Cross-currents: Indigenous language interpreting in Australia’s justice system

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The enduring dearth of recognition within institutional settings of the place and complexity of Australian Indigenous languages has been a factor in the inconsistent provision of professional interpreting services to Indigenous language speakers. In the justice system in Australia, failure to provide adequate and timely interpreting assistance has resulted in a number of high-profile cases of miscarriage of justice, notably the recent case of Gene Gibson (Tulich, Blagg and Hill-De Monchaux 2017). Efforts to address this long-standing problem have included the establishment of the Aboriginal Interpreting Service (AIS) in the Northern Territory and Aboriginal Interpreting WA in Western Australia, as well as the creation of numerous policies and guidelines for police, courts and legal professionals regarding the use of interpreters. Despite these efforts, however, there are myriad factors that continue to impact the effective provision of Indigenous language interpreting such as the inconsistent use of interpreters in many parts of the justice system, the paucity of interpreters in remote communities and the variable quality and reliability of interpreting. While there is increasing research about these issues, Indigenous language legal interpreting remains an under-explored area of study.

In this thesis, I endeavour to address the research gap by examining Indigenous language interpreting as a dynamic, contextual, and contingent act. At the core of the thesis is the recognition that the act of interpreting, like all other linguistic acts, does not occur in a political or cultural vacuum, nor is it itself apolitical, acultural or epistemologically neutral. This perspective is reflected in the following research aims:

Aim 1: To situate the act of Indigenous language interpreting in the linguistic, political, sociocultural and epistemological context in which it occurs.
Aim 2: To highlight the lived and professional experience of interpreters and legal professionals.
Aim 3: To foreground the salience of localised contexts.
Aim 4: To use Kriol as a case study in pursuing the above aims.

To address these aims the study employs a number of theoretical frameworks and methodologies including decolonial theory (Mignolo 2011; Quijano 2013; Vázquez 2011; Veronelli 2015), grounded theory (Charmaz 2014) and interpretivism (Schwartz-Shea and Yanow 2012). A decolonial lens provides unique means of interrogating the persistent effects of colonial attitudes on the way Indigenous people, and their ways of knowing and speaking, are viewed by Western institutions like the Australian justice system. In fact, a central premise in this thesis is that Indigenous language interpreting has always taken place in a colonial setting, and it continues to do so. The thesis therefore endeavours to demonstrate the
value of explicitly articulating a decolonial position when examining interpreting and calls for a shift in the current paradigm of treating the act of interpreting and the interpreters themselves as insulated from colonial forces. Decolonising perspectives influenced the methodological choices made in this research, particularly my decision to let findings steer the research rather than to adhere to rigid preconceptions or assume any a priori meaning (Charmaz 2014).

Data was collected during five fieldtrips to Darwin and the Katherine region, both in Australia’s Northern Territory, over a period of two years from 2017 to 2019. Data consisted of field notes, court observations and semi-structured interviews. Court observations totalled over 120 hours and were carried out in the Supreme Court NT in Darwin, the Katherine Local Court and circuit courts in the communities of Mataranka, Barunga and Ngukurr. I also spent time shadowing interpreters at AIS’s headquarters in Darwin and gained a valuable insight into the workings of the organisation including bookings, phone interpreting and language training.

Semi-structured interviews were carried out with interpreters from AIS and legal professionals from the Northern Australian Aboriginal Justice Agency, Katherine Women’s Information and Legal Service, and NT Legal Aid – Community Legal Education. Eight participants were interviewed, totalling over 11 hours of recorded interviews. The interviews covered topics such as language proficiency, the level of engagement between the justice system and interpreting services, and the roles of culture and knowledge in interpreting. A semi-structured format was chosen to allow for the conversation to be guided gently without forcing data, and to give participants the opportunity to think through the questions and revisit them at a later stage in the interview if required (Charmaz 2014: 42).

Summary of research

The research aims are based in the understanding that to fully explore the dynamic and iterative nature of interpreting, we must consider not only the linguistic aspects that impact it, but also other influencing factors including cultural backdrops, power relations and the narratives of knowledge that underly linguistic interactions (see Figure 1).

From a language perspective, I examine the challenges in assessing language proficiency and ascertaining the need for interpreting services including mutual intelligibility and ‘masked miscommunication’ (Cooke 1998, 2002) where verbal scaffolding, code switching and collaborative discourse can lead to a false perception of effective communication between legal professionals and Indigenous language-speaking clients. Linguistic challenges are explored with particular relation to the Kriol language, an English lexified contact language with 20,000–
30,000 speakers across Australia’s Top End (Sandefur 1981, 1986; Schultze-Berndt, Meakins and Angelo 2013). I focus on how specific aspects of the Kriol language, such as its creole continuum and dialectal variation, can complicate the process of identifying the need for interpreting services and obtaining appropriate interpreters. For example, I explore how the blurred boundaries within the creole continuum can cause uncertainty among legal professionals regarding when to engage interpreting services, leading to clients who speak ‘lighter’ varieties of Kriol having their language conflated with Aboriginal English and, in turn, being less likely to be offered interpreting assistance. I note that the term ‘Aboriginal English’ is used here as a broad umbrella to describe Aboriginal people’s use of English (sometimes as a second language) and to also refer to the specific dialect of English described in the literature (see Butcher 2008; Dickson 2020; Grote 2007; Malcolm 2013).

I also investigate how dialectal variation in Kriol can impact the provision of appropriate interpreters. A significant finding here is that the practice of delineating Kriol dialects into Eastside and Westside Kriol, while widely accepted by interpreting services and legal professionals, is nonetheless a cause of concern for some interpreters. In particular, there is concern that if an interpreter of one variety is not available, legal professionals may decide to forgo booking an interpreter altogether, potentially leading to clients being left without crucial interpreting assistance. In other words, focusing on dialectal differences to ensure accuracy may be paradoxically hindering the effective delivery of interpreting services.

The sociocultural aspects of interpreting are also investigated including kinship relations, shame and blame.¹ I explore how the binding kinship relations
that interpreters have with other members of their community can influence the availability of interpreting, especially in smaller communities. For example, interpreters may be called to interpret for a community member with whom they are in an avoidance relationship. As avoidance relations frequently entail physical distancing and restricted communication, interpreters are at times unable to carry out their work if it places them in the physical vicinity of particular kin, or if direct communication is required. My interviews with interpreters reveal that avoidance relationships continue to be an integral part of belonging to one’s community and that interpreters are concerned about inadvertently violating avoidance rules if they are not briefed in advance on who they are interpreting for.

I examine how shame, often articulated as ‘shame job’, can influence interpreting, particularly how clients who feel shame for having to request interpreting assistance may not assert their right to an interpreter. Additionally, I explore how interpreters can themselves experience shame in different contexts, including when witnessing the shame of others, engaging in taboo topics and interpreting in the first person. The effect of shame on interpreters is often overlooked both in research and by the justice system, so this exploration contributes to a better understanding of the interpreters’ personal and professional experience and, in turn, addresses one of the central aims of the thesis. Fear of being blamed by their communities for the outcome of a legal case was also cited by interpreters as a major reason why some were reluctant to take on specific assignments. One of the findings is that the risk of being blamed can be perpetuated by a lack of awareness in some communities about the role of the interpreter, the optics of the court where interpreters may be perceived as taking sides, and the dubious practice of summoning interpreters as witnesses.

As well as sociocultural factors, I consider the impact of power and race relations and interrogate the ways in which interpreting is racially inflected. I explore the political context of interpreting in the Northern Territory, a place where race relations are at the centre of the lived experience of Indigenous communities. I posit that Indigenous language interpreting operates in a political climate where racism has always acted as a subterranean force. From resisting the establishment of professional interpreting services to the persistent underutilisation of interpreters and the dismissal of Indigenous language speakers’ rights, the racial politics of interpreting in the justice system are difficult to ignore. I use anecdotal data provided by interpreters and legal professionals to investigate the role of power in the discretionary use of interpreting services by different parts of the justice system. The data suggests that there is a low degree of engagement of interpreters by police, NT Correctional Services and certain government organisations such as Territory Families. Underutilisation of interpreters undoubtedly acts as a barrier to access to justice for many Indigenous language speakers and is an issue that needs to be addressed with greater urgency.
Another area explored in the thesis is the impact of uneven power relations on confidence levels among interpreters. An important finding is that some interpreters feel more empowered and respected in formal settings such as the Supreme Court compared to Local and circuit courts. A major reason given for this is that interpreters in the Supreme Court are introduced by the presiding judge and given the opportunity to describe their role and explain the Code of Ethics (AUSIT 2012) by which they abide. This makes interpreters feel more visible and recognised, which increases their confidence. Working towards increasing the confidence of interpreters will not only allow them to work effectively but can also increase confidence within the justice system in the competence and professionalism of interpreters, thus hopefully leading to greater engagement of interpreting services.

Race and power relations also heavily influence the degree to which interpreters feel able to adhere to some of the requirements under their Code of Ethics, particularly the requirement of impartiality. Interpreters indicated that witnessing recurrent injustices being inflicted on their families and communities can challenge their ability to remain entirely neutral and impartial. As a way of addressing this issue, I investigate the possibility of interpreters having the choice to act as bilingual advocates. I argue that there is scope to widen the parameters of the role of the interpreter to include the option of advocacy while also protecting the interpreters’ right to declare impartiality if they are vulnerable to blame.

Finally, I examine interpreting from an epistemological standpoint with a view to uncovering the ways in which varying knowledges intersect with the linguistic and cultural aspects of interpreting. This recognises that because knowledge cannot be abstracted from the values and norms of a culture, the cultural aspects of interpreting must be studied in relation to the different ways of knowing that underpin them. I interrogate how the different Indigenous and Western conceptualisations of language and interpreting can impact the availability of interpreters. For example, the way the role of the interpreter is conceptualised by some members of Indigenous communities as belonging to elders and spokespeople has led to a paucity of young people wanting to become interpreters. Examining knowledge is also pertinent to exploring the role of colonialism in shaping the linguistic environment in which interpreting takes place. The persisting colonial attitudes towards the Kriol language are a case in point. These attitudes influence interpreting in multiple ways including whether legal professionals recognise the linguistic needs of Kriol speakers and whether negative attitudes towards Kriol can lead to feelings of shame and act as a barrier to Kriol speakers requesting or accepting interpreting assistance.

In summary, this thesis reveals that the challenges to the provision of Indigenous language interpreting are multiple and that addressing them requires a
better understanding within the justice system of how language, culture, power and knowledge are inextricably linked. It also demonstrates the importance of amplifying the voices of Indigenous interpreters and raising awareness of the issues they encounter both in their professional role and as members of their communities. Finally, the thesis advocates for a collaborative approach involving representatives of the justice system, interpreting services and Indigenous communities in the design and implementation of strategies to improve the provision of interpreting services and, thereby, Indigenous people’s access to justice.

**Note**

1. *Shame* in the Indigenous context can cover a broader range of emotions than Western understandings of the notion and may arise in situations that would otherwise not be perceived as shame-inducing by a non-Indigenous person. For example, *shame* can be experienced by Indigenous people in circumstances involving personal attention, even if the attention is positive, as well as from meeting strangers, being in the presence of certain types of kin or entering an unfamiliar place (Grote 2007; Harkins 1990).

**References**


