didn't want us to be part of the thing.
- ...
- We wanted to sit down there when this court was on, you know. People come in for court and that lawyer is there every time we come; lawyer come and sit with those people and they thought that we were doing the same thing as the lawyer, you know. And you know our people were always ... put down, you know, by *gardiya* from—before, long time ago—where they want to be. They don't want anyone to go and help them, you know, like interpreters ...
- MC: So they don't trust you; is that what you are saying?
- Int19: No. They do trust us in a way but they don't want us to – like they think it's just like fighting for them, for their rights, you know. And they don't want that to happen. That's the way I saw it.
- LB: Who, the lawyers or countrymen?
- Int19: The people, countrymen. They can work with the lawyer, you know. Because that lawyer try his best too, to help them. But they always want to go to court and plead guilty, you know. And that's why they been frightened – they thought that we might help them with any problems they had with that police. That's the way I read it ... That's the way I see those things.
- MC: ... You know how an interpreter is supposed to be in the middle—
- Int19: —Yeah, I know that—
- MC: —Not on one side and not on the other side.
- Int19: I know that.
- MC: Well, those people, those countrymen that you're talking about now – do they see you or do they see the interpreter as someone who helps them, or someone who helps the police?
- Int19: That's what they might [be] thinking, you know. I don't know but that's the way I read it, you know. They was really scared.
- MC: So they thought you were working to put them in trouble – or take them out of trouble?
- Int19: No, take them out of trouble. Which meant that they were scared that if we did take them out of trouble and the police will go after them again, you know ... there'll be more trouble on them. That's the way they want to be, how they being handled by the police. That's how I saw it, you know. I see those people there.
- ...
- LB: So, [Int19], I don't know if I'm hearing you right, but are you saying that people are used to going to court and pleading guilty, and then if they have an interpreter there, that it's going to change all that and so that's why people are frightened?
- Int19: That's what they're frightened of ... they used to the way they been going along you know, whether they didn't do anything or not.
- ...
- LB: ... One lawyer one time said to me, just not long ago, 'Well, you know, interpreters will change everything. Sometimes I'm much better off that the judge doesn't understand what really happened because I can get people off easy. But if that judge understood the full story, those people would be in much worse trouble'.
- ...
- MC: Does the lawyer usually tell them or advise them to plead guilty?
- Int19: No, they ask them. But they know their rights already ... Yeah, but as for this thing, the Law Reform [Commission Project] ... I think, you know, that what they should do is ask the lawyer to go and see them there, tell the lawyer how many people they got for court – ask them if any of those people need interpreters. You know, they've got to start asking ... All they've got to do is ask.

...

LB: 'Cause we've got a lot of interpreters in Fitzroy. It's the biggest concentration of interpreters. Whenever I go to ALS²⁴ or Legal Aid or the police, and I've done it many times, and I talk about interpreters to them, ... they say, 'Yeah, yeah. We know people plead guilty when they haven't done anything. We know that'.

Int19: Even the hospital mob ... especially on specialists' day, like when the doctor comes for children's specialist or eye doctor or bone doctor, and they get a lot of people going there – and they don't even do their plan already and look around and ask for an interpreter for that day. They just, you know, work with them until suddenly they find themselves caught up and they go: 'Oh, can you come up here and interpret for this person?' You know, they need a plan before ... But they don't do that, this hospital mob.

...

MC: So your suggestion, the one you just gave me, the lawyer should go and see the families—not the families—the people in trouble and find out if they need an interpreter—

Int19: —If they need an interpreter. They can ask the people and then explain to the people too, what the interpreter can do for them, you know? Interpreters are there ... just to interpret what they say, you know ... explain the role of an interpreter to that person.

LB: We just applied for some money from the ... Public Purposes Trust to make two videos: one for legal professionals, for those who work in the courts, police, ... [and] the other one for community mob. And if we get that money we'll make those videos next year, and make a lot of them so that we can give them to households.

Int19: ... They don't watch video in prison, eh?

LB: No, but we'll give them to everybody in the community. We'll make a good video so that people will want to watch it, you know, with people acting from all over the Kimberley.

Int19: I think we should leave it in some sort of office—I don't know where—set up some sort of place where we can, maybe, those people who go to jail and we can maybe bring 'em out down there in their spare time; bring 'em into the office and they can watch that video. And put all these video in that area, they can come and watch it in.

...

One video should be made about the role of an interpreter and those prisoners can watch ... When they take them to the police station they will think about that: 'Well, I should get my interpreter' – they can say that.

Suggested two-stage interpreting process

LW is a language worker whose grandmother is an interpreter. In this brief excerpt, *LW* explains how the importance of briefing an interpreter and explaining the legal concepts to them; even possibly having an initial translation from English into Kriol and then into the relevant traditional language. *LW* begins by stating that few people from Halls Creek understand about interpreters.

LW: To be honest I don't think people now, well in Halls Creek, I don't think they know much about that they got interpreters, full stop.

...

My grandmother is an interpreter but I think if they are there I don't think they get used a lot.

...

I don't think hardly anybody knows what most of the government organisations ... are responsible for ... And there needs to be more cultural awareness, even though there is an interpreter ... because maybe sometimes the problem might be ... not so much that they can't understand, but the person is trying to explain things to that other person, you know. And so I'd see that the interpreter going to have a lot of problem too, you know.

I know most of the interpreters—my grandmother is an interpreter—so I could see how they ... going to miss out, and she probably needs someone to go from English to Kriol to her and she'd ...

And you know like sometimes ... and I've noticed this lately as a – you know when you are doing language (i.e. as a language worker) and trying to change something. A lot of English is used round-and-round-the-garden and they never get to the point of what they really want to say or find out, you know.

And sometimes interpreters—and especially because I know they use older people—they'll get confused with all that round—about language, you know, ... and really miss the point of what them mob really wanted them to say.

24. The Aboriginal Legal Service.

... How much time do they have with each, like client, that they interpreting for? How much time do they have to explain to the interpreter about what they need to translate? ... I think that's an important thing.

Western Australian Magistrate

This interview, with a Broome-based magistrate (*M1*) whose circuit covers Kimberley communities, highlights a number of issues that affect communication in interpreted witness testimony including:

- the self-consciousness of interpreters working in front of relatives;
- the potential for relatives to signal subtle pressure on interpreters as they work; and
- the value of using interpreters—even with present deficiencies—over not using them.

MC: The first thing I would like to ask you ... is whether you have ... made any observations of Indigenous interpreters and any difficulties or challenges or particular things that have surprised you, that might be very different to what you find with mainstream languages?

M1: Yes, I've had quite a few experiences with ... interpreters in this court in Halls Creek, Kununurra. I use them as much as I can. The first complaint that I would have—not complaint but observation—[is] that we don't have enough ... Secondly, I find quite often [that] ... interpreters are hesitant in really interpreting directly because of the family connections ... quite often they hesitate because 'my uncle' is sitting in the back of the court, 'my cousin' is there, 'my wife' – you can see that, yes, and I give them all my sympathy because of that.

MC: Do you see any evidence of sign language or of signalling.

M1: Yes, yes, the eyeballs ... not looking at each other, but sometimes the eyeballs go down ... not hands so much ... how you look, how you turn your head. Yes. And then the next answer that you should get, you can see it's very, very, difficulty given quite often. Also quite often, not [only] with the accused or the complainant, but even with the audience at the back. And you can't tell them, 'Don't look there!' And if the trial goes on for a half day or day, you know immediately which one that ... the interpreter is conscious about ... You can follow that ... How to prevent it, I don't know – clearing the court: maybe.

...

MC: In your circuit, which courts mainly use interpreters?

M1: Halls Creek, Kununurra, Balgo, Kalumburu sometime – and that's where you also see the most of what I just talked about—the sign language, the body language—because [they are] much smaller (i.e. than Broome) – and I walk out and step on an airplane and go.

...

MC: We've just spoken about what happens in court; you also, I imagine would see many records of interview in your work. Have you got any comments about what you see in records of interview?

M1: ... They are even more difficult, I think, as in court. At least in court you know you've got the protection from the magistrates there ... but in [police] interviews, you don't. I mean, you get two policemen there and I'm not trying to knock the police but their job is to get the best evidence they can get. I'm not saying that quite often it's unfair but very often you put a question to a witness [and the answer] can hang you ... Then, again, I guess, the interpreter can really answer in the interview what she wants to ... speaking a few different languages myself, it quite often depends how you 'sing the tune' (i.e. intone one's answer) ... it depends how I 'sing it' as to different meaning ... So it could also work against the policeman.

MC: My experience in the Northern Territory about the use of interpreters – you know the Anunga Rules ... are incorporated into [police] standing orders in the Northern Territory ... the practice prior to the interpreter service being set up, and the practice still, often, is that police will ... try and use the prisoner's friend as an interpreter only for the first part of the interview when they want to administer the caution. Or even when they've got a 'real' interpreter there, that's when they'll use them. Once they're satisfied that the administration of the caution will 'pass muster' in court, then they often go on to just ignore the interpreter and the prisoner's friend and just work on getting answers to their questions. Do you notice that [here]?

M1: Yes. Absolutely. Absolutely. And you see the prisoner's friend, or even the interpreters, quite often are not strong enough. You've got to be a very strong person.

...

MC: One suggestion that I've heard, getting back to that issue that ... the role of an interpreter is not understood in Aboriginal communities because there is no such thing as a pure interpreter ... in discussion with a number of interpreters in Alice Springs, Darwin and here in Broome, this idea has come up: that when interpreters are going to be used in a magistrate's court – at the beginning of the session, or at the beginning of the case,

the magistrate ... introduces the interpreter and says, ... 'This is the interpreter. The interpreter is here to help the court understand what that person is saying and to help that person understand what [others] are saying. The interpreter is not here to do anything else and is not involved with the case'. What do you think of that idea? Do you see any legal problem with it? And would you be prepared—if that was a strong suggestion coming from many people—to do that sort of thing?

M1: I would. I would. And I see no legal problem. No, no. And I would, yes, yes, definitely.

MC: How do you see the potential or actual conflict of interest or the difficult things that come up because of the fact that the interpreter will know the [Indigenous] people they're interpreting for – and not only know them but be family to them.

M1: My belief is that you will never get a perfect system. You will never get an interpreter like the United Nations [situation] ... we should strive to overcome that [difficulty] but I'm not overly worried that we only get 70 percent because [without interpreters] the court has nil ... And then it is on the court, I think, to look into it deeper.

But I think, even with the dilemmas we just talked about, the court now has a very good image available and therefore can give a much better judgement – more fair, than now [when] you speculate that the person understands.

...

MC: Do you have any ideas as to training that they are missing ... what I mean is deficiencies – can you be specific?

M1: My most common experiences are with [untrained interpreters]. I also have the other one (i.e. trained interpreters). I have basically no problem—like I say, what they disclose to me, even with all their dilemmas—the 60 to 70 percent that I didn't know, and then hopefully I'm intelligent enough to say, 'Oh, oh!' The alarm bells ring. I want to go further. Or I would say, 'No, it's quite clear to me now.' And I find with the interpreters, what all of them can use, or 98 percent, is that we build up more their confidence.

Discussion with a Western Australian Aboriginal Legal Aid lawyer

In this discussion, L2, a Legal Aid lawyer working in the Kimberley context, recounts a startling case of real physical threat to an Indigenous employee who had to be evacuated from their community after being called upon—in the normal course of their duty—to support the interests of a suspected killer during a police interview in the dual roles of prisoner's friend and interpreter. The threat of harm came from the family of the homicide victim who saw the employee as siding with the suspect and the suspect's family.

MC and L2 then discussed possible strategies to protect Indigenous interpreters from this kind of threat before moving on to discuss defence counsel's perspective on the utility of an interpreter in respect of Aboriginal witnesses.

MC: I'm looking specifically at ... Aboriginal interpreters and ... looking at how, in a way, they're caught between two systems ...

L2: There was a killing in [Community X]. And at [Community X] ... the Aboriginal Legal Service permanently station an Aboriginal Court ... Officer: a person who has got some training in basic [court duties]—how to get bail for people, how to remand matters—till it gets to a lawyer.

Now, as I say, this court officer was rung by ... the [Community X] police and asked if he would sit in on the interview. The function of that is: one, to interpret if necessary – very important especially in the explaining of the police caution, the right to silence issue, a crucial factor in all trials involving Aboriginal people. Secondly he's there just to give comfort or support, just by his presence, in that a person who has been arrested may be less fearful of what he thinks in his mind the police are about to do to him if he was there on his own. So, to interpret and to be just a presence; someone of his own kind. And thirdly, the reality if that person is there, then the police are less likely to do anything inappropriate. So you can see it's a very important role. And for many years I've just assumed it was a good idea and there wasn't a problem with it.

But as I say, last week, I discovered that I had to assist in extracting the court officer from the [X] community because he was seen by the family of the deceased as aligning himself with the family of the about-to-be-accused and it was a very serious situation – and I still have that person in my office here, hundreds and hundreds of kilometres away, waiting for the situation [to be resolved].

Now, I'm an experienced criminal lawyer with Aboriginal people and because I was just looking at the obvious advantages of interpreters ... I didn't see this problem and I can see I've been blind. It's amazing you can do these things for so long and you honestly – you could see something today that's so obvious. Why didn't I think of that problem! So now I'm looking at the interpreters, because I've got a murder trial coming up

different from this matter but – and I'd made arrangements to get an interpreter from within the community at [Community Y] ... Now, I was aware I couldn't get a mother-in-law and I couldn't get all sorts of family members, but I can see now that just getting anyone—anyone from the neutral corner—will still, would seem in some cultural way as choosing to align himself with the person accused.

Now, I said, 'And what about the lawyer?', and then I got the response: 'No, because they're white, they don't get accused so strongly.' In my experience you'd tend to get a little bit of antipathy towards you, and it depends on the result of the court case. While I have a low level of potential antipathy by aligning myself with accused people constantly – for an Aboriginal person, especially someone who is from a traditional background, I can see their lives could be at risk just by trying to fulfil their task of interpreting.

So, wow! Now that all us 'whities' have all of a sudden switched on a light, do we scrap interpreters? How do we deal with it? Or do we just leave it as it is and ... well, it sort of worked, and if we don't have it we're going to be worse off. Obviously we can't do away with them.

... This was a problem that became obvious quickly for police aides or ... APLOs (i.e. Aboriginal Police Liaison Officers) ... and we have had enormous trouble because here the communities are staffed by APLOs not full police ...

Well here we've found that to be a problem because in any action they do, they align themselves! ... Once you put your foot into it and you're Aboriginal: problems!

...

MC: One suggestion in terms of the magistrates' courts—bush courts—is that on each occasion when an interpreter is to be used in the court, that the magistrate gives an announcement to the court, to the audience, that this person is going to be an interpreter, that their role is simply to aid communication, they're not involved in the case on this side or on that side and ... their job is to be right in the middle.

GB: There's merit in that suggestion – the formal pronouncement approach. They like that ... especially in the higher courts where it's done with all pomp and ceremony and you do tend to get 'rellies' (i.e. relatives) in if it's a murder or something serious.

...

MC: If interpreters are used exclusively as interpreters—not prisoners' friends, not these other people—and they are trained people who have accreditation then maybe you can get the perception arising that this person has the specific and restricted job—

L2: —Wouldn't this be best approached through these things like the Kimberley Interpreter Service, that they provide specialist interpreters for the police, independent from the police, but something that people can latch [on to]: 'Oh we're these mob coming from that, come and do this talking – the interpreter service' ... [It's] just we use them so infrequently; I don't think anyone quite understands what they're doing there.

...

I think we need to make a structure that people can touch, smell, see, poke,... can see where it's coming from and explain, 'Yes, they're not telling anything to the white people that shouldn't be told'. You see, I think their big fear is that because they're language speakers they could, could tell white people stuff that shouldn't be told.

...

I never use an interpreter unless it's really serious and using an interpreter is to my advantage in getting an acquittal.

...

I use interpreters as support persons and I don't use them as pure interpreters because it's so boring for people who do understand English. It's just some concepts, you don't really need an interpreter – you need that nudger or that prompter in a Shakespearian play who, when an Aboriginal person doesn't get a concept—he can understand English but he doesn't cop the concept—'What this provocation?', and the bloke *explains* to him. He's not really interpreting—

MC: —You mean a cross-cultural broker?

L2: Yeah, they're the people we need because I've tried running trials with interpreters who interpret word-for-word ... The interpreter goes to sleep by the afternoon and it breaks down. In the end we're back to doing it all in English. But if he's there when needed, and there are some sessions we don't need him when it's pretty plain: me cross-examining police or something or other, he can go to the toilet, have a smoke or whatever, but he's on call and I can push him in when I need him ... I'd have problems with the prosecution and probably the judges with that because clearly I'm giving him a helper—

MC: —But, you see, an interpreter has to be both—

L2: —Yes, but they're not allowed to be, because they take the oath to just interpret exactly ...

- MC: ... Every significant vocabulary item in either language has a context in which it operates; for example, just the word *mother*. In white society we're pretty clear ... it's the person we [physically] came from. Whereas if a witness is asked, say, ... 'How are you related to the victim?'—and say the witness is a thirty-year-old man and the victim is a ten-year-old girl—and he says in language, 'She's my mother'. Now if you want a word-for-word translation back into English, 'She's my mother', you're going to have a meaningless statement. So it's valid to say that an interpreter has to give some explanation ...
- L2: Well those people would be very useful if we could create them ...
- MC: I'm just saying ... that's a valid interpreting role—
- L2: —Not in a court of law as the law stands.
- ...
- MC: If you are not permitted to go outside the literal kind of translation you won't get effective communication.
- L2: And that's why I think to this day [there is] limited use by experienced criminal lawyers of interpreters because they know there's not a lot of value in it. Sometimes getting the exact translation is more damaging to your case than sort of leaving the jury a bit perplexed – they don't know what's going on at all.
- MC: Yes, yes. I accept that there's a whole lot of tactical issues...

Interview with a senior sergeant of police

P2 is a senior police officer with almost thirty years of policing experience in Indigenous contexts in Western Australia. While he acknowledges that Aboriginal Police Liaison Officers may require support in cases where their family/community identity may present problems in respect of their dealings with community members, he states that in his experience interpreters are rarely used in policing, so the problem has not really arisen.

- MC: Have you got any anecdotes or ... experiences of this issue that Aboriginal interpreters are unable to do their job in the same way that interpreters of European languages might do, because of the fact that they know their clients and are probably related to them and often from the same community?
- P2: I have not yet had to call on an interpreter to do with an Aboriginal issue. Most times when we deal with individuals in our organisation, whether it be a crime issue, or a family issue, a social issue—it's quite numerous—I've never had reason to call for an interpreter. We've been able to manage to deliver information and seek information from just the normal process of talking to people and there's an understanding about how you go about retrieving information and delivering information. And an interpreter service, in my view, is a service that's only been available in a short time and there's no doubt if we came across hurdles in the future then we'll make use of ... those assistance to be offered.
- ...
- To be honest in all the years I've had in the bush and dealing with Aboriginals I've never had the opportunity to call for an interpreter service.
- ...
- MC: What about your Aboriginal Police Liaison Officers, 'cause they, I imagine, would occasionally be caught in a situation where they're not happy?
- P2: ...They have been handy when I've been retrieving and giving information in my past. That's where it's been available to me because they're the only service ... Having dealt with Aboriginals for not quite 30 years ... I think if you ... set up a trust basis with them, understanding is very simple. It's very basic, and it goes both ways so I haven't had that problem. But modern day policing, specifically when the respect that used to be given to police officers in the past is not there today, that's where it becomes a bit difficult. And seeing what goes on a day-to-day basis in my police station, some people don't need an interpreter service – they just don't want to talk to us, full stop.
- MC: Again, I'll just ask you about your liaison officers ... have they ever reported trouble to you that people are blaming them for being involved. Do people understand from the uniform that they've got a job to do?
- P2: ... The police aides are very, very aware of their role within the organisation—West Australian Police Service—and their impact on their own people and they are very careful, and most times they make it known to me as their OIC or whoever's their shift supervisor, what they think they should become involved with. Now that's the respect we pass down to them because of their family roles and their position within their family groups and, also, outside family groups. And yes, they do report to me if they have concerns for any issues. But we're very sensitive to Aboriginal content of family values and address those as they come across the board.

- MC: Do they ever—you know when you're running ... a record of interview and you are, for example, administering the caution—do the liaison officers ... ever help you with that in the language side?
- P2: No, not at this stage, not unless they're involved in the actual inquiry. I don't do the interviews anymore because of the position I hold within the organisation. But since I've been sitting here, I've had none of those issues come across my desk and, using the Anunga Rules which was first incorporated into the Territory some time ago, I'm well aware of what the requirements are. They're applied here in their entirety and we don't seem to have any difficulties, no.
- Most times, you know, a friend or a relative sits in with interviews and I don't think there has been any language barrier issues at all.
- ...
- MC: You've said you don't use interpreters, or you don't have call for interpreters – are the prisoners' friends ever used to do language translation in interviews?
- P2: There may be the odd word that possibly the person we interview doesn't understand or maybe the person's friend doesn't understand a word and maybe the person we are interviewing does. So it's a flow of information between the people in that room. That's my experience.
- ...
- MC: You would, I'm sure, sometimes have difficulty getting across the meaning of the caution. Just generally ... how do you get around that problem?
- P2: ... How you deliver that caution and how it's received is the crux. You don't have to use the exact words ... How you go about it is up to you and if you've done it properly the courts will accept that.
- MC: Are they often challenged on that basis ... [of not] understanding the caution.
- P2: Cautions are challenged and matters have been put aside because of those cautions but ... we learn from the experience and the Police Service aren't always right and we learn from our mistakes.
- ...
- MC: ... There's a possibility that the government will end up, somewhere along the track, looking at procedures and thinking if they could be made better – I'm thinking of interview procedures or courtroom procedures or anything. Have you got any procedures, improvements that you could see ...?
- P2: I've been a policeman for 29 years and every day something comes across the desk that I haven't seen before. The ability to be able to adapt will make you successful. I don't care what sort of procedures anybody writes up – it's like a business plan or it's like an emergency management plan, you cannot write anything up for each particular incident. It's skill to deal with any issue that comes across your desk ... to understand what the issues are, the legalities of what you are doing. And if you're doing your best nobody will criticise you. And most times if you do your best, you'll succeed. Can't say any more than that.

The KIS perspective

The Coordinator of the Kimberley Interpreting Service, Lesley Baxter, provided a great deal of useful information (and practical assistance) during the course of this research. The series of interviews with others revealed that Aboriginal languages interpreting services are not being sufficiently utilised in legal contexts and I was interested to follow-up this issue with Ms Baxter. She revealed that, 'in the last 12 months we've had one job from the police in the whole of the Kimberley'. By way of contrast, the Kimberley 'Land Council uses interpreters regularly for meetings to explain what's happening in land claims, for example'.

On the availability of interpreters and promotion of their use:

... there are interpreters in most regions, so potentially the police could use interpreters throughout the Kimberley ... I have visited every police station in the Kimberley and I've talked to the senior sergeant of every police station in the Kimberley.

... I also went to visit a senior police officer for the whole of the Kimberley and he told me that although he understood that most Aboriginal people don't speak English, that his boys know how to handle them and ... that within a year or so the new police pick up the lingo.

Even in courts, interpreters are 'rarely used' with only several bookings during 2003. Nevertheless, examples arose of interpreters experiencing difficulty or their roles being misunderstood:

- 'An old man who wanted to know why his grand-daughter was following the words of the *gardiya*, because he didn't understand what her role was in the court.'
- In 'another case ... [for] three young men, a male interpreter agreed to do the job. His wife wouldn't let him go'.
- 'Five young [teenagers] were in court for indecent assault and rape ... and it was very hard to get an interpreter ... who would do the job. It needed to be a male. We don't have a lot of male interpreters and it needed to be a person who is brave enough to do it because there were so many families involved in it ... We had a [language X] interpreter who was studying in Perth who did that job.'
- 'There was a murder case a couple of years ago and no one would do the job.'

The problem of interpreters' roles being misunderstood requires attention. A positive development is the increasing use of Aboriginal languages interpreters in a range of areas including community services, health and aged care. Of particular note is the effort being made by Argyle Mining Company in employing a team of interpreters to ensure the integrity of negotiations with traditional owners for a new agreement. These activities help raise the profile of interpreting among those who are involved and promote a better understanding of the function of an interpreter.

However, the utilisation of interpreters remains 'patchy'. While they continue to be used rarely in criminal justice proceedings it is difficult for community members to see how they fit in as a neutral but integral aspect of the criminal justice process. Under these circumstances, 'the bottom line is we need money to educate everybody involved in it'.

Another point raised with Ms Baxter concerned the role of an interpreter extending to *explaining* unfamiliar concepts uttered by one or other party in the course of an interpreted police interview or witness testimony:

MC: Do you see a role for a cultural broker for Aboriginal people in the criminal justice system?

LB: ... What I've seen is that interpreters provide that function because they are Aboriginal; they do act as cultural brokers all the time. And whether it's explicit or not, that is a part of what they are doing all the time and, with my committee, when we talk about interpreting, it's always an issue that comes up – every time we talk about it. And there's an assumption that that is a role that they absolutely need to perform.

Part IV: Discussion

The interviews documented above largely speak for themselves and much of the material is left to do so. However, it may be helpful in this final part of the paper to provide some distillation of the main points and consensus dealing with the central issue at hand: impacts of customary law upon the work and welfare of Indigenous interpreters operating in legal contexts, and how to appropriately respond.

This part is organised into two themes: the effects of misunderstandings about the role of the interpreter, particularly in the criminal justice domain; and, impacts of customary law on the integrity and practice of the interpreting Code of Ethics.

While deriving primarily from the stories and ideas documented in the previous part of this paper, discussion and analysis here will also draw from my own reflections as a student of intercultural communication and Indigenous languages interpreting in legal contexts.

Misunderstandings about the legal interpreter's role

In terms of occupational safety issues facing Indigenous interpreters, the main concern here is that the impartiality which is integral to the modern interpreter's role (i.e. as defined in the Australian context by AUSIT) is often not understood in Indigenous communities. Rather, partisanship may often be assumed according to the interpreter's identity, personal history, family history, and kinship and cultural affiliations/obligations – with these factors being considered in relation to the interpreter's Indigenous clients (and *their* families, histories, etc) and in light of what happens to them following an interpreted interview.

This common assumption of partisanship can be understood by considering that legal proceedings are analogous to traditional conflict resolution processes, particularly in cases of criminal justice proceedings involving victim and accused who are Indigenous people from the same community or 'country'. In traditional proceedings the victim and the offender may each be assisted by an appropriate person who can speak for them in promoting or protecting their respective

interests. Thus, in state proceedings (whether police or court) where the accused is accompanied by an Indigenous interpreter who 'speaks' for them in English, it is not surprising that the interpreter's role may be conflated with that of a partisan spokesperson, and that any outcome may be attributed (at least in part) to the participation of the interpreter in that role.

Blaming of interpreters for the outcome of proceedings figured as a serious concern among most interpreters and causes many to keep away from legal interpreting. It is important to note, however, that the seriousness of the crime is a crucial factor here. There is little concern interpreting in cases of petty crime, especially involving young people, compared with crimes of homicide and rape, for example.

The use of non-Indigenous interpreters in serious crimes is often seen as a way of avoiding placing the Indigenous interpreter in this invidious position. There is less likelihood that the non-Indigenous interpreter will be accused of working in with family or other customary alliances and obligations rather than doing the straight job of interpreting. Yet this is no final solution for the reasons that:

- the non-Indigenous interpreter may still be blamed for the outcome (*Int2* at pages 84–87, above);
- the non-Indigenous interpreter's understanding of customary law may often not be adequate (as was implied by *Int4* at pages 89–91, above): 'To be a good interpreter also, you have got to be so steeped in your own law, in your blackness, before you can make sense in that court.');
- non-Indigenous interpreters of Indigenous languages are very rare indeed, even in the more widely spoken languages.

Further evidence of distinctive Indigenous perspectives concerning the legal interpreter's role can be identified in comments by many interviewees about community acceptance of interpreters depending upon their personal attributes (maturity, gender, ceremonial status and standing within the community) in addition to the necessary language skills. This situation accords with the perception that an interpreter's role extends to mediation, where the interpreter promotes intercultural understanding as part of the conflict resolution process involving western and Indigenous parties in legal proceedings.

This was highlighted in the discussions featured at pages 91–96, above, with comments about the attributes of a good interpreter and their mediation role:

- ... someone who is a good model in the community, who is someone we can look up to, an elder, someone to trust (*Int6*);
- ... someone who understands both systems ... Even when they have arguments afterwards, they would say, 'No, this is how that law goes in the western side and this is our law' (*Int8*);
- Probably the Yolngu see the two jobs together: mediator and interpreter. They seek someone who has strong language and someone who is recognised under our law. Someone who is recognised in the community (*Int8*).

Int4 (at pages 89–91, above) also expressed that she was often seen as a mediator and sometimes asked by elders to petition authorities to temporarily release an offender so that the community disharmony brought about by the offence can be cleansed through customary law – and 'then they can have him'.

There were many other comments pointing to misunderstanding about an interpreter's role including confusing the interpreter as some kind of police officer or lawyer (*Int13*) or seeing the interpreter as someone whose job is to help get someone out of trouble (*Int15, Int18, Int19, L2*).

Apart from the stress placed on Indigenous interpreters working in the legal field, there are other serious consequences arising from this state of affairs. *Int19* related the example of defendants who did not want 'help' from interpreters because:

... they always want to go to court and plead guilty, you know. And that's why they been frightened – they thought that we might help them with any problems they had with that police. That's the way I read it ... That's the way I see those things.

... they were scared that if we did take them out of trouble and the police will go after them again, you know ... there'll be more trouble on them. That's the way they want to be, how they being handled by the police. That's how I saw it, you know.

The Legal Aid lawyer, *L1*, also cited the example of a community which made clear that interpreters were not wanted for a forthcoming murder trial involving a number of their members. *Int3* offered this explanation for the decision:

They're probably thinking that interpreters might put words into those people's mouth ... They might think you're adding on something to help with that person to get out.

In other words, community misunderstandings about the role of an interpreter not only affect Indigenous interpreters working in legal contexts but may also compromise the trial process itself when interpreters are refused by defendants or their counsel on grounds other than the level of the defendant's English skills.

The following suggestions were given for overcoming misunderstandings within Indigenous communities concerning the role of the interpreter and the consequent difficulties:

- providing information to communities through community education broadcasts and through the development of information videos to be distributed in communities and perhaps to be accessible at police stations, courts and prisons;
- having magistrates and judges formally introduce any interpreters by name during court proceedings—especially during bush court—and explain their role as impartial communication facilitators operating for the benefit of the court rather than for one party or another (this explanation could even be interpreted);
- visits to communities from interpreter services to meet with community representatives in the presence of interpreters from the community in order to properly and authoritatively explain their training, skills and role;
- lawyers and judicial officers visiting communities and 'outstations' for cross-cultural communication and cultural awareness training with community members and elders; and
- ensuring that interpreters are *actually used* in police stations, courts, prisons and by legal services so that people can become accustomed to their presence and their role as a normal part of the (criminal) justice process.

These suggestions are reinforced by the stories told by *Int13* at pages 98–103, above. *Int13* is a trained and experienced legal interpreter whose work is becoming acknowledged in the communities from which her clients are drawn. She told the story of how she faced a community meeting to explain her impartiality as an interpreter under circumstances where she was being blamed for the outcome of a case, and how she has conducted her own community education campaign in local 'outstations' (i.e. small communities on traditional homelands) to counter impressions that she was a lawyer. She also reported the comments of an elder who acknowledged her community service and of other older men who are now interested in working as legal interpreters and who, at the same time, strongly desire to conduct cultural awareness training for lawyers and magistrates/judges in their homelands. It is also noteworthy that *Int13* works in a region within Arnhem Land for which there is a significant pool of accredited interpreters and where interpreters are commonly utilised. These accounts point to community education and the utilisation of interpreters as key strategies in countering misunderstandings about their role.

By way of contrast, the situation in the Kimberley is evidently problematic since it appears that interpreters are very rarely used by police (*P2* at pages 113–14, above; *LB* at pages 114–15, above) or by Legal Aid lawyers (*L2* at pages 111–13, above). A similar situation exists in the courts (*LB* at pages 114–15, above) where those that do appear are (more often than not) untrained and unaccredited anyway (*M1* at pages 109–11, above).

Ensuring that Indigenous communities are educated about an interpreter's role in the contemporary western sense need not of course negate or deny the importance and prominence given to the office in some Indigenous communities. The consensus by those interviewed in this project about the issue of an interpreter's acceptance by their community is that mature individuals who are respected as individuals in their community are more readily accepted as interpreters than young people (and particularly young women). The respect given to law by Indigenous elders is thus reflected in the expectation that the legal interpreter will be educated not only in two languages but in two laws. In this sense the bar is perhaps set higher for legal interpreters by Indigenous communities than by the mainstream agencies who use them.

Of great interest in this context were the comments by *Int4* (at pages 89–91, above), a mature woman whose community elders decided should go through ceremony to gain the authority to interpret with protection under customary law. The result is that even as a female interpreter she is able to interpret in rape and homicide matters including for some men who, under normal circumstances, are in an avoidance relationship with her.

Implications of customary law on the Code of Ethics for interpreters

Three of the eight AUSIT ethical principles for the interpreting professions—impartiality, confidentiality and accuracy—are variously and sometimes inevitably compromised through the effects of customary law.

1. Impartiality

An Indigenous interpreter and their client commonly know and are related to each other, and carry rights and obligations to each other under customary law according to each one's kinship status relative to the other. Furthermore, serious offences may polarise communities, often along family or clan lines, and the interpreter may be caught up in this. As a result, Indigenous interpreters may experience a conflict of interest between their work and their kinship or other obligations towards the client, or may not be able to maintain objectivity and professional detachment in the face of community feeling, or indeed their own feelings, in relation to the situation at hand.

Many potential difficulties can be resolved by attending carefully to the choice of interpreter. Agencies who wish to book an interpreter need to provide the interpreter service with adequate information including the interviewee's name and language, their community and the nature and topic of the interview. This information allows the interpreter service to choose the appropriate interpreter for that person and that job. But it is also clear that the small size of many Indigenous language speech communities and the nature of Indigenous kinship systems mean that interpreter impartiality is frequently under challenge.

There are steps which can help avert or minimise potential conflicts of interest or challenges to objectivity:

- For each language, establishing a pool of male and female interpreters from different family groups and from different communities (i.e. in cases where a language is spoken in a number of communities) will increase the chance of finding an interpreter who is sufficiently distant from the client as a relative and sufficiently detached from the events under consideration so as to be able to function impartially and objectively. Again, the use of non-Indigenous interpreters (where available) may sometimes be necessary.
- Only trained interpreters should be used. Interpreter training covers professional ethics and provides strategies for recognising and dealing with factors that compromise these ethics (e.g. informing parties of their role and of any potential conflicts of interest or challenges to objectivity; knowing when to withdraw from an assignment; making clear to clients the distinction between speaking for them and interpreting what they say).
- Police, lawyers and members of the judiciary require sufficient cultural awareness training to anticipate, enquire about and deal with potential compromising factors facing an Indigenous interpreter in respect of their impending assignment. Those who use Indigenous interpreters require training in working with them. They should know to explain through the interpreter to the Indigenous party that the interpreter's role is limited to helping with language issues and that when they are 'at work' they must put family and community issues temporarily aside. This will help avert false expectations of the interpreter on the part of the Indigenous client and will reduce the likelihood that the interviewee will try to engage the interpreter in inappropriate conversation during the interview.
- Again, community education about the role of an interpreter and providing people with the opportunity to see interpreters at work will help Indigenous clients become familiar with the principle that interpreters must not attempt to influence the direction or outcome of an interview.
- Adequate briefing of the interpreter prior to an interview—informing them of the nature of the impending conversation and the topics to be covered—will alert the interpreter to potential cultural sensitivities.
- Interpreters may require debriefing or access to counselling following upsetting or traumatic assignments (e.g. interviews concerning extreme violence to relatives or about recently deceased relatives). They need strategies for minimising or otherwise dealing with the emotional impact of traumatic and upsetting interviews and to learn to recognise when they are losing objectivity during an assignment (and therefore to withdraw).

2. Confidentiality

Interpreters gain access to highly sensitive and confidential information about family and community members in the course of their work. While trained interpreters are clear that they must not share information learnt during an assignment (with defined exceptions), they may sometimes be heavily pressured by elders or other family members for information (see the discussion at pages 91–96, above).

Again, community education is critical so that people come to understand that the interpreter is not allowed to share information. The exclusive use of trained interpreters also assists by ensuring that this principle is observed to be consistently applied (untrained, ad hoc interpreters are under no such constraint).

Int9 suggested a strategy (at pages 91–96, above) for asserting her restriction from sharing information by proclaiming the information to be secret/sacred under customary law and thus unutterable. Notwithstanding this appealingly appropriate suggestion, one can imagine circumstances in which elders may require information urgently where, for example, their clan or community is in turmoil after being grossly offended on behalf of a victim who is their member, and where the interpreter is the only person whom they can access who knows the details of the offence through having interpreted for the suspect at the police station. The interpreter may experience a serious ethical dilemma in the situation where sharing the information might assist elders in diffusing a tense, and perhaps violent, community situation.

This scenario highlights the importance of cultural awareness training and cultural sensitivity on the part of police and lawyers. Under ideal circumstances police and lawyers would anticipate, or at least appreciate when appraised, the operation of Indigenous cultural and community dynamics that may urgently require information to be released. In this scenario, police could enable the interpreter to report on what transpired at interview by seeking the consent of the suspect (through the defence lawyer if need be) as disclosure of information may only be made with client agreement.

The point to be made here is that ethical issues and dilemmas facing interpreters arising from the operation of customary law may often be discussed and resolved when the quality of intercultural communication is high, channels of communication are open and cultural awareness is well developed.

3. Accuracy

The AUSIT Code of Ethics provides annotations to its eight general principles.²⁵ Annotations concerning accuracy include:

- Interpreters shall convey the whole message, including derogatory or vulgar remarks, as well as non-verbal cues.
- Interpreters and translators shall not alter, make additions to, or omit anything from their assigned work.

At pages 83–87, above, the influence of customary law on language use was discussed in some detail with *Int2* giving examples of how Aboriginal people are constrained according to factors including age differences; how speakers are related; ceremonial considerations; and, that constraints are carried over into the courtroom context.

While customary law in respect of language use may vary from tribe to tribe, there are some common examples that may affect Indigenous interpreters in their work:

- Respectful language is used when interpreting for an elder.
- Some relatives must be addressed in the plural form (just as respect is signified in French by addressing people using *vous* instead of *tu* for you).
- Vulgar speech must not be used in many circumstances (as *Int4* said at pages 91, above, 'you put it another way').
- During periods of ceremony people may be further constrained in who they talk to and how they talk.

An interpreter must not only tailor their speaking style according to whom they are addressing, but also according to whom they are referring. Thus, a man cannot be asked personal questions about a female categorised as his sister without causing great offence (and therefore introducing a significant dynamic into the interview). Another common constraint is to avoid talking about recently deceased people, to avoid using their name (and even any words sounding like their name) and to refer to them indirectly or obliquely or use the plural pronoun *they* instead of *he* or *she*.

The consequence of these factors is that the course of police and courtroom interviews may be affected in ways that are not recognised or appreciated by the interviewer. On the other hand, if an Indigenous interpreter insisted on putting their customary law aside and always interpreted questions in the form and manner in which they were asked, then the course of the interview would still be impacted by dynamics of embarrassment, hostility or even a reluctance to proceed on the part of the interviewee. (Such unintended communicative effects also compromise accuracy.)

25. AUSIT Code of Ethics for Interpreters and Translators, see: <<http://www.ausit.org>>.

So what are the possible responses to this? First, it is important to recognise that these are legitimate constraints which need to be understood and accommodated. It is imperative, for example, for cross-examining counsel to realise that, in circumstances where respectful language is required of interpreter to witness, attempting to unsettle the witness through aggressive questioning uttered in challenging tones might necessarily fall flat.

Again, education and training are indicated. Police, lawyers, magistrates and judges who deal with Indigenous people need training in intercultural communication and cross-cultural awareness so that they can: anticipate the impact of their style of speaking; adjust their style according to the circumstances; and seek and be receptive to advice from the interpreter about the cultural dynamics which may be affecting communication during an interview. This training should not be seen as an added burden but as an extra tool. For example, the advocate who wishes to 'vigorously' cross-examine an elder would then know to begin by locating a mature interpreter.

Both counsel and witness would also be assisted by the witness being advised beforehand—through the interpreter—of the process they are about to undergo and to be alerted to its key characteristics (bear in mind that English speaking Australians absorb this information through the mass media). Community education about these matters, including the role of a witness, would also promote greater acceptance of courtroom questioning as an essential component of justice rather than being feared as a terrifying ordeal of white-man's law.

It should be pointed out that among AUSIT's annotations to the general principles of the Code of Ethics is the provision that 'Interpreters and translators shall explain their role to those unaccustomed to working with them'. This provision can only be met for courtroom witnesses if the interpreter *knows* their role—which cannot be assumed for untrained ad hoc 'interpreters'—and if time is set aside by the court, or by counsel who called the witness, for the interpreter to fully explain their role to the witness before evidence is taken.

For the Indigenous witness who knows the interpreter as a relative and as an individual there is an additional, perplexing, aspect of the interpreter's role that many might not appreciate. This is the provision that the interpreter should not interpret counsel's utterances in the manner of *reporting* to the witness what counsel has said, but must adopt the persona of counsel and, in effect, play the role of counsel by speaking their words (in the other language) and even adopting their tone. Confusion arises when counsel says something like: 'That's not true, is it?' because when the witness hears the interpreter uttering this in their own language the witness may assume that the interpreter is speaking person-to-person rather than as an actor. This reinforces the critical importance of providing the interpreter with adequate opportunity to fully explain this aspect of their role. (The alternative is for the interpreter to preface all questions addressed by advocates with: 'That lawyer is speaking to you like this: ... (*the interpreter then speaks as the lawyer*)'.)

Finally, there is another challenge to accuracy that was discussed in several places within Part III, above: the need for an interpreter to sometimes explain what cannot be simply translated. *Int1* put the issue in these terms:

- That's the hardest part – trying to find a language word that will fit an English word, so sometimes we've got to tell it like a story so people understand it. (at pages 83–87, above)
- Well that's another tricky thing about interpreting. When we do interpreting there's sometimes words, these legal words, that may mean nothing to us in our language. So we've got to tell it like a story, so that people understand or get the gist of ... what this business is all about. So sometimes it's really hard to use legal words too when we're interpreting; so we've got to tell it like a story, to get the story right and to do it right. (at pages 88–89, above)

Whether or not interpreters are permitted to explain what cannot be simply translated is, according to the lawyer interviewed in Part III, questionable. While this is not so much an issue of customary law, it is nevertheless important that courts more readily acknowledge and accommodate the reality that direct translation is not always effective (let alone *literal* translation, which is rarely even possible); and that explication, or even explanation, of some terms and concepts may be required if a witness is to understand the lawyer's intended meaning or, indeed, if the lawyer is to understand the witness's intended meaning.²⁶

26. This position is set out by the author in Cooke M, 'Understood by All Concerned? Anglo/Aboriginal Legal Translation' in Morris M (ed), *Translation and the Law* (Amsterdam: John Benjamins Publishing Company, 1995) 37–66.