CROSS-CURRENTS:
INDIGENOUS LANGUAGE INTERPRETING IN AUSTRALIA'S JUSTICE SYSTEM

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ABSTRACT

The enduring lack of recognition in Australia's justice system of the complexity and situatedness of Indigenous languages has negatively impacted the provision of appropriate interpreting services to Indigenous people. Efforts to address this problem have included the establishment of professional Indigenous language interpreting services and the creation of numerous guidelines for police, courts, and legal professionals regarding the use of interpreters. Despite these efforts, Indigenous language interpreting remains plagued by many issues, including the inconsistent use of interpreters by the justice system, the paucity of interpreters in remote communities, the variable quality and reliability of interpreting, and the lack of accreditation and qualification pathways for Indigenous people wanting to become interpreters.

This thesis explores the myriad factors influencing the process of Indigenous language legal interpreting by taking a holistic approach that recognizes interpreting as a dynamic, contextual, and contingent act. This approach involves situating the act of interpreting in the linguistic, social, cultural, historical, and political contexts in which it occurs. Interpreting is also approached from an epistemological standpoint with a view of uncovering the hidden ways by which varying discourses of knowledge intersect with language and interpreting.

A central aim of this thesis is to also foreground the salience of localized contexts. Fieldwork was primarily conducted in the Northern Territory town of Katherine and the surrounding region, and data is drawn from Katherine's local court as well as circuit courts in the communities of Mataranka, Barunga and Ngukurr.

The linguistic factors impacting interpreting are examined in relation to the Kriol language in particular. Kriol was chosen because it is the most widely spoken Indigenous language in Australia. As an emerging language, it is also largely under-recognized, and its close relationship with Aboriginal English presents unique challenges for interpreters and legal professionals.

Findings suggest that the challenges faced by Indigenous language interpreters are multiplicative and addressing them requires better understanding in the legal system of how language, culture, power, and knowledge are inextricably linked in the day-to-day work of interpreters. In particular, the findings demonstrate 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, this thesis advocates for a collaborative approach involving 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.

DECLARATION

This thesis is an original work of my research and contains no material which has been accepted for the award of any other degree or diploma at any university or equivalent institution and that, to the best of my knowledge and belief, this thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.

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PUBLICATIONS DURING ENROLMENT

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STATEMENT ON SENSITIVE DATA

Research for this thesis was carried out with approval from Monash University Human Research Ethics Committee (MUHREC) - Ethics ID No. 10718.

Every effort is made to ensure that sensitive data collected and presented in this thesis is included with explicit permission from participants. Participants were anonymized when requested and their responses were decoupled from identifying information at all stages. However, given the small pool from which participants were drawn, e.g., Indigenous language interpreters in Katherine, some of the data included could lead to participants being identified. Accordingly, the future version of this thesis to be made publicly available, as well as any future publications drawing on materials from this thesis, will involve further redactions of specific parts that may lead to the identification of participants.

STATEMENT ON TERMINOLOGY

I recognize that a single term cannot encapsulate the diversity of the more than 700 distinct linguistic and cultural groups in Australia, or the individual members within them. With that in mind, when referring generally to people and languages, I have elected to at times use the terms 'Aboriginal' and 'Torres Strait Islander', or more broadly, 'Indigenous'. I do, however, acknowledge the ever-evolving nature of terminology in the academic and public spheres, including the increasing preference for the terms 'First Nations' and 'First Peoples'. Whenever possible, I use the language group name of the people I refer to in this thesis. My use of the terms 'Aboriginal people', 'Torres Strait Islander people' and 'Indigenous people' is reflective of the official use of these terms by numerous organizations around the country including those run by Indigenous people.

1 INTRODUCTION

In all modern depictions of Lady Justice, she is blindfolded. Her blindfolds signify the equality of all who stand before her, a symbol of a virtuous justice system that does not see race, wealth, gender, colour, or creed. But these are blindfolds of convenience. In declaring her blindness, Lady Justice is released from the burden of having to bear witness to the damage and the fragmentation inflicted in her name. All around the world, the notion of a blind justice system is coming under increasing challenge. The global reckoning following the death of George Floyd seems to have moved the needle here in Australia with collective outrage over the issue of Indigenous deaths in custody gaining further momentum[1]. This in turn has led to greater awareness of the chronic injustices experienced by Indigenous people around Australia. Indigenous communities are now, more than ever, calling not for symbolic equality, rather for a justice system without the blindfolds, one that actually chooses to see them.

While it is too early to predict whether the growing tide of discontentment will lead to tangible and lasting change, the call to highlight the myriad issues facing Indigenous Australians in legal settings has rarely had a larger or more attentive audience. One particular issue that continues to impact Indigenous people's access to justice is the law's lack of understanding, and at times wilful ignorance, of the role and situatedness of Indigenous languages and the needs of their speakers. As such, Indigenous communities and their allies are faced with the added question: *'What does Lady Justice choose to hear?'*

To many Indigenous Australians engaging with the legal system, it seems that Lady Justice in fact hears only one language, English, and arguably one dialect, Standard

[1] https://www.abc.net.au/news/2020-06-02/us-riots-indigenous-deaths-in-custody/12309010

Australian English. Such language-based discrimination may not be codified by law, but it is certainly amplified by convention. In countless legal settings, Indigenous languages are sidelined, their speakers forced to navigate a system they do not always understand, in a language they do not always speak. The historical lack of recognition of the place and complexity of Indigenous languages has also been a factor in the poor provision of professional interpreting services, resulting in number of high-profile cases of miscarriage of justice involving the lack of access to adequate interpreting[2].

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 (formerly Kimberley Interpreting Services) in Western Australia. These organizations, which currently employ a large number of accredited interpreters, were established to address the then ad hoc provision of mostly non-professional interpreters. The setting up of professional interpreting providers was also accompanied by the creation of numerous policies and guidelines regarding the use of interpreting services for police, courts, legal professionals, and those working in government organizations.

Despite these efforts, however, the provision of Indigenous language interpreting in Australia remains plagued by many issues. Multiple reviews commissioned by state and federal governments and bodies such as the Law Reform Commission have identified persistent problems with Indigenous language interpreting. These include the inconsistent use of interpreters, the paucity of interpreters in remote communities, the variable quality and reliability of interpreting, and the lack of accreditation and qualification pathways for Indigenous people wanting to become interpreters (Appendix I summarizes relevant findings and recommendations of reviews and reports from 1987 until 2018).

[2] The recent case of Gene Gibson's wrongful conviction is a prominent example of the consequences of the failure to provide professional interpreting services to Indigenous suspects (Tulich et al., 2017).

While there is no disputing the need for more interpreters and better accreditation pathways, increasing the number of interpreters and/or providing additional training has not been sufficient in overcoming current problems. The focus on raising awareness about the benefits of interpreting has also failed to achieve adequate use of interpreters in all relevant legal contexts. One factor contributing to the lack of real progress is a deficiency of intercultural competence in legal circles. In response, organizations such as AIS have offered regular cultural competence training to legal and government organizations who work routinely with Indigenous language speakers. Although these workshops have a major role to play in redressing the lack of cultural awareness in the justice system, they alone cannot remedy the problems that beset Indigenous language interpreting in legal contexts. This thesis posits that it is not enough to view interpreting as a linguistic act intertwined with culture. Such an approach obscures a plethora of other important factors that influence both the process of providing interpreters and the individual act of interpreting. Interpreting is not a standardized act that can be studied purely empirically, rather it is a contextual and contingent act. A holistic approach to issues of interpreting must take into consideration the political, historical, and sociocultural context within which interpreting is carried out. Additionally, any effort to offer a holistic examination of interpreting would benefit from considering the epistemological and ontological groundings of language interpreting and how discourses of knowledge influence theory, policy, and praxis. These considerations form the basis for the some of the aims of this research project, which I outline in §1.2.

1.1 Research background

This thesis is firmly grounded in the research area of forensic linguistics which explores the multifaceted relationship between language and the law, including how the law employs, and sometimes distorts, linguistic means to achieve particular ends (for an overview of forensic linguistics, see Cotterill, 2003; Coulthard, 2016; Coulthard & Johnson, 2010; Gibbons, 2003; Gibbons & Turell, 2008; Olsson & Luchjenbroers, 2014; Tiersma & Solan, 2012). In Australia, the linguistic challenges faced by Indigenous people engaging with the justice system have been explored in detail by Diana Eades.

Her extensive research on the disadvantages experienced by Aboriginal English (AE) speakers in legal contexts and her tireless work with the justice system and Indigenous communities has led to both increased awareness and concrete legal reforms. Eades explores the miscommunication that results from the justice system's lack of understanding of the way AE differs from Standard Australian English (SAE) (Eades, 1992, 1994, 2004, 2006, 2008c, 2012a, 2013, 2014, 2015). Eades' exploration is relevant to this thesis because speakers of Kriol, which is the language I focus on, face very similar issues with regard to how the justice system has little understanding of their linguistic needs (see Chapter 5).

Of particular importance to this thesis is Eades' focus on culturally-based miscommunication in the law. She explores how the justice system's lack of recognition and appreciation of Indigenous cultures, and the communicative norms they give rise to, can lead to recurrent miscarriages of justice and an erosion of trust among Indigenous people dealing with legal professionals (E.g. Eades, 1992, 1996, 2000b, 2003a, 2007, 2008a, 2012b). Eades' work is supported by other research on the cultural aspects of Indigenous language use in legal contexts, especially in relation to Land Rights and Native Title Claims (E.g. Nash & Henderson, 2002; Rumsey, 1989; Walsh, 2002, 2008, 2011). These examinations have demonstrated that Indigenous people, whether they speak SAE, AE, Kriol or other traditional languages, regularly encounter a justice system that either does not understand or actively denies their cultures. The impact of this on interpreting is especially significant. Indigenous language interpreters who often have a deep understanding of the cultural and linguistic norms and practices of their communities can play a major role in facilitating access to justice, but they are not being effectively engaged by the justice system, often with grave consequences (see §7.5). Additionally, the cultural needs of Indigenous language interpreters working in legal settings are also frequently unmet (see §4.5.2, §7.2.1, §7.3.3).

As this thesis also aims to highlight power disparities in the law and their impact on access to justice, it draws on critical perspectives within forensic linguistics that interrogate the role of power relations in shaping linguistic interactions in legal

contexts, including in courtrooms and police interviews (E.g. Berk-Seligson, 2009; Conley et al., 2019; Eades, 2008b; Ehrlich et al., 2016; O'Barr, 1991; Wagner & Cheng, 2011). These perspectives align well with the critical lens through which decolonial theory, the main framework I use in this thesis, has viewed the way Western institutions treat Indigenous languages (see §8.4). In fact, a central premise of this thesis is that Indigenous language interpreting in Australia has always taken place in a colonial setting, and it continues to do so. Ignoring the impact of the enduring legacy of colonialism on how Indigenous languages are conceptualized would ensure that many of the linguistic disadvantages experienced by Indigenous language speakers are never adequately addressed. Although my research is situated primarily in linguistics, the choice to employ the decolonial perspectives found in social and political theories was imperative to the way I approached this project.

The focus on interpreting in this thesis means that it also draws on some theoretical and analytical works in the field of interpreting and translation studies. In particular, it incorporates some of the research on community interpreting in legal settings (E.g. Berk-Seligson, 2002; Garber, 2000; Hale, 2007, 2011, 2013, 2014; Hale & Napier, 2016; Howes, 2019). The thesis also builds on a significant body of work that has specifically interrogated Indigenous language interpreting in Australia's justice system, including the pioneering work of Michael Cooke. Cooke, an interpreter of Djambarrpuyungu, explores the communicative challenges faced by Indigenous language speakers as they navigate a justice system that has little understanding of their languages, cultures, and communicative norms (Cooke, 1996, 1998). He also examines the issues confronting Indigenous language interpreters who work in legal settings, including those concerning power relations, cultural competence, and community expectations (Cooke, 2002, 2004). Other scholarly works in this area include those by Moore (2014) who focuses on the miscommunication caused by the different Western and Indigenous conceptualizations of legal terminology, MacFarlane et al. (2019) who interrogate the power relations of legal interpreting, and Goldflam (1997, 2015, 2019) who examines the politics of power inherent in the provision of Indigenous language interpreting.

While the above works lay important foundations for this thesis and inform many of the discussions throughout, they also highlight a clear gap in research. To date, there has been little research on the use of Kriol in legal contexts. Given that Kriol is a thriving language with an ever-increasing number of speakers, this paucity in research is problematic. There are some disparate publications that have examined Kriol in legal contexts, and to some extent its interpreting. For example, Bowen (2017) analyses the right to silence both at the conceptual and linguistic levels, with particular attention to the differences in the conceptualisations of modal verbs between English and Kriol speakers. Disbray (2016a) focuses on mixed languages in legal settings and calls for further research into the potential misunderstandings that can occur between legal practitioners and speakers of emerging and mixed languages including Kriol. This thesis attempts to addresses some of the identified gaps in the research by adopting a holistic approach to examining Indigenous language interpreting in general, and Kriol in particular.

1.2 Research aims

The following are the main research aims of this project. The topics I discuss in addressing these aims intersect and overlap frequently which reflects the dynamic approach needed to examine Indigenous language legal interpreting.

Aim 1: To situate the act of Indigenous language interpreting in the linguistic, political, sociocultural, and epistemological context in which it occurs.

As I describe above, this thesis adopts a holistic perspective that recognizes the many strands of the interpreting web. At the core 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. By investigating the various aspects of interpreting, we can arrive at a better understanding of both the nature of interpreting and the experience of the interlocutors involved in interpreted

communication. The organization of the thesis reflects the need to examine all these aspects in detail and understand how they influence each other (see §1.3)

Examining the linguistic aspects of interpreting is a vital first step. After all, the most essential skills required from interpreters are related to their knowledge of source and target languages. Linguistic skills are at the heart of interpreter training and testing and play a major role in ensuring accurate interpreting. A deep understanding of the culturally-bound communicative practices of language speakers is also of immense importance. Interpreters who possess a high degree of cultural competence are not only more capable of faithful translations, but they are better able to facilitate communication and foster an environment of mutual understanding with their clients. Cultural norms and expectations also influence the experience of the interpreters themselves and at times dictate whether they are able to accept certain interpreting assignments, for example, when interpreting for particular members of one's kinship group. These considerations can have short and long-term impacts on the practical aspects of interpreting and as such must be examined closely.

In this thesis I also attempt, in part, to interrogate the ways in which interpreting and access to justice are 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 underutilization of interpreters and the dismissal of Indigenous language speakers' rights, the racial politics of interpreting in the justice system are difficult to ignore. In these contexts, interpreting itself can be viewed as a political act of solidarity and resistance.

Finally, I endeavour to examine interpreting from an epistemological standpoint with a view of uncovering the ways in which varying knowledges intersect with the linguistic and cultural aspects of interpreting. In recognizing that knowledge cannot be abstracted

from the values and norms of a culture, or in other words, that epistemology and axiology are intertwined in the experience of members of cultural groups, we can begin to view the cultural aspects of interpreting from a new perspective. Examining knowledge is also pertinent to exploring the role of colonialism in shaping the linguistic environment in which interpreting takes place.

Aim 2: To highlight the lived and professional experience of interpreters and legal professionals

This thesis endeavours to elevate the voices of Indigenous language speakers and interpreters by giving them a platform to share their perspectives and experiences. I am cognizant of the fact that exclusively etic approaches to interpreting research are inadequate because they omit the perspectives of the most important stakeholders. My research is, therefore, guided by the principal notions of collaboration and representation. From the outset, my intention was to give interpreters the opportunity to share their professional and personal experiences, especially in relation to working in a legal system that regularly stacks the odds against their communities. Interpreters were very generous with their time and knowledge, allowing me to observe and learn and to ask many questions. As well as describing their professional experiences, many also shared personal stories that gave me a real insight into the larger topics of race relations, the conceptualization of language, and responsibility to one's community.

I also set out to give voice to some of the non-Indigenous participants in the legal process who often find their good will and genuine allyship constrained by the very system they work in. For example, most of the lawyers I spoke to were frustrated by the immense workload and the lack of institutional support that meant that some of the needs of their clients, including interpreting, were regularly inadequately addressed. Like interpreters, these legal professionals are at the frontline of the justice system and their viewpoints can shed important light on the many factors that impact the provision of interpreting services.

Aim 3: To foreground the salience of localized contexts

This thesis emphasizes the importance of *where* the act of interpreting is carried out as well as how. There is little doubt that Indigenous language interpreting in larger towns like Darwin and Perth will differ from that taking place in smaller towns such as Katherine, where resources are more limited and fewer interpreters are available. The differences are heightened further when we examine interpreting in small or remote Indigenous communities where certain social and cultural factors, such as kinship and traditional law, can have immense influence on the experience of interpreters. In my research I incorporate data from Katherine's local court as well as circuit courts in the nearby community of Mataranka, and more remote communities such as Barunga and Ngukurr. The aim is to capture the different geographical and physical contexts of interpreting and explore their impact on the availability of interpreting services.

Aim 4: To use Kriol as a case study in pursuing the above aims

The research focuses on Kriol interpreting in particular, although other Indigenous languages are often examined. Kriol was chosen for multiple reasons. Firstly, it is a dynamic language spoken by a growing number of Indigenous people from vastly different linguistic and cultural backgrounds. Kriol is one of the largest languages spoken in Katherine and the surrounding region, providing a rich source of data for this research. Secondly, as a relatively new language, Kriol remains grossly under-recognized and the linguistic needs of its speakers are regularly overlooked by the justice system. Thirdly, Kriol's close relationship with Aboriginal English can result in masked miscommunication between speakers and legal professionals[3]. Finally, the negative

[3] In this thesis, the term 'Aboriginal English' is used 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). Indigenous people's use of English can range from English being used as a second language, in which case non-standard features can be influenced by proficiency as well as first language(s) interference, or as an everyday dialect of English where linguistic features that differ from Standard Australian English are relatively uniform throughout speakers' repertoires. As I describe in §5.1.1, these delineations are not always clear cut, especially for Kriol speakers whose repertoire of English use can place them along a continuum.

attitudes held by some Kriol speakers towards their language can have a great impact on the identification of speakers and the adequate provision of interpreting services for them.

1.3 Thesis organization

The thesis is organized thematically around the main topics of the linguistic, racio-political, sociocultural, and epistemological contexts of Indigenous language interpreting. This thematic organization lends itself to an integrated review of literature, therefore relevant works are included throughout each chapter.

The Introduction chapter (Chapter 1) provides a brief background to this research project and lays out the research aims. Additionally, the chapter locates the thesis in relation to the body of literature on Indigenous language interpreting in order to highlight the research gap.

Chapter 2 introduces the conceptual framework of decolonial theory, including an outline of its main concepts and how they relate to the Australian context. The chapter also describes why particular notions within decolonial theory provide novel ways for examining Indigenous language interpreting in Australia's justice system.

Chapter 3 discusses the methodological choices made throughout this project, including where and how data was collected. The chapter is reflective in nature and contains an exploration of my own role in the research project.

Chapter 4 constructs a contextualized backdrop to Indigenous language interpreting in legal settings. The chapter begins with an examination of the availability of qualified interpreters to Indigenous language speakers in legal contexts with a particular focus on the discretionary use of interpreters. Other aspects explored in the chapter are the right to interpreting assistance and the issues faced by legal professionals in ascertaining the need for interpreting services for their clients. The focus is then shifted to exploring

the challenges to the recruitment and retention of Indigenous language interpreters, including training and working conditions.

Chapter 5 focuses particularly on the linguistic context of Kriol interpreting. The chapter examines some of the main linguistic differences between Kriol, AE, and SAE and discusses their influence on Kriol interpreting. The impact of the 'creole continuum' of Kriol on the decision to engage interpreting services is also examined[4], along with the complexities of dialectal variation. The chapter also includes a discussion of speaker and non-speaker attitudes towards Kriol, and their influence on the process of Kriol speaker's self-identification for the purpose of engaging interpreters. This particular aspect is explored in reference to the notion of 'coloniality of being' found in decolonial theory (Maldonado-Torres, 2007). The concluding part of the chapter presents a case study from recent court proceedings to demonstrate the disadvantages experienced by Kriol speakers when a professional interpreter is not provided.

Chapter 6 investigates the politics of Indigenous language interpreting in the context of historical and ongoing race relations in Katherine and the surrounding region. It draws on the 'coloniality of power' aspect of decolonial theory (Quijano, 2000) to explore the intersection of power, race, and Indigenous language interpreting. The notion of 'interpreter visibility' is also used to interrogate the impact of racial politics on the professional experience of the interpreters themselves, including their confidence and their ability to act impartially in the course of their work.

Chapter 7 focuses on the socio-cultural context of interpreting and takes into account matters of kinship relations and other forms of social organization. The chapter includes a discussion of the Indigenous notion of 'shame', which can be distinctly different from the non-Indigenous interpretation of the word, and its impact on interpreting. The

[4] 'creole continuum' here refers to the gradation of Kriol from lighter varieties that closely resemble Aboriginal English to heavier varieties that are more influenced by the Indigenous languages of the area (see §5.1.1)

interpreter paradox is also discussed, whereby the more proficient an interpreter is in their Indigenous language, the greater likelihood of them being well-known members of their community or language group and therefore the less likely they are to be viewed as an impartial by their own communities. This paradox contributes to interpreters fearing blame and payback from their communities and is a factor in interpreters refusing to take on particular assignments. The chapter concludes with a case study that demonstrates the important role of interpreters as cultural brokers.

Chapter 8 examines the epistemological and ontological foundations of Indigenous language interpreting by drawing on the notions of 'coloniality of knowledge' and 'coloniality of language' both of which have emerged as part of decolonial theorizing. The chapter begins by exploring the epistemic territory created by Australia's Western law and situating language use within this territory. The chapter then discusses language as a site of epistemic struggle and resistance by examining how conceptualizations of language and interpreting intersect with the actual act of interpreting itself. Finally, the chapter examines translation as an instrument of coloniality designed to expand Western epistemology's territory by relegating Indigenous ways of knowing to the margins of intellectual written discourse (Vázquez, 2011).

Chapter 9 presents the profiles of two Kriol interpreters who were interviewed extensively for this research. Both interpreters were trained and qualified around the same time and have worked regularly in legal settings. One of the interpreters is an Indigenous elder and a respected strong woman in her community and the other interpreter is a non-Indigenous scholar who has worked widely on the Kriol language and has lived in Indigenous communities for a long time. The chapter explores the similarities and differences of their perspectives and lived experiences, particularly as these pertain to the topics discussed in previous chapters.

The concluding chapter (Chapter 10) is a synopsis of the project that also discusses the implications and limitations of the research including suggested areas for further

exploration. The chapter includes a table summarizing the main findings of the thesis and suggested pathways towards improving the provision of interpreting and the experience of interpreters.

2 THEORETICAL FRAMEWORK

As I describe in §1.2, furthering our understanding of some of the issues involved in Indigenous language interpreting requires an appreciation of the historical, sociocultural, political, and epistemological factors impacting the way interpreting is carried out. In deciding on which theoretical framework to use, I needed a theory with a wide enough scope to capture these broad and varied notions, yet with detailed analytical tools to examine the nuances of what are clearly multi-faceted and complex issues. This led to my decision to adopt decolonial theory, as I discuss in §2.2. I also incorporate interpretivism and Grounded Theory as part of the methodological approach to data collection and analysis – these are discussed in §3.1.

2.1 Previous approaches to research in language and the law

Linguists working in the area of language and the law have long highlighted the need to re-evaluate some of the traditionally empirical approaches to linguistic analysis that privilege universalism, objectivity, and neutrality. Instead, they argue, researchers must adopt a critical stance that sheds light on the role of power, race, and control, while also recognizing human agency and the inherent inter-subjectivity of linguistic interactions (Eades, 2004, 2008b; Pennycook, 2001, 2010). Contextualizing the use of language in the law, therefore, benefits greatly from engaging with political critiques of the relationship between language, ideology, power structures, and social inequality. Eades (2004), in particular, advocates a critical sociolinguistics perspective on the study of language and the law, whereby linguistic practices are examined in relation to wider social and political domains. In line with Eades' (2004) call, I adopt a critical stance throughout this thesis, especially when examining interpreting practices within the political and historical context of Katherine and the surrounding region (see Chapter 6).

I note here that the term 'critical' has arguably become a victim of its own success. Its ubiquity since entering the mainstream of theory and praxis means that it is now at risk of embodying the very kind of common sense it was meant to challenge. This dilemma has led some scholars to move away from critical-based frameworks, notably Pennycook (2010) who after previously advocating for critical perspectives (Pennycook, 2001) has recently argued that, for the most part, much of the critical work being produced in Applied Linguistics nowadays is conventional and moribund. While I recognize the merits of Pennycook's argument, I believe that the term 'critical' still occupies a significant space in intellectual inquiry. A more pressing issue for me is the need for more linguistic-based research that rigorously explores the epistemological and ontological factors that underpin many power relations, especially within Indigenous contexts. Any intellectually honest examination of Indigenous language interpreting in the justice system must take into account not only the power discrepancies inherent in Western law, but also how the law views and treats Indigenous ways of knowing. In other words, what is required is a theory that is in essence critical of power relations, but also addresses the question of who produces knowledge and whose knowledge is considered valid. The answer, I believe, lies in the conceptual and analytical framework of decoloniality, a framework which has caused small waves in disciplines such as sociology, anthropology, and critical translation studies, but little more than ripples in Australia's linguistic research landscape. As I describe in this chapter, decoloniality's exploration of knowledge production as a tool of marginalization, and its concern with language as site of hegemony and resistance, makes it a powerful framework for examining the relationship between language, knowledge, and power in legal contexts.

In this chapter, I outline decolonial theory and describe how its facets are applicable to specific aims of this research (§2.2). This is followed by a brief exploration of why decolonial perspectives should be applied in Australia (§2.3).

2.2 Outline of decolonial theory

I begin by noting the important differences between 'coloniality' and 'colonialism', and 'decoloniality' and 'postcolonialism'. Colonialism refers to the actual sociohistorical process of imperial expansion and the colonizing of other lands, and the resulting creation of geopolitical cores and peripheries. It is both a policy and a practice of power that has allowed Europeans to assume and retain physical and political control over Indigenous territories and populations. Coloniality, on the other hand, denotes the forms of domination that outlast colonialism and remain not only as a legacy of former colonial relations, but as enduring and dynamic means of exercising control over the lives of colonized subjects. Rather than examining colonialism as a mere series of historical events, the study of coloniality assumes that colonialism is a continuous and modern-day practice. A key tenet of the theory of coloniality is the identification of a global ethno-racial hierarchy that organizes and controls social and structural relations around the world. Another tenet is the assertion that such a hierarchy is maintained through a combination of economic and political power and the construction of particular forms of knowledge.

Decoloniality is a tradition of thought that is sometimes conflated with postcolonialism, which is a distinct theoretical and analytical framework. As intellectual movements, decoloniality and postcolonialism overlap in parts but differ conceptually, in their temporal scope, and in their geographical origin and remit. Postcolonialism developed around the ideas of Middle Eastern and South Asian scholars including Said (1978), Bhabha (1994), and Spivak (1988) whose primary focus is on the colonial experiences of their respective regions, in contrast with decoloniality which developed in South America. Though very diverse in nature, most postcolonial works coalesce around critiquing the West's cultural and material domination of the Third World, as well as the representation of the colonial subject as the 'Other', the subaltern who is denied agency and whose voice is often silenced. Postcolonial scholars also directly address the question of the production and reproduction of knowledge in the global context, though

arguably not to the same extent as scholars working within the conceptual framework of coloniality/decoloniality.

Unlike postcolonialism which focuses mainly on the era spanning the nineteenth and twentieth centuries, decoloniality takes as its departure point the European colonization of the Americas beginning in the fifteenth century. Decolonial theory, sometimes expressed in terms of the coloniality/modernity duality, is grounded in prior movements within Latin American studies that explored the sociology of dependency, exploitation, and liberation in the Third World as it related to the First World. The notion of coloniality was articulated in a series of conferences and symposiums organized by Latin American and Caribbean scholars around the turn of the 21st century. One of its most influential promulgators is Aníbal Quijano (2000, 2013) who first proposed the idea of coloniality of power. His work was later taken up and advanced by a number of scholars including Mignolo (2000, 2011b), Maldonado-Torres (2007), and Vásquez (2009, 2011), among others.

Decoloniality theorists propose three interrelated aspects of coloniality: *coloniality of power, coloniality of knowledge,* and *coloniality of being*, each of which will be explored in the following sections.

2.2.1 Coloniality of power

The coloniality of power interrogates the systems of hierarchies that emerged through colonization and continue to persist along racial and gendered lines. Quijano (2000) posits that such systems are not merely symbolic, but embodied in cultural and economic relations and enacted through the racial division of labour. Such relations explain how the concentration of economic power in the occident has transcended the historical period of colonization and continues to exert its influence in the geopolitical realms. Quijano also theorizes that global Eurocentric power is constructed and organized around two axes: coloniality and modernity. Coloniality utilizes the invention of 'race' to reframe and rearticulate systems of superiority and inferiority from

corollaries of power and dominance to natural and biological phenomena. Racial hierarchy is presented by colonizers as an ahistorical and common-sense fact. This racial classification, according to Quijano (2000, p. 534), is a cornerstone of the coloniality of power that paves the way for the creation of geo-cultural identities, including 'black', 'European', 'Mesitzo', and others. The other axis of global Eurocentric power is modernity, defined loosely as the ensemble of economic and social norms, processes, and practices that developed as a consequence of the Age of Enlightenment in eighteenth-century Europe. Quijano focuses on modernity's production and systemization of knowledge to suit European capitalist agenda, in particular how everything can be measured, quantified, and/or exchanged.

In a sense, the coloniality of power perspective overlaps greatly with areas of critical sociolinguistics advocated by Eades (2004), especially with its emphasis on the construction of power relations along racial lines. It is a powerful perspective for analysing the historical and sociopolitical context of Indigenous language interpreting in the Northern Territory in general and Katherine in particular. It is virtually impossible to disentangle power and race relations in the Northern Territory, something that I examine in some detail in Chapter 6, nor is it easy to abstract the linguistic interactions involved in the act of interpreting from the power differentials at play in most legal settings. Such power differentials have a clear impact on how Indigenous interpreters conduct their duties, including how they are viewed by police, courts, and legal and other organizations. Historical power imbalances that have led to generations of Indigenous people fearing Western law and its enforcers also impact the levels of confidence among Indigenous interpreters, a topic that is also explored in Chapter 6.

2.2.2 Coloniality of knowledge

Coloniality of power is supported by the coloniality of knowledge, that is the domination of Eurocentric systems of knowledge production and transmission, and the denial or repression of traditional ways of knowing. The concept of coloniality of

knowledge is explicated by Mignolo (2011a) who, following Quijano, examines the persisting restriction on the production and reproduction of knowledge post colonization. Mignolo also brings to the fore the hidden ways by which Western knowledge occludes alternative epistemes and relegates Indigenous ways of knowing to the margins of intellectual discourse. In particular, Mignolo argues that the coloniality of knowledge is entangled in the ideals of knowledge proposed by the project of modernity and posits the coloniality/modernity axis as an integral tool in examining colonial relations.

One of Mignolo's major contributions to the theory of coloniality is his expansion of Quijano's notion of the 'colonial matrix of power', a relational system of social classifications that operates through a number of interdependent and interrelated domains: economic control, physical and political authority, a monopoly on the generation and representation of valid forms of knowledge, and racial and gendered hierarchy (Quijano, 2000). Mignolo (2009) focuses on the geo- and body-politics of knowledge as part of the colonial matrix of power. He introduces the concept of epistemic disobedience, described as the move away from the colonial classification of the global south as 'places of non-thought' and the disobeying of exclusionary disciplinary boundaries that demarcate the West as the site of knowledge production. Mignolo's call for epistemic disobedience is part of what he views as an important task of decolonial thinking that is 'the unveiling of epistemic silences of Western epistemology and affirming the epistemic rights of the racially devalued' (2009, p. 4).

In this thesis, the relationship between the coloniality of knowledge and Indigenous language legal interpreting is explored in detail in Chapter 8. The chapter examines how Australia's Western justice system has created its own epistemic territory and situates the act of interpreting within that epistemic space. By exploring how the law's conceptualization of language and interpreting differ from Indigenous understandings, the chapter interrogates how the law validates certain ways of knowing over others. Varying understandings of family and kinship are also examined, including how they are expressed linguistically and the impact that has on the act of interpreting.

2.2.3 Coloniality of being

The coloniality of being refers to the persisting effects of colonialism on the lived experience of people. It examines the impact of past colonial relations on the way people view themselves and others around them, and the way they place themselves in the global hierarchy created by colonialism. Scholarship on the coloniality of being emerged before Latin American researchers began to grapple with questions of the colonized self, although the use of the term 'coloniality of being' is more recent. Fanon's (1952) exploration of the slave/master dialectic and his concept of the 'epidermalization of inferiority' highlights the Eurocentric hierarchy of subjecthood which afforded superiority to whiteness and consigned everyone else to the 'Other' category, with its entailed inferiority. Both postcolonial and decolonial theories have expounded on Fanon's work, especially his concept of otherness, to describe the decentring of personhood that emerges as the result of persisting colonial conceptualizations of 'white as superior' (see, for example, Maldonado-Torres, 2007). In Australia, a similar articulation of this notion is found in Moreton-Robinson's (2004) examination of 'whiteness as epistemology a priori'. Moreton-Robinson argues that the power relations inherent in the connection between representation, whiteness, and knowledge production are embedded in our collective identities and affect entire social structures. In this way "whiteness is constitutive of the epistemology of the West; it is an invisible regime of power that secures hegemony through discourse and has material effects in everyday life" (Moreton-Robinson, 2004, p. 75).

I explore the notion of a coloniality of being in relation to Indigenous language interpreting in §8.4.1 when I discuss Kriol speaker's attitudes towards their language, especially the potential for Kriol speakers to internalize negative attitudes espoused by non-Kriol speakers. I specifically link coloniality of being to the Indigenous concept of *shame* and examine the impact it may have on Kriol speaker's willingness to engage interpreting services.

2.3 Decolonial perspectives in the Australian context

'Let us admit it, the settler knows perfectly well that no phraseology can be a substitute for reality'

Frantz Fanon, 'The wretched of the earth', 1963, p. 44

The formal granting to Indigenous people of equal rights to white Australians following the 1967 referendum, including citizenship rights, was heralded as a turning point in Australia's colonial history. The campaign to vote 'yes' in the referendum had implored voters to 'right the wrongs' committed against Australia's Indigenous population[5], and the overwhelming success of the 'yes' vote gave a clear signal that Australians understood some of the negative impact of their country's colonial history. Since then, consecutive governments have worked tirelessly to create the impression that colonial control over Indigenous people is a mere relic of the past. Apologies were made, a degree of recognition of Indigenous rights to land was achieved under the Lands Rights Act (NT) 1976 as well as Native Title[6], and the passionate rhetoric of justice and equality became a consistent trope among many mainstream politicians. But the invisible hand of coloniality continues to pull the strings. Nowadays, Indigenous people are subjected to subtler, but no less violent, means of colonial domination that have been either unrecognized or hidden by past and recent governments. Such domination is engrained in Australia's social and economic institutions; from the law to education to welfare,

[5] https://www.abc.net.au/rightwrongs/

[6] It should be noted that legislation around land rights has always been problematic. Native Title, for example, falls well short of achieving the return of stolen lands. While Native Title is a form of recognising pre-existing Indigenous rights and interests according to traditional laws and customs, it does not equate to the formal granting of land rights which usually comprise of freehold or perpetual lease title to Indigenous Australians (Hocking, 2005).

many aspects of Indigenous lives are constantly impacted by the colonial matrix of power. While this thesis is concerned with applying a decolonial lens to Indigenous language interpreting and translation in Australia's justice system, I hope that it contributes to a broader conversation that addresses the wide-scale non-disclosure of coloniality's institutional entrenchment in this country.

I chose to use the framework of decoloniality for a number of reasons. Firstly, decolonial thinking is geared towards the emancipation and empowerment of colonized populations through the construction of workable frameworks that counteract Western hegemony while also encouraging cooperation. An example of this approach is decoloniality's focus on the right have one's existing knowledge recognized as a legitimate alternative to Western epistemology without disregarding the validity of Western knowledge. Veronelli (2015) maintains that decoloniality is a movement "not about dictating a counter-hegemonic global design, nor about denying the contributions of Western civilization and Eurocentred modernity to the history of human kind, but about opening up the option for other logics of thinking, doing, and living that emanate from the various subjects disenfranchised by modern/colonial racism" (2015, pp. 109–110). In other words, decolonial approaches can offer the possibility of critiquing hegemonic and normative ideologies regardless of their orientation and without alienating particular forms of knowledge. With that in mind, it is not my intention in this thesis to completely sideline the role of modernity in facilitating the flourishing of Australia's democracy, which I consider indisputable. Instead, I implore that we do not turn a blind eye to the physical and epistemic violence perpetrated against many of the world's Indigenous populations in the name of the project of modernity, precisely because such violence tears at the fabric of the democracy. As I aim to demonstrate in this thesis, epistemic violence is a stark feature of Indigenous Australians' engagement with one of modernity's most powerful symbols, Western law. Counteracting this violence, I posit, requires a shift in our understanding of how various knowledges operate in legal paradigms, including how some are tacitly marginalized through linguistic practices.

Another factor for choosing decolonial approaches is that they are easily applicable to the Australian context and, in part, aligns with existing Australian scholarship in the field of settler colonialism studies (E.g. Moreton-Robinson, 2016, 2020; Wolfe, 1999, 2001, 2016). An unfortunate feature of history has been colonization's role in shaping the world and leaving a lingering legacy of oppression and control all over the globe, including in Australia. Although it occurred centuries later, Australia's experience with settler-coloniality has much in common with Latin America's. In both cases, European colonizers' attitudes to Indigenous populations involved the denial of their existence, their humanity, their cultures, and their languages. From the very beginning, European colonizers in Australia made little to no attempt at understanding the different ontological and epistemological foundations of Indigenous societies or anchoring particular cultural practices to them. In other words, there was no recognition of Indigenous cultures to begin with let alone the inference that they were somewhat inferior to European culture. To the newly arrived colonizers, *terra nullius* entailed *marae nullius, vox nullius, lingua nullius, cultura nullius*, and *cognitio nullius*. It implied a linguistic, cultural, and legal vacuum that needed to be filled by the West. The void was declared ab initio by the colonizers and then gradually transformed into the discourse of denial and negation that is still pervasive in current day Australia. In this way, Australia's experience with colonization is different to that of the subcontinent where the colonizers initially acknowledged existing laws and customs, before beginning a process of replacing these laws by denigrating them as uncivilized and inferior. Put differently, the 'othering' that characterized the colonial experience of the subcontinent, and became the focus of many postcolonial works, was made possible by the understanding that for the superior colonizer to exist, the existence of the inferior 'Other' had to be acknowledged. There were no proclamations of *terra nullius* in the subcontinent; instead, colonial powers relied on a discourse of racial and cultural superiority to maintain control over their subjects.

In Australia's case, the *terra nullius* doctrine allowed the denial of Indigenous people's very humanity. Their categorization with flora and fauna was not only a legal strategy, it was a deeply-held view by many colonizers. In a parliamentary debate in 1902, King

O'Malley commented that "An Aboriginal is not as intelligent as a Māori. There is no scientific evidence that he is a human being at all"[7]. Even when Indigenous people were considered human, they were often placed at the bottom of humanity's scale: "The Australian n***** is the lowest type of human creature about" (Inson & Ward, 1887; cited in Dodson, 1994).

Once acknowledging the existence of Indigenous people became inescapable, establishing and expanding the West's epistemic territory needed to be achieved through other means. This included the deliberate and violent decimation of the Indigenous population and the subsequent introduction of many of the symbols and artefacts of Western culture and epistemology including Western science and technology, English Common Law, Christianity, and, of course, the English language.

European domination could not be maintained by physical force alone. It was supplemented by the continuous exercising of epistemic violence, that is the controlled suppression and marginalization of Indigenous knowledge and the relentless tightening of the grip of Western knowledge. Even today, epistemic violence can go unrecognized because, crucially, it is often framed in the West as 'cultural differences', as the inability to grasp or appreciate each other's cultures because of their incompatibility with our own. As such, cultural training and intercultural competence are often touted as the panacea, and although they have a place in improving the relationship between Indigenous and non-Indigenous Australians, such measures have the potential to obscure ongoing epistemic violence. The risk with relying on an intercultural perspective alone is that it opens the door for the relationship between culture and epistemology to be viewed purely from the perspective of congruence; that is which cultures suit which knowledges. In colonial contexts, such as Australia, where Western knowledge reigns supreme, Indigenous people who hold different knowledges inevitably become cultural outsiders, further entrenching the power of coloniality. A decolonial approach to understanding the relationship between culture and

[7] Commonwealth Parliamentary Debates (HR), 1902, p. 11930.

epistemology requires that we first deconstruct and decentre the notion that Western epistemology is the default or standard against which all non-Western cultures' ways of knowing must be compared. By 'naturally' situating itself in the centre of what is and what can be known, Western epistemology is both absolved from having to apply the same level of scrutiny and rigorous examination to itself as it does other epistemologies, and, more troublingly, allowed to relegate all other knowledges to the peripheral and marginalized category of *ethno*epistemology.

Ethnoepistemology is a problematic construction that is part of a larger set of fragmented so-called ethnodisciplines including ethnobotany, ethnomusicology, ethnoastronomy, ethnomedicine, and ethnoscience, among others. These fragments are constructed to reflect distinct academic disciplines but are almost never acknowledged as equally valid possibilities of knowledge because they fall outside of the Western criteria for knowledge, not to mention the Western tradition of grouping the knowledges of vastly different cultures together under the umbrella term 'ethnoepistemology', thus obscuring their diversity. Indigenous knowledges are then permitted to exist as some kind of discrete epistemology that is systematized and incorporated into Western intellectual thought, but only to the extent allowable by 'epistemic tolerance'. Similar to how 'cultural tolerance' operates in the West, where other cultures are accepted so long as they do not impinge on Western cultural norms and expectations, characterized as culture proper, epistemic tolerance involves a tokenistic acknowledgment of Indigenous knowledges while tacitly never permitting any encroachment into Western epistemic territory (Bradley, 2020).

Australia's legal system is a case in point, where the existence of Indigenous customary laws is acknowledged, but they are routinely disregarded in criminal matters and in cases involving families and children. Following the Northern Territory National Emergency Response - also known as the Intervention - courts were explicitly prohibited from considering customary laws and cultural practices in determining sentencing and bail conditions, putting a stop to the powers of discretion previously exercised by

judges[8] (See also §6.4.2, §9.2.4, §9.4 for further discussion of the Intervention). A number of lawyers and legal aid providers I spoke to in the Northern Territory indicated that prior to the Intervention, some judges had routinely considered customary laws when sentencing low-level criminal offending. The lawyers all expressed dismay at having to work within the constraints of the new provisions that in effect put aside any recognition of the importance of customary law to Indigenous communities *[Katherine_Jun2018_Field Notes_ p. 9]*.

The Intervention was an excuse for justifying the existing politics of disdain and dismissal in relation to Indigenous customary laws and knowledges. By disallowing the consideration of customary law, the state signalled to its Indigenous people that their ways of knowing that had governed their societies for over six millennia were at best irrelevant. The expansion of Australia's epistemic territory had left no space for traditional knowledges which now lay on the other side of its borders. Counteracting the law's power to dictate which forms of knowledge are valid requires the adoption of decolonial approaches, a notion which is discussed thoroughly in Chapter 8.

2.4 Concluding remarks

This chapter laid out the rationalization for choosing decoloniality as the overarching theoretical framework in this thesis and provided an outline of the main aspects of the theory. The chapter also briefly examined why decolonial approaches are needed in the Australian context by describing the establishment and expansion of the West's epistemic territory in Australia, with a particular focus on the role of the law as an instrument of coloniality. The next chapter delves into the methodological considerations of this thesis including the choice of methodological framework, and the site and methods of data collection.

[8] Northern Territory National Emergency Response Act 2007 (No. 129, 2007) – Sect 90, Sect 91.

3 'BALANDA ASK TOO MANY QUESTIONS': REFLECTIONS ON METHODOLOGY

I am sitting with Miliwanga Wurrben, who has asked me to call her Aunty Mili[9], in a shady corner of a local café, taking notes as we have one of our many conversations. As usual, I have come equipped with numerous questions. My trips to Katherine are short and I am always anxious to collect as much information as I can in those few precious hours I get to spend with her. I ask some questions, and as she answers them, I find myself interrupting her on a few occasions to clarify certain points and ask follow-up questions. I do it politely and I always apologize and ask her to continue, and the conversation moves on.

Aunty Mili is now talking about police interviews and how their manner of questioning Aboriginal suspects is perceived by the community. She stops abruptly, looks me directly in the eyes and says *'balanda ask too many questions. After a while it becomes an insult[10]'*. Recognizing that she is talking about the police but sensing the implication of this deliberate statement, I reply jokingly *'here I am asking you a thousand questions'*, expecting her to laugh along. Instead, she simply says '*it's ok dear, it's the only way you know how to do things'*.

Feeling slightly admonished, I venture yet another question: *'do you think I ask too many questions?'*. *'Yo, for sure'*, comes the short reply. A brief and uncomfortable silence follows before she smiles broadly and

[9] This follows her giving me a Rembarrnga kin name, *wamutjan*, which made me her classificatory niece

[10] *Balanda* is a term used by some Aboriginal people to refer to white people or those from a European background.

says in her kind voice *'sometimes it's best to take your researcher hat off, dear, and just listen, you know? That deep listening I talked to you about'*. I then remember an earlier conversation when she had lamented the fact that many who attend her cultural awareness classes do not really listen. She called it shallow or surface listening, where people *'hear the words, but they don't try to understand them'*.

I am taken aback by this turn of events - I had considered myself to be listening deeply. In my mind, asking so many follow-up questions was in itself a sign that I was paying attention.

With rising anxiety, I close my trusted notebook and tell her to talk about whatever she likes. What follows is an hour of deeply personal stories and mind-opening insights into the history of the region, the importance of spirituality, the place of family, and many other topics. I realize after a while that I have stopped interrupting, asking questions, or even nodding; I am now simply listening.

Back in my room that night, I write a single word in my notebook – LISTEN.

[Katherine_Jun2018_Personal Diary_p. 18]

3.1 Methodological considerations

The methodology for this research is located broadly within interpretivism, a methodological stance in sociological research grounded in the notion that human beings operate in a web of complex and subjective social realties with no single or universal truth about the social world. Interpretivism regards both researchers and research participants as instruments in the measurement of social phenomena

(Schwartz-Shea & Yanow, 2012). Interpretivist methodologies rely on the recognition that the researchers' and participants' own ontological and epistemological positions contribute to the overall production of knowledge, and that methodological choices and decisions made in the course of research are informed by the confluence or intersection of these epistemological positions. I am drawn to interpretivist approaches because they privilege *words* as data. I recognize that the multiple social realities that form the background of Indigenous language interpreting should not be studied in a purely empirical or positivist manner; to do so would only contribute to the silencing of the people who occupy these realities. Interpretivist methodology, which includes participant observation and semi-structured interviews, allows me to delve deeper into people's experiences and understandings. From its inception, this has been a project about listening, though as I recount in the story above, listening is a skill I developed over time.

Interpretivism's acknowledgment of the role played by the epistemological positioning of the researcher and participant in the production of knowledge is congruent with the principles and concerns of the theoretical framework I have chosen, decolonial theory (see Chapter 2), and in line with recent developments in methodological approaches to research involving Indigenous communities. Frequent intellectual forays into Indigenous lives by sociologists, anthropologists, and linguists alike have resulted in the creation of specific methodological and analytical frameworks that have sought to challenge the dominance of Western methods of research (Brown & Strega, 2015; Chilisa, 2012; Wilson, 2008). One of the foundational works in this area is that of the Māori post-colonial scholar Linda Tuhiwai Smith (2012) who identifies the multiple intersections of colonialism and research within academia. Smith argues that to the colonized Indigenous people, the term 'research' is linked to imperialism and colonialism because of its grounding in the tradition of Western researchers studying the 'Other', the colonized Indigenous population (L. T. Smith, 2012, pp. 31–33, 45). Smith locates the solution in the growth of research led by Indigenous people working within the wider frameworks of self-determination, decolonization, and social justice, in order to redefine and rewrite Indigenous experiences and stories (L. T. Smith, 2012, p. 35).

Smith specifically acknowledges feminist research as being grounded in similar terrain to Indigenous research insofar as they both critique the social construction of narratives of knowledge (L. T. Smith, 2012, p. 37). Following from Smith, I incorporate some elements found in feminist methodology into this thesis, specifically the methodology proposed by Ackerly and True (2010) whose feminist research ethic I consider similar to my own intended research approach. Ackerly and True argue that feminist methodology is not a series of guidelines and protocols, rather a commitment to the critical and reflective use of a constellation of research methods and practices (Ackerly & True, 2010, p. 6). I am particularly interested in three interrelated tenets of feminist research ethic proposed by Ackerly and True: *power of epistemology*, *attentiveness to boundaries and relationships*, and *the situatedness of the researcher* (Ackerly & True, 2010, pp. 32–27).

3.1.1 Power of epistemology

Research projects involving Indigenous people are often guided, even shaped, by specific conceptual frames, methodologies, and analytical tools. In my own field, linguistics, research with Indigenous communities, especially that involving language documentation, has for the most part adopted a Western scientific slant in line with other social sciences. Even the terminology associated with research methodology is heavily policed, so much so that most researchers are now reticent to use the term 'significant' lest they accidently imply statistical significance and all its trappings.

This thesis is no different. It sits in the confines of university-led research and as such faces the same expectations as all other research in its genre. I both recognize and accept this fact, but if I am allowed the indulgence of taking off my researcher hat for a moment, I feel compelled to highlight some of the issues I encountered in attempting to adhere to the conventions of similar research.

For example, I felt uneasy at having to assign the many wonderful yarns that I have been privileged to partake in to the prosaic category of 'data'[11]. I consider the stories and teachings I received as symbols of the trust that people placed in me and the research I was conducting, rather than a conscious effort on their part to provide me with data for my project. These stories convey people's acknowledgement that I was ready to learn, and that they had something to teach me. To reduce them to an empiricist term like 'data' feels insincere, and sheds little light on the personal dynamics that were at play in every 'data'-eliciting encounter (see also Taussig, 2011). In light of the need for consistency, however, I continue to use the term 'data' when necessary, especially when discussing aspects of the research pertaining to the sites and processes of data collection and analysis (see §3.3).

I also wrestled with the tension of deciding whether the wealth of information that I learned during prolonged yarns with people constituted conventional 'real' data that I can include in this thesis. That was until I read Bessarab and Ng'andu's (2010) work on yarning as a legitimate methodology in Indigenous research. Bessarab and Ng'andu advocate for the gathering of information through participating in narrative or storytelling events. Yarning, they posit, is not only a legitimate method, but sometimes it is the most appropriate way to elicit data. A few days after reading that article, I was sitting in in a yarning circle organized by some of the women elders in Katherine when I was struck by the depth and thickness of the knowledge being shared. I include many of the things I learned through yarning in this thesis, but it speaks to the power of my own Western-based epistemology that I had been so reticent to consider them suitable data in the first place. Fortunately, there is increasing use of yarning as a prime methodological choice in linguistic research (E.g. Rodríguez Louro & Collard, 2021). This approach is part of a larger push to incorporate Indigenous ways of holding and transmitting knowledge into linguistic research in order to counteract hegemonic

[11] 'Yarning' is a term used by many Aboriginal and some non-Aboriginal people to refer to informal conversations or storytelling. Most of the numerous non-recorded discussions I had with Aboriginal people in Katherine started with a simple *'sit down and let's have a yarn'*.

Western research methodologies and practices. Contemporary scholarship on decolonizing linguistic research has led to wider acknowledgment that the continued use of Western research norms that examine Indigenous languages through the lens of major global languages frequently contributes to the entrenchment of colonial legacy (Errington, 2008). While much of this scholarship has centred specifically on decolonizing the description, documentation, and reclamation of Indigenous languages (E.g. Leonard, 2017, 2018), there is a growing body that scrutinizes the role of the general field of linguistics in reinforcing colonial perspectives and practices (E.g. Charity Hudley et al., 2020; Gaby & Woods, 2020; Leonard, 2020).

3.1.2 Attentiveness to boundaries and relationships

I faced another quandary in devising a single label for the vastly diverse group of people I talked to, some of whom became my friends away from home, and some felt more like teachers. From the outset, I rejected the term 'subjects' which is now thankfully considered outdated due to its implied power differentials. I set out to explore what the people I spoke to consider their own role in this research by suggesting a few terms and gauging their responses to whether they were deemed apt descriptions. Terms like 'informants' and 'collaborators', which I intended to convey the collaborative nature of this project in line with current trends in anthropological research (Konrad, 2012), were perceived negatively because they conjured up notions of collaborating with the police, or those in power, against one's own people. While I had not anticipated such a response, it definitely fits with the dynamic of power relations between Indigenous people and those who administer the law. The terms 'consultants' and 'teachers' seemed to elicit anxiety about being responsible for the outcome of the research *[Katherine_Jan2018_Field Notes_p. 2]*. In the end, most people seemed to prefer the neutral term 'participants' which I have adopted in this thesis.

My awareness of power relations that contributed to the rejection of the term 'collaborator' also played a role in the way I approached the gathering of sensitive data. In accordance with the guidelines provided by Monash University Human Research

Ethics Committee, all participants were provided with explanatory statements and consent forms and were given the choice to either be anonymized or have their names appear in the thesis and/or subsequent publications (see Appendix II & Appendix III). As I expected, some of the participants were eager to remain anonymous and at times reluctant to have their stories noted on the record. For example, of the many interpreters I spoke to, Miliwanga Wurrben was the only one willing, in fact keen, to have her name published. I understood the reluctance to be identified; for many interpreters, interpreting is a job that provides the bulk of their income and livelihood and so many were concerned that speaking out would jeopardise their employment status. As such, the thesis only includes the full names of participants who agreed to have their names published; all others have been given anonymized initials and every effort is made to avoid their identification. I note here that, unsurprisingly, those wanting to have their names published tended to hold senior positions in the organizations that participated in this research and as such presumably felt empowered to share their opinions openly *[Darwin_Jun2018_Field Notes – p. 16]*.

3.1.3 The situated researcher: finding my place

I have also felt compelled to examine my own role in this project in some detail after realizing that I could never be an objective observer whose role is to simply record people's experiences and perceptions while casting aside my own. Geertz (1973, p. 9) describes this dilemma best when he notes that "…what we call our data are really our own constructions of other people's constructions of what they and their compatriots are up to". It became apparent to me that the best I can hope for is to honestly convey my own understanding of the thoughts and opinions of those I met. I include their stories throughout this thesis and, when appropriate, I quote them extensively, but I also recognize that I cannot begin to encapsulate the vastness of the experiential field that is Indigenous life, for example. I recall discussing this very topic with my supervisor, John Bradley, who summed it up perfectly when he said that after four decades of closely living and working with the Yanyuwa people, he has had to resign himself to simply 'accepting the glimpse', recognizing that we can only ever understand a fraction of the

lived experience of others (Bradley, 2017, personal communication). With this in mind, this thesis is best viewed as my own glimpse of the interplay between language, the law, and the lives of Indigenous people and others in the Katherine region.

Understanding my own motivations in this research has also been an ongoing process. Having read Clare Land's (2015) examination of the origins of solidarity in non-Indigenous people's support of Indigenous struggle, especially her critique of the colonial-based desire to 'help' (2015, pp. 205–208), I had to examine what it was that compelled me personally to undertake this research. In part, I am driven by feeling troubled by the countless accounts of injustice faced by Indigenous Australians, both historical and contemporary. I had always wondered how a nation as prosperous and supposedly moral as Australia seems to continually fail its obligations to its own original inhabitants - and the many stories I was told in Katherine have only added to this perplexity. My exasperation at the status quo is undoubtedly one of the reasons for wanting to become an ally and supporter, though my role so far has consisted primarily of listening.

I am also partly motivated by a self-indulgent desire to learn more about what life is like for Indigenous people in the Northern Territory, especially when it comes to issues of justice. Having lived in Melbourne for most of my adult life, my daily interactions with Indigenous people have been very limited and have consisted mainly of brief conversations with a handful of people. Almost everything I knew about Indigenous life was learned in the abstract setting of a university classroom or reading a book in my own lounge. This research afforded me an opportunity which I had been longing for to travel to the Northern Territory and get some hands-on experience of this complex and still-misunderstood region of Australia.

As a non-Indigenous researcher of Indigenous issues, I became acutely aware of others' perceptions of my research and how these impressions impact the process of building trust and rapport. Even simple aspects of interaction such as introductions were potentially fraught. For example, I found that gaining the trust of judges and lawyers,

all of whom have so far been non-Indigenous, was best achieved by explicitly stating my position and aim; I am Dima, a PhD candidate from Monash University, and I am in Katherine to conduct interviews regarding the use of Kriol in the justice system and the role of interpreters in facilitating communication. With some, though not all, of the Indigenous people I talked to, including some of the interpreters, the formality of such an introduction earned me little more than suspicious looks and a great deal of silence. I took my cues from the way Miliwanga Wurrben would introduce me to others *as 'Dima from down south'* who was in Katherine to *'learn how our mob use our languages with the police and in court'*. I particularly liked how my research was re-framed as learning which was not only a more honest depiction, but also placed the power in the hands of those who I needed to teach me. These two personas that I assumed were never contradictory, nor were they designed to deceive. It was simply a matter of recognizing the culturally and historically-grounded perceptions of researchers and the research process itself. I got the feeling that many Indigenous people were fed up with being 'researched', but they had a lot to teach and were always generous with their time and knowledge to anyone who genuinely wanted to listen and learn.

3.2 Fieldwork sites

Although this thesis covers a large array of topics such as race, power, coloniality, and knowledge, one of my main aims is to foreground the salience of localized contexts. The act of interpreting is contextual in so many ways, not least with regards to *where* it is occurring. Interpreting Indigenous languages in larger towns like Darwin, Katherine or Alice Springs may differ from interpreting in smaller or remote communities where matters of kinship and social organization can play a larger role. In the process of choosing to situate my research within a specified geographical context, I examined a number of criteria including linguistic and cultural diversity, and the opportunity to observe interpreting in legal contexts on a regular basis. Also, as I am particularly interested in Kriol interpreting, it was important for me to be able to conduct my research in an area with a large number of Kriol speakers.

The Katherine region emerged as the best choice for this research. There are a number of Kriol-speaking communities throughout the region, such as Mataranka and Barunga, where circuit courts are conducted, and interpreters are almost always required. As I describe in §6.2.2, circuit courts offer a unique insight into the uneven power relations and specific patterns of visibility that dominate in interactions between Indigenous people and the justice system. Katherine itself is a particularly ideal site because of its geographical location, its social and linguistic make up, and the abundance of legal and government organizations (see §3.2.1 and §3.2.2 below). But there is far more to this town than these attributes. Katherine is an intriguing place, unassuming at first sight, yet full of complexity once you scratch beneath the surface. It is a unique microcosm of the region, a meeting place where languages and cultures co-exist seamlessly in some contexts and tensely in others. Katherine has long been an intersecting space of people and land, of Christianity and the Dreaming, of Western and Aboriginal law, and of coloniality and resistance. In this land of red earth and azure skies lay limitless possibilities for exploring the potentials and perils of the West's encroachment into a space that was once uncontestably Indigenous. A number of accounts of the complexity of Katherine have been written, none better than Francesca Merlan's (1998) *Caging the rainbow*. Merlan's seamless combination of ethnographic work, theoretical grounding, and personal insight brings to life the diversity of human experience found in Katherine.

My first visit to Katherine in early 2018 was during the wet season and coincided with an oppressive heatwave that was compounded by simultaneous high humidity and a lack of rain. Being outside of the dry tourist season, and a public holiday at the time, the sleepy town had an air of being abandoned, with only a handful of people walking around. As I strolled around the empty streets, I wondered if I would ever get the chance to even speak to anyone, let alone collect some useful data. It took a few days for the magnificent storms to roll in offering much-needed relief. After that it seemed as if the storms had breathed new life into the town because suddenly there were people everywhere. As I got to know the town better on subsequent visits, I came to learn that my first impressions were indeed misleading, and that Katherine is a lively place with

endless opportunities to conduct traditional research or, better still, to take my researcher's hat off and just listen.

Figure 1: Katherine's main street (photo my own).

3.2.1 The town and its people

Katherine is located 312 kms southeast of Darwin on the Stuart Highway and easily accessible from the cities of Darwin and Alice Springs. With a population of around 11,000, it is the fourth largest city in the Northern Territory after Darwin, Alice Springs, and Palmerston. The immediate vicinity of Katherine has traditionally been home to the Jawoyn, Dagoman, and Wardaman people, and many of their descendants still reside in town. There is also a substantial Warlpiri population in town, most of whom were trucked in by the government the 1980's from the settlement of Lajamanu, some 350 kilometres southwest of Katherine.

The greater Katherine region has a population of 21,000 people, 52% of whom are Indigenous, and incorporates over thirty language groups including Gurindji, Ngarinyman, Wubuy [aka Nunggubuyu], Mayali, Rembarrnga and Dalabon (Katherine Town Council, n.d.). The politics of the region are very complex, with intertwining

issues of race, power, and identity playing a major role in the relationship between Indigenous and non-Indigenous people as well as within the varied Indigenous groups. These issues are delved into more deeply in Chapters 6 and 7 of the thesis.

Being the central hub for the wider region, Katherine is home to both permanent and temporary Indigenous residents from a host of cultural and linguistic backgrounds. In fact, transiency seems to be a marking feature of the region as whole, and Katherine in particular, where the Indigenous population can fluctuate significantly between the wet and dry seasons as people move into town from neighbouring communities. Also, as the place with the largest concentration of services in an immense geographical area, Katherine has many temporary Indigenous residents who are based in town for a short or medium duration whilst they receive any required services – medical care in Katherine's hospital is an example of such a service. This kind of transiency is not limited to the Indigenous population, however. Many non-Indigenous people call Katherine home for relatively short periods. The majority of them are drawn to the region in search of work opportunities or a life change. Some who venture there are lured to stay by its complexity, but for many their experience of living in Katherine usually comes to an end after a few years. This lack of permanency has ramifications on the day-to-day operations of the justice system, especially on the availability of legal service providers with sufficient experience and intercultural competence to deliver appropriate legal advice and representation to Indigenous people.

Importantly for this research project, Katherine has a large number of Kriol-speaking residents who, by virtue of being from different parts of the region, speak a number of Kriol varieties in addition to some traditional languages. The Stuart Highway and connecting major roads also link Katherine to various other parts in the Northern Territory and Western Australia where many Kriol varieties are widely spoken, including the communities of Barunga, Ngukurr, Fitzroy Crossing, Timber Creek, Kununurra, and Tennant Creek. This complex linguistic situation where Standard Australian English, Aboriginal English, Kriol varieties, and traditional languages are in constant contact provides a fertile environment for research on cross-linguistic and cross-cultural communication, including in areas such as the law.

3.2.2 Courts, legal services, and government organizations in Katherine

Katherine is home to many institutions, government agencies, and services involved in the justice system. The Magistrates Court, presided over by a single judge, sits daily in town, and also organizes frequent circuit court sessions, known colloquially as 'bush court', in the surrounding communities (Appendix VII . The communities where bush courts are held house many of the Kriol varieties and traditional languages in the region (Map 1). Table 1 lists the location of circuit court and the language/variety mainly spoken in the community - the rightmost column lists the language(s) in which interpreting is offered. As I describe in §5.1.2, despite the presence of many Kriol varieties, the Aboriginal Interpreting Services recognizes the division between Eastside Kriol and Westside Kriol only.

Table 1: Locations of circuit court, Katherine region, 2019

LOCATION	PRIMARY LANGUAGE IF NOT ENGLISH	INTERPRETING LANGUAGE/VARIETY
Barunga (Bamyili)	Barunga/Beswick Kriol	Eastside Kriol
Ngukurr (Roper River)	Roper River Kriol	Eastside Kriol
Mataranka	Barunga/Beswick Kriol	Eastside Kriol
Timber Creek	Victoria River Kriol	Westside Kriol
Yarralin (Walangeri)	Ngarinyman, Westside Kriol	Westside Kriol
Kalkaringi (Wave Hill)	Gurindji, Gurindji Kriol	Gurindji, Westside Kriol
Lajamanu (Hooker Creek)	Warlpiri	Warlpiri/Light Warlpiri[12]

[12] Light Warlpiri is a mixed language which incorporates linguistic features from Warlpiri, Kriol, and English.

Map 1: Approximate locations of towns and communities where court is held

Some of the circuit court sessions held in remote communities such as Lajamanu or Ngukurr operate under vastly different conditions from local court in a large town like Katherine. This research incorporates data from a number of circuit court sessions in order to capture some of the issues that are unique to the carrying out of justice in remote locations. Interpreting is particularly sensitive to matters of location, especially in communities where the practices of Western law can stand in great contrast with traditional languages, systems of kinship, and Indigenous conceptualizations of both Western and Aboriginal law.

There are also a number government and private organizations Katherine, some of whom deal predominantly or exclusively with Indigenous clients. Of particular importance to this thesis is the presence of an Aboriginal Interpreting Services (AIS) branch in Katherine. AIS is the only provider of qualified interpreters in the region and works closely with the court, legal services providers, government agencies, and non-government organizations. AIS also provides much-needed language and cultural training to organizations and businesses in the region. As this thesis focuses on

interpreting as the underlying theme in the exploration of Indigenous languages and the law, having extensive discussions with interpreters has always been a priority.

A differentiating feature of AIS in comparison to many other organizations in Katherine is that most of its workforce is made up of local Indigenous people. A senior member of AIS explained to me that, since its establishment in 2000, there has been a conscious and concerted effort by AIS to employ Indigenous staff in all its branches, not only as interpreters but in management and administrative roles as well *[Darwin_Jun2018_Field Notes_p. 16]*. In contrast, there is currently a paucity of Indigenous people occupying senior positions at many of the legal service providers in Katherine. That said, there appears to be a great desire to increase recruitment of Indigenous lawyers and legal education providers who can bring to the table an understanding of cultural and localized issues not always found in their non-Indigenous counterparts *[Katherine_Nov2018_Matt Fawkner_Lawyer_Interview]*.

The extensive face-to-face dealings that many providers of legal services in Katherine have with Indigenous people result in frequent experiences of cross-linguistic and intercultural communication. As such, it is also important to capture their insights and perspectives on issues of communication and the effectiveness of interpreting services in facilitating their interactions with Indigenous clients. In the end, communication is a multi-directional process, and no true picture can be arrived at without involving participants on all sides of the communicative event.

3.3 Data collection and analysis

Data collection and analysis were carried out simultaneously in this project. I collected data on multiple field trips to Katherine, Darwin, Mataranka, Barunga, and Ngukurr in 2018 and 2019 and carried out preliminary analysis of my data during each field trip, with more extensive analysis performed after returning to Melbourne (§3.3.2). I treated data collection and analysis as an iterative process, using some of my findings from one round of data collection to guide interview topics and questions on subsequent trips,

and sometimes subsequent interviews on the same trip. The decision to allow my findings to steer me in particular directions rather than to adhere to rigid preconceptions is based on the analytical approaches found in both interpretivism and Grounded Theory. Grounded Theory, which is concerned with the inductive generation of theory from the data itself, directs researchers to allow theory to emerge through reviewing and categorizing findings, rather than assuming *a prioi* meaning (Charmaz, 2014). As a novice researcher of Indigenous issues, I found this approach, which also allows for moments of deliberation and reflection from both the researcher and the participants, to be the most suitable for getting a real insight into the multitudes of factors impacting the provision Indigenous language interpreting.

A great deal of my data comes from annotated field notes that I jotted down diligently during or immediately after talking to participants, and during the countless hours I sat observing court proceedings in Katherine Local Court, Darwin Supreme Court, and at a number of circuit courts in the communities of Mataranka, Barunga and Ngukurr[13]. I also kept both a field diary and a personal one, the latter turning out to be a surprisingly important source of data. It contained many of the stories that at the time I considered interesting enough to jot down, but not necessarily as part of my field observations. I realised later as I read some of my entries that the stories contained within them actually provided some of the contextual background to the research and drove certain decisions that I made. I use some of these stories at the beginning of chapters to highlight the important role they played in shaping my view on Katherine and its people. Another major source of data is the eleven hours of recorded semi-structured interviews that I conducted with a number of lawyers, interpreters, and the presiding magistrate in Katherine. I also had the opportunity to spend some time talking to and shadowing a number of AIS interpreters at its headquarters in Darwin where I gained a valuable insight into the workings of the organization including bookings, phone interpreting,

[13] My court observations totalled over 120 hours including some carried out in closed Family Court sessions with special permission from the presiding magistrate.

language training, and even the recording of Indigenous language news broadcasts for the Australian Broadcasting Corporation.

Field and personal diaries were later digitized and stored in password-protected external hard drives alongside interview recordings and transcriptions. As per the explanatory statement, physical and electronic copies of the data will be destroyed after a 10-year period unless participants consent to the data being used in future research (see Appendix II

Unless specifically redacted, data is annotated throughout the thesis using the following formats:

- For field notes and personal diary entries - *[Place_Date(monthyear)_Source_Page Number]*, for example *[Katherine_Jun2018_Field Notes_p. 17]*.

- For interview transcriptions - *[Place_Date(monthyear)_Name/Anonymized Initials_position_Interview]*, for example *[Katherine_Jun2018_SQ_Interpreter_Interview]*.

3.3.1 Participants

With multiple field trips came increasing opportunities to meet people and have long discussions about Indigenous engagement with the law. The nature of this research was inherently adaptable, and data was always going to be the by-product of having formed trustful relationships with many people in town. I made many notes from these discussions, but it was virtually impossible to recruit everyone I spoke to as a participant. As it transpired, there was no shortage of people willing to talk to me, and their accounts and opinions broadened and deepened my thinking throughout. I reached out to many organizations that deal extensively with Indigenous clients and

found most of them very receptive and willing to set aside time for me to interview their staff. The organizations that participated openly in this research include Aboriginal Interpreting Services, Northern Australian Aboriginal Justice Agency, Katherine Women's Information and Legal Service, and Northern Territory Legal Aid - Community Legal Education. The presiding judge at the Katherine local court in 2018, Judge Elisabeth Armitage, also took a keen interest in the research and participated in a recorded interview as well as guiding me through a number of significant prior court cases where miscommunication was a central issue.

A notable exception to this willingness to participate was the Northern Territory Police Force who declined my request to speak to their members in any formal capacity on the advice of the Police Legal Services. The explanation provided to me was that NT Police do not routinely engage with researchers due to time constraints and other priorities. Unfortunately, this leaves out a major and potentially very insightful key player; after all, most Indigenous people's engagement with the legal system begins with contact with members of the police force. [14]

3.3.2 Interview format and analysis

The in-depth interviews conducted with participants were semi-structured and lasted from 30 to 60 minutes. Choosing a semi-structured format allows for the conversation to be guided gently without forcing data, and gives participants the opportunity to think through the questions and revisit them at a later stage in the interview if required (Charmaz, 2014, p. 42). Some of the participants were interviewed more than once, but I also kept in regular contact with many interviewees and spoke to them extensively on subsequent visits.

[14] Gorrie's (2021) personal account of working as an Indigenous police officer in Queensland provides an honest and insightful perspective on policing in Indigenous communities which touches on many of the issues discussed in this thesis.

The locations of my interviews and discussions with participants were as diverse as the participants themselves – some took place while waiting outside the Katherine court, others in local cafés, at the Barunga festival, in air-conditioned offices, under the shade of trees at bush court, on car trips to outlying communities, sitting on the floor of someone's lounge, swimming in refreshing waterholes, and on a few lucky occasions, sitting down on a balmy winter's night over pizza and a cold drink.

Recorded interviews were later transcribed using an Intelligent Verbatim approach, that is excluding hesitations, fillers, stutters, repetitions, and interruptions, unless these were pertinent to the utterance (see Bailey, 2008). The transcripts were then analysed and coded thematically using NVivo®, which is a qualitative data analysis software package. NVivo® was used to code small segments of interviews which were then organized into larger thematic categories that could be studied comparatively, allowing for the emergence of wider contextualized themes (Charmaz, 2014, p. 113).

3.4 Concluding remarks

This chapter describes some important aspects of the methodology and grounds my methodological decisions in theoretical and analytical frameworks. The following chapter (Chapter 4) reviews some of the main challenges to the access and availability of interpreters including the lack of awareness of the right to interpreting services as well as the discretionary use of interpreters in legal settings. The chapter also examines important issues relating to the recruitment and retention of Indigenous language interpreters including the paucity of available training and accreditation pathways.

4 ACCESS TO AND AVAILABILITY OF INTERPRETING

In this chapter I explore some of the practical issues relating to Indigenous language interpreting in the Northern territory in general and Katherine in particular. A central aim of this chapter is to contextualize some of the discussions that appear in subsequent chapters. Many of the issues discussed here are related to the procedural and logistical aspects of interpreting, but they also provide the background to other important discussions later in this thesis.

The chapter focuses on the availability of qualified interpreters to Indigenous language speakers in legal contexts and explores some of the challenges to the recruitment and retention of interpreters which can impact the long-term availability of interpreting services. I begin the chapter with a brief overview of the current providers of interpreting services (§4.1). In §4.2 I discuss how low awareness about the right to interpreting can lead to Indigenous people not exercising that right consistently. In §4.3 I explore the discretionary use of interpreters in certain aspects of the justice system, particularly the low level of engagement of interpreting services by police, Territory Families, and Correctional Services (see also §6.3.2). In §4.4 the focus is shifted to examining the challenges encountered by legal professional in ascertaining the need for interpreting and the impact on the provision of interpreters. Finally, §4.5 is dedicated to exploring the qualification and accreditation pathways available to Indigenous language speakers hoping to join the interpreting profession, as well as the working conditions of current interpreters.

The ethnographic grounding of this thesis carries throughout this chapter. Data is drawn from field notes, informal discussions with participants, and recorded interviews conducted with legal professionals and interpreters (see §3.3).

4.1 Indigenous language interpreting service providers

Currently, there are two dedicated providers of Indigenous language interpreting - the Aboriginal Interpreting Service (AIS) in the Northern Territory and Aboriginal Interpreting Western Australia (AIWA)[15]. Both organizations were established around 2000 following repeated calls for qualified and accredited interpreters of Indigenous languages (see §6.3.1). AIWA provides interpreting in around 40 Indigenous languages. It has offices in Perth and Broome and employs around 100 interpreters based in multiple towns and communities in Western Australia. AIS has offices in Darwin, Katherine, and Alice Springs and employs around 30 permanent interpreters and 270 casual interpreters who provide face to face and phone interpreting in almost 100 Indigenous languages. AIS also employs several trainers who provide the training required for accreditation by the National Accreditation Authority for Translators and Interpreters (NAATI). In addition, AIS runs regular workshops with government and private organizations in the Northern Territory to increase awareness about the role of interpreting and the importance of engaging qualified and accredited interpreters for their clients. The workshops also provide training for organizations on how to work effectively with interpreters as well as explore some of the cultural aspects of interpreting Indigenous languages.

The Katherine AIS office supplies interpreters for the local court and legal organizations in the area. The office, however, currently does not take direct bookings for interpreters. Requests for interpreters must be lodged with the Darwin office instead, a practice that many of the legal professionals I spoke to found frustrating at times *[Katherine_Jun2018_Field Notes_p. 17]*. Although a streamlined and centralized booking service is undoubtedly efficient, the flexibility to engage interpreters directly from the

[15] In South Australia, interpreting services in Indigenous languages such as Pitjantjatjara and Yankunytjatjara can be obtained through AIS or *ABC Multilingua Pty Ltd* which also provides interpreters in non-Indigenous languages. In Queensland, *2M Language Services* provide interpreters for some Indigenous languages.

Katherine office is worth considering given its close proximity to all the legal organizations in town and the fact that interpreters are frequently present in the office during business hours.

Ordinarily, a duty interpreter is present while the Katherine Local Court is in session. The duty interpreter is usually a Kriol interpreter, but occasionally an additional Warlpiri interpreter is also available as these are the two most commonly spoken languages in Katherine. Interpreters of other languages are booked as needed, and if an interpreter is not available, court cases may be adjourned by the magistrate until one is found. Most interpreters are seemingly booked by lawyers for specific clients rather than by the court. In circuit courts, where interpreters are almost always required, the lack of clarity regarding whether the court or the lawyers are responsible for engaging interpreters has at times led to cases where an interpreter was not booked by any party and court hearings were either adjourned or went ahead without interpreting assistance. Both outcomes are potentially very disadvantageous to communities. Given that circuit courts take place in a community only once every few months, adjourning cases can amount to a delay in justice for community members. On the other hand, proceeding with a hearing without adequate interpreting may lead to significant miscommunication with great disadvantages for Indigenous defendants and witnesses (See §5.5 and §7.5 for case studies demonstrating the impact of a lack of interpreter on communication in a court hearing).

4.2 Awareness about the right to an interpreter

The right to free interpreting assistance in the justice system has been enshrined in International Law for many decades. Article 14 of the International Covenant on Civil and Political Rights (1966) [16] includes the following provision:

[16] https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

> 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
> (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
> (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

A person's right to interpreting is also explicitly recognized in Australia at a federal level under Division 3 of the Evidence Act 1995 (Commonwealth). In the Northern Territory, which is the main focus of this research, the right to an interpreter is included in the Evidence (National Uniform Legislation) Act 2011. In addition to legislations, there are many guidelines developed by courts and government and legal organizations which cover the use of interpreters, including Magistrate Courts[17], the Supreme Court[18],

[17] Interpreter Protocols – Northern Territory Magistrate Court
http://www.localcourt.nt.gov.au/documents/MagistratesCourtInterpreterProtocols.pdf

[18] Interpreter Protocols – Northern Territory Supreme Court
http://austlii.community/foswiki/pub/NTLawHbk/Interpreters/Interpreter_Protocols_-_Northern_Territory_Supreme_Court.pdf

Correctional Services[19], the Northern Territory Law Society[20], and many government organizations.[21,22]

Legislations and guidelines can bring interpreting services to the attention of organizations and legal professionals, but they do little to increase awareness of the right to an interpreter in Indigenous communities. This can result in low uptake of interpreting services by Indigenous clients. One of the main issues raised by the legal professionals I interviewed was that many Indigenous clients who would benefit from interpreting services either did not request an interpreter or declined interpreting services when they were suggested. Multiple lawyers indicated that their clients did not realise that interpreting assistance was available until they were informed by the legal team. They also noted that the default position for many clients in these situations was to decline the offer of an interpreter *[Katherine_Jun2018_Field Notes_p. 12]*. This is unsurprising; if a client does not have a good understanding of the interpreting process and the role of the interpreter, they are likely to need more time to make an informed decision whether to accept interpreting assistance. As a result, many first meetings

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[19] Standard Guidelines for Corrections in Australia (sections 1.5, 1.6)
https://justice.nt.gov.au/__data/assets/pdf_file/0009/238185/aust-stand_2012.pdf

[20] 'Indigenous Protocols for Lawyers' – 2nd Edition 2015
https://lawsocietynt.asn.au/images/stories/publications/indigenous_protocols_for_lawyers.pdf

[21] The Department of Prime Minister and Cabinet - 'Protocol on Indigenous Language Interpreting for Commonwealth Government Agencies' Version 4, 17 November 2017
https://www.pmc.gov.au/sites/default/files/publications/protocol-indigenous-language-interpreting.pdf

[22]
The NT Government Department of Local Government and Housing - 'Language Services Policy-2009)
https://dhcd.nt.gov.au/__data/assets/pdf_file/0004/440563/language_services_poilcy_web.pdf

between lawyers and clients can potentially proceed without an interpreter. These initial meetings are generally very important for establishing facts and ascertaining the wishes of the clients, so clear communication is essential. Some lawyers, in fact, emphasized that in cases where they perceived language barriers as prohibiting them from understanding the needs of their clients, they often rescheduled the consultation and requested an interpreter. Of course, this requires lawyers to make assessments about the language proficiency of their clients, which is a skill that they are not specifically trained in (see §4.4 below).

4.2.1 Increasing community awareness about the right to interpreting

One pathway to address the low use of interpreters is to increase the awareness among Indigenous people and communities about the right to interpreting, which is best achieved through collaboration between interpreting services, legal education providers, and community members. Such collaborations must take into account what information to include as well as when and how to deliver information to communities. Increasing awareness about interpreting in communities involves explaining that access to interpreters is a legal right that can be exercised by anyone who needs it, and that the justice system is required to make every effort to accommodate a request for an interpreter. It is also imperative that communities are aware that interpreting can be requested at all stages of engagement with the justice system, including in police interviews, lawyer consultations, court appearances, and when dealing with correctional and parole services. An interpreter explained to me that the presence of duty court interpreters on site, which is not replicated in police station and lawyers offices, can give Indigenous clients the impression that courts are the only setting where interpreting assistance is available or that they cannot request an interpreter themselves if there are none present *[Darwin_Jun2018_Field Notes_p. 8].* Additionally, awareness about the right to interpreting should be supplemented by comprehensive information about the exact role of interpreters and the code of ethics by which they must abide.

How information is delivered is also an important consideration. When providing any form of education to communities, it is vital that existing channels of knowledge transmission are respected (Purdie et al., 2011). Legal education is no different. Making use of established methods of knowledge sharing not only leads to more efficient legal education but also maintains respectful collaboration with community members. For example, reaching out to the elders of a community is important given that they are traditionally the usual providers of important knowledge. It may also be useful to consider gendered aspects of knowledge sharing. As an example, knowledge sharing among women in many communities often takes place through yarning circles where women elders pass important cultural and ecological information to younger women. Working collaboratively with women elders to incorporate legal education into yarning circles can be immensely effective. This approach has been tried in Katherine with positive feedback from Indigenous elders, women in the community, and legal organizations *[Katherine_Nov2018_Field Notes_p. 11]*[23]. Similarly, reaching young community members may involve engaging younger spokespeople from the community and augmented by the use of social media platforms such as Facebook, Twitter, and TikTok. Whichever methods are employed, it is important that they are respectful to the community and social structures involved in knowledge sharing.

Deciding when to reach out to communities to increase awareness about interpreting is also crucial. Ideally, such information should be delivered to potential users when they are about to use it - people are more invested in understanding the information given to them because they can contextualize it and apply it directly to their situation. They are also able to ask relevant and practical questions, which is an important part of effective legal education. In the case of interpreting awareness, the ideal time to educate a person about their right to an interpreter would be in situations where they would benefit immediately from interpreting services, e.g. when they are about to be

[23] I attended a yarning circle in Katherine where issues around child protection and Family Law were discussed by the elders in a safe and empathetic environment. Women were able to ask questions of the lawyers and representatives of Territory Families who were also present.

interviewed by the police. This is clearly not practical, so education about interpreting must often be delivered in decontextualized settings. A drawback to this is that education workshops may not capture all the intended audience. Therefore, in order to reach as many community members who would benefit from knowing their right to an interpreter as possible, the delivery of legal education should involve repeated visits to the community as well training appropriate members to continue the work of raising awareness in their community.

Producing legal education materials is another vital aspect of information delivery. Crucially, these materials must be made easily accessible to community members. In communities where traditional languages are widely spoken, legal education materials should either be produced in these languages or designed for easy interpreting. A successful example of this approach is the Blurred Borders project established by Legal Aid in Western Australia in 2016[24]. The project involved the creation of resource kits that use visual art, storytelling, and narratives to explain legal terminology in linguistically and culturally accessible ways. Using Plain English in the resource kits allows for accurate interpreting as well. So far, resource kits have been produced about child protection, family violence, and bail and criminal process. The kits also include a description of the role of the interpreter and can be used alongside other legal education material to increase awareness about the interpreting process and the rights to an interpreter.

4.3 Patterns of discretionary use of interpreting services

Despite ample regulations and guidelines regarding the use of interpreting services, there remains a great deal of discretionary power in the decision to engage interpreters in the justice system. Generally speaking, decision-making power is concentrated in the hands of few key players, for example, judges, lawyers, police, correction and parole

[24] https://blurredborders.legalaid.wa.gov.au/

officers, and Territory Families staff. What has emerged from such stratified structures of power is a clear pattern of use of interpreters in the justice system. Anecdotal evidence as well as findings from numerous reports indicate that a lack of interpreting is a significant issue at every stage of engagement with the justice system (Appendix I). From my own court observations and discussions with interpreters and legal practitioners, it seems that interpreters are becoming more routinely engaged by lawyers for their consultations with clients as well as by courts during hearings, although less so in circuit courts. Many of the interpreters I spoke to identified courts and lawyers as the parts of the justice system for whom they interpret most frequently. However, they noted a lack of engagement from police, NT Correctional Services and Territory Families, an issue they described as very problematic and disadvantageous to Indigenous language speakers with low proficiency in English *[Darwin_Jun2018_Field Notes_p.7; Katherine_Nov2018_Miliwanga Wurrben_Interpreter_ Interview; Alice Springs_Apr2019_Field Notes_p. 33].*

This section focuses specifically on the impact of intermittent use of interpreters by police, Territory Families and Corrections on access to justice for Indigenous people. Although interpreters are used more frequently by courts, there are nonetheless significant issues with the way courts deal with interpreters which are discussed in detail in §6.4.

4.3.1 The use of interpreters by police

One of the most frequently cited policing guidelines that encompass the right to an interpreter are the Anunga Rules (Appendix IV). These discretionary and non-binding guidelines are based on the reasons handed down on 30 April 1976 by Chief Justice Foster to explain his rejection of typewritten records of interviews in the matter of *R v. Anunga and Others*. The Anunga Rules were later formalized and incorporated in Police Circular-Memorandum No 13 of 1979 issued by the Northern Territory Police Commissioner and are currently the standard practice for interviewing Aboriginal

suspects. There are nine guidelines in total, of which the first two pertain specifically to English proficiency and interpreting:

> (1) When an Aboriginal person is being interrogated as a suspect, unless he is as fluent in English as the average white man of English descent, an interpreter able to interpret in and from the Aboriginal person's language should be present …
>
> (2) When an Aboriginal is being interrogated it is desirable where practicable that a 'prisoner's friend' (who may also be the interpreter) be present. The 'prisoner's friend' should be someone in whom the Aboriginal has apparent confidence …

Though only considered guidelines, the Anunga Rules have force in the Northern Territory as precedent, which means they can be used by lawyers in court to challenge the admissibility of evidence arising from police interviews conducted without an interpreter. In fact, many of the interpreters and legal professional I spoke to believed that concern over admissibility of evidence is the main motivation for police using interpreters when interviewing Indigenous suspects and witnesses. Greg, an interpreter who has worked in the legal system for many years, describes how the discretion to use interpreters by police is not based on the linguistic needs of Indigenous suspects, rather the desire to have evidence accepted by the court.

> *The only time I've seen the police use interpreters, I've been in Ngukurr for the last 6 months or so, was when they had a special task force in, then they used me and another interpreter. But actual interpreters, the police don't use them. And they would only ever do it for the interview, and even then, I don't think it's because they want good communication. They just don't want the case to get thrown out in court.*
>
> *[Ngukurr_Nov2019_Greg Dickson_ Interpreter_Interview]*

Making decisions to engage interpreters merely on the basis of admissibility of evidence can severely impact access to justice for Indigenous suspects. For example, in cases where an interpreter is warranted but the police are either unwilling or unable to engage interpreting services, they may forgo conducting an interview if they believe that the evidence would be deemed inadmissible. This issue was raised by Judge Armitage who notes that, if conducted properly, a police interview is in fact an opportunity for suspects to provide information that is pertinent to their legal case.

> *I believe that police would not generally use interpreters unless someone clearly could not understand English, except when they're conducting Records of Interview…So, most of them don't blatantly ignore their obligations in relation to using interpreters, but some will go to more efforts than others to give effect to that. And I guess the ones that really don't want to give effect to it, probably just tend to not interview someone. They just say:* "they need an interpreter, there wasn't one available, so we didn't conduct an interview". *So, I guess that could be unfair to some defendants if they had [been interviewed], they might have been able to say something that might have assisted them.*
>
> *[Katherine_Jun2018_Elizabeth Armitage_Magistrate_Interview]*

The evidence arising in a police interview can be as important for the person being interviewed as it is for the police. Therefore, every effort should be made to conduct interviews properly, including taking all necessary steps to engage interpreters. However, it should also be taken into account that suspending interviews to find an interpreter can also lead to suspects being held in custody for longer than they wish. In fact, lawyers noted that when some of their clients were told that they had to stay in lockup until an interpreter was found, they opted for the interview to go ahead without interpreting assistance *[Katherine_Jun2018_Field Notes_p. 13]*.

4.3.1.1 Exercising the right to interpreting assistance in police interviews

The power differentials in police interviews are immense, with Indigenous people often feeling intimidated and reluctant to assert many of their legal rights, including the right to silence and the right to an interpreter (see §6.3 for a discussion of power relations and interpreting). It is often left to the legal team to advise the police that a client needs interpreting assistance, and some lawyers have even encountered resistance from their own clients who did not want to seem demanding or uncooperative. A non-Indigenous

lawyer, TL, who has worked in Katherine for a number of years explained how disempowered their clients are in their encounters with police:

> *Any interaction between police and an Aboriginal person in this town is going to be completely drenched in a power imbalance.*
>
> *[Katherine_Jun2018_TL_*Lawyer*_Interview]*

TL also noted that lawyers sometimes did not discover that their client was questioned by police without an interpreter until issues were raised about the answers given during the interview. Some clients who know that they would have benefitted greatly from interpreting assistance were reticent to later complain about the police interview being conducted without an interpreter and at times need to be convinced by their legal team to do so. An Indigenous person who felt disempowered to ask for an interpreter will likely also feel disempowered to later speak up against the police for not engaging interpreting assistance. TL describes how police are often not held accountable for such omission of duty because clients are reluctant to complain:

> *People are just so used to being so dreadfully wronged that they don't identify it as a legal issue and they think* "Ah, that was another shit thing to happen to me, and I'm not going to pursue it". *It's just constant.*
>
> *[Katherine_Jun2018_TL_Lawyer_Interview]*

What this demonstrates is that unless Indigenous people are empowered to assert their right to an interpreter, those who occupy positions of authority in the justice system will continue to exert control over the decision to engage interpreting services with minimal accountability. While increasing awareness in Indigenous communities about the right to interpreting is an important step, it will be of little benefit unless it is

accompanied by a shift in the paradigms of power to put the control back in the hands of Indigenous people and ensure accountability on the part of the justice system itself.

4.3.2 Territory Families and NT Correctional Services use of interpreters

Despite having clear guidelines and directions about the use of interpreting services, both Territory Families and NT Correctional Services were singled out by interpreters and legal professionals for their low use of interpreters[25]. Territory Families is the government body responsible for child protection in the Northern Territory and is one of the most feared institutions by Indigenous people as many of the decisions made by Territory Families have had devastating and long-lasting effects on families and communities throughout the region. Owing to the complex nature of the rules and decisions involved in child protection, good communication with families is crucial. Without interpreters, many families are left to negotiate meetings with Territory Families staff that are rife with linguistic and culturally based miscommunication. Below are the views expressed by judges and lawyers about the lack of use of interpreters and the damage caused to families.

[25] Division 3 (98) of The Care and Protection of Children Act 2007 requires Territory Families to ensure that interpreting services are provided for all parties.

> *In relation to Territory Families, I suspect that many families would benefit if interpreters were used, and I suspect that on most occasions, they're not used. There is a lot of conferencing with families that's conducted by Territory Families, and I suspect that Aboriginal families in that situation are substantially disempowered, so... I think they are at a disadvantage. I think that without an interpreter they don't really properly understand what is happening or what is required.*
>
> *[Katherine_Jun2018_Elizabeth Armitage_Magistrate_Interview]*

> *I just feel like I've never seen an interpreter in a child protection proceeding until before a hearing.*
>
> *[Katherine_Jun2018_SQ_Lawyer_Interview]*

> *I've really struggled with Territory Families. I specifically am up against, in my youth practice, Youth Outreach Officers which come from Territory Families and they hardly ever use an interpreter. And in fact, there are times when I've used an interpreter and the YOOs have said:* "oh that person doesn't need an interpreter, I know they understand me". *It's the most arrogant way of operating.*
>
> *[Katherine_Jun2018_NR_Lawyer_Interview]*

The recurring failure by Territory Families to use interpreters disadvantages families and erodes communities' trust in the organization. Furthermore, it compounds the legacy of disempowerment and fear associated with government bodies that exert great control over Indigenous lives. Gaining the trust and cooperation of communities

requires recognition of the potential damage caused by miscommunication and ensuring that interpreting services are available for all families at every stage.

Similar to Territory Families, NT Correctional Services were particularly noted by interpreters and legal practitioners as having low engagement with interpreting services. This anecdotal evidence supports the findings of a number of government and independent enquiries including the Royal Commission and Board of Enquiry into the Protection and Detention of Children in the Northern Territory (see Appendix I). Youth offenders are a particularly vulnerable subset of Indigenous people engaging with NT Correctional Services. Their communicative needs can often be overlooked due to the false assumption that owing to their young age and schooling, they would be proficient in English. The reality is that for many young offenders with low English proficiency, interpreting is a vital service that gives them a voice in settings where they would feel particularly disempowered, including when dealing with correctional staff. As Judge Armitage notes, this is often not the case.

> *My main experience is in youth justice, and I am not aware of any interpreters regularly attending Don Dale (Youth Detention Centre) for any reason other than if they're required to attend for defence, but they might get them in for medicals. But I think there is scope there for a significantly greater use of interpreters in Corrections, but that's an outsider's observation.*
>
> *[Katherine_Jun2018_Elizabeth Armitage_Magistrate_Interview]*

As well as managing custodial facilities, NT Correctional Services are responsible for supervising offenders to ensure that they comply with community-based court orders that may include attending programs or counselling, undergoing specified drug/alcohol treatments, and completing unpaid community work. In the absence of clear communication, offenders may not have a good understanding of the conditions imposed on them by the court and many inadvertently breach these conditions leading them to have to appear in front if the court again and, at times, resulting in harsher

sentences. The use of interpreters by NT Correctional Services should be common practice if these risks are to be mitigated, saving time and money for the justice system, and, more importantly, addressing the injustices experienced by community members.

4.4 Ascertaining the need for interpreting services

The picture of English proficiency among Indigenous language speakers is complex and nuanced. It is not unusual for some speakers to be fluent in one or more Indigenous languages, including traditional languages and contact languages such as Kriol and Yumplatok, a creole language spoken in some Torres Strait Islands and in Cape York, as well as Aboriginal English (AE) and/or Standard Australian English (SAE). On the other hand, some speakers may be proficient in English enough to adequately navigate daily aspects of life but not have the level of proficiency required in certain complex linguistic environments such as those found in legal and medical settings. In these specific contexts, ascertaining proficiency levels is vital for establishing whether interpreting services may be beneficial. There are many potential pitfalls in ascertaining the need for interpreting both for Indigenous language speakers and the legal professionals with whom they are dealing. There is a risk that speakers may underestimate the complexity and intricacy of the linguistic interactions that take place in legal settings or overestimate their own English proficiency and downplay some misunderstandings. Similarly, legal professionals can underestimate the potential misunderstandings that can occur even when communication seems manageable. Determining a speaker's proficiency and level of comprehension in any language requires specialized linguistic skills which are not generally taught to legal professionals. This leads to both parties relying on their own perceptions of mutual intelligibility in deciding whether to engage interpreting services.

For many of the lawyers I spoke to, the main criteria used to gauge the need for an interpreter were the questions: '*Do I understand them? Do I think they understand me?*'. While mutual intelligibility is an important consideration when assessing the need for an interpreter, determining how much understanding is taking place is potentially

fraught. Cooke (1998, p. 326) describes how a 'veneer of adequacy in communication' is achieved through collaborative discourse, verbal scaffolding, prompting replies, and exploiting gratuitous concurrence. Perceptions of ineligibility can also be influenced by other factors including code switching and the use of some form of interlanguage when communicating[26]. It is clear that in the absence of an interpreter, all the above factors can contribute to the risk of miscommunication by masking potential misunderstandings.

The fact remains, however, that mutual intelligibility is a first step for many legal professionals in the decision to engage interpreters for their clients. Even if a client declines the offer of an interpreter, lawyers are still responsible for ensuring that communication is adequate to be able to receive clear instructions from the client and confirm that the client understands the advice given to them. Without having the specific skills required to assess comprehension in linguistic interactions with Indigenous language speakers, legal professionals and others often must rely on their own intuition. Relying on intuition is potentially problematic as it can be influenced by whether the person assessing comprehension is a native or non-native speaker of English. Native and non-native speakers may have different vulnerabilities when it comes to evaluating someone's proficiency. Monolingual English speakers may be more susceptible to being influenced by phonetic or grammatical features of speech. Multilingual speakers, whether native or non-native, who have advanced intercultural communication skills may be better tuned into other speakers' 'passing' strategies such as verbal scaffolding. On the other hand, their willingness to overlook errors/non-standard usage may lead to masked miscommunication going unnoticed.

While I did not have access to official figures, the magistrate, lawyers at the main legal organizations, police officers, and correction officers I saw and heard in Katherine during my research all used SAE, and the vast majority of them were non-Indigenous.

[26] The issues surrounding interlanguage and communication are well researched and will not be covered here, but I refer the reader to Kasper & Blum-Kulka (1993) for an overview.

This was not the case in other organizations, however. A notable example frequently mentioned by lawyers is Territory Families where a significant number of staff are non-Indigenous non-native speakers of English, mainly from African and Asian countries, with varying levels of English proficiency. Lawyers raised concerns about the level of miscommunication occurring between Territory Families staff and Indigenous clients with whom they have regular contact, and some attributed this miscommunication to the fact that at times all participants had varying levels of English.

> *It's at that point, you wonder what is being said between all the parties when they're doing that, because the Territory Families worker could be someone whose English is a second language talking to someone whose English is a second language. There's all those communication problems.*
>
> *[Katherine_Jun2018_Matt Fawkner_Lawyer_Interview]*

In particular, there was concern over the fact that families did not always understand the conditions imposed on them by Territory Families in child protection cases. These conditions frequently appear in safety plans constructed by Territory Families staff in the absence of legal and interpreting assistance. As a result, some families unintentionally failed to comply with these conditions leading to instances of child removal. Lawyers noted that it was only during efforts to return children that the extent of these misunderstandings became clear and observed that despite their repeated calls for Territory Families to use interpreters, these situations kept arising *[Katherine_Nov2018_Field Notes_p. 24]*. Failing to engage interpreters and the resulting miscommunication compounds the inherent trauma of child protection cases. For the families struggling to cope with the complexities of an investigation by Territory Families, not being able to understand what is required of them is immensely distressing. In these cases, a qualified and well-trained interpreter is a much needed life line. Given that Territory Families staff are not trained to assess English proficiency,

engaging interpreters should be routine practice, especially in communities where Indigenous languages are spoken by a significant proportion of the population.

4.5 Challenges to the recruitment and retention of interpreters

The above sections described the problems facing Indigenous language speakers accessing accredited interpreters due to discretionary use by different parts of the justice system. Access is also restricted by the availability of qualified and accredited interpreters in the first place. Predictably, there is a chronic shortage of accredited interpreters for languages with small speaker numbers. Low speaker numbers also create a small pool of people wishing to become interpreters. The corollary is a long-term lack of available interpreting services for these language communities. Even for larger languages, such as Kriol, there are significant challenges to the recruitment and retention of interpreters which can result in variable quality of interpreting and, in turn, negatively impact the perception of interpreting in the justice system. These issues are the focus of the following section.

4.5.1 Qualification and accreditation pathways for Indigenous language interpreters

Interpreter accreditation in Australia is offered by the National Accreditation Authority for Translators and Interpreters (NAATI). The accreditation process including all requirements is available on the NAATI website[27]. Current accreditation levels are Certified Provisional Interpreter, Certified Interpreter, Certified Specialist Legal/Health Interpreter, and Certified Conference Interpreter. NAATI requires separate qualification pathways and testing for each of these levels. Currently, Indigenous language interpreters are accredited as Certified Provisional Interpreters, the lowest level of

[27] https://www.naati.com.au/become-certified/how-do-i-become-certified/

accreditation. For some smaller languages, interpreters are not accredited but can work as Recognised Practicing Interpreters.

The accreditation pathway for Indigenous language interpreters is represented in Figure 2.

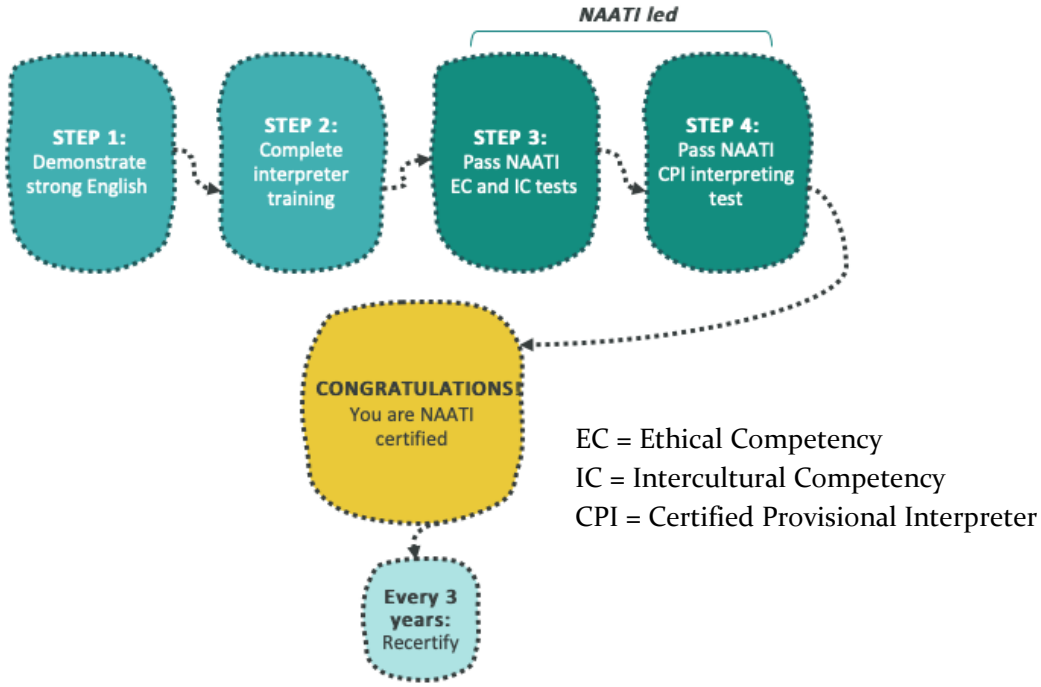


Figure 2: Pathway to becoming a NAATI certified interpreter for Aboriginal and Torres Strait Islander Languages. Source:https://www.naati.com.au/our-industry/indigenous-interpreting-project/certification-for-indigenous-languages/

As I discuss below, each of these steps presents specific challenges for Indigenous language speakers hoping to become accredited.

4.5.1.1 English for specific purposes

In §4.4 I describe how the varying levels of English proficiency among Indigenous language speakers is a source of complexity when ascertaining the need for an interpreter. This issue is also encountered by interpreting services when recruiting Indigenous language interpreters. Although most of those applying to become interpreters tend to be highly proficient in English, there are times when the pool of potential new interpreters is so small, especially for languages with few speakers, that

proficiency standards must be made more flexible. This allows for the recruitment of interpreters from these languages, which greatly benefits communities, but may also result in some interpreters not meeting the regular requirements necessary for them to carry out their work efficiently. This particular subject was raised by a number of lawyers in Katherine who noted that some of the interpreters they worked with did not have the level of English proficiency required to interpret complex legal ideas and, as a result, they felt that the interpreted consultations with clients did not go as well as expected. Lawyers who work regularly with interpreters are better at using Plain English and avoiding legalese during interpreted consultations. However, given the precise and intricate definitions of many legal terms, simplifying legal language to allow for interpreting can be time consuming and lawyers have generally not been trained to manage such communicative complexities. Here, a lawyer describes the challenges they face when engaging interpreters with varying English proficiency:

> *I think the difficulty we've had with some interpreters, only some, not a large majority, is that we're not in a place where we would talk to the interpreter like we're speaking to an English-as-a first-language [speaker]. We are modifying our language to talk to the interpreter who then modifies the language again and that can be tricky...it's really good and important to have the ability to break things down simply, but where it's been broken down a bit beyond simple terms, it gets a bit hard.*
>
> *[Katherine_Jun2018_TL_*Lawyer*_Interview]*

Arguably, the ability to demonstrate proficiency in English is as expected of accredited interpreters as it is of those seeking accreditation. If legal professionals and others in the justice system are uncertain about the quality of interpreting, they are less likely to engage interpreters, which is immensely disadvantageous to clients.

Interpreters with lower proficiency in English can find working in complex legal settings to be difficult and intimidating. This has a negative impact on the retention of these interpreters, further reducing interpreting availability. There are many aspects of legal contexts that interpreters may find problematic. Aside from legal terminology, the wide use of complex linguistic constructions such as metaphors and idioms in legal settings, especially court, can present added challenges for interpreters. These expressions are almost always culturally bound, meaning that interpreters have to choose from a number of alternative translations, which can influence accuracy (Hale, 2007, p. 76). It is worth noting that many aspects of language used in courtroom settings are inherently foreign and intimidating not only to interpreters, but to other court participants without legal training. Research on courtroom language demonstrates that even when legalese is deliberately simplified to improve communication, the risk of misunderstanding and miscommunication can remain high. Heffer (2008), for example, examines the language of jury instructions and finds that standardized Plain English instructions delivered by judges are not always clearly comprehended by jurors which can potentially impact their ability to arrive at legally fair verdicts.

There is possibly some recognition in the justice system of the impact of using figurative language on the faithfulness of interpreting, in part due to ongoing efforts by AIS to educate legal professionals about this and other aspects of interpreting. However, I observed that many legal professionals make little to no accommodation for this impact in court proceedings. During my observations of interpreted court hearings, it was clear that while judges and lawyers used shorter utterances and avoided figurative language when directly addressing defendants and witnesses, they often returned to using more complex and metaphoric expressions when addressing each other or presenting their arguments. This frequently left interpreters unable to keep up and many would stop interpreting these interactions, preferring to wait until the client was being addressed. I observed a hearing where the interpreter stopped attempting to interpret a discussion between the judge and prosecution after the prosecutor used the expression 'the thin edge of the wedge'. The defendant was left without interpreting until the sentence was handed down. Clearly this is a problematic issue in terms of access to justice as anyone

who is part of a court hearing has the right to understand the proceedings which bear directly on the sentencing outcomes.

Although it may not always be possible for lawyers and judges to avoid figurative language, awareness about its impact on interpreting is crucial. While many interpreters have the metaphoric competence considered central to effective communication (Littlemore & Low, 2006), this should not be assumed. An important part of training for legal professionals should be to provide the necessary communicative conditions for interpreter to be able to interpret all stages of a court trial including all communications between lawyers and the judge or jury. It may also be worth training legal professionals to pay closer attention to interpreters and offer clarification or rewording if they notice a break in interpreting.

As I discuss in §9.2.1, interpreters themselves are cognizant of the role of English proficiency in their ability to carry out their work. They are trained to interrupt court proceedings to seek clarification when needed, but as discussed in Chapter 6, not all interpreters have the confidence or feel empowered to interject and signal their need for repetition or clarification, especially if this leads to unfounded scrutiny of their proficiency.

4.5.1.2 Opportunities for interpreter training and testing

Once English proficiency is established, the next step in the process of accreditation is to complete approved interpreter training. Currently, the training pathways for Indigenous interpreters are significantly fewer than those available for interpreters of international languages (Stern & Liu, 2019). The lack of Diplomas and Advanced Diplomas of Interpreting in Indigenous languages offered by universities and other institutions, combined with a lack of access to these institutions in remote communities, has left a significant gap in the qualification pathways available for interpreters, resulting in the overwhelming proportion of Indigenous language interpreters being unable to gain accreditation at a level above Certified Provisional

Interpreters[28]. For some of the Kriol interpreters I spoke to, the dearth of government investment in providing qualification pathways was a source of great frustration. For example, until a few years ago, the Batchelor Institute of Indigenous Tertiary Education offered both training and assessment, including a Diploma of Interpreting in Kriol, under a Memorandum of Understanding between the Institute and the Aboriginal Interpreter Service (AIS). Unfortunately, the Diploma is no longer offered, leaving some interpreters who had partially completed their Diploma unable to obtain full qualifications *[Katherine_Jun2018_Field Notes_p. 13]*. Some interpreters were particularly concerned about working in settings such as courtrooms without the level of qualification and training obtained by interpreters of many non-Indigenous languages who are certified at a higher level.

> *We [Kriol interpreters] only have the lowest level NAATI accreditation, if that, so I think elsewhere we would not be doing court interpreting.*
>
> *[Ngukurr_Nov2019_Greg Dickson_ Interpreter _Interview]*

The gap created by the lack of available diplomas is partly filled by training programs offered by organizations such as AIS. However, the limited number of available trainers means that many community members who express interest in becoming accredited interpreters have to wait for extended periods to be able to access training leading to many giving up and pursuing other avenues of employment. In Katherine and the surrounding region, trainers who left for personal and professional reasons were frequently not replaced and some community members waited for over 12 months to access training. At the time of writing, AIS and NAATI are working together to slowly

[28] There have been two interpreters accredited as Certified Interpreters in the Djambarrpuyngu language, but they are the exception to the rule.

increase the number of trainers in a number of larger Indigenous languages which will hopefully result in more community interpreters.

After completing training, interpreters must pass certification testing offered by NAATI comprising of Ethical and Intercultural Competence Testing and Certified Provisional Interpreter Testing. The provision of testing for Indigenous languages is growing steadily. In 2019, NAATI created testing for a number of Indigenous languages including Yumplatok, Kalaw Kawaw Ya, and Gumatj. For Indigenous languages where testing has not been developed, interpreters can work as Recognised Practicing Interpreters until testing becomes available.

Finally, all interpreters must be recertified every three years, a process that involves producing evidence of regular interpreting work and ethical conduct as well as completing 120 points of professional development over three years, including skill development, industry-specific participation, and maintenance of language. As I describe below, the requirements of reaccreditation are more difficult to meet for interpreters of smaller languages whose work is often more intermittent than other interpreters.

4.5.2 Working conditions and remuneration

One of the challenges to the recruitment of interpreters is the fact that Indigenous language interpreting remains, for the most part, a career marked by casualization, precarious employment, and unpredictable income. These factors can make interpreting a less lucrative option, especially for young people seeking stable long-term careers. While not unique to interpreting, the uncertainty stemming from casual employment is undoubtedly a significant drawback, one that must be counteracted through the provision of desirable work conditions for interpreters. For example, creating a supportive environment where interpreters feel empowered and respected may encourage more people to pursue a career in interpreting (see §6.4.1.1). Adequate remuneration is also crucial, given the intermittent nature of interpreting. Uncertainty

about the costs associated with interpreting assignments is also a consideration for some new interpreters. These costs, including travel and accommodations are generally covered by interpreting organizations and/or clients, but there have been some instances where a breakdown in usual procedure has led to interpreters personally incurring such costs and having to seek reimbursement at a later date *[Darwin_Jun2018_Field Notes_p. 7]*.

Interpreting over a vast geographical area also presents its own challenges. Interpreters may be required to travel from their communities to larger towns such as Katherine or Alice Springs, sometimes with little notice, to assist during court hearings. In cases of prolonged court trials, interpreters can spend extended periods away from family, community, and other support networks, which is another consideration for potential interpreters.

As well as influencing the recruitment of new interpreters, these same issues can negatively impact the retention of existing interpreters. Interpreters of smaller languages, in particular, face the additional challenge of low demand for their service and consequently fewer opportunities to practice interpreting. These interpreters also frequently have other forms of regular employment which impacts their ability to meet the work practice and professional development criteria required to maintain certification. Although the NAATI recertification process makes accommodation for these specific contexts, there is a risk that the lack of opportunities to practice can compromise the quality of interpreting further reducing the engagement of interpreting services.

Another aspect of interpreting that can impact the retention of interpreters is the potential risk of vicarious trauma (Lai & Costello, 2021). Working in contexts that involve particularly difficult and/or taboo subjects can be traumatic for interpreters, especially when involving members of the interpreter's own community, which is not unusual for interpreters of small languages. The risk is compounded by the fact that interpreters are rarely briefed about the details of a case in advance, leaving them

unprepared and vulnerable to trauma (Hale, 2007, p. 141). The interpreters I spoke to were aware of the issue of vicarious trauma and that they can access counselling as part of their work. Some, however, indicated that they generally seek assistance with trauma from elders and healers in their own community and one interpreter noted that this option should be made available as part of the services accessible to interpreters at AIS.

4.6 Concluding remarks

This chapter provided a brief overview of the current state of Indigenous language interpreting in the Katherine region and focused on some the practical and logistical challenges to the access and availability of interpreters. Subsequent chapters address many of the topics raised in this chapter through the various lenses of language, race, power, culture, and epistemology. For example, Chapter 5 explores some of the linguistic aspects of ascertaining the need for interpreting by focusing on the Kriol language and the specific linguistic considerations that must be taken into account when deciding whether to engage interpreters. Similarly, in Chapter 6, the discretionary use of interpreters is examined in more detail in relation to the power differentials that inhere in the justice system. The holistic approach of the thesis means that these aspects are considered strands of a complex web of factors that impact the provision of interpreting and, in turn, access to justice for Indigenous language speakers.

The next chapter focuses on the linguistic factors that impact interpreting by examining Kriol interpreting in particular. Although specific to Kriol, many of the issues discussed in Chapter 5 are common to interpreting of other Indigenous languages and provide an insight into the experience of Indigenous language speaker, interpreters, and the legal professionals who engage with them.

5 LINGUISTIC FACTORS IMPACTING KRIOL COMMUNICATION AND INTERPRETING

A central aim of this thesis is to explore the linguistic factors that play a part in the interpreting of Indigenous languages in the justice system. Given that there are more than 100 Indigenous languages and dialects in which interpreting is available, it is not possible for this thesis to examine all the linguistic factors that impact the interpreting of these languages. For this reason, I chose to focus specifically on the communicative aspects of the Kriol language and their impact on Kriol interpreting. Kriol was selected because it is a thriving Indigenous language with an ever-increasing number of native speakers and, as such, a growing need for interpreters. Additionally, certain aspects of Kriol that impact interpreting - such as dialectal variation, issues with nomenclature, and language attitudes - are also common in other Indigenous languages. Other aspects, however - including the creole continuum and proximity to English - mean that Kriol presents interpreters and legal professionals with unique challenges that can lead to an underutilization of interpreters and impinge on access to justice for Kriol speakers.

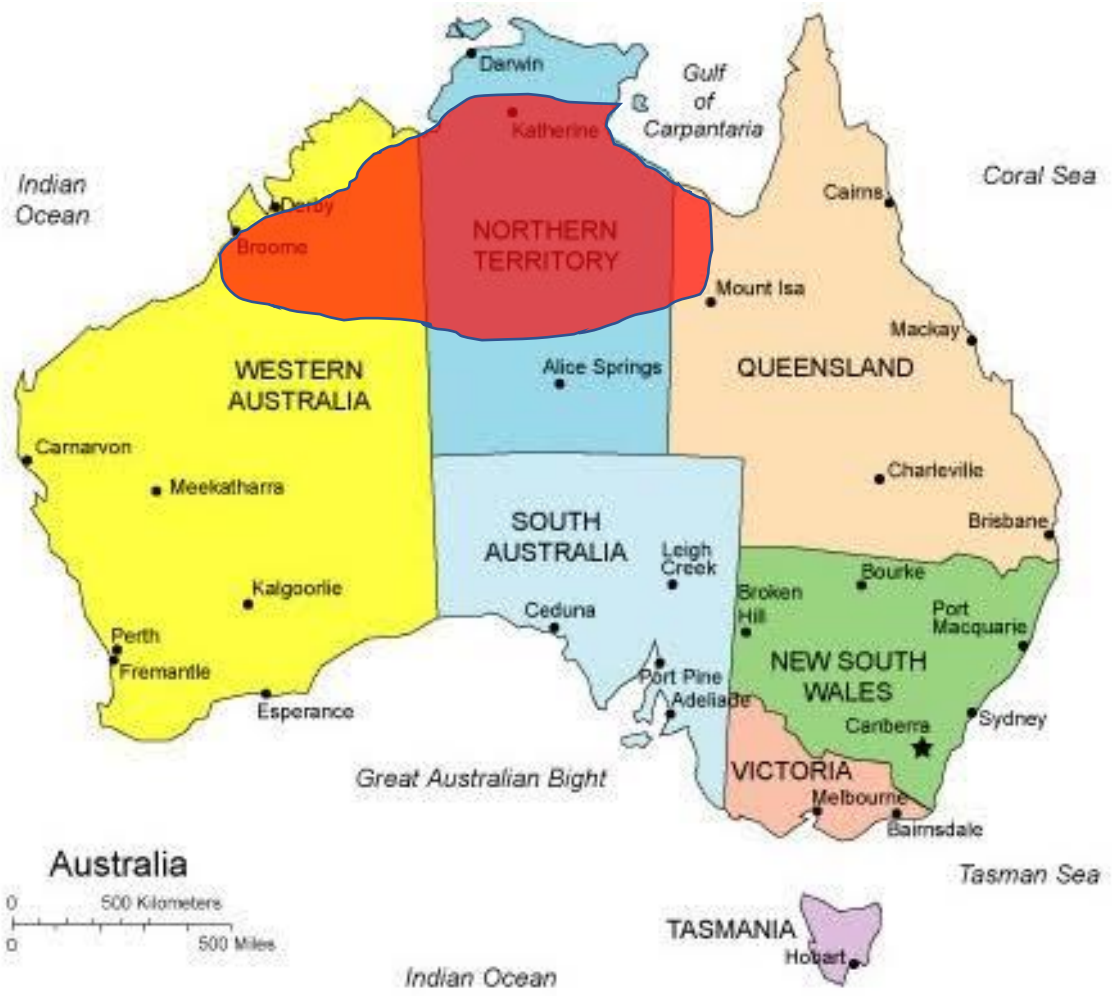
This chapter begins with a brief overview of the Kriol language (§5.1) including its creole continuum (§5.1.1), and dialectal variation (§5.1.2). Section 5.2 focuses on some of the specific linguistic features of Kriol, such as lexical semantics, and describes how they differ from Aboriginal English (AE) and Standard Australian English (SAE). The section explores how a lack of understanding of linguistic differences can lead to miscommunication and disadvantages for Kriol speakers in legal settings. The focus of the chapter is then shifted to the complexities faced by non-Kriol speaking legal professionals when ascertaining the need for interpreting services for their Kriol-speaking clients (§5.3). Issues examined include the recognition of Kriol as an Indigenous language, how the 'continuum' of Kriol (including its close relationship with AE) impacts upon the ability of legal professionals to recognize the need for an interpreter, and the role of dialectal variation in the provision of appropriate interpreting assistance.

Section 5.4 closely examines one particular aspect of the provision of interpreting services, namely the self-identification of Kriol speakers. The section explores the many factors that influence self-identification, including nomenclature and labelling practices of Kriol by its speakers and others (§5.4.1), the attitudes of Kriol speakers towards their language (§5.4.2), and the interplay between Kriol, ancestral languages, and language affiliation (§5.4.3).

The last part of the chapter (§5.5) presents a case study which centres on the negative impact of a lack of interpreting assistance on the experience of a Kriol speaker in a particular legal case. I note that this case study refers to an incident of domestic violence and includes a description of physical assault.

5.1 A brief overview of Kriol

Kriol is an English-lexified creole spoken by a growing number of Indigenous Australians over a vast area of Australia's Top End covering parts of Queensland, Western Australia, and the Northern Territory (Map 2). In some communities, such as Ngukurr, Barunga, and Numbulwar in the Northern Territory, Kriol is a first language for most of the Indigenous residents. In other places, such as Arnhem Land, also in the Northern Territory, Kriol functions as an additional language for some speakers of traditional languages including Yolŋu Matha, which remains the primary language in use.



Map 2: The approximate geographical spread of Kriol (Adapted from map of Australia © Bruce Jones Design 2009)

The exact number of Kriol speakers is unknown. The Australian Bureau of Statistics' (ABS) 2011 and 2016 census data put the number of people who speak Kriol at home at 6692 and 7,108 respectively[29]. However, there is general agreement amongst linguists and Kriol speakers that this number is grossly underestimated. Historically, census figures relating to language use by Indigenous Australians have been notoriously inaccurate due in part to the complexities of conducting the census in remote regions and, in the case of Kriol, to underreporting by Kriol speakers themselves (see §5.4).

29

https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/IQS036#demographics

Linguists, on the other hand, estimate the number of Kriol speakers to be vastly greater than reported. Sandefur (1990b, p. 11) estimates the number of Kriol first language and second language speakers to be around 30,000, living in 250 Aboriginal communities in the three northern states of Australia. Schultz-Berndt, Meakins & Angelo (2013, p. 241) claim that there are around 20,000 speakers of the language.[30]

Kriol developed in the early 20th Century at the Roper River Mission in southern Arnhem Land before spreading to other parts of Australia. The history of Kriol development is presented in Appendix V . This history is relevant to interpreting in a number of ways. Firstly, it explains the presence and nature of the creole continuum, the impact of which is explored in §5.3.1.1. Additionally, it highlights some of the attitudes that developed towards Kriol, which to this day influence the decision by legal professional and Kriol speakers to engage interpreters (see §5.4.2 and §8.4).

Since gaining the attention of linguists, and subsequently government institutions, there has been a considerable body of research on Kriol. Appendix V presents a list of scholarly works about Kriol, from grammars and dictionaries to works exploring specific linguistic features of the language.

5.1.1 The creole continuum of Kriol

A creole continuum (sometimes referred to as a post-creole continuum) is a notion first articulated by Stewart (1965) to describe inter-speaker variation within a vernacular. It refers to a spectrum of linguistic variation within a given creole that ranges from a variety that is closest to the dominant lexifier, termed the *acrolect*, to a variety that most closely resembles the creole's substrate language(s), termed the *basilect*. The gradient of variation between the two ends of the continuum is referred to as the *mesolect* (Figure 3)

[30] There are some linguists who claim these numbers are exaggerated, notably Rhywden (1996, p. 2).

In the case of Kriol, the acrolectal variety is sometimes described by speakers as 'light' Kriol and is linguistically closest to Aboriginal English (AE). On the other end of the continuum, 'heavy' Kriol is described as a variety that least resembles AE or SAE and is generally far less intelligible to speakers of those two varieties at a normal rate of speech.

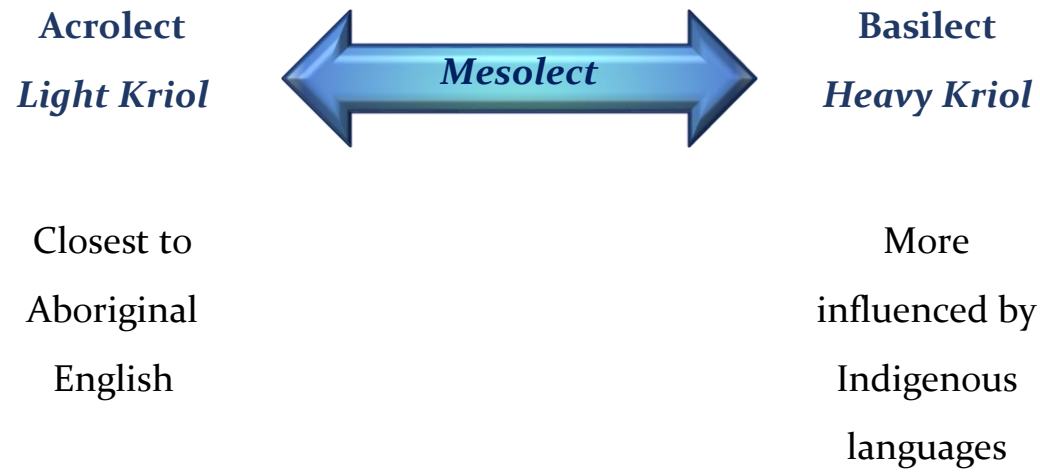


Figure 3: Creole continuum of Kriol

Ascertaining exact delineations of varieties along the continuum is not possible. There are many linguistic features, including phonological and morpho-syntactic, that are present in the basilect end of the continuum which are not common in the acrolect varieties. These have been suggested as general telltale markers of Kriol that differentiate it from AE. Such features include the use of auxiliaries to mark verb tense (e.g. *bin* 'past', *garra* 'future'), the use of the suffix *–bat* to mark the durative aspect, the use of the suffix *-im* as a marker of transitivity, and the use of the genitive marker *blanga/bla/ba/la*. However, as I describe in §5.3.1.1, these features are neither universally used by all speakers, nor are they always restricted to certain varieties on the continuum. This means that placing a Kriol speaker along the continuum is extremely complex and greatly influenced by *inter*speaker and *intra*speaker variation. Not only do Kriol speakers employ the above linguistic features to varying degrees, but many are also

multilingual and multidialectal. For some speakers, Kriol is an additional language that they use within a particular community or with specific people while also using traditional languages, AE, or SAE in other contexts. Therefore, it is not uncommon for Kriol speakers to use code-switching between Kriol and other languages in their day-to-day communication. Some speakers of heavier varieties of Kriol can also switch to lighter varieties, which are still heavier than AE, which adds yet more layers of complexity to the linguistic repertoire of Kriol speakers.

These factors can greatly impact the ability of a non-Kriol speaker to understand the linguistic needs and capacities of Kriol speakers, in turn impacting the ability to ascertain the need for interpreting services. This is discussed in §5.3.1.1 which deals with the influence of the creole continuum on the provision of Kriol interpreting services in legal contexts.

5.1.2 Whose Kriol is it anyway? Dialectal variation

Given the vast geographical spread of Kriol and the presence of many Indigenous languages in areas where it is spoken, the presence of dialectal variation is unsurprising. There is wide acknowledgment by linguists and Kriol speakers that there are many dialects of the Kriol language, although a consensus is yet to emerge on the exact number. Munro (2000, p. 249), for example, proposes seven distinct dialects, which she attributes to the presence of different substrate Indigenous languages (see also Munro, 2011). Although English is the major lexifier in Kriol, the Indigenous languages of the Top End have contributed widely to the phonological, lexical, morphological, syntactic, and semantic variation seen in current-day Kriol. Schultz-Berndt et al. (2013) identify a number of substrate languages that play a part in the formation of different Kriol dialects: Alawa, Marra, Ngalakgan, Wandarrang, Mangarrayi, Ngandi and Nunggubuyu are the substrate languages for Roper River Kriol; Jawoyn, Dalabon, and Rembarrnga are the substrate language of the Barunga/ Beswick dialect of Kriol; Jaminjung, Ngarinyman, Wardaman contribute to the linguistic features of Westside Kriol; and

Walmatjari, Jaru, Miriwoong, and Gija are the substrate languages of the Kimberley Kriol dialect[31].

Table 2 lists the dialects proposed by Munro and some of the scholarly works that center on specific dialects. A more comprehensive list of works on Kriol can be found in Appendix V .

Map 3 shows the geographical location of Munro's proposed dialects.

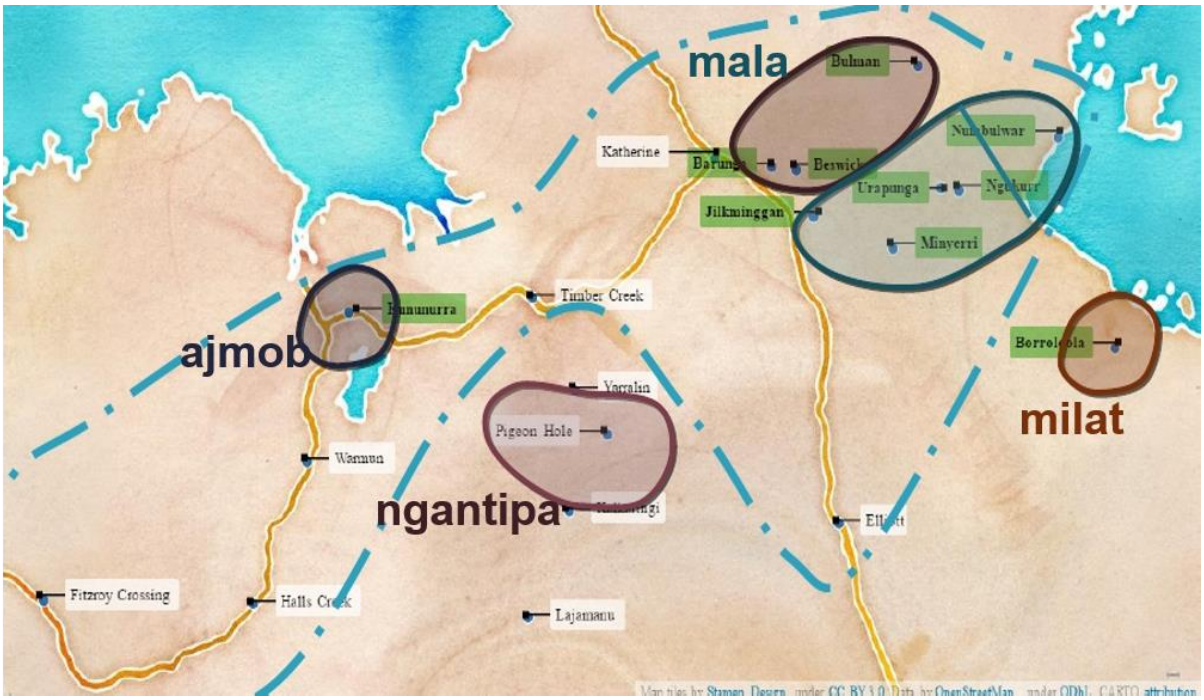
Map 3: Geographical location of Kriol dialects using Munro's (2000) classification

[31] Note that some of these dialects differ from Munro's classification

Table 2: Kriol varieties as proposed by Munro (2000)

DIALECT NAME – *GEOGRAPHICAL LOCATION*	**SPECIFIC WORKS ON DIALECT**
Roper River Kriol - *Ngukurr; Minyerri*	Dickson (2015); Harris (1986, 1991); Munro (2000, 2011); Sandefur (1979, 1984b, 1991), Sandefur & Sandefur (1981)
Beswick/Barunga Kriol – *Beswick, Bamyili (Barunga)*	Ponsonett (2010, 2012, 2016)
Eastern Kimberley Kriol – *Fitzroy Crossing; Halls Creek*	Hudson (1983, 1985)
Daly River/ Ngan'giwatyfala Kriol	Rhydwen (1996)
Turkey Creek/Wyndham/Kununurra Kriol	
Barkly Tablelands Kriol – *Tennant Creek*	Graber (1987a)
Victoria River Kriol – *Timber Creek*	Schultz-Berndt, Meakins & Angelo (2013)

Recent ongoing research is confirming the presence of significant lexical variation involving both content and grammatical words (Dickson, 2018b, 2019) [32]. Map 4 shows variation in 1st person plural pronoun, exclusive - i.e. we, but not you - as documented by Dickson (2018b). The presence of substantial differences in a common grammatical word such as a pronoun is evidence of the significant variation found across Kriol-speaking regions.



Map 4: Dialectal variation in 1st person plural pronoun, exclusive (Dickson 2018b)

Further research into the complex linguistic ecology of northern Australia has led to the identification of a number of mixed languages that combine Kriol with the Indigenous languages spoken in the region. The influence of these substrate languages is significant enough that the resulting language cannot be considered a mere variation or dialect of Kriol. The three main mixed languages described so far are Gurindji Kriol which is spoken by the Gurindji people at Kalkaringi (Victoria River District) (McConvell & Meakins, 2005; Meakins, 2008b, 2012, 2013), Light Warlpiri, spoken by the Warlpiri

[32] Content words are words that have meaning, such as nouns and verbs. Grammatical words are structural and include articles, prepositions and pronouns.

language group at Lajamanu (North Tanami, Northern Territory) (O'Shannessy, 2005, 2005, 2016), and Wumpurrarni English, spoken in Tennant Creek (Disbray, 2008, 2016b; Disbray & Simpson, 2005) .

5.2 Linguistic differences and communication in legal contexts: Kriol and SAE

This section reviews some of the major linguistic differences between Kriol and SAE and the effect such differences can have on successful communication in legal settings. It is not intended as a comprehensive exploration of the numerous and complex differences between the two languages, rather a demonstration of how such differences can lead to misunderstandings and miscommunication.

5.2.1 Friend or faux? Misunderstanding false friends in Kriol

> *Although you can recognize English words, they have a completely different meaning in Kriol, and that's the mystery of it.*
>
> *[Katherine_Jun2018_Matt Fawkner_Lawyer_Interview]*

Variation in the lexical semantics of SAE, AE, and to some extent Kriol, is fairly well-understood. General descriptions of lexical differences between AE and SAE appear in the literature (Butcher, 2008; Malcolm, 2013) and the impact of these differences on communication in the law is especially well-explored, mainly through the extensive body of work of Diana Eades (1994, 1996, 2000b, 2000b, 2003b, 2004, 2006, 2012a, 2013, 2015). Particularly noteworthy is Eades' ground-breaking lawyer's handbook *Aboriginal English and the Law* (1992), a guide designed to assist lawyers and other legal professionals understand the different linguistic features of AE and the potential for different meanings to give rise to miscommunication in legal settings (see also Eades, 2000a).

To date, there is no equivalent to Eades' handbook that addresses the differing linguistic features of Kriol and their role in communication in the law. However, there is some acknowledgment in legal circles that many of the lexical differences identified in AE are also present in Kriol, especially in the 'lighter' varieties of Kriol, and that miscommunication can result from non-Kriol speakers failing to appreciate semantic variations between Kriol and SAE.

The following section presents some examples of lexical differences between SAE and Kriol. While there are many examples to highlight, I focus on differences that have the potential to cause miscommunication in legal settings. Some of the words in the following list are well-recognized as words that are likely to have different meanings, others less so. It should be noted here that due to the fact that research for this thesis was conducted in and around the Katherine region, the following examples are all found in the Kriol varieties spoken in that area. Other examples from varying Kriol-speaking regions are also likely.

One of the best recognized differences in meaning relates to the Kriol word *kilim* (or its variant *gilim*). The etymological source for *kilim* is the English word *kill*, but the two words have different semantics. Even in SAE, the word *kill* has many senses, although when referring to animate beings, it is generally used to denote the causing of death or depriving of life. In AE and Kriol, however, *kilim* may simply refer to hitting or striking. To differentiate between the two meanings, Kriol speakers employ a number of various terms, including *kilim ded* 'kill dead', *kilim brabli* 'kill proper' and *kilim binij/binijimof* 'kill finish/finish off'. Below is an example from the Kriol Holi Baibul which shows the use of *kilim ded* and *binijimof* as a translation of *kill* in the original English God News Bible[33].

[33] The Holi Bible also contains examples of *kilim ded* and *hitim* to denote different meanings:

Aibin **kilim** wanbala yangmen **ded** dumaji imbin **hitim** mi basdam - Jenasis 4:23

I have **killed** a young man because he **struck** me – Genesis 4:23

Wal Isau bin heidim im braja Jeikob brabliwei na. Im nomo bin larramgo im brom dijan ting, en imbin dalim miselp, "Afta wen main dedi garra dai en melabat krai blanga im, ***wal ai garra binijimof main braja. Ai garra kilim Jeikob ded****."*

Jenasis 27:41

Esau hated Jacob, because his father had given Jacob the blessing. He thought, the time to mourn my father's death is near, then ***I will kill Jacob.***

Genesis 27:41

The potential for the different meanings of *kill* and *kilim* to lead to miscommunication in the law is commonly described in the literature (Butcher, 2008, p. 639; Cooke, 2002, pp. 4–5; Moore, 2014, p. 9). The variation in meaning is also widely recognized by legal professionals as it appears in many training materials about communicating with Aboriginal people (see, for example, Eades, 1992; Law Society Northern Territory, 2015). In my interviews with non-Indigenous SAE-speaking lawyers in Katherine, all were very familiar with *kilim* as an example of variation between SAE and AE/ Kriol *[Katherine_Jun2018_Field Notes_p. 10]*.

There are a number of other lesser-known examples of multiple or variant meanings of the same or similar sounding words. The following is a list words that were primarily identified to me by interpreters and other Kriol speakers as well as some that I observed during court proceedings.

I. *Stab*: In SAE, *stab* would be inferred as 'using a sharp object to penetrate or puncture skin'. Many Kriol speakers, however, use the term to simply mean 'tap' or 'hit lightly'.

In a discussion with a Kriol interpreter, they recalled interpreting for a Kriol-speaking suspect in a police interview who claimed that he *stabbed* his friend with a stick where he meant that he had poked him with it playfully *[Katherine_Jun2018_Field Notes_ p.*

12]. The interpreter was able to explain this to the police during the interview and the suspect was not quizzed any further on it.

II. *Bingga/finga*: This is the Kriol rendering of the English word *finger*, though in Kriol it can be used to refers to both 'finger' and 'hand'.

During a court case that I observed, a defendant, who was a Kriol speaker but was answering in AE during a cross examination, said that he had pushed the witness with his *finger* and when asked to clarify by the prosecution lawyer, he replied "with my finger, my hand, like" while displaying a gesture of pushing someone with an open hand *[Barunga_Dec2018_Field Notes_ p. 31]*.

III. *Fosim*: A Kriol rendering of the English verb *force*, this term can denote less duress or threat of violence than its English counterpart. Kriol speakers may use the term to refer to teasing or cajoling as well as compulsion by physical means.

While I couldn't find real-life examples of misunderstanding arising from these different meanings, an interpreter gave a hypothetical example of a young person being arrested for damaging property, who could claim to the police that his friends forced him to do it, intending to say that they egged him on, but that might be construed as the young man claiming that his friends had threatened him *[Katherine_Dec2018_Miliwanga Wurrben_Interpreter_Field Notes_p. 29]*.

IV. *Sili*: Acting *sili*, from the English *silly*, can refer to aggressive and threatening behaviour rather than playfulness.

I witnessed the use of this term in the Katherine Magistrate Court where a witness claimed that the accused was drunk and belligerent on the night in question. The following exchange occurred:

Witness*:* *He*[34] *was drunk and acting silly*

Lawyer: *What? So she was just mucking around?*

Witness: *No, he was shouting and pushing like*

Lawyer: *She was shouting and pushing people? [Not just]*

Witness: *[Yeah]*

[Katherine_Jun2018 _Field Notes_p. 11]

The lawyer who questioned the witness was relatively new to the Northern Territory at the time, having worked exclusively in Victoria and with little experience with Indigenous clients. His pre-existing conceptualization of the word *silly* likely caused him to underestimate the degree of aggression that the witness intended to convey in his use of the word *silly*, as evident by him asking whether the accused was 'just mucking around'. Had the witness not disagreed with the lawyer's statement, for example had the witness displayed gratuitous concurrence, the extent of the aggression shown by the accused may not have been understood by the court.

V. *Dina*/*dinataim*: While this term originates from the English *dinner*, in some Kriol dialects, including Roper River and Barunga Kriol, it refers to the midday meal known as *lunch* in some varieties of English[35]. The word *sapa* (from English *supper*) is used instead to describe the evening meal.

This variation can have obvious implications in legal contexts. For example, one of the main aspects of evidence gathering in a police interview is establishing accurate timelines of events in order to determine facts or confirm alibis, so it is vital that words and expressions describing time periods are clearly understood by both the police and

[34] The use of 'he' as the 3rd person pronoun irrespective of gender is a common feature of Aboriginal English and some varieties of Kriol.

[35] This variation is also present for some non-Indigenous speakers of SAE as well as speakers of British English varieties where *dinner* can refer to the midday meal. Broadly, this is related to class/profession as well as geographical variation.

people being interviewed. A reference by a Kriol or AE speaker to *dinataim* can be inferred by a SAE-speaking police officer to mean later in the day than actually intended. An experienced Kriol interpreter explained that if the police relied on their understandings of 'dinner time' during their questioning of the suspect, and then discovered that the timeline was indeed different, it may lead them to be more mistrustful of the suspect's other claims or answers to questions *[Katherine_Dec2018 _Field Notes_p. 29]*

VI. *Haf*: From English 'half'. This word in Kriol refers to one of two portions of a whole, not necessarily one of two equally-sized parts, so that breaking something in *haf* can just mean 'into two parts'.

An example of how a lack of understanding of this difference can result in miscommunication in legal contexts is found in Cooke (2002, pp. 23–24) where a witness's credibility was challenged based on his use of the expression 'half-moon' to describe a crescent moon leading to discrepancies in the timelines of certain events. Cooke describes how he had to intervene as the interpreter in order to clarify the perceived discrepancy in the witness's testimony to the court. Again, this highlights the crucial role of qualified interpreters in mitigating misunderstandings in the law.

As well as variances in the semantics of single lexical items, differences between Kriol and SAE have been observed at phrase level. All the examples below are compiled by Disbray (2016a) from discussions with Kriol interpreters. These demonstrate how the meaning of seemingly straightforward expressions can be inferred incorrectly, leading to stark miscommunication.

I. *Ai bin go leader*: This was a phrase used by one of three men accused of assaulting another man. The accused used the expression to deny that he was at the house at the time of the assault, having left before the incident took place. The statement, which was assumed to mean that he was the ringleader, actually means 'I went ahead' or 'I left first', although this was not initially noticed.

Fortunately, the cause of the miscommunication was identified by the interpreter before the court case took place.

II. *Ai bin followim behind:* This Kriol phrase has the same meaning as the English 'I came after'. In another instance of miscommunication, the phrase was used by a young man to indicate that he was walking independently from his partner and at a later point of time. The police misunderstood this statement as admission of threatening behaviour, i.e., as a physical act of walking directly behind a person rather than as a temporal reference.

III. *Go limit:* This expression, which relates to driving, has a paradoxical sense in that it refers to driving very quickly in violation of the legal speed limit. A misunderstanding of this discrepancy led to a witness being accused of lying in a dangerous driving case because she had said the accused *bin go limit*.

5.2.2 Modal semantics

Modal verbs are auxiliary verbs that are used to express obligation, ability, possibility, etc. Such verbs include *would, can, must, may,* and *have to.* Despite many modal verbs in Kriol being derived from English, some of their meanings have over time diverged significantly from their SAE counterparts. As a result, the differences in the semantics and pragmatics of these modals can potentially lead to misunderstandings between Kriol speakers and speakers of other varieties of English. This potential is explored comprehensively in Bowen's (2017, 2019) examination of Kriol speakers' understanding of the police caution relating to the right to silence. Bowen focuses on the modal verb 'have to', in particular its negation 'don't have to' which appears in the police caution where it denotes a lack of obligation: *'you don't have to do or say anything'.*

Bowen notes that a number of Kriol modal verbs have diverged from SAE in their denotation so that some indicate future while others indicate obligation, with some degree of overlap between them. Examples include the two Kriol verbs *garra* and *labda. Garra/gada* (from English 'got to') primarily expresses future meaning (similar to

English ‘will’) but is also frequently used to denote obligation. On the other hand, *labda* (from English ‘will have to’) generally expresses practical necessity rather than obligation per se, which is a narrower meaning than the SAE ‘have to’ that is present in the police caution (Bowen, 2019, p. 355). Bowen argues that the nuanced differences in meaning between these two verbs and their divergence from the English corresponding verbs has significant ramifications on how Kriol speakers comprehend police cautions.

These differences are even more complex in the context of the negation system found in Kriol. The common negative of both *garra* and *labda* is *gan* (from English ‘can’t’), which semantically merges impossibility and negative future, with its meaning ranging between SAE ‘can’t’ and ‘won’t’. These meanings are inconsistent with the permissive meaning of ‘don’t have to’ in SAE (Bowen, 2019, p. 359). Kriol speakers construct the English obligatory meaning ‘have to’ and permissive meaning ‘don't have to’ using *garra* and *labda* as shown in the negation paradigm provided by Cooke (1998, p. 187):

Kriol	**English translation**
im garra tok	he/she will/should talk
im labda tok	he/she has to/must talk
im nomo garra tok	he/she doesn't have to talk
im nomo labda tok	he/she mustn't talk

As the above sentences demonstrate, while the negative of ‘have to’ in English produces ‘doesn't have to’, the negative of *labda* in Kriol produces the meaning ‘must not’. This discrepancy can cause a great deal of confusion for a Kriol speaker attempting to understand the police caution. If the Kriol speaker’s personal interpretation of ‘don’t have to’ is *nomo labda* then they will likely feel compelled to remain silent throughout an interview, which deprives them of the opportunity to make potentially beneficial statements. As an interpreter once explained to me, it is a profoundly confusing experience for a Kriol speaker to be taken to a police station for questioning and then being promptly told not to say anything! *[Alice Springs_Apr2019 _Field Notes_p. 34].*

Efforts to mitigate misunderstandings of the caution have included the production of recorded cautions in a number of Indigenous languages including Kriol.[36] While these recordings have received praise from communities and legal organizations, I have learned through many discussions with interpreters and lawyers that the recordings are not being used effectively or often enough by members of the police force.[37] This is troubling because ensuring that a suspect has full and clear understanding of their right to silence is a fundamental tenet of the law in Australia and around the globe. Understanding the right to silence not only conforms to international and national laws, but it also tends to the basic human right to be treated fairly by the justice system. Moreover, from a practical perspective, ensuring that the caution is understood by the suspect also reduces the risk of having evidence collected during a police interview deemed inadmissible in court at a later stage.

Even with the consistent use of recorded police cautions, there is no doubt that one of the most effective ways of reducing the risk of miscommunication in the carrying out of justice is to engage accredited interpreting services. Qualified interpreters are able to expertly navigate the sea of linguistic differences described above in order safeguard against misunderstandings. But first, those who work with Kriol speakers in legal contexts must be able to ascertain the need to engage interpreting services in certain instances. To do so they must be cognizant of the many language-based factors that can influence the provision of interpreting and the process of engaging interprets. The following section explores these linguistic factors both in relation to the recognition of Kriol as a distinct language and to the close relationship between Kriol and AE (§5.3.1.1) The section also briefly discusses the effect of dialectal variation on the delivery of appropriate interpreting services (§5.3.1.2).

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[36] https://dlghcd.nt.gov.au/aboriginal-interpreter-service/aboriginal-interpreter-service/aboriginal-language-police-cautions-aboriginal-interpreter-service

[37] These are anecdotal observations – to date there have been no reviews of the use or effectiveness of recorded cautions by NT Police.

5.3 The impact of linguistic differences on the provision of Kriol interpreting services

5.3.1 Kriol - a language or an ethnolect of English?

A key prerequisite for identifying the need for Kriol interpreting is the recognition of Kriol as a language in its own right rather than simply a dialect of English. For many legal professionals working in Australia's Top End, the presence of multiple traditional Indigenous languages is a familiar notion, but there is less awareness of recently-formed contact varieties like Kriol. Without legal professionals appreciating Kriol's status as a distinct language with speakers who may require interpreting services, many Kriol-speaking clients are at risk of being linguistically disadvantaged in legal contexts.

The lack of awareness of the status of Kriol, or even its existence, is not confined to legal circles; Kriol has long been under-recognized and ill-understood. This was partly redressed in the 1970's and 1980's when a sustained campaign by Kriol speakers and academics, including linguists and anthropologists, raised calls for the recognition of Kriol as an Aboriginal language distinct from other languages in Australia (See, for example, Harris, 1986, 1988a, 1988b; Sandefur, 1986b, 1990b). In order to elevate the status of Kriol and achieve institutional recognition of it as a language in its own right, the campaign promoted Kriol literacy through the use of a conventionalized orthography, dictionaries, and grammars (Sandefur, 1981a, 1984a, 1986b, 1990b).

These efforts proved relatively successful, with Kriol gaining recognition by some institutions, including the education sector[38] and missionary-based institutions such as the Summer Institute of Linguistics and Wycliffe Australia. Further evidence of

[38] The first Kriol-English bilingual program was set up in the community of Bamyili (Barunga) in 1975 and lasted almost 16 years.

recognition is seen in the Australian Bureau of Statistics' (ABS) classification of Kriol as an Indigenous language. For example, the *National Aboriginal and Torres Strait Islander Social Survey 2014-15* commissioned by the ABS (2016) categorized Kriol speakers as speaking an Aboriginal or Torres Strait Islander language, depending on how the individual identifies.

The campaign to acknowledge Kriol as a bona fide language rather than an ethnolect has generated some debate within academic circles. Rhydwen (1995, pp. 115–116) for example, suggests that the efforts by field linguists such as Sandefur to increase the status of Kriol stems from their own desire for the recognition of all creoles as 'real' languages, which she claims does not necessarily align with the wishes or needs of the speaker community. In particular, Rhydwen argues that the categorization of Kriol as a 'real' language is problematic because it is based solely on linguistic criteria devised by non-Aboriginal linguists. Mühlhausler (1996) concurs with Rhydwen's assessment that the construction of Kriol as an Aboriginal language or a unified creole is a reflection of non-Indigenous linguists' desires, arguing that 'Deliberate acts of status planning, lexical innovation, graphisation and Bible translation on the part of the Summer Institute of Linguistics (SIL) and other missions, seem neither necessary nor sufficient causes for the emergence of a unified creole' (Mühlhäusler, 1996, p. 128).

While it is important to recognize the debate about where Kriol sits on the language/dialect continuum from both linguistic and sociopolitical perspectives, it is also worth noting that the recognition of Kriol as an Indigenous language was a crucial step in the establishment of professional Kriol interpreting services. Without the government's official classification of Kriol as a language distinct from English, arguments will invariably be made against the need for interpreting services. Aboriginal English (AE), for example, is considered a dialect of English, rather than an Indigenous language, and as such, governments have consistently resisted calls for funding to be made available for the provision of interpreting services to AE speakers. This policy remains in effect despite many people calling for it to be re-examined, including AE

speakers, Indigenous language interpreters, and prominent experts in AE including Diana Eades (Eades, 2019, personal communication).

Currently, both the Aboriginal Interpreting Service (AIS) and Aboriginal Interpreting Western Australia (AIWA) list Kriol among the Indigenous languages in which they provide interpreting. These organizations continually work to promote the status of Kriol and dispel the notion that it is a form of broken English. The AIWA website, for example, has the following disclaimer in their Frequently Asked Questions section:

> ***Isn't Kriol just bad English?***
> *Kriol is a discrete language with its own structure and meanings. It should never be thought of as simply 'bad English'. Kriol has an English base and may sound like English, but treating it as English will lead to serious miscommunication.* [39]

The Ngukurr Language Centre which operates in the community of Ngukurr, located 320 kilometers east of Katherine, also organizes a regular Kriol Awareness Course for legal and medical professionals as well as government and private organizations. The 2-day course currently runs every few months and, at the time of writing, participants must pay to attend as there is no government funding available to the language centre, so it is the dedicated small staff and community members that make this course possible. Despite this, the course is generally well attended as it provides vital tools and skills for staff at these organizations to assist in identifying Kriol speakers, understanding their linguistic rights and needs, and ascertaining when to engage professional interpreting services. A number of lawyers who participated in this research indicated that attending the Kriol Awareness Course helped them understand how Kriol differs from SAE and AE and appreciate the risk of miscommunication when consulting with Kriol-speaking clients, and in turn spurred them to engage interpreting services more frequently *[Katherine_Jun2018_Field Notes_p. 1; Katherine_Nov2018_Field Notes_ p. 27]*.

[39] http://aiwaac.org.au/faq.html

The potential for the Kriol Awareness Course to mitigate the linguistic disadvantages faced by Kriol speakers in legal settings is clear, and with appropriate funding from local and federal governments it can be held more frequently and at a lower cost to participants. Furthermore, the allocation of funding could ensure that similar courses are conducted at other locations in the region, which would increase participation rates. Legal organizations are not always able to send their staff to Ngukurr to attend the course, and lawyers who are new to working in the Northern Territory often must wait for months before the course is available to them. In the meantime, these lawyers are continually working with Kriol speakers with little understanding of their linguistic needs.

5.3.1.1 Engaging interpreters along the continuum

The creole continuum of Kriol was discussed in §5.1.1. In this section, I examine how the continuum can impact the decision to engage interpreting services. Even if legal professionals recognize the fact that Kriol speakers may occasionally require interpreters, how do they differentiate between a Kriol and an AE speaker, or decide when to engage an interpreter? For a legal professional, placing a speaker along the creole continuum is virtually impossible. The very nature of a continuum entails that there are no clear boundaries between acrolectal, mesolectal or basilectal varieties of Kriol. This raises the key issue of how a non-Kriol speaker can ascertain whether the Kriol speaker's variety is sufficiently far along the continuum away from English for an interpreter to be required. In other words, a legal professional may only feel compelled to engage interpreting services if they are convinced that their client is speaking a non-English language, or if they can identify instances of miscommunication. However, as I demonstrate below, they are rarely equipped to make such judgments.

As discussed in §5.1.1, there are a number of linguistic features that can help differentiate Kriol from AE or SAE. There are, however, limitations to the reliability and practicality of using these to identify Kriol speakers. Firstly, some of the linguistic markers

mentioned, particularly *bin*, are not exclusively used by Kriol speakers, having been attested in Aboriginal English as well, especially in areas where Kriol is also present (Malcolm, 2013, p. 270). Secondly, it is impractical for legal professionals, who are not generally trained in the linguistic structures of spoken discourse, to use distinct linguistic features as means of identifying Kriol speakers. These features may not occur with enough frequency to be noticed by non-Kriol speakers, or may be missed even if they do occur.

The blurred boundaries of the creole continuum can lead to a great deal of uncertainty regarding how much miscommunication is occurring in any particular interaction between Kriol and non-Kriol speakers. Such uncertainty is heightened in legal contexts, where clear communication is paramount, and misunderstandings can have serious consequences. The following is an extract from a decision handed down by Chief Justice Wayne Martin in *The State of Western Australia v Cox [2008] WASC 287* in which he attempts to outline Mr. Cox's linguistic repertoire. The extract exemplifies the ambiguity caused by the blurred boundaries between Kriol and AE, especially if intersected with uncertainty about English proficiency.

> *'**His preferred language is Kriol** which is a **dialect** made up of a mixture of Aboriginal and English words. **He also speaks English** and it is not suggested, nor could it be concluded from the evidence, that his capacities in English were so limited as to necessitate an interpreter. However, it is clear from the evidence that his fluency in English is limited, and that **he speaks a form of English sometimes described as Aboriginal-English**, which may well give rise to issues as to the comprehension of his answers if the video record of interview is admitted into evidence'* (*The State of Western Australia v Cox*, 2008, pp. 3–4, emphasis added).

The uncertainty displayed by Chief Justice Martin here is not unusual. Despite the fact that this legal case took place in 2008, many years after Kriol became widely recognized

as an Aboriginal language, there is clear evidence of lingering confusion about the linguistic nature of Kriol. For example, Chief Justice Martin refers to Kriol both as a 'language' and a 'dialect', an indication that he considers the two terms semantically interchangeable. As discussed above, treating Kriol as a dialect rather than a language diminishes the understanding of speakers' needs, especially with regards to the need for an interpreter. Chief Justice Martin also describes Kriol as consisting of a 'mixture of Aboriginal and English words'. As well as it being an inaccurate representation of Kriol, this statement may falsely imply that a Kriol speaker is simply using a mixture of two or more languages in which they are competent, and that the meanings of words are the same in Kriol as they are in English and/or the Aboriginal language source. As discussed in §5.2.1 and §5.5, such an assumption can lead to instances of gross miscommunication.

But it is Chief Justice Martin's remark that the comprehension of Mr Cox's answers may be impacted by him being an AE speaker that highlights the blurred boundaries, and even possible conflation, of Kriol and AE. Comprehensibility in communication with speakers of SAE is typically, but not always, a good indicator that a speaker is using AE rather than Kriol. As a general rule, a non-Indigenous monolingual English-speaking person would be unable to understand a Kriol speaker, but would have little difficulty understanding an average Aboriginal English speaker (Dickson, 2020, p. 147). It is likely that in the absence of an interpreter, a Kriol speaker would use either AE, a lighter form

of Kriol, or a form of interlanguage when communicating with a non-Kriol speaker[40]. However, it is not clear from the Chief Justice Martin's remarks whether Mr Cox was speaking AE when giving evidence or was in fact switching to a lighter form of Kriol or using an interlanguage. Given the ambiguity about Mr Cox's linguistic repertoire, and

[40] An interlanguage is an idiolect or linguistic system used by second language learners during the process of acquiring their target language. Prominent characteristics of an interlanguage include the preservation of linguistic features of the first language and the overgeneralization of the linguistic rules of the target language (Selinker, 1972; Tarone, 1979).

the fact that he indicated that Kriol was his first language, providing him with an interpreter should have been considered as a first option.

5.3.1.2 Effect of dialectal variation on Kriol interpreting

Dialectal variation in Kriol is discussed in §5.1.2, particularly the influence of substrate languages. The impact of widespread dialectal variation on accuracy in the process of interpreting, however, has not been evaluated. Despite wide agreement about the presence of multiple varieties of Kriol, interpreting services in the Top End do not, or perhaps cannot, reflect the diversity of dialects in the area. The reasons for this will be explored in this section.

Currently, both AIS and AIWA classify Kriol into two separate dialects: Eastside Kriol and Westside Kriol, with the area around the town of Katherine acting as a somewhat boundary between the two. From a linguistic perspective, this classification belies the linguistic evidence of multiple varieties which are influenced by numerous substrate languages. But from an interpreting perspective, the categorization seems uncontroversial among the Indigenous language interpreting community, in the NT at least. In fact, even the division into two dialects, while accepted by Kriol interpreters, is not always considered crucial or indisputable. Some of the interpreters I spoke to at AIS noted that the Eastside/Westside binary seemed a bit arbitrary, and while many were able to give examples of the differences between Eastside and Westside Kriol, they were generally dubious about how much these differences impacted their ability to perform faithful translations *[Darwin_Jun2018_Field Notes_p. 6]*. Again, it should be kept in mind that like many Indigenous people, Kriol interpreters are often remarkably multilingual and multidialectal and are skilful enough to identify language variation and adapt accordingly.

Legal professionals interviewed for this research also expressed doubt as to whether the interpreters themselves were concerned about specific dialectal variation when taking on interpreting assignments.

> *I remember asking an interpreter once* 'Are you Westside?' *and he said* 'Ah, I don't know'.
>
> *[Katherine_Jun2018_NR*_Lawyer*_Interview]*

There is little question that the presence of significant dialectal variation has the potential to lead to inaccuracy when it is not factored into the interpreting process. This poses a dilemma for interpreting services. On the one hand, accuracy is a central tenet in the interpreting services and errors that stem from unrecognized differences can have significant consequences especially in legal and/or medical contexts. On the other hand, given the severe shortage of Kriol interpreters in many parts of Australia's Top End, especially in remote regions, pragmatic decisions have to be made about the provision of interpreters in order to ensure that people who don't speak English proficiently are not systematically disadvantaged by the legal process.

In an ideal world, interpreters should be recruited from the various Kriol-speaking regions of Australia so that interpreting can be provided in all identified Kriol dialects. This is not, however, a straightforward task. Firstly, there is yet no consensus on the number of Kriol dialects or how significantly they differ from each other. What is required as a first step is a clear identification of what varieties would necessitate their own specialized interpreting service. This could also be extended to include mixed languages such as Gurindji Kriol and Light Warlpiri (see Table 1). Secondly, in order for an interpreter to be accredited in a particular dialect, interpreting services and organizations that oversee the training and accreditation of interpreters must be able to create training materials, provide qualified trainers, and devise official testing for obtaining accreditation. These are lengthy processes that require community involvement and significant long-term funding. Finally, even with the availability of training and testing materials, the recruitment and retention of Indigenous interpreters is a process that comes with its own set of challenges (see §4.5).

Until the above issues are addressed, the provision of Kriol interpreting continues to be a process of pragmatic decision making. As one of the participants interviewed, DQ, who is involved in organizing the provision of interpreting services explained to me:

> *We have to provide interpreting service, it's a technical interpreting service. As we're getting more and more, not only high tech, but really more detailed and higher quality. There's issues around language and where languages are changing and with Kriol, I've heard people say there's Daly River Kriol, we've got Kununurra Kriol, we've got Aulbry Kriol, Gurindji Kriol.... I talk to the interpreters and say* 'which way can you mob talk?' *[and they say]* 'Yeah we still can understand. We can hear each other'*, you know. We do it with the more traditional languages...But what I'm worried about is if we've got to make sure people are accredited and we try to get everybody accredited, we're never going to have the money to develop testing in every dialect of those languages, and that's a challenge for us. And if the courts and people that aren't really involved in languages get hold of something and then they stick to that, it's going to break us down, and this is about social justice for our people so that's where I'm really worried.*
>
> *[Darwin_Jun2018_DQ_ Interpreter _Interview]*

A Roper River Kriol-speaking interpreter may not be the ideal person to interpret for a Daly River Kriol-speaker, but they are nonetheless a preferred alternative to a family or community member with no training, or even worse, to no interpreter at all.

5.4 Linguistic factors impacting the identification of Kriol speakers

The linguistic factors that influence the provision of interpreting services include those that can impact the identification of Kriol speakers by non-Kriol speaking legal professionals. As discussed in §5.3.1.1, legal professionals are not equipped with the linguistic training required to accurately identify Kriol-speaking clients and ascertain their need for an interpreter. In order to circumvent this problem, legal professionals often attempt to identify Kriol speakers by enquiring directly from the client about what language they speak and whether or not they require the assistance of an interpreter. While this method is more likely to elicit correct information about the language status of a client, it relies heavily on self-identification by Kriol speakers. Self-identification has been shown to be a problematic notion which contributes in part to the significant under-reporting by even monolingual Kriol speakers of Kriol as their primary at-home language. There is attributable to a number of factors which are discussed in the following sections.

5.4.1 Issues with nomenclature

As mentioned in §5.1, despite the Australian Bureau of Statistics (ABS) 2016 census report that Kriol speakers number around 7000, linguists have put the number as around 20,000 to 30,000 speakers (Schultz-Berndt et al., 2013, p. 241). One of the main factors contributing to this discrepancy is the fact that the label 'Kriol' is not uniformly used by all Kriol speakers, especially in areas where traditional languages remain widely spoken. In Question 18 of the ABS 2016 census regarding languages other than English spoken at home, aside from English and some of the major heritage languages spoken in Australia, all other languages, including Kriol and other Indigenous languages, fall under the category of 'other', and speakers have to specify the language by name (Figure 4). This means that unless a person identifies particularly as a Kriol speaker, they are less likely to include the language in the census. Given the creole continuum of Kriol,

and its close relationship to AE, many speakers of the lighter varieties of Kriol likely indicate that they speak English at home.

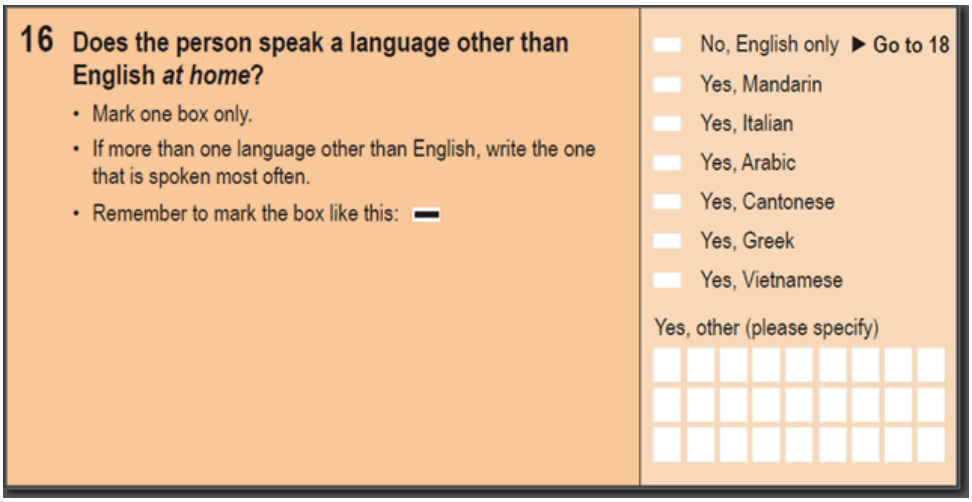

Figure 4: Question regarding languages spoken at home as appears in the ABS 2016 census

The influence of nomenclature on the identification of Kriol speakers is also confirmed by research into the language. Rhydwen (1996, p. 4), for example, notes that while people in Barunga and Ngukurr are happy to use the name 'Kriol', the term 'pidgin' is still also regularly used, especially by older speakers. The interchangeable use of the labels 'Kriol' and 'pidgin' is still occurring, though to a lesser extent. In my own conversations with Kriol speakers in Katherine, some still referred to it as 'pidgin English' and one speaker even termed it 'Katherine pidgin' *[Katherine_Jun2018_Field Notes_p. 16]*. Similarly, some of lawyers interviewed reported their clients using terms like 'pidgin' and 'blackfella English' when asked about the language they spoke at home. Many simply insisted that they spoke English *[Katherine_Jun2018_Field Notes_p. 16]*.

The use of the labels such as 'pidgin' and 'pidgin English' by Kriol speakers to describe their language does not always align with official classifications of creoles and pidgins in Australia. An example of this is found in the 2014-15 National Aboriginal and Torres Strait Islander Social Survey's classification of the languages spoken by the respondents. When a respondent indicated that they spoke Kriol, they were classified as speaking an Aboriginal or Torres Strait Islander language depending on how they identified.

However, when a respondent identified their language as a pidgin, they were classified by the survey as speaking an 'other language'[41] which means that Kriol speakers who labeled their language 'pidgin' were not always identified. This inconsistency undoubtedly contributes to the under-reporting of Kriol speakers, which is problematic because it can lead to fewer allocation of resources for Kriol speakers, including pedagogical and language materials as well as funding for interpreting services.

Another aspect of nomenclature is its relation to dialectal variation. There is a perception among many Kriol speakers that the term 'Kriol' applies only to varieties present in particular areas of the Northern Territory such as Roper River, which is widely acknowledged as the birthplace of Kriol, and surrounding areas like Barunga and Beswick (Rhydwen, 1996). A Kriol interpreter interviewed for this research noted that this perception still lingers in many areas especially in the Kriol-speaking regions of Western Australia, including the Kimberley *[Ngukurr_Nov2019_Greg Dickson_Interpreter_Interview]*. The multiple varieties of Kriol spoken in these areas are generally categorized under the umbrella term 'Westside Kriol' by interpreting services, though how much this categorization is shared by speakers is not fully documented.

Given the complexities of the naming conventions of Kriol by speakers and non-speakers, it is important that these issues are highlighted as part of the training provided to non-Kriol speaking legal professionals. A safeguard measure against possible miscommunication is to ensure that those working with Kriol speakers recognize the relationship between varieties of Kriol and the names given to them and take that into consideration when enquiring about a client's language. It is equally important that Kriol speakers are made aware of the different classifications and labeling practices of Kriol in order to ensure that speakers are self-identifying and receiving interpreting assistance if required. The latter can be achieved as part of existing community legal

[41] https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4720.0~2014-15~Main%20Features~Language%20and%20culture~12

education measures undertaken by government-funded legal organizations such as Legal Aid or interpreting services such as AIS and AIWA.

5.4.2 Attitudes to Kriol

Self-identification is also greatly influenced by attitudes towards language. In a sea of language change, entrenched colonial beliefs, and communicative agency, ascertaining exact attitudes and normative practices relating to Kriol is a challenging task. It is therefore unsurprising that there is a paucity of published research on the attitudes held by Kriol speakers and others towards the Kriol language (Although, see, Ponsonnet, 2010, discussed below). What emerges from these limited accounts is a loose consensus that, historically, prevailing attitudes towards Kriol by English speakers with little understanding of the language have been predominantly negative, while Kriol speakers' attitudes are contextual and display far more complexity and nuance.

Negative attitudes of non-Kriol speakers towards the language are discussed in detail in §8.4 as part of the exploration of Kriol and the coloniality of language. This section will instead focus on Kriol speakers' perceptions of the status of their language and how these perceptions relate to self-identification and the likelihood of a Kriol speaker requesting interpreting services. As this section demonstrates, Kriol speakers' attitudes are both varied and multifaceted. There are numerous linguistic, social, historical, interactional, and generational factors that contribute to the well-attested interspeaker and intraspeaker variation in the attitudes towards Kriol.

A relatively comprehensive exploration of speaker attitudes is found in Rhydwen's (1996) description of her personal journey working with Kriol speakers as a literacy researcher. Rhydwen's account is a deep reflection on her own cross-cultural experience that also provides valuable insights on the variation in attitudes among Kriol speakers, and the tension between linguists and native speakers' perceptions of the status of the Kriol language. In describing the linguistic situation in the community of Nauiyu Nambiyu (Daly River) which is home to a number of ancestral language groups, Rhydwen notes that although Kriol is widely spoken, speakers rarely admit to speaking

it (1996, p. 45). She suggests that there is, in fact, overt hostility to Kriol in Nauiyu Nambiyu, recalling how she once brought a Kriol book into the community and was told *'we don't want that rubbish language in our community'* (1996, p. 49).

A similar account is provided by McGregor (1988, p. 94) who notes a strong negative attitude towards Kriol among many speakers of traditional languages in the Kimberley region, and a strong feeling that their children should be taught to speak SAE. Likewise, Bradley and Yanyuwa Families (Bradley et al., 2016, p. 10) describe older Yanyuwa people insisting that the English taught to their ancestors by white people in the early stages of contact was 'not pidgin' but 'proper whitefella English'. They note that the people showed particular pride in their ancestors' ability to 'speak English right through' – an indication that speaking a pidgin was perhaps a source of embarrassment. I discuss this example in more detail in §8.4.2 by relating these attitudes to Veronelli's (2015) notion of 'coloniality of language' and Fanon's (1952) concept of 'epidermalization'.

Speaker attitudes are not always adverse, however, and can vary considerably even within one community. Sefton (1994, unpublished paper, cited in Eades & Siegel, 1999), for example, conducted a small scale survey of attitudes to Kriol in the Halls Creek area of Western Australia, and reported widely varying attitudes that ranged from 'lazy English' to 'an Aboriginal language'. Similarly, Sandefur (1986a, p. 124) notes that many Kriol speakers are no longer ashamed of their language and have in fact adopted it as a marker of their indigeneity.

Accounting for these divergent attitudes requires an understanding of the sociocultural context within which they occur. This is the basis for a study by Ponsonnet (2010) who investigates generational patterns of attitude towards Barunga Kriol in the remote Aboriginal community of Weemol in southwestern Arnhem Land. Weemol is typical of numerous places in Australia where Kriol is currently spoken; many of the older people still use their ancestral language, in this case Dalabon, while younger generations tend to be monolingual Kriol speakers. Ponsonnet's findings, therefore, shed some much-needed light on the various factors that influence the perception of Kriol.

Ponsonnet's exploration of the attitudes of different generations in the community began after a personal encounter with a young Kriol speaker who referred to his language as *breinwoj brom Inglij*, literally 'brainwash from English' (2010, p. 63). Ponsonnet was taken aback by the sentiment and set out to explore whether it was shared among other members of the community. She found that although some older people associated Kriol with English and colonial invasion, referring to it as *Munanga langguj* 'white men's language', middle-aged and older generations as a whole had more positive views of Kriol when compared to younger monolingual speakers.[42]

In order to explain this variance, Ponsonnet argues that any interpretation must consider linguistic, historical, and social contexts. She hypothesizes that older generations view Kriol as a tool of communication, adaptation, and diplomacy between Indigenous and non-Indigenous Australians in the post-colonial era. Older generations also considered Kriol a cultural device which they regularly used as a means of resisting cultural domination by white Australians, and thus became part of their historical agency. Furthermore, this older generation tended to have full mastery of their traditional language, Dalabon, and were deriving pride from their linguistic competence in both languages. In turn, they had little anxiety about the status of Dalabon and were comfortable with the Kriol language being used in their community.

Attitudes to Kriol among the middle-aged generation were similarly positive, albeit for different reasons. Ponsonnet notes that this generation considered Kriol as a bridge in language learning that assisted children in learning both English and Aboriginal languages. This generation demonstrated attachment to Kriol as a mother tongue, and an understanding of the claims to historical agency that were expressed by the older generation. They did, however, display more internal conflict about the relationship

[42] Ponsonnet is careful to point out that, due to the relatively small number of people interviewed, generalized conclusions should be avoided.

between Kriol and Dalabon, likely because they themselves were less fluent speakers of their traditional language.

Like other young people in Weemol, the young man who described Kriol as 'brainwash from English' had no mastery of Dalabon and could not derive any part of his Indigenous identity from it, nor did he seem to recognize any claims of historical agency associated with Kriol. He was also critical of the value of Kriol as tool of communication or learning. This resulted in an overall negative perception of his own language, something that Ponsonnet suggests may be commonplace among young speakers.

Ponsonnet's findings echo those reported by Sandefur (1990b, p. 17) at Roper River. He suggests that to older generations who spoke an Aboriginal language as their first language and Kriol as their second, Kriol was considered English. In contrast, younger generations with a more fluent use of Standard Australian English viewed Kriol as something other than proper English. Along similar lines, Rhydwen (1996, p. 37) hints at the authority vs. solidarity aspect of Kriol use. She notes that at formal council meetings, Kriol-speakers in a position of authority overwhelmingly used English, even when addressing a predominately Kriol-speaking crowd. In contrast, when people wanted to signal solidarity with her, especially privately, she would be generally addressed in Kriol.

Speaker attitudes towards Kriol, especially when they are negative, can influence the interpreting process. I discuss this influence in some detail in §8.4.2, but in summary, negative attitudes can lead to speakers feeling embarrassed and unwilling to ask for or accept interpreting assistance. This, in turn, can result in diminished access to justice for speakers of Kriol as they try to navigate Australia's legal system where English dominates in all aspects and settings of the law.

5.4.3 The role of Traditional Languages

5.4.3.1 Kriol and ancestral languages

In order to unpack some of the negative attitudes espoused by Kriol speakers, it is pertinent to explore the different perceptions of Kriol and traditional languages. An important aspect here is the triangulation of traditional languages, land, and the Dreaming in Indigenous Australia. This connection is made explicit by the widespread belief in many Indigenous communities that ancestral languages 'belong' to certain tracts of land because they were planted there by ancestral or Dreaming beings as a gift to the land and its people. Indigenous oral traditions abound with stories of Dreaming figures moving across country at the time of creation and leaving placenames, stories and songs in their languages (Evans, 2010) (see also §8.3.1). Unlike ancestral languages that were called into being by Dreaming figures, Kriol and its pidgin predecessor emerged from a protracted and ongoing process of personal, structural, and linguistic violence at the hands of colonial powers. Kriol is not a gift from creation beings; it is a product of dispossession. And although it has been shown to encode many of the kinship relations and biological knowledge of ancestral languages (see Dickson, 2015 for example), some speakers feel that Kriol lacks the rich history recorded in traditional songs, stories, and placenames.

Adding to the anxiety about the origins and history of Kriol is the relentless decline in the number of ancestral languages spoken in Australia. Any pride in being associated with Kriol is tinged with the sadness of watching traditional languages fall silent, and the realization that little can be done to stop the process of linguistic dispossession. While stolen land can be potentially reclaimed through various measures such as land claims and Native Title, it is far more difficult to bring back an ancestral language once it is no longer uttered by those for whom it means so much.

The intersection between the death of traditional languages and the internalized stigmatization of creoles is explored by Shnukal (1988) with reference to Torres Strait Creole (TSC), also known as Broken. Given that both TSC and Kriol are Australian creoles, Shuknal's findings can be reasonably applied to Kriol as well. Shnukal describes

how Torres Strait Islanders in the late 1880's and early 1900's held the newly developing creole in high regard, believing it to be the same as the English spoken by whites. It was not until after WWII that the islanders became aware of the negative attitudes of whites towards TSC as a 'bastardized' and 'ungrammatical' form of English. This negative outsider view, coupled with the weakening of traditional languages in the Torres Strait Islands caused TSC speakers to view their creole as a threat to traditional languages. As Shnukal observes, many islanders would have found it easier to accept the loss of their ancestral languages if the replacement was a language of prestige that would afford them similar opportunities as white Australians. Instead they felt that Broken was used by white Australia to mark Torres Strait Islanders as second-class citizens and thus deprive them of social justice (Shnukal, 1988, p. 8). Kriol speakers face a similar dilemma. The language that has replaced their traditional languages is one that has never had many champions (Abley, 2003). Kriol brought its speakers no closer to an equal footing with non-Indigenous Australians; if anything, it sometimes moved them further away.

Despite the gradual improvement in the status of Kriol, many speakers still display significantly more reverence for traditional languages. A national survey of Indigenous identity and wellbeing (Marmion et al., 2014) asked participants to respond to a number of statements regarding their language use. Figure 5 shows responses to the statement *'It is more important to be able to speak recently developed Indigenous languages such as Kriol, Yumplatok, or Aboriginal English than traditional languages?'*. The large number of respondents who disagreed with this statement indicates the prestigious position still held by ancestral languages in the minds of Indigenous people.

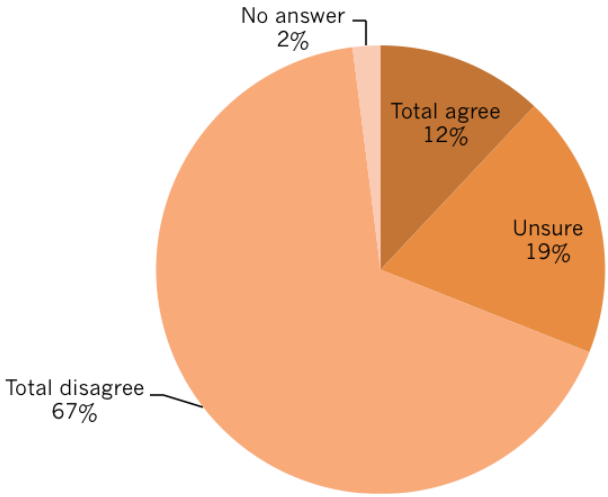

Figure 5: Responses to the statement 'It is more important to be able to speak recently developed Indigenous languages such as Kriol, Yumplatok, or Aboriginal English than traditional languages' - percentage out of 288 respondents. (Marmion et al., 2014, p.39)

5.4.3.2 The impact of traditional languages on speaker identification

Associating with ancestral languages rather than the language one speaks can have implications on the identification of Kriol speakers who are in need of interpreting assistance. For example, *how* lawyers ask their client about their language can influence the client's response. In discussing the need to engage interpreters, one of the lawyers interviewed said the following:

> *It is not on you to determine that someone needs an interpreter…but the first step should be* 'what's your first language? we're going to talk in your first language, your best language' *and for that to be right from the beginning.*
>
> *[Katherine_Jun2018_TL_*Lawyer*_Interview]*

I note here that TL intended to emphasize that lawyers are not trained adequately to assess English proficiency and should therefore defer the decision to their client. However, the use of expressions such as 'first language' and 'best language' may

inadvertently elicit the client's ancestral language and lead to interpreting services being booked in a language not necessarily spoken by the client.

Many Kriol speakers, when asked about their language, would often cite their ancestral language instead. Rhydwen (1996, p. 45) notes that although Kriol is widely spoken, even monolingual Kriol speakers will nominate an ancestral language as their language. Ancestral languages are tied in with Indigenous identity to such an extent that a person's language group is often one of the first things they mention when introducing themselves to others, using expressions like 'I am a Marra woman' or simply 'I am Marra'. I discuss this in more detail in §8.3.1 where I present an example of language ownership and identity in the Kija and Jaru languages of the east Kimberley region of Western Australia (Blythe & Wightman, 2003, p. 72). Kriol speakers, on the other hand would not identify as a 'Kriol man' or a 'Kriol woman'. For this reason, language training of individuals and organizations that deal with Indigenous people should include specific instructions to use question such as 'what is the main language that you speak at home?' to ascertain which interpreters to engage.

The above sections explored some of the main linguistic factors impacting the provision of interpreting services in Kriol. The following section presents a case study involving a Kriol speaker in a court setting in order to demonstrate the kind of miscommunication that can result from the lack of interpreting services in legal contexts.

5.5 "What does 'couple' mean to you?": A case study

As discussed in §5.2.1, the presence of Kriol words that have a different meaning to their English counterparts can lead to stark and often masked miscommunication. In this section, I present a case study where the different meanings of a word became a point of contention and disputation during a court hearing and resulted in a Kriol-speaking vulnerable witness feeling intimidated and confused. In Chapter 7 I analyse an example of miscommunication that also occurred during this hearing which arose due to a lack of cultural understanding by the court of the authority of certain members of kin, but

in this chapter, I will focus on a language-based misunderstanding that could have potentially had a significant impact on the court's perception regarding Witness X's credibility.

I begin by outlying the main details of the court hearing before describing some of the instances of language-based misunderstanding that occurred during the witness examination. I then examine one particular misunderstanding and argue that it stemmed from differing conceptualizations of one particular lexical item. I hope to demonstrate that such miscommunication could have been avoided if a qualified and accredited interpreter had been provided to the witness.

Although the hearing was public and the case itself is not subject to any suppression orders or restrictions on reporting, I have chosen to omit certain details of the allegations, as well as the location and date of the hearing, in order to mitigate the risk of the people involved being identified. Also for this reason, the witness will be identified only as Witness X. The hearing centred on an allegation of two separate incidents of domestic violence involving the same witness and defendant that occurred two days apart. On the first occasion, Witness X alleges that in the course of a domestic violence assault, the defendant had pushed her head against a brick wall multiple times. Witness X alleges that on the second occasion, which occurred at a different location to the first assault, the defendant had pushed her down causing her to fall to the ground. Two to three days after the second incident, Witness X provided a single statement to the police regarding both occasions. The statement was written by the police officer who interviewed Witness X and it was subsequently read out to her before she signed it to confirm the veracity of its contents. At no stage did Witness X personally write or read any part of her statement.

It is important to note here that Witness X is a Kriol speaker and that while she speaks some English, I observed during the hearing that her proficiency was quite limited. She responded to questions during the hearing in English, and as I demonstrate later on, she is most likely using AE. Witness X was not provided with an interpreter at any stage.

There was no interpreter present during the police interview when the witness provided the statement later used as evidence in the hearing. An interpreter was also not engaged during her interactions with the prosecution for whom she was the main witness. The hearing also went ahead without an interpreter. In fact, the lawyer for the prosecution began the hearing by saying something along the lines of *"I know that you speak English, so I'm now going to ask you some questions",* thus foregoing any possibility that an interpreter would be used. Although there was a qualified Kriol interpreter present in the court, they were there at the request of the organization that acted as the defence team in this particular hearing.

I emphasize the lack of interpreting services for Witness X because, as I show below, some of the statements made by her during the hearing demonstrate that she experienced considerable difficulty understanding some of the questions posed to her by both the prosecution and defence. It was apparent that communication was often strained and that many small instances of misunderstanding either went unnoticed or they were quickly glossed over.

Firstly, however, I want to give a contextual background to the misunderstanding in order to give a clearer picture of the communicative process during the hearing. I start by presenting a few examples that show Witness X's difficulty understanding some questions during cross examination by the defence:

Example 1: This misunderstanding occurred during the defence's questioning regarding the location of the second alleged assault. The defence lawyer here is trying to establish where the assault had happened. He instructs Witness X to *"now think back to the second assault"*, before the following exchange:

Defence Lawyer: *Do you remember where you were?*
Witness X: *Yes.*
(Long silence)
Defence Lawyer: *Where were you?*

Witness X: *I was still sick.*

After another period of prolonged silence, the defence lawyer specifically refers to the location of the second assault and asks Witness X to verify the location, which she does.

In the first part of the exchange the question 'do you remember where you were?' is likely intended as a prompt for the witness to provide a specific location rather than a literal inquiry regarding whether or not she actually recalls the location. In this case, however, Witness X seems to address the question literally and has to be prompted again with the direct question *'where were you?',* the answer to which is also unusual and offered without additional context.

It is difficult to gauge from this response whether Witness X understood the question and was providing what she thought was an appropriate answer. Her *"I was still sick"* response would make sense if she was implying that she had remained in the same location where the first assault took place as she was too sick to go elsewhere, but in fact Witness X was residing at a different location at the time of the second assault, so the above inference cannot be made. This response could also be construed as an evasive strategy. However, I observed that Witness X was actually forthcoming with her answers on other occasions during the cross examination, at least when she seemed to understand the context of the question. It is therefore not unreasonable to imply that the witness was unable to fully understand the question or did not recognize that she was being asked about the second incident.

Example 2: In relation to Witness X suspecting that her husband was having a sexual affair with another woman:

Defence Lawyer: *You didn't think there was another lady?*
Witness X: *Yes.*
Defence Lawyer: *So you did think there was another lady?*
Witness X: *No.*

This example hints to the fact that Witness X was likely using AE in her responses. Answering negative questions by either confirming or denying the negative proposition contained within them is a well-documented practice in AE (Cooke, 2002, pp. 24–27; Lester, 1982). Replying 'yes' to a negative question is an affirmation of the veracity of the proposition itself, so in this case Witness X's initial response of *"yes"* is her affirming that she did *not* think there was another lady.

Responses given by Aboriginal people to negative questions can seem confusing and ambiguous, particularly if the question contains multiple or complex clauses or tags such as such as 'didn't you?' or 'is it?'. It is a known fact among many experienced lawyers who have worked for extended periods with Indigenous clients that framing questions in particular ways, including the use of negative interrogatives, can elicit specific desired responses. I asked a number of the lawyers about the strategies they use in questioning Aboriginal witnesses and defendants, and many acknowledged that despite knowing the confusion caused by certain questioning styles, they continue to use these styles in cross examinations. As a lawyer explained it to me *"at the end of the day, my job is to act in the best interest of my client, so I have to be able to convince the judge or the jury" [Katherine_Nov2019_Field Notes_p. 32]*.

During cross examination, the witness also struggled to understand some of the terminology used by the defence in their questioning, including the word 'exaggerate' which had to be explained to her, as well as the construction 'I put it to you' which the defence lawyer had to rephrase as 'I'm saying that' after realising Witness X's confusion. Overall, it was clear that despite the prosecution's claim that Witness X spoke sufficient English, her understanding of certain aspects was limited and was contributing to her feeling quite rattled during cross examination.

The main incident of miscommunication in this hearing, however, involved a misunderstanding regarding the meaning of the word *couple*. In her statement to the police, which was used by both the prosecution and the defence as the main source of

evidence in this hearing, Witness X had claimed that the defendant had pushed her head against a brick wall *"a couple of times"* during the first assault. When asked to recount the details of the assault by the prosecution, Witness X was asked specifically how many times the defendant had pushed her head against the brick wall, to which she replied *"three to four times"*. This discrepancy was immediately noted by the defence lawyer who in cross examination asked Witness X again about the number of times her head was pushed against the wall, and again she replied with *"maybe four times"*. When the defence asked her whether she was sure that it was four times, she nodded her head in agreement. The defence then asked Witness X why she had told the police in her statement that the defendant had pushed her head a couple of times but is now saying that it was four times. Witness X did not seem to understand what was being asked of her so she remained silent, though she looked quite perplexed. The defence lawyer then reiterated his question, but this time adding that he thought Witness X had either lied to the police when she was being interviewed for the statement or was now lying to the court. Again, Witness X did not seem to understand the issue on hand. The defence then requested that Witness X read out to the court the part of her statement where she had specifically said a "*couple of times"*. Witness X did not seem to be able to read the statement and so the defence lawyer read out that part himself. This time, the lawyer specifically asked Witness X if she meant 'two times' when she said *"a couple",* to which the witness replied that she definitely did not mean just twice. The lawyer then asked the very telling question *"what does 'couple' mean to you?"* but unfortunately, he moved on immediately before Witness X could respond. The defence then presented the court with an extended monologue in which it was implied that if Witness X was lying about this aspect of the incident, then perhaps she was lying about the whole incident even taking place.

Witness X seemed genuinely blindsided by these accusations. It appeared that she could not understand the perceived discrepancy between what she reported to the police in her statement and what she had been telling the court. She continued affirming that she was telling the truth when she used the expression 'a couple of times' in her police statement but was also telling the truth to the court when she said the defendant had

pushed her head four times. This became a sticking point for the defence who continued to press Witness X about this point until the judge ordered them to move on. By this stage, Witness X was both confused and irritated, and her answers to subsequent questions were shorter and less direct.

But what seems like an inconsistency in Witness X's claims regarding the number of times that her head was pushed can be seen in an entirely different light if we take into consideration the linguistic context of the hearing. Witness X is a Kriol speaker and although she was using AE during the hearing, her replies were most likely influenced by her Kriol-based conceptualizations of the word 'couple' which are different from those of a SAE speaker. *Kapula* is the Kriol rendering of the English word *couple,* but the two words differ in their semantic scope. I'll begin by briefly discussing the sematic range of the English word *couple* in SAE. The following is the definition of *couple* that appears in the Macquarie Dictionary, the authoritative dictionary of Australian English widely used in the legal profession in Australia to ascertain definitions that are not clearly set out in legal sources:

***Couple*: Noun**

1. A combination of two; a pair.

2. Two of the same sort connected or considered together.

3. Two people in a romantic relationship: a young married couple.

4. Two people associated as partners in a dance, etc.

5. A small number; a few: in a couple of minutes; a couple of things to do.

6. Mechanics a pair of equal, parallel forces acting in opposite directions and tending to produce rotation.

7. A leash for holding two hounds together.

8. One of a pair of rafters or beams that meet at the top and are fixed at the bottom by a tie.

For the most part, the definition of *couple* in SAE seems to relate directly to 'two of the same or similar things'. Entry 5, however, indicates that *couple* in fact has extended its meaning so that it can denote the notion of 'few'. Exactly how many are in a 'few' is never delineated, though it is always understood to be a small number. Although there has been no research into the precise semantic range of *couple* in SAE or any other variety of English, it would be uncontroversial to claim that many native speakers of SAE would regularly use the word *couple* to refer to more than just two, though the maximum number tolerated would differ between individuals. For example, whether the expressions 'a couple of times' and 'four times' can be considered exchangeable will depend on individual speakers.

In Kriol, the word *kapula* does not carry the same strong association with 'two' as *couple* does in SAE, although it may be used to describe two people in a relationship, e.g., *hasben en waif* 'husband and wife'. In fact, *kapula* is closest in meaning to the English word 'few' and is usually used to refer to a small indefinite number and not a pair or two of something. The following is an example of real-life usage of the word by a Kriol speaker from the community of Bulman in the Northern Territory. The example comes from unpublished linguistic data collected by Dr. Greg Dickson, a linguist and Kriol interpreter, in the course of his Kriol dialectology research. The Kriol speaker is responding to a question about how many times he has been to the Barunga Festival.

> *Yea ai bin go* ***kapula*** *taim, maidi siks taim, ai tingk*
> 'Yeah, I went a **couple of** times, maybe six times, I'd say'
> (Dickson, 2018a, unpublished data, used with permission)

This recorded example aligns with similar usage of the word among other Kriol speakers in varying contexts *[Jan2020_Greg Dickson_Interpreter_Personal Communication].* As such, it is reasonable to assume that while many SAE speakers will use 'couple to mean either 'two' or a number in the vicinity of 'two', Kriol speaker's use of the word denotes a larger number, something more akin to the SAE speaker's use of 'some' or 'a few'.

In this particular case, Witness X's use of the English word *couple* in her police statement is likely intended to refer specifically to 'more than twice'. As mentioned, Witness X was not provided with an interpreter during her police statement, nor did she read or write any part of her statement. It can be assumed then that when the police officer wrote the statement and read it back to the witness, the latter's understanding of *couple* was never specifically clarified. As Witness X gave evidence in AE during the hearing, she likely also used AE when being interviewed by the police. The rendering of *kapula* into *couple* in the police statement, while seemingly innocuous to both Witness X and the police officer at the time, came to be used later by the defence as a strategy to attack the witness's credibility.

While the above incident did not impact the judge's decision in this case – the judge ultimately accepted that the defendant hit Witness X multiple times - it left the vulnerable witness very shaken. Her negative experience is in itself a poor outcome which can have repercussions on the way she and the community members who were present at the hearing view the justice system. There is also the risk that in a different setting, perhaps one that involved a jury, these accusations could have potentially influenced the court's perception of the witness's credibility, leading to a different result.

It is clear that Witness X would have benefitted greatly from the assistance of a qualified interpreter both during her police interview and in the court. She was vulnerable on both occasions. The police interview took part not long after Witness X had been assaulted, and the presence of an interpreter would have allowed the traumatized woman to communicate her story in much more detail. In the stressful and

overwhelming setting of a court, especially with a restricted view of the legal team, the witness would have also felt quite uncomfortable, which would have been exacerbated by her difficulty understanding the complexities of legal language and the barrage of sometimes thinly veiled, sometimes direct, accusations from the defence. A qualified Kriol interpreter with the training to recognize these kinds of misunderstandings would have been able to offer to the court an explanation of the discrepancy between the witness's use of 'couple' and 'four times'. This was in fact confirmed to me by a Kriol interpreter who was not present during the case, but who indicated that they would have immediately requested that they are given a chance to clarify the misunderstanding by explaining the different meaning of the Kriol word *kapula* both to the client and the court.

In fact, the linguistic context in this court case was not dissimilar to that of *The State of Western Australia v Cox [2008] WASC 287* discussed in §5.3.1.1. Like Mr. Cox, Witness X is a Kriol speaker, and like Mr. Cox, in the absence of an interpreter, she gave her evidence to the court in AE, which made some of her responses less comprehensible to the SAE speaking judge, prosecution, and defence. Moreover, her police statement was written in SAE, a variety she likely did not speak, let alone understand how it differed from Kriol or AE. She was linguistically disadvantaged at almost every stage of her court case and would have been far less so had she been provided with interpreting assistance, the right to which is enshrined in international and Federal law.

5.6 Concluding remarks

This chapter provides an overview of the linguistic factors that impact both communication and interpreting with regards to Kriol in the justice system. As Kriol is now the largest Indigenous language spoken in Australia, ensuring that Kriol speakers are not linguistically disadvantaged in legal, medical, and educational contexts is of utmost importance. Mitigating linguistic disadvantage in the justice system involves increasing awareness among legal professional of the nature and status of the Kriol language as well as the linguistic needs of its speakers. A recognition of the crucial role

played by interpreting services in facilitating communication in legal settings is also paramount. Educating legal professionals about the factors that impact the identification of Kriol speakers and the provision of adequate and timely interpreting service is a necessary step towards ensuring equal rights and opportunities for Kriol speakers engaging with Australia's justice system where a monolingualism remains the prevailing mindset.

The next chapter interrogates the racio-political context of Kriol use and interpreting in Katherine and the surrounding region. It expands on the some of the themes explored in this chapter with a particular focus on the interplay of language and politics.

6 THE RACIAL POLITICS OF INDIGENOUS LANGUAGE INTERPRETING

I arrive in Ngukurr on the morning of November 11th 2019, two days after the death of teenager Kumanjayi Walker, who had been fatally shot by the Northern Territory police during a botched arrest in the Aboriginal community of Yuendumu[43]. Ngukurr and Yuendumu may be geographically distant from one another, but the two Indigenous communities are very similar in their remoteness, size, and demographics, making the incident feel close to home for many Ngukurr residents. The shooting, and its aftermath, is dominating most conversations and there is palpable tension in the air.

A few days later, I attend a workshop at the community centre aimed at recruiting Kriol interpreters. The workshop is well-attended, and a number of community members of varying ages are present, eager to find out about the path to becoming interpreters. A part of the workshop is run by a legal organization and involves explaining some of the concepts that interpreters encounter in legal contexts, such as bail, sentencing, and parole. At one point, the lawyer begins to describe the procedures involved in the process of arrest, including the rights and responsibilities of the police officers and the person they are arresting. The mood shifts immediately, and suddenly there are murmurs of *'Well, explain that to the police in Yuendumu'* and *'That's not what happened with that poor boy'*. Next to me sits a gentle old lady to whom I had spoken earlier. She stands up, and with her voicing

[43] https://www.abc.net.au/news/2019-11-13/yuendumu-police-shooting-nt-as-it-happened/11692900

cracking with anger, yells above the rest *'Why bother talking about this interpreting stuff when the policeman can just come and shoot you?'*

[Ngukurr_Nov2019_Personal Diary_p. 8]

6.1 Background and chapter outline

At the heart of this chapter is the recognition that the act of interpreting does not occur in a political vacuum, nor is it always apolitical itself. Indigenous language interpreting is particularly susceptible to the racio-political setting in which it takes place. Most Indigenous language interpreters work in institutions where structural racism is a common feature, including in legal and health settings, yet they are frequently overlooked in discussions about race and representation. One of the main aims of this thesis is to acknowledge that in order to address the inequalities that Indigenous people face in the justice system, we must first work towards having a shared sense of reality. The fact is, the justice system does not always view the use of language through the same lens as Indigenous people, especially in matters of interpreting. As Indigenous communities continue to wrestle with questions of representation and restorative justice, the need to demand better understanding of Indigenous language interpreting in legal settings has never been greater. There is also an equally urgent need for the justice system to interrogate the ways by which it is potentially contributing to the marginalization of Indigenous language interpreters and the silencing of their voices. There is arguably inadequate recognition in the justice system that Indigenous language interpreters regularly come from marginalized communities and with a history of witnessing injustices towards their people. The corollary of turning a blind eye to this important aspect of interpreting is that many of the challenges encountered by Indigenous interpreters, including their ability to strictly adhere to the code of ethics that regulates their profession, can go unnoticed and unaddressed by the justice system.

This chapter aims to explore the intersection of power, race, and Indigenous language interpreting by emphasizing the impact of racial politics on the experience of the interpreters themselves. The chapter is divided into three main parts. The first part (§6.2) sets out the historical and political background of Indigenous language interpreting in Katherine. In this section, I briefly outline the history of modern race relations in Katherine and draw attention to how race relations translate to the distinct patterns of visibility of Indigenous people in Katherine. In §6.3, I examine how race and power dynamics impact some of the important decisions made in relation to Indigenous language interpreting. The section includes a discussion of the power plays that plagued the establishment of professional Indigenous interpreting services and an examination of the impact of power differentials on the continuing discretional, and often inadequate, use of interpreting in the justice system. The third part, §6.4 shifts the focus to the visibility of interpreters, specifically in court settings. Here, the notion of visibility is expanded to include the physical positioning of interpreters, public recognition of the interpreting profession and its impact on interpreter confidence (§6.4.1), and the complex relationship between invisibility and impartiality (§6.4.2).

6.2 The political context of interpreting in Katherine

In order to highlight the importance of localized contexts, this chapter focuses particularly on Katherine and the surrounding region. The challenges faced by Indigenous language interpreters who work in Katherine are explored against a background of the specific historical and contemporary race relations that shape Indigenous engagement with the justice system in the region. However, I recognize that many of the issues discussed here will also be applicable to Indigenous language interpreting throughout Australia. Colonialism has not only left similar scars across the country, but it continues to inflict similar wounds on countless Indigenous communities. The result is a near-uniform backdrop of power and race dynamics against which interpreters carry out their work. It is therefore not unreasonable to posit that interpreters in Katherine would grapple with the same issues of structural racism, disempowerment, and marginalization as interpreters in other parts of the country.

6.2.1 Brief background of race relations in the Katherine region

Like other parts of Australia, Katherine has at times been a hotbed of racism and discriminatory policy. Insightful accounts of racialized politics in Katherine and the surrounding region include Francesca Merlan's (1998) compelling study of Katherine and its people's relationship with kin, place, and power, as well as Gillian Cowlishaw's (1999) account of colonization and race relations in the town of Bulman in Central Arnhem land. In order to contextualize the issues facing Indigenous language interpreters in Katherine, this chapter begins with an overview of the racial politics that have in part shaped both the town's history and the ongoing relationships between its Indigenous and non-Indigenous residents.

Although racism has been a feature of daily life in Katherine since the town's establishment in the late 19th century, the nadir of modern-era race relations between Aboriginal and white residents of Katherine was arguably in the 1970's and 1980's, catalysed by a land claim launched by the Jawoyn traditional owners over their homelands. On March 31, 1978, the Jawoyn people submitted the Katherine Area Land Claim, under the Land Rights Act (NT) 1976, which covered a large area of the Katherine region including the Nitmiluk National Park. The land claim process was protracted, lasting for over a decade and sparking a great deal of animosity and hostile debate fuelled by the false belief that handing the national park to the traditional owners would result in the closure of the famous Katherine Gorge, which is both a significant landmark and a huge tourism drawcard[44]. The debate over land rights was centred on race from the very beginning. With many local non-Indigenous residents opposing the land claim, lobby groups formed quickly, including the organization 'Equal Rights for Whites' which consequently changed its name to 'Equal Rights for Territorians' in an attempt to camouflage its racist foundations. Some of the members of this organization

[44] These days Katherine Gorge is managed jointly by the NT Government and the Parks and Wildlife Commission, after the Jawoyn Association leased it back to the Government immediately after taking possession of it in 1989. The gorge remains a thriving tourist destination all year round.

would later form the 'One Nation One Law' and the 'Committee for Community Ownership of the Katherine Gorge National Park' lobby groups which were particularly vociferous during the claim's hearings in Katherine and Barunga in 1982-1983 (Merlan, 1998, p. 177).

Before long, the town's streets became the canvas for outright displays of racism including rallies and marches organized by opposition groups. Some residents went as far as erecting 'sacred site' signs on their front gardens, directly mocking Indigenous connection to land (Crough, 1993, p. 43). The road leading to Katherine Gorge was also littered with threatening signs such as *'my sacred site, fuck off'*, *'sacred site, enter here at your own risk'* and *'sacred site, trespassers will be shot'* (J. Bradley, personal communication, July 17, 2020)

Most disturbing was the formation of the Australian branch of a United States-based organization known as SPONGE (Society for the Prevention of N*****s Getting Everything), whose reputation had been notorious despite having very small membership. Though none of this organization's activities in the Northern Territory was recorded or appeared in press, I was told by some of the residents who remember that contentious period that SPONGE was indeed openly active in Katherine. The logo of the organization, black drops being wrung out of a white sponge, was displayed around town, and some residents wore t-shirts with the logo as a signal of their affiliation with the organization *[Katherine_Nov2018_Field Notes_p. 28; J. Bradley, personal communication, July 17, 2020]*.

There are, however, many *recorded* accounts of racial violence and intimidation in Katherine at the time. On the 18th of December 1989, shortly after the land claim was settled in favour of the Jawoyn people, the offices of the Northern Land Council in Katherine were subjected to racist graffiti which referenced the KKK (Race Discrimination Commissioner, Human Rights and Equal Opportunity Commission, 1991). The fires of racial tension were also occasionally stoked by the government. In response to a proposal for the establishment of an Aboriginal cultural centre in

Katherine, the then Minister for Lands and Housing, Mr. Max Ortmann, wrote to the residents of East Katherine regarding the site of the proposed cultural centre and asked them whether they preferred a shopping centre with a cinema complex to be built on that site instead (Crough, 1993). Crough speculates that this was nothing more than a cynical exercise by the government designed specifically to increase racial tensions.

There is little question that the authorities were in fact encouraging the fraying of relationships between Indigenous and non-Indigenous residents of Katherine. Vocal opposition to the Nitmiluk Land Claim came directly from the mayor of Katherine, Jim Forscutt, as well as members of the incumbent Northern Territory Government, with the then speaker of the Northern Territory Legislative Assembly leading a street rally against the land claim (Gibson, 2013, p. 163)[45].

The protracted legal case also impressed upon many Indigenous residents the notion that the justice system was working against the Jawoyn people's claim to their land, further entrenching the distrust of the legal system in the region that continues to this day (see cartoon in Figure 6 below).

[45] The NT government has a legacy of opposing almost all Land Rights and Native Title claims on principle.

Figure 6: Cartoon depicting the law as complicit in the fight against land rights for the Jawoyn people of Katherine. Source: https://blogs.crikey.com.au/northern/2016/02/07/les-macfarlane-of-moroak-cattleman-politician-racist/

I describe these events not only to draw attention to the fact that Katherine did not escape the scourge of racism experienced by other towns and communities in the region, but also to highlight that such incidents are not simply part of a long-forgotten chapter of Katherine's history. These are relatively recent, and in fact continuing events, ones that form part of the collective memory of many interpreters who currently work in Katherine. Several of the white residents who marched down Katherine's streets still live in town and are known to the Indigenous people I spoke to, including to the interpreters. When I asked a resident about this topic, she replied *"Oh yeah, you still see them around, and they're still racist as fuck" [Katherine_Nov2018_Field Notes_p. 25].*

Overtly racist marches may no longer be part of life in Katherine, but racial tension is undoubtedly still a significant issue. From my conversations with the town's locals, both Indigenous and non-Indigenous, it was clear that many believed that racism was simmering below the surface. Discussions about race relations were not always immediately welcomed, and at times my questions felt like applying pressure to a bruise.

As a result, these discussions often grew organically from conversations about life in Katherine. For example, my informal chats with some of the non-Indigenous local traders revealed a level of frustration at what they perceived as the preferential treatment of Indigenous-operated businesses. Many conversations began with descriptions of Katherine as a multicultural place where white and Indigenous locals live happily together, yet frequently turned to the traders lamenting how Indigenous organizations and businesses receive substantially more government funding and subsidized bank loans, when non-Indigenous businesses have to rely on their own financial means. Some described feeling that they lacked equality with Indigenous businesses, while others conceded that it was a way of achieving equity for Indigenous people following a long history of discrimination. Despite having these reservations, when asked specifically whether taxpayers' money should be spent on providing interpreting services for Indigenous languages, all the traders I spoke to were in agreement that such expenditure was justifiable and necessary, and none considered it a form of preferential funding *[Katherine_Jan2018_Field Notes_p. 3]*.

Conversations about racialized politics with Indigenous locals struck a different note. Many were emphatic that racism is alive and well in Katherine and the Northern Territory in general. Some residents even described witnessing or personally experiencing racial discrimination. An Indigenous resident who had occasionally worked as an interpreter recounted an incident where she was stopped and searched in a department store in Darwin for no apparent reason. She explained that she felt helpless and humiliated at the time, especially because the incident was witnessed by members of her family, including children. She also described how those feelings lingered as she went to work as an interpreter the following day *[Katherine-_Nov2018_Field Notes_p. 25]*.

Indigenous interpreters are by no means immune to the effects of historical and current racism and racial tension. They live and work in the very towns and communities where toxic race and power relations are not a marginal feature of daily life, but are 'baked in the cake', intertwined with every aspect of one's existence. It is not possible to

disentangle Indigenous language interpreting and the lived experience of Indigenous interpreters from the web of racial politics that are present in the justice system and other institutions in the region. The impact of growing up in communities that bore the brunt of numerous discriminatory policies can have on interpreters cannot be ignored if we are to arrive at a real understanding of the issues they face in their day-to-day work.

6.2.2 Patterns of visibility and the politics of separation

Katherine's long history of tense race relations is reflected nowadays in the patterns of visibility of Indigenous people in town, which have been remarkably consistent across the years. Indigenous people are frequently present in particular contexts and almost never in others. For example, they make up the overwhelming majority of the town's itinerant population, the so-called 'long grass people', living and congregating in the parklands around the town centre. It is predominantly Indigenous people who gather outside the pub, the bottle shop, the supermarket, and the couple of fast-food restaurants in town. More upmarket cafés, restaurants, and shops are frequented almost exclusively by non-Indigenous people. A striking example of this division is found in the café at the Katherine Visitor Information Centre on the outskirts of town. The small leafy establishment is almost entirely surrounded by a high metal fencing. Inside, tourists and locals can enjoy coffees and toasted sandwiches on comfortable shady tables. The café is open for all, but there are rarely any Indigenous patrons. Indigenous residents are often seen sitting on the grassy area outside the café, at times leaning against the fence. The optics of the place are undeniably jarring and yet the response from the locals is ambivalent at best. A non-Indigenous lawyer who had lived in town for a number of years, and who continues to be shocked by the recurrence of this sight, referred resentfully to the café as a 'reverse ghetto' and mused that the coffee there

"comes with an extra shot of white privilege" *[Katherine_Jun2018_Personal Diary_p. 18]* [46].

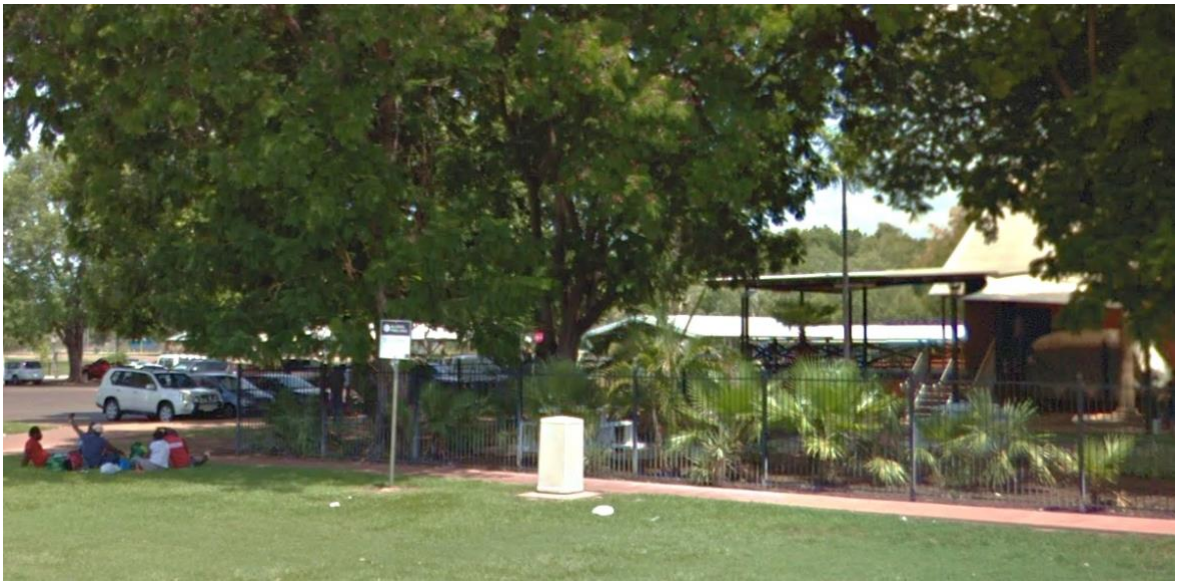

Figure 7: The Katherine Visitor Information Centre. Image obtained from Google Earth on 4/3/2020

Why does this small café matter? It matters because these scenes play out all over Katherine, the Northern Territory, and Australia at large. Australia's apartheid is not a vestige of the past. The Freedom Ride in 1965 may have exposed a segregationist Australia that horrified onlookers and drew attention to the ongoing discrimination against Indigenous Australians[47], but it did not put a halt to segregationist practices. In 2019, the Ibis Styles Hotel in Alice Springs was found to have deliberately directed its

[46] See also Smith et al.11/01/2022 6:38:00 AM (2017) on this particular café as emblematic of racial division in Katherine

[47] The Freedom Ride was a fact-finding trip by students from the University of Sydney that surveyed the appalling living conditions of Aboriginal people living in NSW towns and exposed a number of segregationist policies including banning Aboriginal people from local establishments and imposing curfews on Aboriginal children in swimming pools

staff to assign inferior rooms to Aboriginal patrons, evidence that segregation and the racist ideologies on which it is founded are still openly practiced[48].

The contemporary politics of separation are not always so overt. The metal fence shown above may conjure up a notion of a gated community, but in reality, the barrier to the Indigenous people sitting outside that café is invisible. Like the many other establishments in Katherine where Indigenous residents feel uncomfortable entering, the café is emblematic of what the African American scholar Elijah Anderson (2015) terms a 'white space'. Anderson argues that the preponderance of white spaces including white neighbourhoods, upscale restaurants, universities etc., creates a situation that "reinforces a normative sensibility in settings in which black people are typically absent, not expected, or marginalized when present" (Anderson, 2015, p. 10). Anderson also posits that while black people may feel that such places are off-limits, whites are often unaware or ambivalent about these settings and consider them as unremarkable reflections of civil society.

This thesis, in part, explores the very real but vexed question of what happens when Indigenous people are forced to navigate a white space. To an Indigenous Australian, there is arguably no whiter space than a courthouse. Court is a place that abounds with visible and invisible boundaries, a space where the optics of separation are glaringly apparent. A clear example is the physical space that separates the judge from the rest of the court's participants, the forbidden territory, called the 'well', which can only be traversed with permission. Just as obvious is the separation of roles according to race; power and authority in court are assigned along racial lines. From a coloniality of power perspective, the neat mapping out of race categories and power hierarchy is predictable. The concentration of power in the justice system in the hands of a few, predominately non-Indigenous, people is a reflection of the much wider racial division of power in Australian society. Despite attempts to change the status quo, the fact remains that, at

[48] https://www.abc.net.au/news/2019-03-08/alice-springs-segregated-hotel-rooms-aboriginal-communities-ibis/10879896

the time of writing, there are only two Indigenous judges presiding over Australian courts.

The patterns of visibility are revealed even more in circuit courts, which are held mainly in remote Indigenous communities. A circuit court, also known as 'bush court', involves the brief relocation of court and its staff from a larger town or city into an Indigenous community for a period of one to three days. In a sense, circuit court is the temporary construction of a white space in a black community. Over two years of research, I attended circuit court on five separate sittings in three different communities, Mataranka, Barunga, and Ngukurr. All of those sittings had the same patterns of Indigenous visibility: Judges, lawyers, police officers, and corrections officers were almost always non-Indigenous; the occasional Aboriginal Liaison Officer and interpreters were the most prominent exception to the rule of white staff. The rest of Aboriginal presence was largely made up by a parade of mostly young men entering court and pleading guilty before making arrangements to carry out their sentences. Family and community members were sometimes present in the court but often waited outside, mainly due to the lack of physical space. Watching Indigenous interpreters work in these settings, I often wondered what it must feel like to be expected to fit seamlessly into such a white space as a condition of one's work. Even for experienced interpreters who have worked in courts for many years, the setting of a circuit court would be challenging, especially when it is held in the interpreter's own community where relations of kin can add another layer of complexity.

I should note here that these racial politics and patterns of visibility do not go unnoticed by those who occupy the higher echelons of power. The following is a quote from Judge Armitage who has presided over numerous circuit courts, in response to the question on power differentials in circuit courts:

> *In communities, the lawyers and the court staff will be generally Caucasian, or of other ethnic background, generally not Aboriginal, although there's an increasing proportion of court staff who are Aboriginal. But the court itself will be filled with Aboriginal people, including interpreters but also including kind of liaison people and things like that, and family and witnesses and other people. But no, the people in power generally are not Aboriginal people.*
>
> *[Darwin_Jun2018_Elizabeth Armitage_Magistrate_Interview]*

Many of the lawyers I spoke to also viewed bush court as a 'different beast' and were very aware of how Indigenous people viewed the way court staff descended on their communities. Here are descriptions from two different lawyers of how they understand the optics of the bush court sessions in which they participate.

> *You've got lawyers rocking up in white Prados, getting out with books and a whole lot of paperwork which they don't relate to, and asking them questions about a court system that is a Western court system. It's trying to dictate their lives and is making judgement calls and actual orders that they have to comply with.*
>
> *[Barunga_Jun2018_NO_Lawyer_Interview]*

> *Can you imagine an Indigenous offender hearing a white magistrate who he's never seen before in his life, come into his community without knowing the complexity of his particular life, of the community, of the offending, and how different things are, come in on their plane, sit for a few hours, maybe go down to the local shop to get a pie at lunch and then fly straight out as soon as it's over? Like, it's the most insulting thing that occurs. It's insulting, there's no other way of saying it.*
>
> *[Katherine_Jun2018_NR_Lawyer_Interview]*

NR and NO are both describing the sentiments of Indigenous communities who are faced with the recurring intrusion by the justice system into their world. After court packs up and the judges and lawyers return to town, the people of these communities are left to deal with the consequences, many of which are long lasting. When the dust settles, what is left is not a community that feels that justice has been served, rather a bruised and often angered community having to make arrangements to visit imprisoned relatives or coming to terms with new family configurations. The justice system on the other hand, is left to reckon with the cumulative erosion of trust from Indigenous communities that stems from the repetition of such experiences. Circuit courts were introduced to ensure that Indigenous people in remote parts of Australia are spared some of the disadvantages that geographical distance creates in terms of access to justice. The reality is that for many Indigenous communities, all these courts seem to do is bring injustice closer to home.

There is also the added layer of circuit courts often taking place in communities where the linguistic space is predominately occupied by traditional languages, Aboriginal English, and Kriol. The white space created by circuit courts repeatedly invades the linguistic landscape of these communities. Standard Australian English as a default language in the court makes all other languages and dialects seem like intruders that need to be addressed and dealt with rather than the natural means of communication

they normally are. This is further exacerbated by some judges and lawyers dismissing the need for interpreting assistance which leaves Indigenous people having to navigate a white space, a white law, and a white language in their own communities. The foreignness and white normative nature of court is often clearly felt by Indigenous people. As an interpreter once told me, court is a 'whitefella show' where Indigenous people can feel like outsiders (see Chapter 8). A similar notion is evident in the phrase *Barrawu nya-alunga li-munangu jalinyamba wukanyinjarra yurrngumantha* which is the term given by Yanyuwa people to describe court. The phrase translates to 'the building for the white people who talk all the time' (Bradley, 2019, personal communication). This term highlights both the inherent whiteness of court and the vastly different communicative norms present within the legal system.

The sense of mounting injustice felt by communities at the disregard of their ways of knowing and communicating will not abate until courts are structurally re-examined and acknowledged as the white spaces they are. The change required to deliver true justice to Indigenous language speakers must go beyond minor reforms and symbolic gestures and extend to a re-imagining of how courts can function in an Indigenous linguistic and cultural space. Possible pathways towards such goal include increased acknowledgment of customary laws, greater involvement of community elders in the sentencing process, and the participation of language and cultural brokers at every stage in the delivery of justice from arrest, to sentencing, to parole, and to the final stages or reintegration within communities. This is a radical change which require the law to face its own colonial history and to work towards redressing its role in perpetuating injustice, but it is a possible change that can be enacted through genuine engagement with Indigenous communities who have been calling for reform for many decades.

6.3 Power dynamics and decision making in the interpreting process

Unsurprisingly, the power imbalances discussed above have a great bearing on who controls the decision making in the process of engaging Indigenous language

interpreters. In §4.3.1.1 I explore how Indigenous language speakers can be discouraged from asserting their right to interpreting assistance and leave the decision to request an interpreter in the hands of the more powerful participants in the legal process – lawyers, judges, police officers, etc. The decision to engage an interpreter then becomes a matter of discretion and practicality, rather than having its basis in a real understanding of what interpreting can offer an Indigenous person with low proficiency in English. The defaulting of this crucial decision to someone who is in a place of more power but less knowledge is an example of the structural inequality in the law that sees Indigenous people excluded from the decision making process. Perspectives from Critical Race Theory have shown that the racialization of institutions and organizations has given rise to the notion of 'whiteness as a credential' (Ray, 2019), creating a setting that normalizes white control of decision making and legitimizes an environment where in order for non-whites to access control of decisions and resources, they must first seek the consent of whites.

In this section, I focus on two examples of the impact of power dynamics on decision-making with regards to interpreting, beginning with the decision to fund the establishment of professional interpreting services for Indigenous language speakers and then exploring the power relations involved in the continuing discretionary use of professional interpreters some 20 years after interpreting services were founded. These examples give an insight into the role of race and power in the long history of failure to recognize and redress linguistic inequality in the legal process.

6.3.1 Institutional resistance to the establishment of Indigenous language interpreting services

The influence of race and power dynamics on the provision of Indigenous language interpreting is exemplified by the extensive power struggles that took place in the lead up to the establishment of professional interpreting services for Indigenous languages in the Northern Territory in the 1980's and 1990's (Goldflam, 2019). Consecutive governments resisted growing calls for the formation of professional interpreting

services despite many recommendations by a number of government bodies, legal organizations and Indigenous communities. Goldflam (2019) describes how it took many years of campaigning, and the eventual death-in-custody of an Aboriginal boy who was not given access to an interpreter, for the federal and NT government to reluctantly succumb to mounting pressure and announce funding for an Aboriginal interpreting service in 2000.

The prolonged opposition to the pleas of Indigenous communities was made possible by the fact that the control in the decision-making process was always in the hands of government officials and bureaucrats who had little appreciation of the linguistic and cultural needs of Indigenous people. The initial debate was not centred on the amount of funding needed or on logistical and practical considerations; instead, it was a fundamental disagreement between the government and Indigenous people about the necessity for interpreting services in the first place. The notion that Indigenous communities needed interpreting assistance was met with disbelief and indignation from the government. It clearly challenged the expectation that Indigenous people should have *assimilated* fully into Australian society. It was as if politicians were surprised to discover that decades of assimilation policies had not succeeded in conforming Indigenous communities to the standards of white governments.

The delay in accepting the need for interpreters was also the result of the ideological belief that Australia had a duty to educate Indigenous people to speak English proficiently, and that any measures to support Indigenous languages and their speakers would in fact be a dereliction of this duty. In what later became infamously known as 'the wheelchair speech', the NT Chief Minister, Denis Burke, stood up before Parliament and declared that the necessity for an interpreting service was indicative of a failure on the part of Australia's education system because Indigenous people should have acquired enough English proficiency through schooling so as to never need an interpreter.

> *"To come up with a program such as an interpreter service, in the Northern Territory or elsewhere, to my mind is akin to providing a*

wheelchair for someone who should be able to walk. That is a simple fact"[49]

Burke also described supporting Indigenous languages as a form of social engineering that disadvantaged Indigenous people. His views, which were widely shared by government officials at the time, demonstrate the power of the monolingual mindset in shaping the policies and practices that have a direct and lasting impact on the lives of minority language speakers (M. Clyne, 2004).

The devaluing of Indigenous languages and the representation of their speakers as products of a failed educational policy is also a testament to the power of the coloniality of language. Yet again Indigenous languages were being treated as inferior and incongruent with success in Australia, a continuation of earlier colonial practices when governments engaged in the systemic delegitimization of Indigenous languages and those who speak them (see §8.4). Rejecting the need for interpreting services is rooted in the conviction that white governments always know what is better for the Indigenous population. Holding up the need for interpreting as proof that governments needed to step in with measures aimed at better educating Indigenous people is a perpetuation of the colonial policies that positioned Indigenous people as 'the known' rather than the 'knowers' (Moreton-Robinson, 2004). Indigenous people were once again speaking from the periphery about something that impacted their own daily lives. The very communities whose access to justice would be immensely improved by interpreting were disempowered and ignored in the decision-making process.

The persistence of Indigenous communities in the face of such entrenched racialized philosophies was, in essence, an act of resistance. It was indigeneity asserting itself. Beyond improving Indigenous people's access to justice, the eventual formation of the

[49] Denis Burke, Northern Territory Chief Minister, 24/11/1999, at the Northern Territory Legislative Assembly. (Questions – pg. 849).
http://hdl.handle.net/10070/279413

Aboriginal Interpreter Services (AIS) in 2000 can be viewed as a counter-hegemonic step towards challenging parts of the systems of oppression that have long disempowered and invisiblized Indigenous communities. However, it is also crucial to recognize that the backdrop of political and racial ideologies against which the interpreting services were founded never disappeared. Interpreters continue to encounter these ideologies in their day-to-day work. Government funding may have increased over the years, but interpreting organizations are constantly having to challenge the government's reluctance to truly invest in Indigenous language interpreting. As a long-time interpreter notes:

> *The NT government often points to AIS as a flagship organization and an important achievement, but it is very tokenistic. We're always having to justify ourselves to politicians – why we need funding and why it's not always working.*
>
> *[Darwin_Jun2018_DQ_Interpreter_Interview]*

DQ's statement reveals the frustration felt by interpreters at the lack of true acknowledgment of their important role in redressing power imbalances and advocating for the linguistic rights of Indigenous language speakers. Interpreters have frequently voiced a feeling that they are swimming against a tide of policies that conceive of their profession as having little significance. This battle for recognition is part of a wider struggle of Indigenous organizations to be considered worthy by white governments. Interpreting services such as AIS and AIWA are some of the few predominantly-Indigenous organizations that take an active part in the process of justice. Both organizations have been deliberate in their employment of Indigenous people and collaboration with Indigenous communities. They represent the possibility of having true representation of Indigenous people in legal settings, but they face an endless battle of having to prove their worth at every turn.

The burden of reaching a place where Indigenous language interpreting is both valued and well-utilized cannot be placed entirely on interpreting services. Government and the justice system have a shared responsibility to work collaboratively with interpreters and to recognize their role as equal to all others who participate in the delivery of justice. It took far too long for Indigenous voices to be heard and for professional interpreting services to be established. The legal system needs to play its part in ensuring that such an important aspect of access to justice receives the public recognition it deserves.

6.3.2 Power and the discretionary use of interpreting in legal settings

As discussed in §4.3, the power to engage Indigenous language interpreters is inordinately concentrated in the hands of police, courts, and legal professionals, rather than the Indigenous people who required interpreting assistance. This has led to a great deal of discretion in the use of interpreting services. There is currently no data to show how regularly interpreting services are engaged when they are potentially needed in legal settings in the NT. Figures produced by the NT government demonstrate increasing use of AIS interpreters over the years –a total of 33852 interpreting hours 36 languages were completed in 2018-2019[50]. Such data, however, cannot capture the instances where interpreters should have been used but were not. There is, on the other hand, anecdotal evidence of specific patterns of use (these are discussed in detail in §4.3) but in summary, interpreters are used most widely by the courts and during consultations between lawyers and their clients. Interpreting services are engaged by the police for the purposes of recorded interviews, although the predominant motivation seems to be the prevention of the Record of Interview being deemed inadmissible due to the lack of an interpreter. NT Correctional Services and Territory Families are consistently mentioned by interpreters and legal professionals as having a substantially lower engagement with interpreting services.

[50] https://dlghcd.nt.gov.au/about-us/stories/aboriginal-interpreter-service

What emerges from examining these patterns is that although there are clear power imbalances when it comes to who decides to engage interpreters, the patterns of use do not correspond to any particular hierarchy of power. In other words, the argument cannot be made that more powerful participants in the justice system are less likely to use interpreters. Judicial officers, for example, arguably wield more power than correctional services officers, yet interpreters are used far more regularly in courts than they are in correctional settings. The differences in the discretionary use of interpreters by varying organizations within the justice system can be explained by the level of awareness around interpreting, the stakes involved, the funding available for services such as interpreting, and the potential level of scrutiny applied to these organizations. For example, court proceedings are a crucial point of engagement with the justice systems and the decisions made by a judge or magistrate are potentially the most significant part of the delivery of justice. These higher stakes also mean that court decisions and procedures are subject to higher level of scrutiny from within the justice system and beyond. The process of appealing a court decision provides an example of the internal mechanism of accountability and scrutiny in the courts - decisions can be appealed on the basis that a defendant was not provided with interpreting assistance and may be later overturned by a Court of Appeals. Similarly, the policy of having most court proceedings open to the public is designed to encourage transparency and accountability of judicial officers and legal professionals. This same level of scrutiny is not found in other organizations operating in the legal system, which may account for a lower level of engagement with interpreters.

Although courts use interpreters more extensively than other parts of the justice system, it is important to recognize that there is still much work to be done by the courts towards making interpreting a fundamental aspect of ensuring access to justice. The increasing vigilance of judicial officers around interpreting is promising, but we must not shy away from interrogating how and why interpreting services are engaged by the courts. The delivery of justice to Indigenous communities must be predicated on the empowerment of Indigenous people and interpreting services should be valued for their

role in facilitating such empowerment. The use of interpreting merely as a means of mitigating negative scrutiny does a great disservice to Indigenous communities because it places interpreting services in the constantly precarious position of constituting a response to outside scrutiny rather than being recognized for their inherent value.

How interpreting is conceptualized by the courts and the justice system at large is as important to explore as the patterns of use. The influence of race on such conceptualizations is particularly worthy of closer examination. Interpreters and legal professionals interviewed for this research frequently expressed a feeling that interpreting in the justice system often seems more of an exercise in fulfilling legal requirements than a deep understanding of how interpreting can empower Indigenous people. Here is a non-Indigenous lawyer describing how interpreting fits in the spectrum of race and power dynamics in the court:

> *It's a white thing, the courts. And when they have an interpreter, it's always in the context of some white provision for a black need.*
>
> *[Katherine_Jun2018_ Matt Fawkner_Lawyer_Interview]*

This is a very telling statement. It highlights why race and power are crucial considerations in examining the provision of interpreting. Indigenous language interpreting must not be a white provision for a black need. Interpreting must be about empowerment, about confronting the coloniality of language that places Indigenous languages at the bottom of, or even outside, the hierarchy of languages. If the justice system is to redress the linguistic inequalities that inhere within it, it must critically examine its own use of interpreting, including whether such use is motivated by a true desire to deliver equity and justice to Indigenous communities. It may be an uncomfortable exercise for those working in the law to reflect on whether they consider interpreters as truly equal facilitators of justice or merely as providers of a solution to a black problem, but it is a question that is undoubtedly long overdue.

6.4 Power, race, and the (in)visibility of interpreters

Invisibility in translation and interpreting has long been associated with competence and professionalism. The traditional norms of impartial and accurate interpreting contain the implicit notion that a competent interpreter is, for the most part, an 'invisible interpreter' - the better an interpreter is at performing their job, the less noticeable they are to those around them. An interpreter's ability to act as an unobtrusive conduit is idealized and considered an indicator of mastery and professional conduct. Such approaches to the interpreter's role emphasize fluency and linguistic skills while simultaneously discouraging interpreters from co-constructing discourse. In this section, I argue that the emphasis on interpreters' ability to work inconspicuously in fact risks marginalizing interpreters and dehumanizing them by reducing them to nothing more than their mechanical skills. However, as many have argued, interpreters cannot, nor can they be expected to, remain entirely invisible. The dilemmas of invisibility in interpreting are reflected broadly in discussions and debates within translation and interpreting studies. Specifically within community interpreting, the notion of an invisible interpreter is interrogated by Angelleli (2003) who notes that the visibility of interpreters, their very self, cannot be ignored or blocked in interpreted interactions. In a later work, Angelleli (2004) further critiques the 'myth of invisibility' arguing that idealizing invisibility obscures the issues faced by interpreters when dealing with some of their ethical responsibilities such as impartiality. On the other hand, Ozolins (2016) posits that rather than focusing on invisibility, the emphasis must be on the need for clear and unquestionable impartiality on the part of the interpreter, partly to demonstrate professionalism, and partly to protect interpreters from the consequences of the utterances. Downie (2017) argues that both the term 'invisibility' and 'impartiality' should in fact be abandoned in favour of 'agency', a notion that allows for contextualizing interpreting decisions in the communicative event rather than measuring them against current professional discourse.

In this section I approach interpreter visibility from three different viewpoints: 1) visibility as the physical positioning of the interpreter in court, 2) visibility as agency, and 3) visibility as public recognition.

Visibility with regards to physical positioning will not be discussed in detail in this chapter but will be visited briefly in Chapter 7 when reviewing the way interpreters are perceived in some Indigenous communities. The physical proximity of the interpreter to a client is often unavoidable during the process of interpreting and interpreters have little choice in where they are positioned in a courtroom. However, the mere fact that an interpreter is sitting on one side of the court can expose them to being perceived as working for one party over the other and undermine their status as impartial participants in court proceedings. This, in turn, makes interpreters more vulnerable to being blamed for the outcome of a trial (see §7.4 for a detailed discussion of the issue of blame). A possible way to mitigate this problem is to have a designated section of the court where interpreters can sit prior to the commencement of proceedings and introduce themselves to the court before moving to be near the client. This would be in accordance with the existing norm of designating separate areas within Australian courtrooms for different participants. Current configurations of courts allocate specific spaces for judges, legal teams, juries, witnesses/defendants, and the public. Having a separate section of the court for interpreters both signals their role as valued officers of the court and protects them from perceptions of partiality.

Visibility as agency relates to the issues of impartiality and advocacy which I discuss in §6.4.2 in this chapter and in §9.2.4. In the following section, I focus on visibility as recognition of Indigenous interpreters in the justice system and the interplay between visibility and power dynamics in court settings. I argue that the unspoken expectation of invisibility risks further entrenching the power imbalances and patterns of visibility that have long marginalized Indigenous people in the justice system and beyond. In particular, I examine how the lack of public recognition can have an adverse impact on the confidence and performance of interpreters and explore how judicial officers and

legal professionals can play an important role in increasing the visibility of interpreters and in turn elevating interpreter status and confidence.

6.4.1 Visibility and interpreter confidence

Confidence is a crucial skill for interpreters in all settings. A confident interpreter is not only able to carry out their duties well and demonstrate their individual abilities but can also instil confidence in others regarding the interpreting profession as a whole. To perform well, interpreters need to have the confidence to handle a variety of challenges that can arise in the course of their work which may require them to deviate from the convention that they merely translate all utterances with no amendment, addition, or interruption. For example, an interpreter may need to interrupt court proceedings to seek clarification or repetition of a particular utterance. As discussed in §4.5.1.1, Indigenous interpreters have varying degrees of English proficiency and may at times require specific utterances to be repeated or worded differently in order to be able to interpret the message faithfully – this issue arises particularly with legalese, as well as metaphorical and idiomatic English expressions. There are also occasions when interpreters may need to contextualize a client's utterance by providing the court with further information. This kind of intervention by the interpreter often occurs when there is evident cross-cultural misunderstanding and the potential for a breakdown in communication as a result. Interpreters are trained in these situations to assert to the court that they need to add context to the original utterance, but this requires training in court etiquette and the confidence to be able to directly address the court's participants.

Interpreters also sometimes need to speak up to request a break from interpreting which can involve asking for court proceedings to be paused. The cognitive load of interpreting means that interpreters should be given frequent breaks to avoid mental fatigue. However, the relentless pace of most court proceedings means that judges and lawyers are unlikely to notice that an interpreter has been working for prolonged periods of time. It takes a confident interpreter to ask for a court recess in order to have a break,

and some interpreters have been known to work continuously for many hours for fear of seeming demanding or unprofessional.

As both a psychological trait and a performative skill, confidence is particularly difficult to quantify and equally challenging to teach compared to linguistic and other technical skills used in interpreting. In discussing the general notion of confidence, Perry (2011, p. 228) notes that "The subjective nature of confidence is of a dynamic character and is highly individualized, based on factors such as one's perspective, role, self-esteem, sense of efficacy, sense of self, and experiences related to the context or setting". More specifically, in relation to confidence among interpreters, Hale (2007, p. 35) posits that interpreter confidence comes with competence, status and a strong professional identity. These interconnected factors can impact confidence in varying ways among different interpreters and across different contexts.

This section focuses primarily on the role of interpreter status, self-esteem, and experience relating to the context of court setting. By highlighting the power dynamics in court, I hope to elucidate how interpreters' perception of their visibility, status, and position on the spectrum of power can influence the level of confidence they possess and display.

My exploration of interpreter confidence in this section is based on discussions and interviews I have had with interpreters and the legal professionals who routinely engage with them, as well as observations that I made during court sittings. I have restricted my exploration of interpreter confidence to court settings partly because interpreters are more likely to be used in court, and partly because I was able to closely observe court proceedings which are open to the public. Conducting close observations of interactions between lawyers, interpreters, and clients was a more difficult endeavour, largely due to the rules around client privacy. My limited observations of the exchanges between the lawyers and interpreters revealed that they were relatively informal and collegial. Lawyers, in fact, observed that interpreters were generally more relaxed and confident

when interpreting for the client in the lawyer's office or outside the court building than they were inside court *[Katherine_Jun2018_Field Notes_p. 17]*.

With all its rules, customs, and formalities, court can be an intimidating place for most people regardless of their indigeneity or cultural background, but Indigenous interpreters in particular often enter court with a life-long experience of fearing the justice system and paradoxically associating it with injustice. A courthouse is a disempowering place for many Indigenous people, a place where Western knowledge and rituals, and a particular dialect of English, are viewed as the norm against which all other ways of knowing and speaking are unfavourably measured. As a space that is imbued with power differentials, court has never been a level playing field for Indigenous people. Many interpreters who grew up watching their communities grapple with Western law would recognize the inequity that is inherent to the system in which they now operate. In some cases there is the added element of the interpreter having direct personal experience with the justice system outside of their professional role. This kind of personal experience, coupled with those of family, friends, and community members, is likely to be part of the collective psyche of many Indigenous interpreters as they enter the court space. While there is no way to quantify the impact these personal experiences can have on the interpreter's level of confidence, it is worth recognizing as part of the spectrum of factors that lead to Indigenous interpreters feeling intimidated in court and other legal settings.

Throughout my research, Indigenous interpreters have commented that they do not feel like they belong inside a courtroom. In Chapter 8, I describe an interpreter pointing to the courthouse and saying "That's not our show in there. That's whitefella show[51]", clearly indicating a sense of alienation, lack of agency, and possibly feeling at once invisible and yet highly conspicuous in a white-run show. An interpreter who feels like

[51] In accordance with its use by some speakers of Aboriginal varieties of English, the word 'show' is likely used by the interpreter in this context not to simply describe to the theatrics of court but to refer to aspects of culture and ways of being.

they do not belong in a particular setting is less likely to possess, let alone exhibit, confidence in that setting. Court is a white space where black presence is expected to follow particular configurations – Indigenous people are generally defendants and witnesses, not judges, lawyers, or other officers of the court. An interpreter's perception of where they are situated the spectrum of power relations in this white space will inevitably have a bearing on their level of confidence.

The correlation between disempowerment and lack of confidence is exemplified by an incident that happened to an Indigenous interpreter some years ago, which was recounted to me by a fellow interpreter. The incident took place in Alice Springs during the early years of the establishment of AIS when interpreters were not yet provided with uniforms that identified them as employees of the organization. A relatively experienced and well-trained AIS interpreter had accompanied a lawyer from the Central Australian Aboriginal Legal Aid Service (CAALAS) to the cells at the Alice Spring courthouse in order to speak to a prisoner. Upon discovering that the prisoner had been transferred out of the cells, the lawyer went in search of him, leaving the interpreter behind. When the lawyer returned, he found that the interpreter had been locked in the cells by the guard. The interpreter would later tell the lawyer that he was ordered by the guard to go into the cell and that he had been too afraid to disobey that order or to tell the guard that he was there as an interpreter. The incident understandably sparked a lot of anger from CAALAS and AIS and became a catalyst for the introduction of AIS uniforms, but it highlighted that even professional interpreters can feel so disempowered that they do not question clear injustices against them. The interpreter who told me this story commented that even though it happened some years back, "That's the lack of confidence that we're dealing with to this day" *[Darwin_Jun2018_DQ_Interpreter_Interview]*.

This incident is a somewhat extreme example, but there are daily instances where a low level of confidence can challenge an interpreter's ability to work efficiently. During my court observations, I watched a relatively new interpreter freeze during a court case despite having been interpreting robustly between the lawyer and client outside the

court moments earlier. On that occasion, the interpreter had to be prompted by the judge to start interpreting but they were clearly flustered and much of the judge's address to the defendant was not interpreted even after the judge's prompt. On another occasion, the interpreter relayed the same sentences in English instead of interpreting them, but this time, the judge did not intervene[52]. I spoke to the judge after both incidents and they indicated that such occurrences were in fact not uncommon, especially with less experienced interpreters. The judge also observed that a sudden loss of confidence can paralyse an interpreter even in situations where they had been interpreting well beforehand.

I note here that I do not mean to imply that Indigenous language interpreters as a whole are less confident than other interpreters or less able to fulfil their professional duties. I have personally witnessed many Indigenous interpreters perform the very complex task of interpreting in challenging settings with ease. There is also no research to date that has attempted to quantify or examine the confidence levels of Indigenous language interpreters or compare them to interpreters of other languages, so much of the evidence remains anecdotal. I simply mean to highlight that while there is recognition of the important role of Indigenous language interpreters in empowering non-English speakers as they navigate the legal system (Cooke, 1996; Goldflam, 1997), there is less discussion of what empowers the interpreters themselves. Such a discussion is not only warranted but essential. As I describe below, empowering Indigenous interpreters is a critical element in improving the overall access to justice for Indigenous people and communities.

The legal professionals interviewed for this research regularly expressed the opinion that there was significant variation in the level of competence and confidence among the Indigenous language interpreters they have worked with. Judge Elizabeth Armitage, for example, observed that although there are many Indigenous language interpreters

[52] I have chosen not to include the date or location of these particular observations to avoid identifying the interpreter.

who display confidence during their work, she believed that, generally speaking, there was a comparatively higher level of confidence among interpreters of other heritage languages such as Asian and European languages *[Darwin_Jun2018_Elizabeth Armitage_Magistrate_Interview]*.

Some lawyers also noted similar views, including that they felt less assured about the quality of interpreting if the interpreter seemed to lack confidence when addressing them or the client *[Katherine_Jun2018_Field Notes_p. 16]*. Such views are not surprising. As observers of the interpreting process, rather than language insiders, legal professionals often resort to relying on non-linguistic cues to judge the quality of interpreting, such as the perceived confidence of the interpreter. Although this is an unreliable metric for assessing the linguistic performance of an interpreter, the perceptions of legal professionals regarding the quality of interpreting can significantly influence their use of interpreters. Unless legal professionals can trust the competence of interpreters, they are less likely to engage interpreting services. This, in turn, would lead to fewer opportunities for interpreters to practice their skills and increase their level of experience, which is an important factor in building confidence. The negative influence on the discretionary use of interpreters created by this feedback loop can have a detrimental effect on Indigenous people's access to justice by limiting their access to interpreting assistance. As such, building the confidence of interpreters, and in turn the confidence of legal professionals in the abilities of the interpreter, is potentially an important measure for increasing the use of interpreters in legal settings. Interpreting organizations such as AIS have been working with legal professionals to increase awareness in the justice system of the issues that are faced by interpreters. It is paramount, however, that the onus is not placed on the interpreting services alone to educate legal professionals about the factors that impact interpreter confidence and how they can be managed in legal settings. These issues should be included in the training of all legal professionals, most of whom would find themselves working with interpreters at some stage of their careers.

6.4.1.1 Empowering interpreters through recognition

My court observations and discussions with interpreters revealed an unexpected paradox. I had assumed that a rigid and formal setting, such as the Supreme Court, would correlate with interpreters feeling more intimidated. A Supreme Courthouse with its ornate interiors and requirement for formal attire, robes and wigs, can be a quite overwhelming place where an interpreter would feel very invisible. Yet as I found out from some interpreters, the Supreme Court was a place where they actually felt more seen and empowered than they did in the Local Court or Circuit Court. There are a number of potential reasons for this. Firstly, interpreters who are assigned to work in the Supreme Court are generally more experienced and highly trained in the first place. Most newly certified interpreters cut their teeth in the Local and Circuit courts and their lack of experience would undoubtedly translate to a lower level of confidence in their own abilities. There are, however, other important factors contributing to this paradox which relate directly to the way judicial officers in the Supreme Court seem to conceptualize the role of everyone participating in the legal process. The higher stakes of the cases seen in the Supreme Court mean that judges and lawyers are perhaps more aware of the importance of providing interpreters with the appropriate tools to carry out their duties. This, combined with the relatively slower pace of the proceedings in the Supreme Court, means that interpreters have more time to be briefed by the legal team about the trial beforehand which helps them to be prepared for what the proceedings might entail. Some interpreters also indicated that the judges in the Supreme Court show them a higher level of respect, including formally introducing them to the court and explaining their role to those present *[Darwin_Jun2018_Field Notes_p. 8]*. The interpreters I observed in the Supreme Court in Darwin were frequently introduced by name either by the judge or the lawyers, and some even recited their code of ethics before the proceedings started. Some interpreters articulated that being shown this kind of recognition made them feel like valued and respected officers of the court. They felt visible and appreciated.

Being recognized as having a vital role in ensuring just outcomes for Indigenous people will result in interpreters developing a strong sense of professional identity, which Hale (2007, p. 35) highlights as a source of confidence. In other words, acknowledging the presence and the role of the interpreter may be a small undertaking for the court, but it is one with a potentially large impact on the interpreter's confidence. In amplifying the interpreter's visibility and in turn elevating their status, the justice system can positively contribute to the empowering of interpreters, the increase of interpreter use, and ultimately the expansion of access to justice for Indigenous communities.

6.4.2 Power, race, and the impartial interpreter

In this section, I examine the notion of interpreter impartiality and how it intersects with the possibilities of agency and advocacy. In particular, I explore how the expectation of impartiality and neutrality can contribute to the suppression of the interpreter's visibility and the erasure of their lived experience. I argue for a better understanding of the potential for interpreting to go beyond improving access to justice and extend to playing a central role in advocating for the linguistic rights of Indigenous communities. I begin by discussing some of the general scholarship around impartiality and neutrality and how it can be applied specifically to Indigenous language interpreting.

6.4.2.1 Impartiality vs. neutrality

Impartiality is considered a fundamental principle of interpreting and is included in the code of ethics of all the major interpreting and translation bodies in Australia[53]. Interpreters working for the Aboriginal Interpreter Service (NT) and Aboriginal Interpreting Western Australia must follow the Australian Institute of Interpreters and Translators (AUSIT) code of ethics (Appendix VI). The code stipulates that impartiality

[53] Including Translation and Interpreting Service (TIS National), Oncall Interpreters and Translators, and Associated Translators and Linguists.

is one of the main tenets of interpreting alongside professional conduct, confidentiality, competence, accuracy, clarity of role boundaries, and the maintaining of professional relationships. The definition of impartiality given in the code is as follows (emphasis added):

> 'Interpreters and translators observe impartiality in all professional contacts. Interpreters remain unbiased throughout the communication exchanged between the participants in any interpreted encounter. Translators do not show bias towards either the author of the source text or the intended readers of their translation.
>
> > **Explanation:** Interpreters and translators play an important role in facilitating parties who do not share a common language to communicate effectively with each other. They aim to ensure that the full intent of the communication is conveyed. Interpreters and translators are not responsible for what the parties communicate, only for complete and accurate transfer of the message. ***They do not allow bias to influence their performance***; likewise, they do not soften, strengthen or alter the messages being conveyed'.

At the centre of the definition is the interpreter's obligation to remain unbiased throughout interpreted encounters. As well as pertaining to impartiality, the absence of bias mentioned in the code alludes to an expectation of *neutrality*. In fact, while the term 'neutrality' does not appear in the AUSIT code of ethics, it is explicitly included, alongside impartiality, in the code of ethics of some interpreting bodies outside of Australia. For example, the American-based National Association of Judiciary Interpreters & Translators' code of ethics includes the following statement [54](emphasis added):

[54] https://najit.org/tag/code-of-ethics/

> Court interpreters and translators are to remain **impartial and neutral** in proceedings where they serve, and must maintain the appearance of impartiality and neutrality, avoiding unnecessary contact with the parties

The conceptualization of neutrality and impartiality as synonymous is nothing new; the two terms are reciprocally used to describe the action or position of not taking sides. There have been, however, several attempts to distinguish the two concepts both in interpreting and translation studies, and in other academic and public spheres. From an interpreting perspective, Zimanyi (2009) examines the complexity of the potential roles played by interpreters ranging from neutral translators to cultural brokers to conciliators and advocates. Zimanyi argues that impartiality is in fact a continuum with an 'impartial interpreters' on one end and an 'involved interpreter' on the other, and that neutrality must be explored in relation to this continuum rather than as static and decontextualized expectation of interpreters (see also Roy, 2000).

Hale (2007, p. 120) argues that the expectation that court interpreters be strictly impartial is problematic because interpreters cannot be expected to be devoid of subjectivity. Hale also links impartiality with visibility, noting that a completely impartial interpreter is as much of myth as a completely invisible one. Addressing this dilemma, Hale states that "no one can deny that total impartiality is impossible. However, a conscious 'neutralistic' stance can go a long way in assuring as much impartiality as is possible to allow for an ethical performance" (Hale, 2007, p. 123). Hale's distinction between impartiality and neutrality differs from some other interpretations found outside linguistics/interpreting and translation studies. A different interpretation, for example, can be found in the realm of peacekeeping and humanitarian work. In his exploration of peacekeeping policies and operations, Donald (2003) describes what he terms the 'Fallacy of Impartial Neutrality', arguing that treating impartiality and neutrality as synonymous concepts leads to a flawed understanding of both. Donald concedes that there is common ground to the two terms but explains that this common ground "does not stretch to include their respective essences" (Donald, 2003, p. 418). Donald delineates the two notions as such: Neutrality

in peacekeeping is a passive policy, distinguished by the fact that it entails the absence of decided views, without a core principle other than the avoidance of trouble. Impartiality, on the other hand, is a coherent and deliberate position predicated on the desire to avoid favouritism and emphasize fairness. Donald summarizes the distinction by stating "At its simplest, neutrality is an absence, impartiality is a presence" (Donald, 2003, p. 418). Importantly, Donald argues that neutrality and impartiality are heavily influenced by the relations of power and that 'impartial neutrality' is unattainable unless there is a static balance of power, which is never the case during wars and other conflicts.

In the following discussion of Indigenous language interpreting in legal settings, I follow Donald's (2003) delineation of these terms, viewing impartiality, and not neutrality, as a consciously adopted stance. I regard neutrality as a personal orientation that is tied to individual and collective experience as well as current circumstance. Absolute neutrality is therefore an unrealistic and unfair expectation of interpreters because it requires the setting aside of the basic human tendency to have an attitude or view about most aspects of life (see also Wadensjö, 2014). This is especially the case for Indigenous language interpreting where history, race relations, politics, and communities of kin are never far from the minds of interpreters. Interpreters in the justice system are cognizant of the power imbalances that are intrinsic to their workplace and satisfying the requirement of impartiality obliges them to *appear* neutral despite knowing that they are never on neutral ground. Interpreters are frequently told that they are the 'alter ego' of the other speakers, when in fact they are often required to be their own alter ego, their other self, standing in non-neutral territory with their interpreter hat on, proclaiming neutral impartiality. It is a tightrope dance that many interpreters would find arduous. A decision to decline an assignment is the interpreter stepping off the tightrope and acknowledging that the challenge to neutrality is such that impartiality is not even attainable in this case. In these contexts, the link between neutrality/impartiality and visibility is highlighted through the interpreter's choice to visibly align themselves with their communities and their people while also asserting

their agency through the deliberate absence from their usual role. The latter form of invisibility can then be viewed as a unique instantiation of partiality.

The contexts in which these issues can arise are varied, but the motivation is often to protest against clear injustices. For example, two different interpreters indicated to me that they declined to interpret for NT and Federal Government representatives during the Intervention because they felt that they could not act impartially in a situation they considered profoundly unjust[55] *[Darwin_Jun2018_Field Notes_p. 7]* (see also §9.2.4). Another interpreter spoke about a fellow interpreter who took on an assignment with a mining company during a period of tense negotiations with the traditional owners of a proposed mine site extension. The interpreter had to step down from their role because they recognized that they could not continue to be impartial during the negotiations and another interpreter was brought in to complete the assignment *[Alice Springs-_Apr2019_Field Notes_p.33]*.

There are contexts where injustice is perceived to be so egregious that no interpreter can be expected to have no biases or decided views (Brennan, 1999). The Intervention, for example, included a slew of policies and practices that generated outrage and resistance among many Indigenous communities. Some interpreters who continued working impartially in these situations would have done so out of a desire to mitigate any potential exacerbation of injustice from the lack of interpreting assistance. The burden to act impartially would have been immense, and likely went unrecognized by government officials, judicial officers and others outside of the interpreting services.

6.4.2.2 Is there a space for advocacy in interpreting?

[55] The 'intervention' is a name given to the Northern Territory National Emergency Response, a set of sweeping measures imposed by the Howard government in 2007 in response to *The Little children are Sacred Report*. The controversial package of policies included alcohol bans, welfare payment reforms, the extinguishing of Native Title in some communities, and sending large numbers of police and army personnel into Indigenous communities.

The relatively strict approach to interpreting endorsed by interpreter training and accreditation organizations such as NAATI means that any acts of advocacy are considered outside of the professional duties of interpreters. Although interpreters are encouraged to clarify messages in order to mitigate miscommunication, their role should never extend to providing guidance or advocacy to the clients (see section 6 of the AUSIT code of ethics – Appendix VI). Direct advocacy is viewed as a reflection of bias which is a direct breach of the principle of impartiality. But as some have suggested, in settings where power imbalances are an inherent feature, e.g. in healthcare and legal settings, advocacy can emerge as an important and necessary means of redressing power differentials (Barsky, 1996; Garber, 2000; Mikkelson, 1998). Barsky (1996) argues that in settings like refugee hearings, where language difficulties and uneven power relations almost always disadvantage refugees, interpreters should be recognized as advocates and active intermediaries with the power to directly assist claimants and improve the narrative in the hearing. A similar, though more tentative, approach is posited by Witter-Merithew (1999) in a discussion of the different roles undertaken by Sign Language interpreters in the United States. Witter-Merithew describes a shift from interpreters being mere facilitators of communication to an Ally Model where interpreters both recognize and attempt to redress power imbalances in interpreted interactions. I describe Witter-Merithew's approach as more tentative because she warns that while we can envisage interpreters as allies, we should be careful not to see them as champions or crusaders. This warning is particularly relevant in the context of Indigenous language legal interpreting where championing the cause of Indigenous communities is an issue that is close to the hearts of Indigenous interpreters but one that they have to balance with their professional duties. As I discuss in §7.4, blurring the line between impartiality and advocacy can also expose interpreters to potential blame and place them in the difficult position of having to manage the expectations of their clients and communities. Measuring up to these expectations can be quite burdensome for interpreters (Hale, 2008, pp. 103–104), and understandably, some will reject the role of advocate, preferring instead to adhere to the safety of their role as impartial participants (see, also, Fenton, 2004)

Outside Australia, including in the US and the UK, this tension has led to attempts to delineate interpreting and bilingual advocacy. Unlike interpreters, who cannot engage in any acts of advocacy, bilingual advocates are specifically tasked with assisting clients with low proficiency in the community language(s) in navigating many aspects of daily life. A common example of this is found in the health sector where hospitals can employ bilingual advocates to assist with clients' decision-making regarding their healthcare (See, for example, El Ansari et al., 2009). Bilingual advocacy does not seem to be widely practiced or endorsed in Australia, however, and especially not in the justice system. This may be attributable to the fact that bilingual advocacy in the health system is likely more viable because of the collaborative atmosphere of these settings, compared to the adversarial nature of courts, for example. Regardless, the power imbalances and clear dearth of proper advocacy for Indigenous people in the justice system warrant a closer look at this model. Bilingual advocacy can fill a gap that interpreting cannot at the moment. Of course, arguments about the ethics and logistics of involving bilingual advocates in decision-making in legal issues are bound to arise, and while the decision to assume an advocacy role would not appeal to all Indigenous language interpreters, and some may even find the notion a threat to perceptions about their professionalism, it is worth working toward having advocacy as a viable option for interpreters who choose that path. It is pertinent, however, that such a process is both collaborative and iterative, and that interpreters are included in all steps of the decision-making process. Advocacy must be a choice and not an expectation, and the creation of a space for advocacy must first and foremost be predicated on the desire to empower interpreters.

Some of the interpreters I spoke to noted that they considered the act of interpreting as a form of advocacy in and of itself. While they all acknowledged that they could not offer guidance to their clients or advocate directly for them, many saw interpreting as a way of redressing power imbalances and the linguistic disadvantage experienced by their clients, which they viewed as no different from advocating for other rights for their people. Here is how an interpreter expressed thus particular aspect of their profession

> *I do it for my people, they have suffered so much because of the language barriers and nothing gets done about it.*
>
> *[Darwin_Jun2018-Field Notes_p. 6]*

Advocating for Indigenous communities was often mentioned by interpreters in interviews and informal discussions as a prime motivation for qualifying and working with interpreting services. Below are some examples of what interpreters described to me as the reasons for joining the profession.

> *It's my way to help my community.*
>
> *[Darwin_Jun2018-Field Notes_p. 6]*

> *If I can be a part of the law that they're not scared of, then I can be of some assistance.*
>
> *[Darwin_Jun2018-Field Notes_p. 7]*

> *I do it for my mob, you know. They sometimes struggle with whitefella law.*
>
> *[Darwin_Jun2018-Field Notes_p. 7]*

> *It's about social justice for our people.*
>
> *[Darwin_Jun2018_DQ_Interpreter_Interview]*

Though not always articulated in terms of direct advocacy, these statements reveal a strong sense of agency through the desire to work for the betterment of Indigenous communities. If we view advocacy as the deliberate decision to actively support others, then these motivations can be considered as expressions of advocacy.

Irrespective of their reasons for joining the profession, neutrality, impartiality, and advocacy are issues that interpreters contend with on a daily basis. These issues and the pressure placed on interpreters to meet unrealistic expectations of impartiality need to be recognized by the justice system. Ignoring these aspects of interpreting not only causes undue stress on interpreters but may also exacerbate the lack of access to justice if interpreters have to withdraw from certain assignments where they feel unable to fulfil their obligation to remain impartial. As one of the interpreters expressed above, this is a matter of social justice, and any barriers must be acknowledged and redressed if Indigenous people are to overcome centuries of injustice at the hands of Australia's legal system.

These are also important considerations in interpreter training, which is the focus of the next section. Increasing awareness of the issues discussed above and incorporating them into the training of interpreters, as well as others who work in the justice system may help to redress some of the barriers to justice that emerge from unequal power relations.

6.4.2.3 Interpreter training on neutrality and impartiality

Although interpreter training carried out by AIS and NAATI focuses on the importance of adhering to the AUSIT code of ethics, there is a recognition of the fact that interpreters cannot always be completely neutral. These organizations are aware that the interpreters' lived experience and that of their families and communities means that interpreters will often have strong feelings about the plight of their fellow Indigenous people. In these contexts, expecting impartiality and neutrality amounts to a demand that interpreters concealing their visibility and suppress their agency. In order to address the issue of impartiality, and the challenges it gives rise to, interpreter training

and professional development often include extensive discussions that involve both recently certified and experienced interpreters. These discussions are carried out in a collaborative manner where trainers and interpreters can explore the nuances of the Code of Ethics as well as share particular cases where they found impartiality to be problematic and the strategies they used in such cases.

This is an important and much needed approach which reassures interpreters that the non-neutral views they may have about the justice system, which are often borne out of personal and collective experience, are valid, and do not make one unsuited to the profession of interpreting. Training should provide potential interpreters with the strategies and tools required to meet the need for impartiality precisely because of the challenges it presents. Interpreters need to have the history of Indigenous people's struggle for justice and the continued discrimination against Indigenous Australians recognized as part of the spectrum of interpreting issues. The more attention given to these issues the better equipped interpreters are to handle future challenging situations.

Similarly, the inherent difficulty of being an impartial Indigenous participant in a Western-based justice system should be discussed in the justice system and included in the training of lawyers, police officers, correction staff and any other organizations that need to engage interpreting services. This will increase recognition of the professional role of Indigenous interpreters and in turn increase the level of use of interpreters by some parts of the justice system that do not regularly engage interpreters.

6.5 Concluding remarks

This chapter has examined the power dynamics in the relationship between Indigenous language interpreters and the law as twofold. Even setting aside the issue of race, there is recognizable power disparity between those who occupy authoritative positions in the justice system (judges, police, lawyers, etc.) and interpreters whose role is often viewed as secondary in the delivery of justice. Once race relations are added into the mix, the power differentials are further magnified. Indigenous interpreters frequently

face the challenge of working in settings where they feel disempowered and even marginalized. Such challenges are of course not unique to Indigenous language interpreting; interpreters of all minority languages in Australia regularly deal with the fact that they come from potentially marginalized groups in society. However, the lack of recognition by the law and political institutions of the linguistic needs and rights of Indigenous language speakers results in inadequate and discretionary use of interpreting services which severely impinges on Indigenous people's access to justice.

Race and power relations also play a significant role in the way Indigenous language interpreters are able to carry out their work and adhere to the principles of their profession. This chapter focused particularly on the principle of impartiality and the challenges it presents to interpreters. Impartiality is a challenging notion that is influenced not only by the racial politics of the law but by societal and cultural factors. These are the subject of discussion in the following chapter which interrogates the intersection of interpreting and cultural and societal practices in Indigenous Australia.

7 THE INFLUENCE OF THE SOCIOCULTURAL CONTEXT

The intrusion of the Western justice system into Indigenous lives has manifested in the creation and enforcement of laws that continue to alter both the cultural landscape and the societal structures of many Indigenous communities. Customary laws were cast aside by the justice system as relics of a primitive past and deliberate efforts were made to sideline them[56]. Imposing the judicial arm of the settler-colony upon Indigenous communities in the form of circuit courts in the 1970's created a setting where Western justice was confronted by a depth and richness of Indigenous culture that it clearly did not understand. Decades later, and the dearth of the law's cultural understanding continues to inflict damage and fragmentation on Indigenous communities throughout Australia. Goldflam (2015, p. 8) describes the disconnect between the justice system and Indigenous culture as the "..yawning gulf between the formal proceedings litigated according to the laws of the land, and the subterranean current of traditional law, what one might call the law of the country, unrecognized and unnoticed, invisible to the legal practitioners and court officials, but alive and kicking in the world of the offenders, the victims, the witnesses – and the interpreters".

Addressing this disconnect is a vital step towards understanding the cultural and societal factors that impact Indigenous language interpreting and fostering an equitable working environment for interpreters. This chapter explores some of these factors, particularly the culturally based conceptualizations of *kinship* and *shame*, and how these intersect with the act of interpreting. In particular, the chapter highlights the lived experience of interpreters as they navigate a legal system that has little appreciation of their cultural backgrounds and the structural organization of their home communities. I begin by laying out some important concepts relating to culture and society in order to contextualize the main body of the chapter (§7.1). The next section delves into the

[56] A recent example is Section 16AA of the Crimes Act 1914 which was introduced in 2007 as one of the measures of the Intervention. The section prohibits court from taking traditional law into account when assessing the objective seriousness of criminal behaviour in the Northern Territory.

central notion of kinship and the juncture between kinship relations and impartiality in interpreting (§7.2). I then shift the focus to investigate *shame* which remains an under-explored cultural aspect of interpreting (§7.3). Here I examine the differing conceptualizations of shame and their influence on the interpreting process. I note here that I use the term *shame* to refer specifically to the Indigenous semantic category of *shame* as used by Aboriginal English and Kriol speakers. In this chapter the word *shame* is italicized in all instances referring to the AE semantics or conceptualization of the word which are markedly different to the SAE word 'shame'. In cases where I refer to the Standard Australian English use of the word, I indicate that explicitly.

In §7.4 I investigate how the fear of being blamed by community members for the outcome of a legal case can lead to interpreters refusing to take on particular interpreting assignments. I also discuss the ways by which the justice system can shield interpreters from accusations of partiality. Finally, §7.5 presents a case study that illustrates the direct impact of a lack of cultural understanding on the experience of Indigenous witnesses and defendants in the courtroom. Again, I note that this case study refers to an incident of domestic violence and includes a description of physical assault.

7.1 Culture and society – some relevant definitions

In my discussion of the cultural and societal factors impacting interpreting, I consider culture and society as distinct yet interconnected systems. I draw these distinctions in order to demonstrate that the dynamic nature of interpreting is in part reflective of the vigorous relationship between cultural and societal structures.

By society, I am referring both to the aggregation of interdependent people who share a geographical area, and to the complex patterns of behaviours and interactional norms that exist among them. Society is a structure that allows people to organize themselves and associate with each other and with societal institutions like family, community, and government. Copp (1992, p. 207) notes that "society exists only where there is a societal

population within which instrumental interaction is directed to securing the material necessities and priorities of life (or the local cultural priorities) and governed by standards of behaviour which are shared in the group". A particularly important aspect of society is that the reciprocal relationships between its members are regulated in such a way as to maintain social harmony. In order for society to remain a distinct and unified entity, social norms have to be agreed upon and adhered to, including norms concerning social roles and social status. Members of society consider deviations from these norms as a threat to social cohesion and to social solidarity. Solidarity, in particular, is relevant here. In the Indigenous Australian context, the hierarchical organization of a community and the interrelations between its members are essential for maintaining its structure, but also important is the notion of loyalty to one's community and one's people. For members of a community, perceptions of loyalty and solidarity are central to the decision-making process in many aspects of their personal and professional lives. Like all other members of their communities, Indigenous language interpreters have to consider societal and structural hierarchies when working with their communities as part of the interpreting role. These considerations, especially as they pertain to impartiality and blame are explored in §7.2 and §7.4.

Culture is a similarly nebulous notion. The pursuit of defining culture has preoccupied anthropological and sociological thought for centuries, especially regarding the potential essentialism that results from conceptions of culture (see, for example, Keesing, 1990). This thesis does not aim to examine the different perspectives on culture, so I will limit my definition to the somewhat vague description of culture as a complex system of morals, values, knowledge, beliefs, habits, laws and customs that are borne of the lived daily experience of a particular group of people (Tylor, 1871, p. 1). Culture also encompasses the way individuals and groups conceptualize and evaluate the world they live in.

Of course, culture and society are intimately intertwined. Society cannot exist without culture, and culture is reflected in the way people organize themselves along social lines. In an Indigenous community, the manner by which society and culture intersect is

exemplified in the way kinship systems provide the blueprint for Indigenous social organization and family relations. Generally, these systems are specific to each linguistic group and can vary significantly from one Indigenous community to another, but a common underlying theme is that kinship rules govern most of the social, economic, spiritual, political, and moral aspects of daily life in many communities, including marriage rules, social roles, ceremonial relationships, and patterns of behaviour towards other kin. As I discuss in the following section, the importance placed by Indigenous people on maintaining harmonious kinship relations can have a significant influence on interpreting and the availability of interpreters in Indigenous communities.

7.2 Kinship relations and interpreting

A thorough anthropological exploration that addresses the significant diversity present in kinship systems in Australia is beyond the scope of this thesis, but I refer the reader to a number of works that discuss these systems in depth (Dousset, 2011; Dudgeon, 1990; Keen, 1988; Rigsby, Finlayson, & Bek, 1998). To summarize, kinship is an all-embracing foundation of Indigenous social organization and family relations across Australia. The intricate systems of kinship concerning rules, principles, and terminologies also position individuals in expanding webs of family and community relations. The social conduct of each individual is thus governed not only by their membership of certain clans, moieties or sections, but also by their egocentric relations of genealogical connection (Sutton, 1982, p. 182). In complying with kinship rules, Indigenous people are allocated rights and responsibilities vis-à-vis one another as particular types of kin. One's position in the kinship system also prescribes one's rights to tracts of land, and the languages associated with them (see §8.3.1). Crucially, Indigenous kinship structures also cover a broad range of classificatory relationships, where members of a kinship system with varying genealogical connections are grouped in the same terminological category.

In most Indigenous communities today kinship remain central to the way community members perceive their roles in the community and behave towards others. These

complex and binding relations, and the social norms they give rise to, can have a direct influence on the process of interpreting.

In the following section, I describe how one particular aspect of kinship relations, namely avoidance, can present unique challenges for Indigenous language interpreters.

7.2.1 Navigating kin-based avoidance relations

Interpreting in small communities frequently involves the interpreter being either in the physical vicinity, or in direct contact, with people in their own kinship system. The broad extent of classificatory relationships also means that anyone that an interpreter may be called to interpret for could potentially be considered kin. In some cases, the interpreter may be in an avoidance relationship with the person for whom they are interpreting, a relationship that would normally entail necessary physical distancing. Avoidance is an obligatory element in certain kinship relations, such as between a man and his mother-in-law (both actual and classificatory), between cross-sex siblings, and also between other members within the kinship system, known sometimes as 'poison cousins' (Morphy, 2006, p. 27). Physical avoidance is part of a larger semiotic continuum that also includes limiting direct speech, avoiding eye contact when speaking, not walking or standing too close together, and passing items with both hands (Merlan, 1982, p. 133)

These restrictions are central to preserving harmonious kinship relations, and many Indigenous people, including interpreters, make considerable efforts to abide by them under all circumstances, including when they are outside of their community. This presents significant challenges to interpreters of smaller languages because they are likely to be in a kinship relation with numerous community members, and, frequently, with many from other communities. Interpreting in a court setting can be particularly problematic for interpreters who are in an avoidance relationship with either the person for whom they are interpreting or other members of the community who may be present inside the courtroom as witnesses, defendants, or supporting family and friends. Aside

from physical separation, avoidance may also involve language restrictions such as the use of specialized respect registers when communicating with or in the presence of certain kin (see Fleming, 2014; Haviland, 1979 for descriptions of avoidence registers). As these registers often employ a limited vocabulary and/or different content words, including nouns, verbs and adjectives, the accuracy of interpreting may be severely compromized.

Judges and legal professionals are generally aware of the kinship restriction's impact on the ability of some interpreters to take on specific assignments, and interpreters are also trained to bring such issues to the courts' attention. However, identifying potentially problematic avoidance relations can only be achieved if interpreters are informed in advance about who will be present in the court. This is rarely practiced, especially in circuit courts where a heavy load of cases and limited time results in a conveyer-belt style delivery of justice. A lack of prior warning has at times resulted in interpreters working with someone who they should normally avoid. These situations are common consequences of failing to be brief interpreters about cases before they begin interpreting. In some instances, interpreters are deliberately denied the opportunity to be briefed *[Katherine_Nov2018_Field Notes_p. 23]*, while in other instances, briefing the interpreter is simply one of the last considerations for a busy court, and therefore the first to be omitted[57].

Unfortunately, an interpreter may not have the confidence to step aside in the middle of a court case once kinship relations conflicts arise (see §6.4.1 for a discussion on interpreter confidence). This has led to instances where interpreters felt compelled to continue working while knowingly violating avoidance rules. Such situations can cause feelings of significant personal *shame* in interpreters as well as place them at risk of

[57] Briefing interpreters about cases should be common practice for a number of other reasons including allowing interpreters the time to familiarize themselves with the case and research particular legal expressions as well as mitigating the risk of some details triggering trauma for the interpreter.

receiving backlash from members of their community (see §7.4). An interpreter described to me the repercussions of a court case in Darwin where she sat next to and spoke to her poison cousin. When she returned to the community, she was chastised heavily by the elders and had to explain to other members of the community that she had little choice in the matter as there were no other available interpreters *[Katherine_Jun2018_Field Notes_p. 28]*.

As interpreters from Indigenous communities are understandably very reluctant to violate kinship rules, it is crucial that there are sufficient numbers of interpreters available in order to ensure that access to interpreting services is maintained. Sometimes, in cases where the speech community is relatively small, it is not possible to recruit interpreters who are not related to other members of the community. I note as well that kinship systems often extend beyond single or even clusters of communities to encompass vast geographical and linguistic terrains, meaning that interpreters are likely to be considered kin even in relatively distant communities. These cases are particularly difficult to circumvent, and every effort should be made to accommodate the kinship rules of the community, including providing the option for the interpreter to carry out their work from a physical distance, for example via telephone, or negotiating with elders and spokespersons beforehand to ensure that the community understands the reasons for the interpreter contravening kinship restrictions on physical contact.

For languages with significant speaker numbers, such as Kriol, there is scope to recruit interpreters from a large number of communities. This means that, at least in some cases, issues arising from kinship-based restrictions can be mitigated because interpreters can be engaged from outside a given community. It is, however, important to consider that outside assistance is not always favoured by communities, especially when their members are demanding greater inclusion in the legal process that affects them directly. For example, in circuit court settings, apart from defendants and witnesses, there are rarely any other community members who take part in the court's proceedings, with the exception of interpreters and Aboriginal Liaison Officers.

Bringing in outside interpreters can further decrease the representation of the community and exacerbate existing frustrations at the justice system's exclusion of community members.

Another important consideration when bringing outside interpreters into a community is that many aspects of culture are subject to locality. The link between culture and language is not static - people who speak the same language may not necessarily share the same culture. Kriol interpreters who have no prior connection to a community may therefore be unable to meet the cultural needs and expectations of its members, in addition to possibly speaking a variety of Kriol not generally used in the community (see §5.1.2).

7.2.2 Kinship and impartiality

In §6.4.2 I discussed the challenges faced by Indigenous language interpreters as they navigate the expectation of impartiality while maintaining political solidarity with their fellow Indigenous people. In this section, I discuss the issue of impartiality from a cultural perspective, specifically how the cultural and societal norms and practices of Indigenous communities can impact an interpreter's ability to adhere strictly to the impartiality principle in their Code of Ethics.

In addition to conveying the relationships and responsibilities of individual community members, kinship is implicated in historical associations between families as well as ceremonial alliances and connections to country. Kincentric social organization creates a distinctly Indigenous political realm within which operate relations of loyalty and solidarity. Solidarity with one's kin is expected of community members, and interpreters are no exception. The challenge for many interpreters is that they are often the only link between this political realm, with its own power structures and expectations of solidarity, and the more dominant Western justice system that values impartiality above all else. While solidarity and impartiality are by no means mutually exclusive, interpreters frequently find themselves in the unenviable position of having to balance

their kinship affiliations and loyalties with their responsibilities as impartial facilitators of communication in the legal process. Interpreters from small communities are often in the situation of knowing or being related to people on both sides of a criminal court and can experience great difficulty being or seeming to be impartial. There are many instances where a lack of alternative options can leave an interpreter having to interpret either for a relative of theirs or for the opposite side to their relative. Remaining impartial in these situations can be extremely difficult, especially in cases involving serious crimes. One interpreter recounted a time when she was asked to work with a defendant who was accused of assaulting the interpreter's young niece. The interpreter, being related so closely to the victim, asked to be excused from working as she felt that she could not have felt neutral or impartial about the defendant or the victim. She also noted that she wanted to be in the courtroom to support her niece as a member of the public rather than as someone working for the other side *[Darwin_Jun2018_Field Notes_p. 18]*.

These sentiments were repeated to me by various interpreters who often had to make the decision to either excuse themselves or to continue working regardless of their personal relationship to the parties in the court case. Here, Miliwanga Wurrben describes how she deals with these difficult situations:

Miliwanga:	*If it's one of my relatives in there, my tribal group, I will not interpret, because where I stand, that is my nephew or my niece, and at all costs I'm going to stand by them.*
Dima:	*So it's hard to be impartial?*
Miliwanga:	*Yo...In other cases, if there is no Kriol speakers but you are the only one from the same tribe, same family, this is where we make that very important decision. We put our interpreter's hat on. Yo, so when we're up there standing, we're not family now anymore, we're interpreters. That's very hard. But we have to if this person has committed something very serious, a serious allegation that has been committed, then we must go and perform our duty... I've done that several times.*

[Katherine_Jun2018_Miliwanga Wurrben_Interpreter_ Interview]

Interpreters like Miliwanga are constantly traversing the difficult terrain of obligation, tradition, representation, and professional expectations. On the one hand they have a commitment to their communities which is borne of the deep sense of belonging that kinship affords Indigenous people. On the other hand, they have a responsibility to carry out their interpreting duties with the professionalism that instils trust in them by the justice system.

An added layer of complexity is that Indigenous norms of interaction can sometimes give an impression of bias. For example, it is not uncommon in court for witnesses and defendants who know the interpreter to greet them with a hug or to refer to them as 'uncle' or 'auntie'. These are often expressions that signify respect for the interpreter but unfortunately this level of familiarity in interaction can diminish the confidence of

judicial officers and legal professionals in the impartiality of the interpreter and lead to a perception that Indigenous interpreters are less professional than other interpreters *[Barunga_Dec2018_Field Notes_p. 31]*. Of course, it would be discourteous for an interpreter to ignore their kin or to insist on formal contact. This places the interpreter in a difficult position of wanting to preserve harmonious relationships with family and other kin while safeguarding themselves from claims of partiality. In fact, the expectation that interpreters behave impartially while also demonstrating 'warm' and 'helpful' attitudes to their clients is something that they have always had to deal with, and the justice system has been slow to recognize the paradoxicality of such an expectation (Fowler, 1997). It is therefore important for judicial officers and lawyers to understand that the norms of interacting with kin can pose certain dilemmas for Indigenous interpreters and not to construe such interaction as signs of bias.

7.3 *Shame*

Shame, explicated below, is an immensely powerful emotion in Aboriginal life (Stanner, 2009, p. 46). Although many aspects of traditional life in Indigenous Australia have been eroded by colonization, *shame* remains a dominant force that influences decision making at an individual and a collective level. Bauman (2002, p. 206) argues that even in larger towns like Katherine, *shame* is a "still relevant 'tradition' and structural force around which much improvisation takes place in order to avoid it". The longevity of *shame*'s role in Indigenous society is ensured by the socialization of children into it through a combination of direct instruction and the sensitization that stems from witnessing the *shame* experienced by adults (Kwok, 2012).

During my fieldwork in Katherine, the notion of *shame*, frequently expressed as *'shame job'* or *'big shame'*, was repeatedly mentioned by lawyers and interpreters in discussions about interpreting. *Shame* was cited as a contributing factor to the unwillingness by some Indigenous language speakers to request an interpreter despite obvious need, as well as the reluctance by some interpreters to accept particular interpreting assignments. As I describe below, *shame* can have a significant impact on

communication and interpreting. Therefore, understanding the nature of *shame* can help those working in the justice system navigate some of communicative issues that manifest as a result of it. The recognition of *shame*'s potency also mitigates the risk of it being dismissed as temporary personal embarrassment with little bearing on access to justice. In order to recognize how *shame* can impact interpreting, it is pertinent that the concept of *shame* in Indigenous society is first explicated, especially in how it differs from its Western counterpart.

7.3.1 Understanding *shame* in the Indigenous context

The notion of *shame* can differ significantly in Indigenous and non-Indigenous conceptualizations. For most non-Indigenous Australians, 'shame' relates to the painful feeling of severe embarrassment that arises from the conscious awareness of having said or done something that would be deemed improper, disgraceful, or ridiculous. *Shame* in the Indigenous context, however, covers a broader range of emotions, and may arise in situations that would otherwise not be perceived as shame-inducing by a non-Indigenous person (Grote, 2007). A well attested example is the *shame* experienced by Indigenous people in circumstances involving personal attention, even if the attention is positive, for example when being praised for an achievement. Feelings of *shame* may also arise from meeting strangers, being in the presence of certain types of kin, or entering an unfamiliar place, especially the land of other Indigenous people (Harkins, 1994, p. 158). Harkins also points out that *shame* is not dependent on being seen, and a person may feel *shame* even if no one is around, for example when passing near a ceremonial ground.

There are many situations where Indigenous people, including Indigenous language interpreters, can experience *shame* in legal settings. Because *shame* can arise from being in the presence of strangers, especially non-Indigenous people, it is often experienced by Indigenous people in legal contexts where white presence frequently dominates and encounters with whites are unavoidable, for example when being interviewed by police, during consultations with lawyers, and in court. Even stepping into an unfamiliar space

such as a lawyer's office or a courtroom can give rise to feelings of *shame*. Conversely, having non-Indigenous people, such as police or government agency representatives, enter an Indigenous person's house can precipitate *shame* in that person. This is the kind of *shame* that can be experienced by Indigenous families who receive regular visits from Territory Families staff. *Shame* emanating from white presence in this particular context is compounded by the feelings of *shame* from being perceived as inadequate carers of children, as well as feelings of intimidation and uncertainty that stem from the power differentials between Territory Families and Indigenous people. Combined, these feelings can make for a significantly disempowering experience which has the potential to severely impact communication. A lawyer who works extensively in family law described to me the wall of silence he witnesses on a regular basis when assisting clients as they engage with Territory Families. He posited that such silence is symptomatic of the mixture of *shame* and fear experienced by his clients. He also noted that silence can be mistakenly perceived by others as deliberate disengagement which has at times led to accusations of families refusing to cooperate *[Katherine_Jun2018_Field Notes_p. 17]*. Arguably, in situations like this, the role of the interpreter becomes even more crucial. As cultural insiders with knowledge of the communication aspects that may elude non-Indigenous legal professionals, interpreters are able to offer a personal perspective on silence and its potential causes. Again, this reinforces the value of encouraging legal professionals to view interpreters as cultural brokers as well as language experts.

Shame can also be induced by being singled out for help, which explains the reluctance by some Indigenous language speakers with low proficiency in English to request interpreting assistance in crucial situations like police interviews and court proceedings. There is also a fear of the *shame* of being considered a nuisance, or of causing undue delays to other people. An interpreter expressed a wish that police would clarify to Indigenous people in custody that obtaining an interpreter is part of normal policing practice rather than an unexpected problem. The interpreter speculated that many people in custody would be dissuaded from seeking interpreting help by perceiving such a request as bothersome to police officers *[Katherine_Nov2018_Field Notes_p. 22*]. This issue can be remedied to some extent by increasing awareness among Indigenous

communities that engaging interpreters is an important procedure that facilitates access to justice and is one of the existing responsibilities of staff working in the justice system. Equally, there needs to be more recognition in the justice system that the reticence by some Indigenous people to ask for an interpreter can be in part due to the associated *shame* from such a request. Some of the lawyers I interviewed were aware of this particular cause of *shame* and had already developed certain strategies to ameliorate the *shame* that may be experienced by their client when a suggesting an interpreter. One such strategy is to reframe the suggestion to explain that interpreting is equally beneficial to the lawyers because they do not speak the client's language and need assistance to understand the instructions given to them *[Katherine_Jun2018_SQ; TL, Lawyers_Interview]*.

The causes of *shame* relating to language can vary in different contexts and communities. While some Indigenous people experience *shame* from lack of English proficiency, others can feel ashamed for not speaking their traditional languages. In certain contexts, these causes converge, deepening the *shame* and entrenching it across generations. For example, Kriol speakers who require interpreting assistance can feel *shame* for not being proficient in English but equally for not speaking the traditional languages of their peoples. The latter kind of *shame*, which can be experienced by individuals and entire communities, is directly linked to the dispossession of land, culture, and language. The complexities of this *shame* are explored by Adgemis (2017) who examines *shame* among Yanyuwa men that derives from their own perceived failure to meet cultural expectations. Adgemis notes that lack of knowledge of the Yanyuwa language is one of the common reasons young Yanyuwa men feel *ashamed* because they consider it a manifestation of their personal (and community's) failure to maintain cultural continuity. The immense injustice of this *shame* is that Indigenous communities continue to feel *ashamed* of having lost connection to language and culture when such loss is the result of violence against them.

Compounding the unfairness of the *shame* foisted upon Indigenous people by the loss of their languages is the fact that they have also long been made to feel ashamed for not

speaking (the prestige variety of) English, the language of their colonizers. Assimilatory policies that inexorably linked fluency in English with formal education introduced novel avenues of *shame* into Indigenous communities. Their ways of knowing and speaking continue to be heavily scrutinized by white governments and white society. The enduring legacy of this unrelenting colonial gaze is that, for countless communities, *shame* is now almost inescapable, its ubiquitous presence a daily reminder of continuing injustice.

7.3.2 Causes of *shame* amongst interpreters

Shame can be experienced by interpreters in the course of carrying out their professional duties. An interpreter may feel *ashamed* at having to relay questions from police, lawyers, or government officials about matters that are deeply personal or even taboo. In these situations, the interpreter is often confronted by the other person's palpable personal *shame*, and it is not unusual for the emotion of *shame* to be transferred to the interpreter. The contagious nature of 'shame' is explored by Biddle (1997, p. 230) who notes that "'Contact' shame may be just as painfully experienced, and equally identity delineating, as a direct shame response. Indeed, that the two are so closely related... is what makes shame so powerful and so social an emotion".

Certain topics, such as sexual assault and domestic violence, are particularly prone to inducing *shame* among interpreters. In contexts involving these topics, the experience of *shame* can encompass the client and/or the interpreter, as well as other members of the wider community. It is reasonable to surmise that the potential risk of *shame* would compel some interpreters to decline particular assignments that involve domestic or sexual violence, or matters relating to child protection. Unfortunately, these areas are relatively frequent sources of engagement with the justice system and the absence of a professional interpreter risks perpetuating the existing lack of access to justice for Indigenous people. This is particularly problematic in small language communities where the paucity of qualified interpreters means that it is not always possible to engage a different interpreter if one declines.

In some situations, the interpreter's *shame* is part of the collective emotion felt by their entire community. This was commonplace during the Intervention when government officials and army personnel, as well as the media, descended on Indigenous communities proclaiming the need to restore order and provide immediate protection to vulnerable children. The intrusion by white people into their lives, and the subsequent policies announced by government, brought a lot of *shame* to Indigenous communities that were singled out and depicted as examples of the perils of self-governance. As members of these communities, interpreters would not have been immune to the feelings of *shame* that reverberated around them. What impact such *shame* had on the interpreters' work has not been fully explored, but in conversations I had with interpreters, some acknowledged that grappling with collective *shame* made interpreting a difficult task.

Shame for Indigenous interpreters can also be the result of the specific requirement that interpreting is always conducted in the first person. Faithful interpreting often entails "performing speech acts on behalf of others, as long as those speech acts were originated by those others" (Hale, 2007, p. 6). This principle definitely improves accuracy and protects the interpreter, but it also challenges some cultural expectations around speaking for others. In other words, the interpreting convention of acting as the alter ego of the person for whom they are interpreting can cause *shame* for interpreters because they perceive such an act as disrespectful, especially if the other person is an elder or of a different sex. An interpreter, Miliwanga Wurrben, indicated that she felt especially uncomfortable and a bit *ashamed* at interpreting in the first person because such a communicative style would be deemed unacceptable in her culture. She noted that she felt scrutinized by the client for assuming their persona even when she explained that this was an expectation in her work. She specifically expressed feeling *shame* for 'stealing the voice' of the client *[Katherine_Nov2018_Field Notes_p. 29]*.

7.3.3 Recognizing and addressing *shame* in legal settings

Shame is rarely explicitly articulated by an Indigenous person who is experiencing it; Vallance and Chacos (2001, n.p.) describe it as 'simply inexpressible'. Sometimes, expressions such as *'too shame'* and *'shame job'* may be offered, but in most cases, *shame* may be identifiable by the physical and communicative behaviours associated with it. Common manifestations of *shame* that impact communication include evasiveness, a reluctance to talk or make eye contact with others, and even hiding the face or eyes with the hand (Harkins, 1994, p. 158).

Recognizing that someone is experiencing *shame* can be difficult for non-Indigenous people who work in legal settings. A lawyer noted to me that before she became aware of the feelings of *shame* that may be experienced by her Indigenous clients, she often felt confused by their aversion to answering her questions even in the absence of a language barrier *[Katherine_Jun2018_Field Notes _p. 17].* In fact, it is often only through personal experience and increased cultural awareness that legal professionals come to understand *shame* and its implications. The following is an excerpt from an interview I conducted with two lawyers, SQ and TL, who have worked in Katherine for many years. Here they are discussing how they recognize *shame* and the importance of being aware and sensitive to their client's feelings:

SQ: *Where I pick it up most easily is when you know the person obviously. Like when you've dealt with someone before, and you can tell differences in engagement. But I feel like when you've been around for longer too and you're interested and perceptive, you can tell even on first meeting. Well, you'll have an idea about certain topics that are generally going to cause shame. Also, maybe you're not even discussing a sensitive topic, but maybe there's a person in the room that makes you feel shame.*

When you know about shame, it's because you've picked it up, not because someone said "I'm feeling shame". *It's rare, not many would say* "I'm feeling uncomfortable talking about this".

TL: *I had someone say it to me the other day, and it was amazing. I thought 'wow'.*

You just have to hope that people are empathetic and perceptive. At the end of the day, it's the sort of stuff you can't really teach.

[Katherine_Jan2018_TL;SQ_Lawyers_Interview]

Recognizing that *shame* is a set of complex emotions with myriad causes is an important first step in addressing its implications on communication in legal contexts. Strategies to ameliorate the impact of *shame* will be most effective if they respond directly to the source of *shame*. For example, the *shame* associated with low proficiency in standardized English can be alleviated through explaining the role of interpreters in facilitating communication for the benefit of both parties. In situations where the interpreter's *shame* emanates from the witnessing of another's *shame*, phone interpreting could be suggested, although this may be of little use if the *shame* is manifesting in near or complete silence. In circumstances of wide-spread *shame* in a community that include the interpreters, obtaining an outside interpreter is a possible consideration. This is a viable option for speakers of larger languages, such as Kriol, where interpreters can be recruited from different communities. However, this must be

weighed against the possibility that communities may reject outside assistance in order avoid their *shame* being witnessed by others.

Although it may not always be possible to mitigate the impact of *shame* on communication and interpreting, it is imperative that there is increased awareness and training within the justice system of how to contextualize *shame* and appreciate its contours and its embodiment. Crucially, the justice system must not view *shame* through the lens of white cultural logic that deems it a destructive and inhibiting force, rather there needs to be an acknowledgment of *shame* as an important part of the scaffolding upon which behavioural expectations are built. A better understanding of *shame* and its potency in legal settings can lead to increased empathy and potentially improve communication between Indigenous people and those who engage with them in legal contexts. Equally important is that *shame* is discussed in interpreter training, with appropriate attention to cultural sensitivities, and recognized as a significant aspect of the day-to-day work of interpreters. Given that the very nature of *shame* means that it is often unspoken about, these discussions will result in interpreters developing the required skills to navigate *shame* in their work. This in turn has the potential to improve the provision of interpreting for Indigenous language speakers and facilitate better access to justice.

7.4 Fear of blame and retribution

An important, but often overlooked, cultural factor impacting Indigenous language interpreter's work is their fear of blame. This is often referred to by Indigenous people as 'blame job' and is one of the reasons for interpreters declining certain assignments or, less commonly, failing to complete them. Concern about being blamed for the outcome of a court case is particularly problematic for interpreters who come from small communities where the boundaries designating the impartiality of the interpreters are often blurred by the close relationship interpreters have with many members of the community, including kinship relations (§7.2.2). This is further complicated by the fact that the culturally based conceptualizations in Indigenous

communities of the interpreter as an advocate and a spokesperson can contrast with the expectations of impartiality that are found in the interpreting code of ethics (see §8.3.2 for a discussion of the varying conceptualizations of language and interpreting). Traditionally, the duty of interpreting between different Indigenous language groups has been a part of a larger set of responsibilities given to elders and spokespeople in the community. The expertise and trusted position of these elders gave them the authority to act as intermediaries with speakers of other languages, but also placed the burden of the outcome of negotiations on them. As a result, some members of community may mistakenly assume that the interpreter is able to alter the outcome of a court trial. These existing cultural conceptualizations are challenged by the Western-based definitions of the role of the interpreter.

Unlike conflict of interest relating to kinship relations, which is generally recognized by the legal profession at large, blame is less understood. However, some judges and lawyers who have worked with Indigenous communities for extended periods are better at recognizing the fear of blame and taking it into consideration when engaging interpreters. A judge noted to me that she understood why some interpreters tend to step aside in cases involving their own or neighbouring communities out of concern that they may become the subject of blame.

> *It requires quite a robust person to be an interpreter in courts and be prepared to, kind of, fight for the fact that they are independent, they are not taking sides, whereas it's seen in the community that they are taking sides or helping the prosecution to put someone in jail. So many interpreters do not want conflict in the community, do not want conflict with family. And in order to stop the humbug, it is easier for them not to come to court.*
>
> *[Katherine_ Jun2018_Elizabeth Armitage_Magistrate_Interview]*

Interpreters do not always express fearing potential blame or feeling intimidated by community members, although they are being increasingly trained to articulate such concerns to the court. Finnane (2016, pp. 199–200) describes an interpreter reporting being intimidated by a member of one of the families involved in a dispute that led to a well-publicized court case. The interpreter was threatened and warned not to take sides, which left her shaken and temporarily unwilling to continue interpreting. Although the incident was resolved by the court and the interpreter returned to work, her decision to step aside speaks to the fear of blame and accusations of impartiality that interpreters must deal with.

Interpreters fearing blame are not only concerned about being criticized or ostracized by their community but may also worry about being the subject of acts of 'payback'[58], which threatens their safety and the safety of their families. Payback may involve physical assaults and acts of intimidation as well as the threat of using sorcery against the interpreter (see §9.2.5). Fear of 'payback' can easily be overlooked by legal professionals who have little appreciation of the importance of the interpreter's personal and cultural beliefs in the decision to be part of a legal case. It is vital, therefore, that those working with Indigenous language interpreters in legal settings are made aware of the issues around blame and the genuine concerns that interpreters have about being held responsible for the result of a legal case. If an interpreter declines a particular assignment or steps aside during a court case in order to avoid potential blame, legal professionals need to recognize the serious concerns that the interpreter has and either attempt to resolve them, or when possible, engage another interpreter from a different community (See Cooke, 2004, pp. 88–89). The latter approach is obviously more viable in larger languages where interpreters can be drawn from various communities. Kriol is one such example. AIS and AIWA employ a relatively large number of Kriol interpreters

[58] The term 'payback' is used extensively in Aboriginal English, but understandings of it in the wider community can be over-simplified and problematic. The notion of 'payback' in Indigenous society is very nuanced and extends beyond simple revenge to encompass a range of understandings of Indigenous Law, process, and logic.

who they dispatch to the many Kriol-speaking communities across the Top End. This circumvents the potential of blame to some extent, although some members of the community may still expect any Indigenous interpreter to be on the side of the community rather than an impartial participant in legal proceedings.

Educating communities about the role of interpreters and the ethical boundaries within which they operate can also play an important role in managing community expectations and protecting interpreters from potential blame. This goes a long way towards assuring communities that interpreters cannot sway the outcome of any trial and fosters increasing trust between interpreters and their communities.

7.4.1 Driving the suspicion: Summoning interpreters as witnesses

The risk of interpreters being blamed by members of the community for legal outcomes is exacerbated by the practice of summoning interpreters as witnesses in court trials. This can occur in cases where the issue of miscommunication is central to the argument of one side of the legal dispute. For example, a defence team may be challenging the quality of interpreting in a police interview, or they may call on the interpreter to shed more light on a particularly contentious communicative interaction. This practice may seem innocuous, but in fact, seeing an interpreter on the witness stand can lead to significant confusion in community about their role as impartial participants in the legal process. This can erode the community's trust in interpreting and leave the interpreters vulnerable to accusations of taking sides even if communities were educated about impartiality being a pillar of the interpreting profession and its code of ethics.

An interpreter who has been advocating to end this practice described its effect to me:

> *Impartiality is not understood, and we have people like the police who don't make it any better when they often summon interpreters as witnesses, which I've been fighting ever since I started in this role. The interpreter goes into a Record of Interview and says "*I'm impartial, end of story"*. The next thing, they're a police witness because they've been summoned…That's not the role of the interpreter…It gives them no credibility with their communities.*
>
> *[Darwin_Jun2018_DQ_Interpreter_Interview]*

Placing interpreters on the witness stand should be a last resort for the court if the justice system is to promote trust from communities in the impartiality of the interpreting profession and the fairness of the legal process. In addition to the measures to shield interpreters discussed above, it is imperative that courts find alternative ways to manage cases where the interpreter is required to deviate from their usual role. Such measures could include the judge and legal teams meeting with the interpreters separately or allowing interpreters to submit written statements to the court instead of appearing at the witness stand.

7.5 "I didn't have my rights 'cos we were staying at his uncle's house": A case study

The following case study is presented to highlight the cultural misunderstandings that can arise from the lack of a qualified interpreter in legal settings. It is a continuation of the case study discussed in §5.5. The case involves Witness X who was the main witness in a domestic violence hearing. To remind the reader, Witness X provided a statement to the police which was written by the police officer and then read back to the witness who signed it to confirm the veracity of its details. At no stage did the witness read or write any part of her statement and she was not provided with interpreting assistance during the police interview.

Witness X is a Kriol speaker who used Aboriginal English in court. However, as I describe in §5.5, she had low proficiency in English and was frequently unsure about the meaning of the some of the phrases and expressions used in the court. There was no interpreter present during the hearing. The witness's mother was allowed to sit next to her in the witness stand, but after providing some verbal assistance in the early stages of the hearing, was told by the judge not to address anyone in the court unless specifically spoken to. This left Witness X without any access to language assistance during the questioning by the prosecution, for whom she was the primary witness, or during the defence's rigorous cross examination that followed.

From the early stages of the hearing, the prosecution sought to lay out the case against the defendant by asking Witness X to describe the details of the alleged assault which had occurred over two separate occasions. The witness struggled at times to recount the events in the order they happened but was able to give a good summary of the incidents. One of the questions posed by the prosecution was aimed at establishing the witness's non-consent to being physically assaulted. This seemed an atypical line of questioning, but I was told by lawyers that it is not an uncommon question given that police officers often include the question of non-consent explicitly in their interviews with witnesses and suspects.

The following is the exchange that took place between the prosecution lawyer and the Witness X[59]:

Prosecution: *And did you say to [the defendant] that it was ok for him to push your head against the wall?*

Witness X: *Yes, 'cos we were living at his uncle's house. He was looking after his uncle.*

[59] This is not an official transcript of the hearing, rather my own transcript which I wrote while observing the court case

Prosecution: *Sorry?*

Witness X: *Yes.*

(The mother nudges Witness X. Witness X looks around in confusion)

Prosecution: *Did you tell [the defendant] that it was ok to push your head against the wall?*

Witness X: *I didn't have my rights 'cos we were staying at his uncle's house.*

Prosecution: *But you told him it was ok?*

Magistrate: *I think I know what she's getting at?*

Prosecution: *Oh, ok, thank you your honour. No more questions.*

Although Witness X's responses were completely unexpected, and in fact implied that she had given consent to being assaulted, no further clarification was sought by either the prosecution or the magistrate about the relevance of the uncle's house to the witness's apparent consent. The mother of Witness X looked particularly agitated at this point but said nothing as she had been told to remain silent by the magistrate earlier. The witness herself seemed unsure whether she had answered the question correctly and continued to look around searchingly as the situation unfolded. At the height of the witness's confusion, the defence took over and began their cross examination in which they continuously attempted to discredit her on multiple grounds including those discussed in §5.5. While Witness X's police statement was eventually accepted by the court, the process was clearly very traumatizing to her. Adding to the problematic nature of the hearing is the fact that she had already been deemed a vulnerable witness by the court due to the nature of the assault and her fear of the defendant. This was also a public hearing which meant that the defendant and witnesses relatives were able to be in court and watch the proceedings.

The exchange between the prosecution and the witness was very telling. The seemingly irrelevant reference to the uncle is actually central to Witness X's response. The court may not have realized that the fact that the incident took place at the defendant's uncle's house would have had a great bearing on how Witness X was able to react at the time.

The community in which the assault occurred is one where traditional kinship relations remain very strong and the norms and practices governed by kinship are a key part of social organization[60]. Kinship rules in Indigenous cultures prescribe the varying rights and responsibilities that kin have towards each other. In the case of uncles and nephews/nieces, these rights and responsibilities would vary from one community to another as well as along matrilineal/patrilineal lines[61]. In many Australian Indigenous societies, a person's uncle in the patrilineal line, e.g. a father's brother (FaBr) is contrasted with an uncle in the matrilineal line, e.g. mother's brother (MoBr). Generally, uncles descending from the matrilineal take on a disciplinary role, especially with their nephews (Franks & Curr, 2007). Such uncles are highly respected and, in many communities, nieces and nephews are expected to display deferential behaviour around them. It was never clarified to the court whether the defendant's uncle is his MoBr or FaBr, so it is difficult to make definite claims regarding the relevance of the incident taking place at the uncle's house in this particular case. However, given that Witness X is a Kriol speaker, her use of the word 'uncle' may be mirroring the Kriol word 'anggurl' which refers to a person's MoBr as opposed to a FaBr, the Kriol word for which is 'dedi' (see Figure 8 below).

[60] I note here that although the assault occurred in community, the court hearing did not necessarily take place in that community.

[61] Patrilineal kin are relatives who descend exclusively through male ancestors while matrilineal kin descend exclusively through female ancestors.

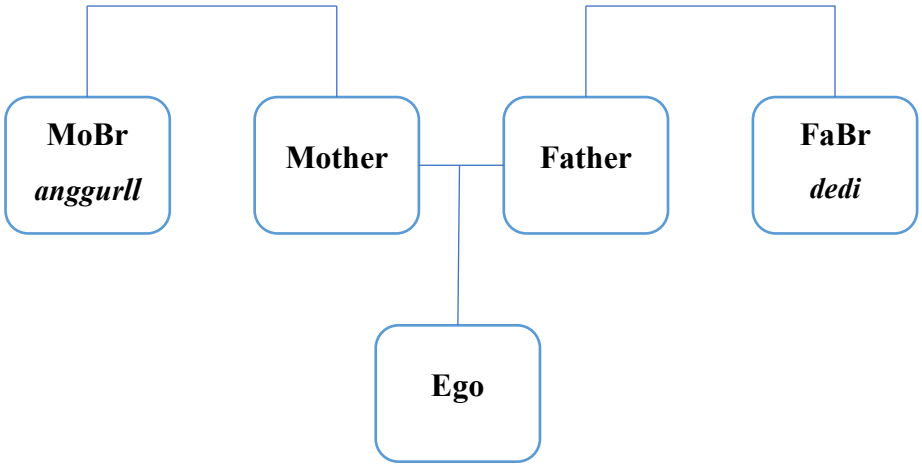

Figure 8: Kriol terms equivalent to English 'uncle'[62]

Witness X's reply to the prosecution's repeated inquiry about consent is likely an attempt at explaining that she felt limited in how she could respond to the assault because it took place at the defendant's uncle's house. Even though it was not her own uncle's house, she would have been cognizant of the behavioural restrictions expected in that context. She expresses this point in the utterance '*I didn't have my rights 'cos we were staying at his uncle's house*'. The rights Witness X refers to are presumably her right to resist the assault, retaliate, or speak up and report the incident. In fact, the court had already heard that it was only when Witness X returned to her own house that she finally contacted the police about the assault.

The repeated questioning by the prosecution revealed a lack of recognition of the cultural background against which the witness's response could be understood. In addition, the fact that neither the prosecution nor the magistrate made a genuine attempt to contextualize the witness's utterances speaks to how intercultural miscommunication often goes unnoticed or unaddressed in courts on a daily basis. Such instances of miscommunication do not always have to lead to a miscarriage of justice for them to inflict lasting damage to the confidence of Indigenous people in the fairness of the legal process. Despite the court eventually accepting the witness's statement, I was left with the impression that her experience was ultimately a damaging one.

[62] MoBr = mother's brother; FaBr = father's brother.

Although I did not interview or speak to Witness X, her distress throughout the proceedings was evident from the way her communication oscillated between frustrated utterances, confused questions, and resigned silence. For a vulnerable witness who needed and deserved extra care from the court, the lack of interpreting assistance was particularly problematic.

This case illustrates the disadvantages faced by Indigenous language speakers in the absence of a qualified and culturally proficient interpreter. An interpreter with the appropriate knowledge of cultural norms and practices would have been able to explain to the court what the witness was referring to by stating that she did not have her rights. Accredited interpreters are trained to recognize cultural misunderstandings and bring the court's attention to them. Unlike Witness X's mother who was not permitted to speak during the hearing, an interpreter would have had an official platform clarify the misunderstanding to the court. Mitigating the risk of intercultural miscommunication in legal settings requires the justice system to firstly recognize the vital role of the interpreter not only as a language expert but as a conduit between cultures.

The lack of interpreting assistance during this hearing was a missed opportunity by the court to demonstrate its appreciation of the linguistic and cultural needs of Indigenous people. Interpreters who are able redress the disadvantages experienced by an Indigenous person as they navigate complex legal contexts can be lifeline, especially when the person is already vulnerable due to other circumstances. The experience of Witness X is likely to further erode her trust in the legal process, something the justice system can ill afford.

7.6 Concluding remarks

The lasting unwillingness by the justice system to face its dearth of cultural understanding is resulting in a multitude of disadvantages for Indigenous communities including, but not limited to, restricted access to justice through inadequate provision of interpreting services. This chapter examined only some of the aspects of Indigenous

culture that impact interpreting. The immense breadth and depth of Indigenous culture means that many more potential intersections between sociocultural factors and interpreting need to be considered in order to improve interpreting in legal settings. For example, gender considerations and age hierarchies in Indigenous societies can play a large role in the decision to interpret in certain legal cases, or to become an interpreter in the first place (see, for example, §8.3.2). Similarly, there needs to be greater attention paid to ensuring that interpreters working in cases involving taboo or culturally sensitive topics are given adequate support and the opportunity to step aside from interpreting if they need to. In this chapter I discussed the challenges by interpreters working during court matters about sexual and domestic violence, especially if these involve members of the community known to the interpreter. This is an issue that deserves greater attention form the legal community as well as organizations that provide interpreting services.

Another aim of this chapter is to highlight that the professional experience of Indigenous interpreters cannot be abstracted from the cultural and social structures of their communities. Understanding these structures and recognizing them as part of the interpreting process is a vital step towards improving the working conditions of Indigenous language interpreters, the provision of interpreting services, and ultimately, access to justice for Indigenous communities.

The next chapter builds on some of the topics discussed in this chapter but adopts a more explicitly decolonial stance that focuses particularly on the epistemological and ontological considerations of Indigenous language interpreting.

8 COLONIALITY AND INDIGENOUS LANGUAGE LEGAL INTERPRETING

It is a stifling day in January, and I am taking refuge in the shady area outside Katherine's local court with FC, a woman whom I had met for the first time only a day earlier. The mix of unfamiliarity and lethargy-inducing heat is resulting in extended periods of silence and gazing at nothing in particular. FC seems to be contemplating something for a while before she stirs suddenly, points to the courthouse and says *"That's not our show in there. That's whitefella show*", then goes back to smoking her cigarette, completely unfussed by how profound and intriguing her statement was.

I press her on what she meant by 'whitefella show' and she says *"It's white people who made the law. We just turn up to court and do what they tell us to do. It's not our place, it's not how* ***our*** *law works"*. She then describes how many of her countrymen, especially the older ones, don't understand whitefella law and find court proceedings remarkably foreign and intimidating. In particular, she tells me, they are confused by how white law changes all the time compared to Aboriginal traditional law, about which she says: *"It was here before all of us. We can't change it"*.

Another drag on her cigarette and a long sigh follow, then she declares: *"But now it's whitefella that makes all the decisions"*.

[Katherine_Jan2018_Personal Diary_p. 16]

Yolŋu speak of *ganma,* the mixing of salt and fresh water, a metaphor for two-way thinking and learning. The fresh water represents Yolŋu knowledge, the salt water is Western knowledge, and as the salt water rushes in and blends with the land's fresh water, new possibilities of knowing are created (Yunupingu, 1994). It is a striking metaphor, but it bears little resemblance to the lived experience of many Indigenous Australians. In reality, Western epistemology has always had the upper hand. Its introduction and expansion were marked with such violence that its territory, physical and embodied, is now dispiritingly vast. The saltwater has seemingly overwhelmed the land.

But as I have come to learn, more than two centuries of colonization and colonial thinking have not managed to completely cast Indigenous ways of knowing aside. There is arguably not a part of Australia that has escaped the intrusion of Western epistemology, but in countless places on country the Dreaming still prevails. Where people 'live in both worlds', a common way that Aboriginal people describe how they deal with living in a Western nation, every facet of life is a potential site of hegemony and resistance. Every act, from rearing children to deciding which language to speak, is laden with the tension of the choice between epistemic assimilation - the giving in to Western ways of knowing, and epistemic disobedience - the conscious delinking of one's thinking and actions from the contemporary legacies of past colonial practices.

In the midst of it all stands language, sometimes as a weapon of modernity's epistemic violence, other times as a symbol of defiance and rebellion. Language's role in the struggle between epistemic dominance and disobedience is never more evident than in the relationship between Australia's Indigenous languages and its Western law, itself a most visible artefact of Western epistemology. Having much of its foundations in the Enlightenment's paradigms of knowledge, the law is both a symbol and an embodiment of Western ways of knowing. As such, any rigorous examination of the relationship between language and the law must have at its heart a recognition of the triangulation of language, law, and epistemology. It is my aim in this chapter to situate the use of

Indigenous languages, specifically in relation to legal interpreting and translation, in the epistemic space created by Australia's justice system. To do so, I use the notion of 'coloniality of knowledge', described in §2.2.2, and the related concept, 'coloniality of language' (§8.4). Using these notions provides novel means for theorizing some of the unique issues around the use of Indigenous languages in the expression of Indigenous conceptualizations, especially in legal contexts.

I begin the chapter by describing how decolonial perspectives reveal the ways by which parts of the West's epistemic territory in Australia are created and fortified by Western law (§8.1, §8.2). I then turn the discussion to examining language as a site of struggle and resistance; here I explore the differences between Indigenous and Western conceptualizations of language and interpreting, and the influence of such differences on the interpreting act itself (§8.3). The notion of a 'coloniality of language' is introduced in §8.4 in order to contextualize a subsequent discussion of attitudes towards the Kriol language and their impact on the process of interpreting (§8.4.1, §8.4.2). The latter part of the chapter explores the vexed issue of translatability, in particular how various underpinning knowledges can impact the translatability of culturally specific conceptualizations (§8.5).

8.1 Australia's epistemic territory, borders, and frontiers

In their articulation of the decolonial project, Mignolo and Tlostanova (2006) call for the adoption of critical 'border thinking' as a way of exposing and responding to the epistemic violence perpetrated by those who assign epistemic differences based on a racial classification of people. Border thinking explores the epistemic boundaries that designate the validity of certain forms of knowledge; ways of knowing that belong to the inside of the borders are deemed acceptable, the rest are either marginalized or erased altogether. Examining the creation and maintenance of epistemic borders allows for the analysis of the colonial matrix of power, both as an oppressive apparatus through which modernity excludes some people from the production of knowledge, and as a site of

epistemic struggle and resistance for those whose ways of knowing are situated outside modernity's imposed epistemic borders. Although not articulated in such terms, Mignolo and Tlostanova's approach is emancipatory in nature as evident by its central aim to "empower those who have been epistemically disempowered by the theo- and ego-politics of knowledge" (2006, p. 207). An emancipatory approach to language and the law is not only apt but sorely needed given the continuing struggles of Indigenous languages speakers to have their languages recognized by the justice system.

With regards to describing the boundaries imposed by epistemic territory, Mignolo and Tlostanova argue for the use of the term epistemic 'borders' rather than epistemic 'frontiers', as the latter invokes nineteenth century conceptions of frontiers as "the last point in the relentless march of civilization" (2006, p. 205), thus implying that beyond the frontier lies nothing, barbarism and emptiness, the very antithesis of civilization. However, I posit that if we are to examine coloniality in the Australian context, the term 'frontier' is indeed an apt one, not because it describes the meeting point between Western and Indigenous people, with the former exemplifying modernity and the latter pre-modernity, but because it conveys both the violence and resistance that have defined the Australian frontier conflicts since the arrival of the First Fleet. Australia's epistemic territory is not metaphorical or imagined; it is comprised of the real and geographically demarcated places where Indigenous bodies reside in contested spaces and where epistemic violence is a feature of everyday life. Indigenous engagement with Australia's democratic institutions, including the law, exposes the many modes by which Western ways of knowing dictate the lives of Indigenous people, including how they should perceive the world. The modus operandi of Western law has always been to initially deny the existence of Indigenous laws and knowledges, and when forced to confront their presence, to deny their validity. The epistemic violence that has resulted from Western law's dismissal of Indigenous law is realized in actual violence, in the fracturing of Indigenous communities, in the wide-scale imprisonment of Indigenous young men and women, and in the unrelenting removal of Indigenous children from their homes and families. Against the backdrop of such colonial control, it is hard to

contest the notion that from an epistemological perspective at least, the Australian Frontiers still exist, and they are still violent.

The establishment of the West's epistemic territory in Australia has not been without resistance, however. Acts of epistemic disobedience, including those concerned with language, family, and kinship are exemplified in the way Indigenous communities continue to uphold traditional laws and pursue the cultural practices that have held their societies together since time immemorial. Exposing the many aspects of epistemic violence and resistance in Australia is a mammoth task that no single person or research project can ever accomplish. In this thesis, I endeavour to identify some possible sites of violence and disobedience in the hope of highlighting the need for a wide-reaching and interdisciplinary approach to the colonial subjugation of Indigenous Australians. I focus on language in general, and legal interpreting in particular, in my exploration of the various forms of colonial control. A common thread throughout is the variance in the conceptualizations that are present at intersection of law and linguistic practices, including of conceptualizations of language, law, and kinship.

8.2 The law as a tool of coloniality in Australia

> *Normally in your Western justice, the person who has the last say is the magistrate, after hearing everything. But for us it is Wangarr, the Great One. All the last of everything that is to be said comes from the Great One, the Great Spirit.*
>
> *[Katherine_Jun2018_Miliwanga Wurrben_Interpreter_ Interview]*

The *terra nullius* doctrine that declared Australia an uninhabited country paved the way for the introduction of English Common Law at a time when 'enlightened' colonizing states were seeking to introduce Western law around the globe as a supposedly civilizing force aimed at bringing legal order to what they perceived as arbitrary and primitive

societies (Merry, 1991). The colonial endeavour led to knowledge becoming a battlefield between hegemony and liberation. In the minds of the colonizers, the West had the light of reason on its side, and the rest was steeped in the darkness of myth and irrational thinking. Vázquez (2011, p. 29) argues that modernity's beliefs were established not through the 'light of reason', as colonizing states claimed, but rather through the states' practices of expansion, disdain, and erasure. In other words, the logic of the coloniality of knowledge is such that Western knowledge is elevated more through the impoverishment of alternatives than through its own inherent values.

In Australia, English law was held in contrast to Indigenous 'lore' and seen as a universally applicable and impartial instrument of reason, one that embodied rationality and rejoiced in noble humanity (Dodson, 1995). The doctrines of English law, which owe much of their foundation and historical development to Christianity and the Enlightenment, were used to set the standards for governing both the colonizers and the colonized. From that point on, Indigenous Australians were subjected to a foreign value system that controlled all aspects of their lives and judged them according to principles which they did not recognize. It took little time for the mass incarceration of Indigenous people to begin, leaving a legacy that continues to this day and results in disheartening figures of Indigenous overrepresentation in Australia's jails.

While Western law's role in the early stages of Australia's colonization cannot be understated, it is its contribution to the ongoing process of coloniality that can be truly pernicious. In particular, the way Western law has come to regard its own standards of knowledge and truth as axiomatic makes it a powerful tool in the marginalization and suppression of other knowledges. The law codifies knowledge in such a way that it operates hand in glove with the project of modernity to subvert Indigenous ways of knowing and maintain control over the bodies and lives of Indigenous people.

I note here that the law's role in maintaining the colonial apparatus has not gone unaddressed in legal circles. Decades of interdisciplinary scholarship that drew from the disciplines of sociology, philosophy, economics, and anthropology, have led to a surge

in dialogue about the true nature of jurisprudence and the need to adopt postmodern approaches to legal theory and praxis. This in turn created a number of legal movements, including Law and Economics, Critical Legal Studies, and Feminist Legal Theory, to name a few, that have critiqued the ontological foundations of modern law, and the gender, class, and racial inequalities produced by legal practices (Minda, 1995). This thesis does not involve an examination of postmodernist interpretations of legal theory, but I refer the reader to a number of works that provide an overview of postmodern law including Minda (1995) and Litowitz (1997).

8.3 Language as an arena of epistemic struggle

The connection between language and epistemology has long been a focal point of Western philosophical exploration. From Russell (1969), Searle (1969), Habermas (1978), Saussure (1995), Wittgenstein (2009), and Whorf (2012), to countless others, philosophy's preoccupation with the relationship between our knowledge and our language use became so prevalent, it is often referred to as the 'linguistic turn' in the course of philosophical thinking (see Rorty, 1967). I do not attempt to summarize the varied and sometimes polemical discourses around language and epistemology other than to note that for the most part, their primary focus is on the role played by language in the acquisition, generation, analysis, conceptualization, and communication of knowledge. What is lacking in many of these discourses is any vigorous examination of language's part in creating, maintaining, and resisting epistemic dominance. Most of the approaches to language and epistemology in Western philosophy take the supremacy of Western epistemology as a given. This, of course, does not invalidate all the claims made by those theorizing within the paradigm of Western philosophy, but it does beg the question of how complete our understanding of the true nature of language's relationship with knowledge can be if it is founded on an assumed hierarchy of knowledge to begin with. Given the imposition of epistemological hierarchies in colonized societies worldwide, a critical evaluation of the relationship between language, epistemology, and coloniality is a necessary part of any comprehensive analysis of language and knowledge. And while such kind of analysis is performed by

some decolonial theorists, it is mainly presented within the context of coloniality in South America. Thankfully, there is growing scholarship in Australia around decolonizing linguistic practices which is contributing to the advancement of the field, though it has focused predominately on deconstructing colonial and power relations in the field of language documentation and revitalization (E.g. Stebbins et al., 2018, pp. 37–62). Significantly, some of this scholarship is framed around linguistic injustice with a specific focus on the epistemic, social, and political aspects of language use, which is very relevant to this thesis (E.g. Roche, 2019).

To situate language in the epistemic space in Australia, I begin by interrogating some of the different conceptualizations of language and interpreting in Indigenous Australia. I then explore the notion of 'coloniality of language', introduced by Veronelli (2015), in order to describe how the marginalization of Indigenous conceptualizations constitutes epistemic violence and contributes to the reification of modernity's epistemic borders in Australia.

8.3.1 Conceptualizing language

Indigenous and Western conceptualizations of language can at times stand in stark opposition. Western notions of language conceive of it as belonging exclusively to the realm of human communication. Although linguistic differences are acknowledged, even celebrated, there is a universalist assumption that all languages belong to their human speakers and cannot exist without them. Because language is considered a vital tool for transmitting information and conveying thoughts and emotions in inter-subjective communication, there is a general belief that a language ceases to functionally exist when its last or second last speaker dies. Speaking about language death, Crystal (2002, p. 2, emphasis added) comments:

> "If the language has never been written down, or recorded on tape - and there are still many which have not – it is all there is. But unlike the normal idea of an archive, which continues to exist long after the archivist is dead, the moment the last speaker of an unwritten or

> unrecorded language dies, the archive disappears forever. When a language dies which has never been recorded in some way, *it is as if it has never been*"

There is also a widely held perception that almost anyone has the right to speak and learn a language even if it is not their native tongue. Most theories of language acquisition, for example, are concerned with a person's cognitive or social ability to acquire a language without consideration of any constraints to their right to do so. Contrast this with the Indigenous Australian conceptualization of language as belonging to country itself, embedded in its landscape, inalienable and irremovable (Merlan, 2009). For many Indigenous language groups, ancestral languages are considered a gift from creator beings who planted them in tracts of land as they travelled across country. There are stories that tell of Dreaming figures moving across country at the time of creation and leaving placenames, stories, and songs in their languages. Rumsey (1993, p. 200) provides the example of the Jawoyn language of the Northern Territory, which according the Jawoyn people, was installed in the land by Nabilil 'Crocodile', a Dreaming creation figure who travelled up the Katherine River and left placenames in the Jawoyn language. A similar account is given by Evans (2010, p. 343) in his description of the story of Warramurrungunji who, according to the oral traditions of north-western Arnhem Land, was the first human to enter the Australian continent. Warramurrungunji came out of the Arafura Sea on Croker Island and moved inland, giving birth to many children along the way. She is said to have placed groups of people in different areas and decreed what languages are to be spoken in those areas before moving on. Evans contrasts this story with the Biblical myth of The Tower of Babel (told in Genesis 11:1–9) where God punishes humans for deciding to build a tower tall enough to reach heaven by scattering them all over the Earth and confusing their languages so they no longer understood each other. As Evan notes, the story of Warramurrungunji highlights a radically different point of view that considers linguistic diversity as a good thing because it shows where everyone comes from and where they belong.

To many Indigenous people, ancestral languages are not considered merely an identifying feature of their speakers or a codified means of communication, rather as an inherent part of the country to which the speakers belong (Walsh, 2002). In other words, the links between people and language are considered secondary, founded on a common grounding in the landscape of both people and languages (Rumsey, 1993, p. 204). This means that even when the last speaker dies, language remains on country in the land's features and in the mouths of the ancestors who roam it. If we compare this conceptualization of language with Crystal's (2002, p. 2) statement above, we get a glimpse of the fundamental differences between Indigenous and Western ways of viewing and understanding language.

The view that language's relationship with the land is necessary rather than contingent, that language exists independently of human occupation of the land, does not mean that Indigenous people cannot or do not claim ownership of an ancestral language; quite the contrary. Like ownership of particular tracts of country, the right to one's ancestral language is passed down through kinship systems. This is exemplified in the fact that it is usually inappropriate for people to enter parts of country or tell stories of that country without the express permission of its owners, especially if using traditional languages to tell those stories. Below is an extract from an interview conducted by Couzens, Eira & Stebbins (2014) with Daryn McKenny, an Awabakal man, where he speaks about reviving the Awabakal language on country that also has many Gamilaraay and Wiradjuri speakers.

> *"We do know we're on someone else's Country. We can know that there are traditions and laws. There are Dreamings which relate to this Country, here, which we're on. We do know that we should not bring our language into here, and start speaking of the Dreamings in that language or so forth" (Couzens et al., 2014, p. 59).*

The rights to traditional languages are considered so inherent and irrefutable that they are sometimes encoded in the language itself. An example of this is provided Blythe and Wightman's (2003) exploration of language ownership and identity in the Kija and Jaru

languages of the east Kimberley region of Western Australia. The following expressions are in the Kija language (Blythe & Wightman, 2003, p. 72).

(1)

ngayin-ti	*Kija-pa-n=ngake*
1SG-TOP	Kija language-having-STAT=1sBEN

'I have the Kija language'

~ 'I am Kija'

(2)

nginyjiny	*Jaru-pa-ny*	*jarrak*	*kerne*	*Kijam*
3SG-M	Jaru-having-M	speak	3sS.say.PRS	Kija

'He is Jaru, but he speaks Kija'

In example (1), possession of a language is denoted by the *–pa* (having) suffix; to have (or own) the Kija language is to be Kija. Contrast this with example (2), where the speaking verb *jarrak* indicates linguistic knowledge rather than ownership; speaking Kija does not mean being Kija.

The above example demonstrates that language knowledge or competency is neither sufficient nor necessary for language affiliation. By 'not sufficient', I mean that the ability to speak a language does not guarantee that the person identifies themselves as a speaker. Multilingualism has always been the status quo for many Indigenous Australians, with some speaking English as their second, third, or even eighth language. However, choosing which language to speak, or divulging one's ability to speak a language, is not always straight forward. A speaker must weigh their competency in a language against their right to speak it. On the other hand, because language competency is not a necessary condition of affiliation, a speaker may declare their language as that of the language group they belong to even if they lack the competency deemed obligatory by Western standards. As Rumsey (1993, p. 200) explains "Jawoyn

people are Jawoyn not because they speak Jawoyn, but because they are linked to places to which the Jawoyn language is also linked".

8.3.2 Language conceptualizations and interpreting

A number of interpreting issues arise from the discrepancy between Indigenous and Western understandings of the distinction between language use and the right to language. One relates to the availability of interpreters in specific languages where speaker numbers are not well-established. Ascertaining how many speakers there are of a given language in order to gauge interpreting needs and demands can be problematic. There are speakers who remain unidentified because the languages they speak and the language groups they belong to are not the same. This can lead to great inaccuracies in speaker numbers, even when reported by linguists or Indigenous communities themselves. The underestimation of speaker numbers can result in the paucity or complete lack of trained interpreters in some languages. This was highlighted to me by a lawyer in Katherine whose client requested an interpreter during a consultation with the legal team and indicated that her preferred language was Dalabon. Upon contacting the Aboriginal Interpreting Service (AIS) to book an interpreter, the lawyer was advised that there are no Dalabon interpreters in AIS because the Dalabon language is considered extinct. "There's not a whole lot that I can do", the lawyer told me *[Katherine_Jun2018_NO_Lawyer_Interview].* It is not clear whether the client belonged to the Dalabon language group or used it as her primary language, and she may possibly have been one of the last remaining speakers of the language. The fact is, unreliable estimates of the number of speakers, semi-speakers, and passive speakers of Indigenous languages are causing uncertainty in the provision of interpreting services, though how such an impasse can be overcome is unclear.

Another ramification of the tension between competency and ownership concerns the choice of appropriate interpreting. One of the ways by which the lawyers I spoke to in Katherine establish a client's language for interpreting purposes involves asking the question *'what is your preferred/best language?'*. In most cases, such a question elicits

the correct information and allows for the engaging of appropriate interpreters. However, some lawyers have indicated that, occasionally, clients would not name a language they speak if it is not their ancestral language, opting instead for English as their preferred language, thus forgoing the opportunity for much-needed interpreter assistance *[Katherine_Nov2018_Field Notes_p. 29].*

Similarly, some interpreters may be fluent in multiple Indigenous languages through family ties or contact with speakers but may feel uncomfortable interpreting in these languages - I met an interpreter who was fluent in four Indigenous languages, though she interpreted in only two of them, her father's and her mother's languages *[Darwin_Jun2018_Field Notes_p. 13].* Through my discussions with various interpreters, I have learned that making the decision to interpret in a language that one has no right to is usually a pragmatic consideration, especially in remote communities, where urgent need and the small pool of available interpreters may outweigh considerations of language ownership.

Kriol can present different scenario, however. Being a lingua franca for many Indigenous communities with varied linguistic backgrounds, it circumnavigates many of the issues of competency vs. ownership. Miliwanga Wurrben, a Kriol interpreter, describes how the size and wide spread of the Kriol language can contribute to greater flexibility in the provision of interpreters.

> *If you're not from the same tribe, and you do not speak that language then you cannot represent that person, that is part of our customary law…But when we see Kriol like a standard language for all people in the Northern Territory, [we say]* "this is a Kriol speaker, now, they will help you to speak for you". *We've had other Kriol speakers represent our mob, you know, when we're not around, and it is good.*
>
> *[Katherine_Jun2018_Miliwanga Wurrben_Interpreter_Interview]*

Not all Kriol interpreters are comfortable working outside the context of their own country, however. A Kriol interpreter interviewed in Cooke (2004) describes the dilemma of her fellow interpreters taking on an assignment on country that is not theirs:

> "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 apologize to the people and ask permission if they could work there, because they didn't actually belong there" (Cooke, 2004, p. 107).

As I describe in Chapter 5, Kriol present its own set of interpreting challenges that relate to its linguistic and social status, as well as the vexed issue of speaker self-identification. Of particular relevance to this chapter is the role of colonization in the emergence and ongoing perception of the Kriol language. As §8.4.1 below discusses, Kriol offers a striking example of the intersection of linguistic and colonial practices and provides us with an important case study for examining the lingering legacy of colonial attitudes to language.

For now, I turn to another less well-researched aspect of the different conceptualizations of language which concerns how the act of interpreting is itself differently understood in some Indigenous communities, especially with regard to its perceived purpose. Miliwanga Wurrben explains that impartiality in interpreting is viewed differently by Indigenous communities because of the way interpreting has functioned traditionally. Interpreters were usually bilingual elders who represented a particular language group and acted as intermediaries who spoke on behalf of their tribe or community in negotiations with members of other language groups. Talking about her own community, Miliwanga notes:

> *Interpreters have always been like spokespeople and our spokespeople have always been our interpreters.*
>
> *[Katherine_Jun2018_Miliwanga Wurrben_Interpreter Interview]*

The association between being an interpreter and acting as a spokesperson stems from the perspective that as well as language acting as a tool for communicating ideas, it is how Indigenous people maintain a harmonious relationship with the land and with each other (see also §7.2). Through a common understanding that language belongs to and delineates the land, the use of language in communication, and also stories and songlines, has always been aimed at achieving mutual understanding. Stories and songlines act as esoteric conduits of the knowledges contained in the Law and give voice to the epistemology of kin-centric ecology that binds people to the land and allows them to *know* their country (Bradley et al., 2016). In the end, it is kinship, which extends to the non-human, that has always been critical in maintaining country.

With language occupying such a central role in maintaining the relationship between Indigenous groups, the act of interpreting is a crucial responsibility which one undertakes on behalf of their whole community. Interpreting has historically been the domain of experienced and trusted elders because it is more than just the rendering of one language into another, rather a strand in an intricate web that involves authority, respect, and a higher understanding of the link between language and country. The conceptualization of interpreting as a complex linguistic act with multiple purposes performed exclusively by elders still persists in many Indigenous communities where Indigenous languages are in common use. This has at times led to a paucity of young interpreters who are reluctant to put themselves forward to be trained lest they be deemed disrespectful to the elders. The lack of young interpreters was raised by a few legal professionals in Katherine during interviews. Here, Judge Elisabeth Armitage is discussing the reliability of older interpreters who suffer from a range of health problems that impact their ability to carry out jobs from start to finish:

> *Many of them are not interested in being there for a whole day. Whether they get tired? I'm sure many of them have the same sorts of health issues that are affecting other people in the community... I don't understand why the young ones aren't going into interpreting.*
>
> *[Darwin_Jun2018_Elisabeth Armitage_Magistrate_Interview]*

A similar point was raised by a lawyer in Katherine who routinely works with young clients. Talking about the reluctance by some young people to engage an interpreter because the interpreter is likely to be a respected elder, the lawyer commented:

> *Let's try and get some young people interpreting with clients. There's a shame and power thing. There's a generational gap.*
>
> *[Katherine_Jun2018_TL_Lawyer_Interview]*

I put this Miliwanga Wurrben (here MW) during our discussion of interpreters being usually the elders of a community.

MW: *Yeah, they're spokespeople for our entire community.*

DR: *So is that still an expectation in the community?*

MW: *Oh yeah. I'm there as a leader, I'm there as an elder speaking. Traditionally, interpreters are actually our elders, people who are representing the community.*

DR: *Is that why there aren't many young interpreters around?*

AM: *That's right.*

[Katherine_Nov2018_Miliwanga Wurrben_Interpreter_Interview]

Misunderstanding the Indigenous view of the role of the interpreter and who can step into such a role stems from the Western conceptualization of language as the common and unconstrained property of all speakers, which does not always apply in the context of Indigenous languages. Until there is better understanding both within the legal profession and Indigenous communities of the expectations attached to the role of interpreting, issues concerning impartiality and recruitment of young interpreters will continue to be unresolved.

The section above described the differences between Indigenous and Western conceptualizations of language and how they can impact the process of interpreting. However, if we approach interpreting and translation issues from the perspective of difference in knowledges or worldviews alone, we risk ignoring the more insidious power differentials and colonial factors at play in the complex process of legal interpreting. To highlight these factors, I explore the notion of the coloniality of language and extend some of the existing scholarship to include legal interpreting. In particular, I interrogate how the coloniality of language plays a crucial role in

determining Kriol speakers' attitudes towards their language, and the impact such attitudes has on the provision of Kriol interpreting services.

8.4 The coloniality of language

The notion of a 'coloniality of language' is introduced by Veronelli (2012, 2015) to describe the process of racialization of colonized subjects in the Americas along linguistic lines, beginning in the sixteenth century. She examines the dehumanization that results from the colonial depiction of colonized subjects as possessing little more than rudimentary communicative tools that are unable to express complex meaning or hold any forms of knowledge. Central to the concept of coloniality of language is the recognition that the classification of people into hierarchical races entails a similar thinking of the expressive tools they possess in terms of superiority and inferiority. Following Mignolo (1995), Veronelli notes, for example, that the Renaissance's association between civility and alphabetical writing systems has led to the assumption that languages not codified in alphabets are innately inferior, and their speakers are considered uncivilized humans, if human at all (Veronelli, 2015, p. 117).

Veronelli also argues that the coloniality of language operates as a double bind. Firstly, by placing languages in a hierarchical system, it allows for the disqualification of some languages in favour of others. But because coloniality is intertwined with racial hierarchy, it disqualifies some speakers regardless of their language, so that even if they speak the language of the colonizers, their speech is regarded irrelevant or unintelligible. The 'logic of silence', Veronelli contends, is such that whether colonized people speak or remain silent, their expressivity is always deemed of a lesser rational value (Veronelli, 2012, p. 6). As I describe below, both the conceptualization of Indigenous languages as irrational and the dismissal of Indigenous people's use of English and English-based languages are hallmarks of the coloniality of language that has operated in Australia since the beginning of its colonization.

Historically, the representation of Indigenous people as subhuman has been a necessary step towards their colonial subjugation. In order to justify the claim that Indigenous people were subhuman, the colonizers had to characterize Indigenous worldviews, knowledges, practices, and languages as belonging to a primitive and uncivilized era. In other words, every constituent of Indigenous people's life and culture, even how the communicate, had to be branded inferior, unevolved, and by extension, subhuman. Language and linguistic practices were particularly vulnerable to such hierarchical categorization. The notion that Australian Indigenous languages are primitive, and therefore inferior, is as old as colonialism itself, yet still it lingers. It is a notion that occupies both the realms of fiction and reality; it is fictional in that it has neither logical nor natural basis (and clear evidence to the contrary), and real, in that it is continuously reified by practices of power. One only has to look at the recent dismantling of bilingual educational programs in Indigenous communities in the Northern Territory to understand the power of the monolingual mindset in making the fictional superiority of English so very real (M. Clyne, 2004; J. H. Simpson et al., 2009).

Like other colonial languages such as French, Spanish, and Portuguese, English affords a sense of inherent superiority to its native speakers, against which speakers of other languages are measured. The differentiation between speakers of 'superior' colonial languages and those of other so-perceived 'primitive' languages is not always constructed as a hierarchy within the paradigm of humanity, but sometimes as a binary of 'human' and 'subhuman'. This is a conviction carried throughout Australia's history and ever present in the collective consciousness of some of its non-Indigenous population. The linguist Eric Vászolyi (1977) recalls a conversation he had with a lady, whom he described as upright and middle-class, about his work on recording Indigenous languages:

> "She said that I could not have very much to do, after all, because the Aborigine's speech is but a sequence of inarticulate babbling sounds which does not make much sense, anyway. *They talk like monkeys*, her ladyship declared with self-assurance" *(Vászolyi, 1977, p. 5, emphasis added)*

Likening Indigenous languages to the communication of monkeys is the epitome of the triangulation of language, race, and humanity that lies at the heart of the colonizer's ability to brand Indigenous people as subhuman. It speaks of the linguistic privilege of colonial languages which, much like racial privilege, often goes unquestioned due not to its invisibility, but rather by being frequently and visibly enacted in the open. The linguistic privilege of the colonizers is that they need not even consider other languages, let alone compare them to theirs.

As well as dismissing Indigenous languages as primitive, the colonizers constructed them as irrational. Taking their cues from the Enlightenments ideal of the light of reason, they examined rationality, like civility, through a raciolinguistic lens; if a group of people were deemed to have only elementary tools of communication, then it followed that they must be incapable of rational thinking. In fact, proponents of modernity's project have often relied on this 'language/rationality deficit' trope in their description of so-called pre-modern societies. Jürgen Habermas, one of modernity's staunchest defenders, argues that the transition from the metaphysical to the rational, and the resulting 'progress' of ideas was only made possible through the use of language – a process he terms 'the linguistification of the sacred'. He condemns mythical thought for having a deficient differentiation between language and world (Habermas, 1985, p. 49) - metaphysical thinking and language are conceived of as mutually exclusive. Without language, Habermas argues, there is no path to rationality. His hypothesis raises questions about the kind of society imagined by Habermas prior to modernity's arrival. As Li (2006) points out, Habermas envisions pre-modern societies as being inhabited by primitives who seemingly do not need language to communicate and coordinate their actions, as they are only led by the imperatives of their mythical beliefs.

> "Language is 'on holiday' in this totally integrated premodern society and its inhabitants are 'conveniently inarticulate'; they cannot speak, and thus must be spoken for by the modern philosopher" (Li, 2006, p. 186).

Li rightly notes that Habermas's conception of the development of modernity through the 'linguistification of the sacred' depends on the delinguistification of the primitive

and a reimagining of pre-modern societies. This reimagining of linguistic capability and its link to rationality is a common tool of colonial representations of Indigenous people. Here in Australia, the discourse of denial borne out of the false doctrine of *Terra Nullius* included the belief that Indigenous people lacked the capability of rational thinking needed to live in a civilized society. Their abjection sanctioned the argument that they needed to be dealt with swiftly, either annihilated or delivered from their primitive ways. This, in the eye of the colonizing state, necessitated extensive intervention in the lives of Indigenous people and precipitated a slew of protectionist measures that took the powers of decision-making entirely out of Indigenous people's hands.

Whether unintentionally or by design, the evocation of 'primitivity' legitimized the creation of a class of subhuman Others who can be re-taught not only what to think but how to speak. Some colonizers saw introducing colonial languages as a path towards raising Indigenous people above their primitive existence, a sort of linguistic assimilation. Others questioned whether Indigenous people even possessed sufficient humanity, rationality, and linguistic capacity to learn 'more superior' languages. As I describe in the following section, Kriol is a case in point of how the coloniality of language influences the representation of Indigenous people by setting the parameters of what constitutes a rational and legitimate language.

8.4.1 Kriol and the coloniality of language

'The language of Compounds and Aboriginal Reserves is Pidgin. A few score of words. No wonder such people come to think like animals!"

Capricornia (Xavier Herbert, 1938, p.82)

In §8.1, I discuss how modernity's territory in Australia was reinforced through the introduction of symbols of Western culture and epistemology, including Western science and technology, English Common Law, Christianity, and the English language.

The intertwinement of these symbols and their role in the discursive cloaking of colonial power and oppression through narratives of knowledge continues to be a defining feature of Australia's epistemic and linguistic territory. Take, for example, the Kriol language and its origins in Christian missions (see Appendix V for an overview of Kriol's origins). These missions were set up around Australia because missionaries believed that teaching Christianity to Indigenous people was the best way to introduce them to civilization and modernity. Kriol's history is therefore interweaved with a new way of knowing that was always intended to subvert and supplant traditional epistemes. The missions taught a different knowledge which they considered superior, in a language they also considered superior. In fact, for many decades, missionaries forbade the use of Kriol in the missions, especially in religious contexts, and greatly resisted calls for the Bible to be translated into this fast-spreading language (Harris, 1993). English, to them, was the true vessel of knowledge and truth, and its association with the Bible was proof of the power it embodied. By disseminating the perception of Kriol as an inferior version of English, the colonizers turned into common sense the notion that Kriol cannot hold, express, produce, or transmit knowledge the way English can. In a way, this mirrors the attitudes of early European colonizers across the world, including the Americas, who proclaimed that Indigenous languages were unable to truly express the Christian doctrine, and openly doubted whether speakers of these languages were human enough to be introduced to the Christian faith (Greenblatt, 1990).

In Australia, Kriol speakers have had to grapple with colonial attitudes towards their language since it emerged in the late 19th century. Non-Indigenous English speakers have historically exhibited strongly negative views about Kriol. Rhydwen (1996), for example, reports a number of denigrating terms used by non-Kriol speakers to describe the language, ranging from 'mumbo-jumbo' (1996, p. 37) to 'shit language' (1996, p. 50), and 'bastard language' (1996, p. 123).

Linguists, anthropologists, and historians alike have at times been complicit in entrenching negative perceptions about creole languages worldwide, even if inadvertently. Degraff (2009, 2019, 2020) critiques the role of the humanities and social

sciences in maintaining certain hierarchies of power through the prejudicial misrepresentation of creole languages and their speakers. He argues that linguists, in particular, are guilty of advancing the notion of 'creole exceptionalism' that contrast creoles with so-called 'regular' languages based on what they deem as 'abnormal' processes of emergence. He concludes that, in effect, "Creole studies may well be the most spectacular case of exclusion and marginalization in linguistics" (Degraff, 2020, p. e292).

Here in Australia, even those who dedicated their academic careers to the preservation of Indigenous languages and cultures have at times deplored pidgins and Kriol in Australia[63]. Some linguists who studied and promoted Aboriginal languages lamented Kriol's role as a poor substitute of ancestral tongues. In his paper '*Some remarks on the role of language in the assimilation of Australian aboriginies'*, Wurm (1963) advocates for Aboriginal people in missions and government stations to be encouraged to continue speaking their traditional languages and practicing their cultures while slowly adapting to European ways. He argues that unless Indigenous languages are preserved until English has been adopted in its *proper* form, the community will resort to speaking a "broken jargon of corrupt English" (1963, p. 4). Notably, Wurm considered assimilation a benign inevitability, arguing that the transition of Aboriginal people to the new ways of living would be smoother if their cultures and languages did not disintegrate too rapidly before they could fully assimilate into European culture. As he put it "when the adaptation to the white man's ways has reached a high degree in such a community, *the old ways will gradually fall into disuse as a matter of course without much harm to the community*" (Wurm, 1963, p. 4, emphasis added). Turner (1966) echoes Wurm's

[63] Here it must be noted that many of these writings were produced before the 1970's and employ the terms 'Pidgin' and 'English Pidgin' to refer to the contact languages of Australia; the name 'Kriol' was not used until later. Given that Kriol was well established at the time of these writings, it is reasonable to argue that unless these terms are describing pidgin in a historical context, they are likely referring to the Kriol language.

sentiments, calling the Pidgin English of the mainland of Australia a 'collection of disjoined elements of corrupt English and native words', and a 'substandard English rather than a regular language in its own right' (1966, p. 202).

Kriol has been regarded by some scholars as an impoverished language, incapable of conveying emotions or encapsulating details to the same extent as English or Indigenous languages. Strehlow (1964), for example, calls Pidgin English 'English perverted and mangled' and provides a Pidgin translation of Macbeth, intended, in his own words, to "bring home the ruinous effect of pidgin English on any moving story" (1964, p. 80). His description of the Pidgin retelling of Macbeth as "an inadequate, untruthful, and malicious caricature of a great story" (1964, p. 81) exemplifies many of the common attitudes of his time.

While such attacks in academia were usually limited to the language rather than its speakers, the co-naturalization of language and race (Rosa & Flores, 2017) means that, inevitably, views about Kriol are extended to encompass its speakers. The fact that Kriol was, and still is, spoken almost exclusively by Aboriginal people makes the linking of racial and linguistic stereotypes seem natural and undeniable. The role of extra-linguistic factors in constructing the poor image of Pidgin and Kriol has been recognized by some. Crowley and Rigsby, for example, (1979, p. 154) acknowledge the association between negative attitudes about Pidgin and the negative Eurocentric racial constructions of the Pidgin speakers themselves.

> "When most Australians speak of 'Pidgin English' or 'Pidgin', they generally think of something they also call 'broken English', which is a language variety that no one takes seriously. Pidgin is a sort of simplified English and its simplicity is believed to reflect the lesser mental capabilities of its darker skinned speakers. Such misconceptions are dangerous because they serve to rationalize European ethnocentrism and they perpetuate stereotypes"

Despite some recognition that racial hierarchy is at times superimposed on attitudes towards Kriol, negative perceptions of the language remain commonplace. As I describe

below, speaker and non-speaker attitudes have a large impact on the provision of adequate Kriol interpreting assistance in legal contexts, as well as on the translation of legal education materials.

8.4.2 'Proper whitefella English': Internalized attitudes amongst Kriol speakers

In my description of the 'coloniality of being' in §2.2.3 I noted Fanon's (1952) notion of 'epidermalization' which refers to the colonized subject's internalization of the beliefs historically espoused by colonizers – that colonized populations are racially, socioeconomically, and linguistically inferior. Fanon argues that the categorization of colonized populations as subordinate lower classes, and their languages as inferior, precludes them from acquiring the forms of socioeconomic and linguistic legitimacy that are associated with speaking a European language. This in turn forces some colonized subjects to opt into the notion that in order to be validated, they must look, behave, and speak like the European classes. In other words, the colonized are led to believe that upward mobility in a hierarchical society is only achievable by adopting the ways of those deemed superior.

Although the internalization of negative attitudes to the Kriol language is neither a universal feature among Kriol speakers, nor is it the only reason why speakers can hold adverse perceptions of their language (see Ponsonnet, 2010, section 2.1.6.2), the possibility that the stigmatization of Kriol is internalized by speakers adds another layer of complexity to our understanding of speaker attitudes. For the many generations of Kriol speakers who have endured constant derision of what is often the only language they speak, some extent of internalization seems inescapable. They would not be alone in this, either. Not far from where Kriol is widely spoken, we find Torres Strait Creole, a language with a different origin and history from Kriol, but with similar status. Of the various names given to this creole, including 'Ap-Ne-Ap', 'Cape York Creole', and 'Yumplatok', perhaps the most telling is 'Broken'. With a name that holds such negative connotations, it is hard to argue that 'Broken' is simply a label not an attitude. Analysed

through a raciolinguistic lens, 'Broken' embodies the colonial attitude of creoles as substandard linguistic forms, sufficient only for those who lack the communicative needs and abilities of superior colonial language speakers - broken people speak broken languages and broken languages denote broken people. This co-naturalization of race and language is described by Rosa and Flores (2017) in the form of a process of 'raciolinguistic enregisterment' where linguistic forms are endowed with cultural values and constructed jointly with racial forms in such a manner that people "come to look like a language and sound like a race" (Rosa & Flores, 2017, p. 631).

With Kriol speakers being almost exclusively Aboriginal, Kriol not only has an Aboriginal sound but an Aboriginal face too. Indigeneity and speaking Kriol go hand in hand, and attitudes towards both are potentially transferable. It is something that Kriol speakers are cognizant of, and while it may not always affect their attitude towards their language, it can impact their linguistic practices. Sandefur (1990b), for example, notes a reluctance by Roper River Kriol speakers to use it in the presence of white people, concluding that the expression of Kriol is probably suppressed by white presence. It is a telling observation of the manifestation of the white normative gaze and its securitization of language, race, and personhood. I mentioned this phenomenon to a Kriol interpreter during one of my fieldtrips who replied that although she felt comfortable speaking Kriol with others in the presence or vicinity of white people, plenty of her friends and family were too embarrassed, choosing instead to switch to English *[Mataranka_Nov2018_DR, Field Notes_p. 31]*.

Likewise, Bradley and Yanyuwa Families (2016) describe older Yanyuwa people insisting that the English taught to their ancestors by white people in the early stages of contact was 'not Pidgin' but 'proper whitefella English'. The collocation of the terms 'proper', 'whitefella', and 'English' encapsulates a raciolinguistic hierarchy that entails the presence of the opposite, the 'inadequate blackfella pidgin'. Standing in the shadows of such otherness, Kriol speakers are forced into a pragmatic decision-making process regarding their choice of language. It would be easy to attribute the Yanyuwa people's eagerness to associate with 'proper whitefella English' purely to Fanon's concept of

'epidermalization' and claim that it is an example of the internalization of the racialized conceptions scripted by white colonizers. But it is not always simply the case of a black 'Other' donning a figurative 'white mask' (Fanon, 1952). It is possible that the Yanyuwa ancestors' linguistic choices were their only means of accessing legitimacy. In the least, speaking 'proper' English may have helped stave off the dehumanization that came to dominate the experience of Indigenous Australians throughout. As such, though it occasionally fits the notion of epidermalization, the desire to speak proper whitefella English should not be viewed as the mere acceptance of inferiority, rather it must be situated in a time where Aboriginality itself was associated with peril, including extreme and sustained physical violence[64]. Like many Aboriginal groups in the Gulf country, the Yanyuwa were killed in significant numbers during the frontier period both in massacres and through the random shooting of individuals (T. Roberts, 2005, p. 189). In other words, learning the colonizer's 'proper' language may well have been more an example of self-preservation than self-loathing.

In any case, with so many complex factors at play, it is unsurprising that Kriol is a site of inner conflict for Aboriginal people. On the one hand, identifying as a Kriol speaker can be considered a form of defiance, of forging a new Indigenous identity in the face of mass-scale acculturation. On the other hand lies the fear that by accepting Kriol, a language deeply rooted in the language of dominant colonial aggressors, Aboriginal people are in fact ceding what little remains of their cultural identity. It is as if they are accepting what Wurm (§8.4.1) believed - that transition to white culture is both inescapable and harmless. Adopting a white-lexified language as a mother tongue may therefore feel akin to a tacit acknowledgment of the futility of resistance.

[64] There are several accounts of violent incidents and massacres in and around the region inhabited by the Yanyuwa people, including the neighbouring Garrwa and Gudanji country (see Map of Colonial Frontier Massacres in Central and Eastern Australia 1788-1930)

https://c21ch.newcastle.edu.au/colonialmassacres/map.php

Undoing decades of colonial denigration of Kriol requires a concerted and ongoing effort by governments and Indigenous communities to elevate its status. Some important strides were made in the late 1970's and 1980's towards establishing Kriol as a legitimate language in its own right, including the introduction of bilingual education programs at a number of schools in the Northern Territory. Unfortunately, some of that progress was reversed when bilingual programs were abolished in favour of English-only curriculums, evidence of the deep entrenchment of the colonial perception that English is so superior that teaching Indigenous children in their own languages will only hinder good educational outcomes. The dismantling of bilingual education is another example of Australia's modern institutions privileging certain languages over others for the purpose of transmitting knowledge. While there is little doubt that an adequate level of education can lead to greater participation in society, this rejection of Indigenous languages as vehicles for learning calls into question governments' claims of inclusion and equality with regards to Indigenous education.[65]

Entrenched colonial attitudes in the justice system towards Kriol and its speakers can result in inadequate engagement of interpreting services for users of Kriol. If Kriol is perceived by legal professionals as a simple form of English used by unsophisticated speakers rather than a bona fide Indigenous language, they are less likely to recognize the need for interpreters. Similarly, an entrenched ideology that Kriol speakers should assimilate into Australian society and switch to speaking 'proper' English will inevitably result in dismissing the necessity of qualified and accredited interpreters. Improving access to justice for Kriol speakers through the provision of adequate and timely interpreting services must therefore begin by challenging the coloniality of language that hinders such access. Important steps include providing ongoing education to legal professionals about the role of colonial attitudes in their perception of Indigenous languages and the importance of confronting entrenched and often subconscious

[65] While most bilingual programs have been left to wither on the vine, fortunately and through the work of communities and educators, some forms of bilingual instruction have endured, though tenuously and with little to no funding from local authorities.

biases. Furthermore, there is an urgent need to hold accountable the decision makers both in the justice system, e.g., judges and others in positions of power, and governments, whose attitudes towards Kriol and other Indigenous languages can influence policies around the use of interpreters.

Negative attitudes towards Kriol by its own speakers are likely to impact interpreting as well. Both the divisive presence of Kriol in Indigenous communities and the internalization of negative attitudes towards the language can invariably influence a speaker's language affiliation. Being a speaker of a denigrated language, combined occasionally with low proficiency in English, has been cited as a source of embarrassment for some Kriol speakers (Drew & Jennings, 2012, p. 37). Such embarrassment, sometimes articulated by speakers as *shame*, can discourage Kriol speakers from accepting the offer of an interpreter especially if the suggestion to engage interpreting services is made by a lawyer or judge who uses Standard Australian English (SAE). In §7.3.1 I describe how the notion of *shame* in Indigenous Australia can differ significantly from Western conceptualizations of the word. In the context of being *ashamed* at speaking Kriol or not speaking SAE, the emotions felt by a Kriol speaker arguably closely resembles Western conceptualizations of 'shame' in that they are linked to the embarrassment at being perceived as uneducated or as speaking an unsophisticated variety of English.

Feelings of *shame* can also be precipitated from being singled out for assistance, which explains why suggesting the need for an interpreter can cause a Kriol speaker to feel *ashamed*. This means that some Kriol speakers are hesitant to request interpreting services in legal settings even when encouraged to do so. In an interview with a defence lawyer in Katherine, she describes her efforts to convince one of her clients, a young Kriol speaker, to engage the services of a qualified Kriol interpreter:

> *I have a client at the moment who I've asked several* times "please let's use an interpreter" *and he said* "no, too shame". *I've done the best that I can. There are issues that have arisen as a result of that, where communication has been tough, and as a result of that communication barrier, there has been a claim that he's trying to obstruct the course of justice. And it's just all this miscommunication that has gotten in the way. So, often not having an interpreter doesn't just impact the present charges, it can create new charges.*
>
> *[Katherine_Jun2018_NR_Lawyer_Interview]*

It is not certain what caused that young man to feel such *shame* at the prospect of having an interpreter. His lawyer, NR, later recalled the client's reluctance to even name Kriol as his everyday-language and speculated that he may have been *ashamed* of speaking Kriol instead of English, based on her own previous encounters with other clients in similar positions *[May2019_NR_Lawyer_Personal Communication]*. The possibility that a youth offender may have decided to forgo vital interpreting assistance despite the serious consequences of such a decision is a testament to the deep reach of negative attitudes towards Kriol and the powerful feelings of *shame* they can give rise to.

Recognizing the impact of negative attitudes can help legal professionals to understand the reluctance by some of their clients to identify as Kriol speakers or to request or accept the assistance of an interpreter. Some of the legal professionals who have worked for extended periods with Kriol speakers are quite cognizant of this problem and often suggest interpreting services in ways that can mitigate the risk of giving rise to feelings of *shame* in their clients. Below is an extract from an interview with NO, a lawyer in Katherine who has a large number of Kriol-speaking clients:

> *I think there is probably a huge difference between needing an interpreter and not needing an interpreter in how you feel about your proficiency... For the majority of Kriol clients that I have, I always give clients the option of an interpreter. Most will say that they don't require one. Obviously if I think that despite them saying that, there's communication issue then I'll usually just say that we require it. That it's not a judgment on their capacity or anything like that, but it's just a legal obligation that we're having to fulfil. Like a duty of care kind of thing.*
>
> *[Katherine_Jun2018_NO_Lawyer_Interview]*

This approach by lawyers is encouraging and needs to be adopted frequently if clients are to feel comfortable requesting interpreting assistance. Importantly, lawyers need to frame Kriol interpreting in the same way as interpreting for all other Indigenous and heritage languages. By recognizing Kriol as a bona fide language rather than 'broken' English, lawyers and other legal professionals are able to understand the linguistic needs of Kriol speakers and feel more confident about suggesting interpreters routinely to their clients.

Following this overview of the way in which the coloniality of language can affect speaker attitudes towards minority languages, I now move on to another aspect of the coloniality of language, namely translatability. I begin by briefly describing common understandings of the notion of translatability and how they have influenced interpreting and translation practices. I then explore the coloniality of translation in legal material and describe how some of the ad hoc methods of translation being carried out by legal professionals with the aid of Indigenous communities present us with a potential framework for decolonizing existing legal translation practices.

8.5 Translatability, translation, and the erasure of knowledge

Battiste and Henderson (2000) critique the Eurocentric notion that translation is an uncontentious act aimed merely at communicating the meaning of a text in a source language by providing its equivalent in a target language. They argue that far from being innocuous, the act of translation in fact contributes to the false assumption that all worldviews and knowledges are translatable without substantial damage or distortion (Battiste & Henderson, 2000, p. 41). This critique serves to explain how assumptions of translatability between Indigenous languages and English can be linked to epistemic violence. The notion that all ways of knowing are linguistically transferable is one that is based in cultural and epistemic dominance. As Chacaby (2015, p. 2) notes "The illusion of benign translatability assumes both that there is a stable centre from which the "truth" of a concept and its signifier are defined through Eurocentric perceptions, and that English linguistic nomenclature is a harmless and satisfactory vehicle for Indigenous language transportation"

There are numerous Indigenous conceptualizations that are not at home in translation. Conceptualizations of family and kinship, for example, present many challenges for translation and interpreting purposes. In a study of kinship representation in the Australian census, Morphy (2006) examines how the complexity of the Yolŋu kinship structure means that translating familial terms to English for the purpose of answering census questions can lead to incorrect, and sometimes incoherent, census data. By providing a number of examples where Yolŋu and Anglo-Celtic kin terminology differs significantly, Morphy challenges the Western perception that particular ways of categorizing kin are 'natural' and concludes that kinship is a "cultural construct, not simply a list of terms" (2006, p. 24). In fact, we can go even further and argue that kinship is not merely a social construct or blueprint for the organization of Indigenous societies, it is also a way of perceiving the world and its components. As such, it is vital that concepts like kinship are treated as distinct epistemes which have been subject to the same marginalization as other Indigenous ways of knowing. The untranslatability

of kinship terms, however, must not be viewed as the product of irreconcilable epistemic differences, rather as the collateral in the construction of Western knowledge, and the linguistic means through which it is expressed, as 'naturally' superior. In other words, translatability is influenced by more than lexical gaps, or cultural differences; without reflecting on the ways of knowing that give rise to and support linguistic expressions of worldviews, any attempt at translating such expressions is at best an exercise in futility, and at worst a tool of coloniality.

8.5.1 Translation as a tool of coloniality

The process of elevating Western knowledge inherently involves the reimagining of other ways of knowing, and the people who hold them, as occupying a space outside of the realm of 'real knowledge'. For modernity's epistemic territory to survive and thrive, it must have no visible opposite, no counter to its ideals. It must "constitute its field of visibility as the totality of the real" (Vázquez, 2011, p. 33). So how does Western knowledge render its counterparts invisible? This question is addressed by Vázquez (2011) whose exploration of the establishment and expansion of modernity's epistemic territory includes examining the role of translation in designating the borders of intellectual discourse. In particular, he is concerned with what is made invisible through translation, excluded, and even unnamed. The coloniality of translation, as Vázquez puts it, is a process by which the privileging of particular texts comes to define the 'parameters of legibility' and brings to the fore the question of untranslatability, of what lies beyond the scope of translation (2011, p. 28).

Most existing scholarship around legal interpreting and translation has focused primarily on *how* conceptualizations are translated rather than *which* conceptualizations are translated or even deemed translatable. As is the case with interpreting, the primary concern of modern translation approaches is to pay particular attention to the tension between textual and cultural translation and its impact on the translatability of culturally-specific concepts in source and target languages (Harding & Carbonell i Cortés, 2018). But unlike most instances of interpreting, translation is a more

deliberate process where the power to choose which text to translate lies in the hands of the translator. The selection of text is particularly crucial because it has the potential to either brings ways of knowing to the fore or occlude them altogether. I posit that in order to reveal legal translation's potential to act as tool of coloniality, we must explore how the discourses created through translation pave the way for the selective legitimization of certain knowledges at the expense of others, and in turn erases any possibilities of knowledge that lie outside the boundaries of modernity's epistemic territory. Furthermore, I argue that it is pertinent to examine how even well-meaning legal translation enterprises are at times unwittingly contributing to the fortification of modernity's epistemic territory.

As I described in §8.2, the power vested in Western law allows it to declare some Indigenous norms, morals, and understandings invalid, especially when they are deemed at odds with their Western counterparts. The law's authority, however, can extend beyond decreeing which conceptualizations are legitimate. Through its scriptural practices - its written definitions and explications – the law controls how conceptualizations are even articulated. With the weight of 'reason' behind it, the law's overwhelming power is such that the very words that express its actuality come to dictate the limits of reality and knowledge. The untranslatable can therefore emerge from the law's construction of reality, its 'economy of the real' (Vázquez, 2011, p. 36).

Herein lies the tension between the need to provide translations of legal martials into Indigenous language for the purpose of facilitating access to justice and the by-product that such translations can act as endorsements of Western ways of knowing. There is little doubt that community legal education can be improved by providing materials in the languages spoken by communities. The question is how the process of translation can be carried so as to challenge the notion that what is translated comes to define what is translatable and, by extension, what is considered legitimate and valid.

8.5.2 In their own words: decolonizing translation through community involvement

The questions raised in the previous section speak to the very issues faced by those working in legal translation and interpreting. So far, translations of legal education materials into widely used Indigenous languages such as Kriol are few and far between. The situation is improving slowly, however. There are ongoing efforts to advance the quality and accuracy of interpreting and create more accessible legal education resources for Indigenous communities. These include a number of ambitious and well-executed projects aimed at simplifying legal terminology to allow for easier translation and interpreting into target Indigenous language. The most notable of these projects are the *Plain English Legal Dictionary* (Aboriginal Resource and Development Services et al., 2015), and the more recent *Blurred Borders* project which is currently being trialled in Western Australia and the Northern Territory[66]. Both these endeavours have had a significant impact on the way complex and normally inaccessible legal concepts are being transmitted to Indigenous communities. The importance of these projects cannot be underestimated given that the lack of knowledge about legal rights is a recognized aspect of injustice in Indigenous Australia. Legal education about criminal, civil, and family law is paramount to empowering Indigenous people who are often utterly intimidated by many aspects of the justice system. Similarly, educating Indigenous communities about the complexities of consumer law and their rights in the area also plays a crucial role in protecting Indigenous people from the unscrupulous behaviour of individuals and corporates who have historically preyed on them. As the recent Royal Commission into Misconduct in the Banking, Superannuation and Financial Services

[66] https://blurredborders.legalaid.wa.gov.au/

Industry (2019) demonstrated, Indigenous people were particularly vulnerable to the misconduct of banks and other financial institutions [67].

The development of the Plain English Legal Dictionary was a colossal undertaking that spanned a period of over four years and utilized the expertise of lawyers, linguists, interpreters, and many Indigenous-language speakers. By its own admission, the dictionary is a balancing act of finding succinct phrases that can be easily used by interpreters and translators while also remaining faithful to the complexity of the meanings with which legal definitions are often imbued. But rendering a complex legal concept into plain English is not always the panacea it is regarded to be, though it is certainly a much-needed improvement. Unfortunately, English, Plain or otherwise, cannot always capture the array of different worldviews that are found in Indigenous societies. Decolonizing interpreting and translation requires a shift in the way we think about the process of translation especially in regard to which language carries the burden of compromise. Legal translation is often approached as a process of finding the right Indigenous words to fit Western concepts. The Plain English Legal Dictionary and the cards and posters provided by the *Blurred Borders* project aim to deconstruct Western concepts in such a way that they become 'translatable' into Indigenous words. But what if we were to turn this on its head? What if, instead of finding Indigenous *words* to fit Western legal *concepts,* we endeavour to use Indigenous *concepts* that embody the meanings of legal terminology?

I give the example of the term 'investigate' which may pose little difficulty to SAE speakers but was identified as needing explication in the Plain English Legal Dictionary. There it is explained as follows:

[67] https://financialservices.royalcommission.gov.au/publications/Documents/ATSI-background-paper-21.pdf

> ‘investigate v. Investigate means to find out what happened.
>
> When a person breaks the law, the police must learn about everything that happened. That is, they must 'investigate'. To do this, they ask people who saw or heard something about it. They look for clues called evidence, such as fingerprints, to help them find out who may have broken the law’ (2015, p. 61).

The above description of ‘investigate’ aims to facilitate translation and interpreting, but naturally it still relies on the Western concepts of law and evidence gathering, which can potentially lead to a circularity in definition. The fact, however, is that the concept of investigating is not in itself exclusively Western; Indigenous Australians across all languages would have an equivalent concept, though it is not always denoted by a single word. Rather than having to translate each of the many concepts within the definition of ‘investigate’, interpreters and translators can use existing conceptualizations in Indigenous languages to convey the meaning of the term. It is an approach that is being developed by some legal organizations and Indigenous communities across the Northern Territory. Below is an excerpt from an interview with a lawyer whose organization often conducts legal education sessions in remote Indigenous communities. Here she discusses the ongoing efforts to translate legal terms into Warlpiri in collaboration with local Warlpiri speakers:

We've just been working down in Lajamanu with Kurdiji Law and Justice Group there and trying to get some of the key concepts into Warlpiri and not just looking in the dictionary and saying "oh well this means that". *And they were having these full blown 45 minute discussions in really old Warlpiri. So, we'd expand the concept and then Kurdiji would talk and then they would come back to us with the phrase, and it's a full phrase that embodies the whole Warlpiri law that reflects that concept.*

So, say for example, one of the ones we did a couple of weeks back was 'investigate' because we had one of the case workers out there, and he was talking about what his role is, and he must have said the word 'investigate' probably 57 times! And one lady put her hand up and said "I'm so sorry to interrupt you but I have no idea what investigate means". *So, we thought 'cool, let's do what that word means'.*

So, 45 minutes later, they [Kurdiji Law and Justice Group] were like 'yep, it's this one, write this one down... those are those hunters, they've seen those clues in the sand and they know that there's one animal gone that way, and you have to slow down and slowly and carefully hunt and follow the trail'. *And it's this whole Warlpiri phrase.*

[Katherine_Jun2018_TL_Lawyer_Interview]

Though borne out of necessity, this kind of approach to legal translation is potentially very empowering for Indigenous communities. It not only facilitates the expression of legal conceptualizations in ways that are accessible, but also recognizes that traditional laws and knowledges already embody much of what Western law considers its own domain. It is an approach that is both pragmatic and decolonial. It challenges the notion of linguistic incongruence that forms part of the question of translatability, and also

highlights that it is the practices of Western law that create untranslatability to begin with.

If Western law is to rid itself of its colonial heritage and begin a much-needed process of decolonization, it must embrace community-led undertakings like the one described above. The applications of these approaches to legal translation and interpreting are wide and varied. Although the two clearly differ in their medium, the corollary of untranslatability has always been the same; the untranslatable can neither be written nor uttered. For Western law to redress some of the injustices experienced by Indigenous people, it must be willing to acknowledge what it has rendered untranslatable, and therefore unknowable and unutterable. Translating these terms into Indigenous languages using Indigenous rather than Western conceptualizations is the epitome of resistance to the linguistic and epistemic hegemony of Western law. But it requires a robust collaborative effort between communities and those working to deliver justice to work towards achieving this important goal.

8.6 Concluding remarks

One of the main themes of this thesis has been that Indigenous language interpreting must be examined by taking into account the context in which it occurs. As I have argued throughout this chapter and in previous chapters, there is little doubt that interpreting in the justice system is being carried out against a backdrop of coloniality both from the perspective of uneven power relations and with regards to the inherent hierarchy of knowledge that contributes to the ongoing marginalization of Indigenous ways of knowing. I contend that if the law is to rid itself of its colonial legacy, it must provide an equitable environment that allows Indigenous communities disentangle themselves from oppressive colonial philosophies, recover their cultural autonomy, and empower their spiritual and intellectual sovereignty. This means that the justice system must firstly acknowledge its own colonial foundations and secondly its potential role in facilitating ontological reclamation for the many Indigenous people who engage with it.

9 INTERPRETER PROFILES

9.1 Chapter outline and data

One of the aims of this thesis has been to highlight the lived and professional experiences of interpreters and to elevate their voices. This chapter specifically profiles two Kriol interpreters: Miliwanga Wurrben and Greg Dickson. There are a number of nexus points in Miliwanga and Greg's interpreting journeys. They both became accredited as Kriol interpreters around the same time (~2010), although their paths began starkly differently. They have both worked for the Aboriginal Interpreting Service (AIS) in legal and medical settings in Katherine and the surrounding regions. They are also both well-known and well-regarded by many of the Indigenous communities in the area.

Like the overwhelming majority of Indigenous language interpreters, Miliwanga is herself an Indigenous woman. Greg, on the other hand is one of a few non-Indigenous, qualified interpreters who have worked in the justice system over the years[68]. I have chosen to focus on Miliwanga and Greg because their different backgrounds, which have in part shaped their sense of identity, have also influenced their views on their professional role and the justice system in which they work. Their distinct experiences and perspectives can shed personal light on some of the issues explored in earlier chapters, including language proficiency, cultural knowledge, impartiality, and confidence.

[68] Another notable example is Michael Cooke who spent many decades working as a Djambarrpuyungu interpreter and has written extensively about the issues facing interpreters working in courts and other legal settings (Cooke, 1998, 2002, 2004).

The data in these profiles is drawn from multiple semi-structured interviews conducted with Miliwanga and Greg in Katherine and Ngukurr in 2018 and 2019. I have made the deliberate decision to include most of the data in the form of direct quotes rather than paraphrasing in order to preserve the authenticity of Miliwanga and Greg's voices.

The profiles are presented separately, beginning with Miliwanga (§9.2) and followed by Greg (§9.3). Each profile includes a description of their path to interpreting and views on a number of issues including language proficiency, impartiality, power, racism, and cultural knowledge. These issues are covered in parallel subsections in each profile, allowing for direct comparison between Miliwanga's and Greg's views. This is followed by a short discussion (§9.4) in which some of the main similarities and differences are examined in more detail.

9.2 Miliwanga Wurrben

Miliwanga is a Rembarrnga elder, artist, weaver, and healer who currently resides in Katherine and Wugularr. Originally from Central Arnhem Land, she grew up in different Indigenous communities including Barunga, and Wugularr. As a child, she spoke her heritage language of Rembarrnga as well as other Indigenous languages including Kriol. She has worked intermittently for AIS since becoming accredited as a Kriol interpreter at a paraprofessional level[69]. She was also involved in the translation of the Kriol Holi Baibul. These days, Miliwanga is the chairwoman of Mimi Art and Craft in Katherine and works additionally as a cultural advisor where she runs cultural awareness classes for organizations that regularly deal with Indigenous people. She is also well known around Katherine for co-organizing women's yarning circles where elders lead discussions on diverse topics including maintaining connection to country, the importance of traditional ceremonies, dealing with child protection policies, the impact of language loss on communities, and the place of spirituality in everyday life.

[69] Since 2018, paraprofessional level has been changed to Certified Provisional level by NAATI

Miliwanga often told me that her motivation for becoming an interpreter was borne out of a desire to help her family and community. During one interview, she described the precise origin of this motivation. She recounted how her decision to become an interpreter was made when she was a young child after her older brother was violently arrested by police, which led to him sustaining a serious arm injury. Miliwanga remembers watching her mother, who did not speak English, pleading unsuccessfully with police officers not to hurt her son. It was at that moment that Miliwanga decided to learn English in order to help her family deal with authorities. Below is her recollection of that incident.

> *I fought that fear. When I first saw my brother being hurt. He was bleeding and they had him down on the ground, I was only about seven, eight, just learning, beginning to speak English. I saw him, they pushed him down, put his hands up very violently, and put this metal handcuff on him, and we thought* 'Oh he's going to break his [arm]' *and I said* "Mumma, Mumma, they're going to break brother's arm". *I remember crying out, but in our language. She said:* "It's alright, it's alright, we try and talk to them not to do that". *But no good; the language barrier. So, from that time I saw that thing happen, you know, and I said:* "This is not going to happen to me, any of my family members, any of my tribe or any of my people", *I said.*
>
> *[Katherine_Jun2018_Miliwanga Wurrben_Interpreter Interview]*

Miliwanga was driven to learn English as a means of protecting her family and community by learning to communicate with those in power. In a way, her story mirrors those of countless Indigenous people who learned the languages of their oppressors as an act of self-preservation. In §8.4.2, I discuss the decision by many Yanyuwa people to learn English as a way of fitting in and avoiding some of the violence that marked the early years of contact with Europeans. These motivations are undoubtedly shared by other Indigenous language interpreters who use their knowledge to help mitigate the

linguistic disadvantages that some of their fellow community members face in the justice system (see also §6.4.2.2).

9.2.1 Language proficiency

Like many Indigenous Australians, Miliwanga is multilingual. She lists English as one of eight languages she speaks. She is registered with AIS as a Kriol interpreter but suggested to me that she is able to interpret in a number of other languages, though outside of her role as an AIS interpreter. When not speaking Kriol or traditional languages, Miliwanga uses Aboriginal English to communicate. When I asked her whether she identifies as an AE speaker, she agreed and indicated her pride in speaking this particular variety *[Katherine_Dec2018_ Field Notes_p. 29]*. She also added that while she considers herself proficient in English, she nevertheless finds certain terms, including those used in medical and legal contexts, challenging.

> *Sometimes we interpreters, we don't know English fluently. Although I can speak it, but if I hear a foreign word come out of the magistrate or the defence lawyers or the prosecutor, I will say* "Excuse me…please can you repeat what you said but in simple English?". *Even us interpreters have to do that…I tell them* "English is not my first language, so whatever you bring in, you know all these words, I have to ask you, so you give me the meaning. [If] I understand, then I can put it in my language"
>
> *[Katherine_Jun2018_Miliwanga Wurrben_Interpreter Interview]*

In §4.5.1.1 I discuss the varying degrees of language proficiency among interpreters. I describe the impact this may have on the accuracy of interpreting and on the perceptions of legal professionals regarding the quality of interpreting services. Contexts such as court proceedings can be especially challenging. They involve

specialized registers like Legalese as well as the extensive use of metaphorical and idiomatic expressions. These are the kinds of contexts which Miliwanga is likely referring to.

By asking the judge to explain particular terms Miliwanga is demonstrating an important aspect of interpreter training. Interpreters are encouraged to seek clarification of unfamiliar terms in order to ensure faithful interpretation. However, as I discuss in §9.2.3 below and in §6.3, speaking up to seek clarification requires confidence, which is a challenge for some interpreters.

9.2.2 Cultural knowledge

As well as being a successful artist and healer, Miliwanga is considered a 'strong woman' in her community, a term which refers to women who have an enduring connection to country, culture, customs, and language. Despite her cultural knowledge being acknowledged widely by many organizations in Katherine, Miliwanga notes that she is rarely called upon by the court to assist when there are clear indications of culturally based miscommunication. She attributes this to a lack of recognition by the justice system of the value of cultural knowledge, but also acknowledges that not all interpreters are able to provide cultural explanations when needed. She explains that although Indigenous interpreters may be proficient in their traditional language, they may not necessarily possess a deep understanding of Indigenous law and customs which are passed on through initiations, ceremonies, and others means of cultural transmission.

> *Some the interpreters we have, they haven't gone through the cultural ways, some of them have. But I see a lot of them have got only the surface part of the culture but haven't been given that depth…This is where all our spiritual values come which has been taught in ceremonies, when we're dancing, when we're doing healing.*
>
> *[Katherine_Jun2018_Miliwanga Wurrben_Interpreter Interview]*

The negative consequences of the justice system ignoring the vital role of interpreters, not only as language experts but as conduits between Indigenous and Western cultures, is highlighted in the case study presented in §7.5. While not every interpreter is capable or willing to act as a cultural broker, the justice system must nonetheless provide interpreters with a platform to use their cultural knowledge. When interpreters are able to demonstrate the immense value of their cultural expertise, the result will be an increased engagement of interpreting services and, ultimately, better access to justice for Indigenous communities.

9.2.3 Perspective on power relations in the justice system

Miliwanga is acutely aware of the power differentials that impact her daily life and her work as an interpreter. She remembers the racial tension in Katherine when white residents marched in protest of the Nitmiluk Gorge Land Rights claim in the 1990's (see §6.2.1). She notes that while race relations are relatively better these days, she is still familiar with some of Katherine's residents who are known to hold racist views. She describes feeling a mixture of anxiety and anger when she encounters them around town *[Katherine_Nov2019_ Field Notes_p. 29]*.

Miliwanga also notes that she and other interpreters at times feel disempowered when in contact with authorities, including in legal settings. For example, she recalls a few occasions where she felt intimidated by the prosecution and defence lawyers as well as

other people in the court who have openly doubted her qualifications and professionalism.

> *Sometimes you hear people in the background say:* "Who does she think she is?". *They go about saying* "Oh they think they can understand all those words when they're up there".
>
> *[Katherine_Nov2018_Miliwanga Wurrben_Interpreter_Interview]*

As I describe in §6.4.1, such suspicions about the abilities of an interpreter can negatively impact their confidence and, in turn, discourage them from performing essential parts of their job. For example, interrupting court proceedings to clarify certain concepts or highlight potential miscommunication is an important aspect of interpreting but it often requires the interpreter to feel confident and empowered. Miliwanga is an experienced interpreter who possesses sufficient confidence to speak up in court and address the judge and lawyers with any questions. However, as she notes below, some of the clients she interprets for have expressed a fear that by speaking up, she may be deemed rude, or worse, may even anger the court and jeopardize their case.

> *I think they're afraid too. You have to put your hand up and say:* "Excuse me Your Honour, can you explain in simple English what this word means". *We're able to do that, but for [the client], a lot of the people would be* "How come she's telling this to the big boss?".
>
> *[Katherine_Nov2018_Miliwanga Wurrben_Interpreter_Interview]*

Deference of judges and other people in authority in the justice system is common among many Indigenous people who have grown up with entrenched power differentials and institutionalized racism. Miliwanga's clients' concern that her interjections may be viewed as speaking out of turn is emblematic of the engrained fear

that marks much of the relationship between Indigenous people and the justice system. Educating communities that interpreters not only have the right, but also the obligation, to speak up in court can alleviate some of these concerns and help interpreters perform their job with independence.

Miliwanga also recognizes that the power differentials in court are amplified by its physical set up which emphasizes the separation of the judge, the ultimate authority in court, from all other participants. In §6.2.2 I describe how the court's setup is laden with power disparities and contributes to the lack of confidence experienced by some interpreters when they step into court. Miliwanga identifies the elevated position of the judge's chair in the Katherine Local Court as a particularly intimidating aspect and an offensive posture to other people partaking in the legal process. She contrasts it with how Indigenous elders and decision makers in communities exercise power.

> *Our wise elders, they hold the law, they hold the keys to a solution. And they don't sit on a throne. They sit on the earth just like the rest of us. I think that's so unique for us. It's something people never understand until they live with us.*
>
> *[Katherine_Nov2018_Miliwanga Wurrben_Interpreter_Interview]*

The hierarchy of power in court is troubling for Miliwanga, especially when she witnesses the many ways by which the justice system continues to marginalize Indigenous law and its holders. She is particularly critical of the way community elders and Jungkayis[70] are sidelined by the courts. She explains that, normally, it is the elders

[70] Jungkayi are guardians, ritual managers, sometimes translated in Kriol or Aboriginal English as policeman or even lawyer. They have the specific responsibility of guarding rituals, Dreaming, and country that belongs to their mother and mother's brothers. Sometimes these rights extend to their father's mother's country (Adgemis, 2017).

who deal with matters pertaining to Indigenous law and any community members who breach it.

> *The justice system you have here and the hierarchy of court, who's in there, who says this or that, we have that too. We have our elders and our Jungkais*
>
> *[Katherine_Nov2018_Miliwanga Wurrben_Interpreter_Interview]*

However, Miliwanga notes, these elders are often excluded by the justice system from participating in the legal process (see also §6.3), and when allowed to contribute, their role is usually limited to writing character references for defendants or providing contextual information about particular incidents. She contrasts the minimal involvement of Indigenous elders in the Northern Territory with the Koori courts in Victoria which have made concerted efforts to include elders in many aspects of court proceedings including the sentencing of less serious crimes *[Katherine_Nov2019_ Field Notes_p. 29]*.

The marginalization of elders speaks to the way Indigenous people are often excluded from the decision-making process despite being directly affected by these decisions. Miliwanga argues that by choosing to ignore the long-established norms of Indigenous law and societal structures, the justice system is missing an opportunity to truly engage with Indigenous communities. She attributes this to the justice system's overall lack of understanding of Indigenous law and of the of the spiritual elements the underpin it (see also §8.2).

9.2.4 Impartiality

In §6.4.2 I discuss the issue of impartiality/neutrality and describe some of the challenges faced by Indigenous interpreters in maintaining an impartial position when working in particular legal settings. Impartiality is a central tenet in the provision of legal interpreting in Australia, but the long history of injustices towards Indigenous people and lingering colonial attitudes in the legal system renders complete impartiality almost impossible. For example, given the legacy of the Stolen Generation, some interpreters are known to refuse assignments that involve Territory Families especially if the case includes the potential removal of a child from their family or community *[Katherine_Jun2018_TL;SQ_Lawyers_Interview]*.

Miliwanga indicated that she is generally willing to work with organizations like Territory Families because she understands the importance of effective communication in situations involving child protection and wants to be helpful to families as they navigate the complexities of Family Law. She does, however, recall a particular time when she felt obliged to decline an interpreting assignment during the Intervention when she was asked to be the interpreter for government officials. As an elder, she wanted to be able to speak on behalf of her community in meetings with government officials, which would not have been possible had she been working as an interpreter.

> *I had to step down from being an interpreter when they first came and spoke about all these special measures, about intervention…*"Excuse me, I'm not going to speak for [the government] because I'm going to speak for my community, so you have to find another Kriol speaker"*, I said.*
>
> *[Katherine_Jun2018_Miliwanga Wurrben_Interpreter_Interview]*

As I discuss in §7.2.2, Impartiality can also be problematic in small communities where the interpreter is likely to be in a kinship relation with many members of the community. Miliwanga notes that when called upon to interpret for family members in court, she makes the decision based on whether that family member would need her personal support as a relative rather than an interpreter. If the person has sufficient help from other members of the family or the community, then Miliwanga feels comfortable assuming an impartial position as an interpreter. However, if that person is a close relative who need her to support them, especially if they are young, then she tries to find another interpreter.

> *That is my nephew or my niece and at all costs I'm going to stand by them.*
>
> *[Katherine_Jun2018_Miliwanga Wurrben_Interpreter_Interview]*

These are precisely the kinds of ethical dilemmas that have led to increased calls for interpreters to be allowed to perform the role of advocate as well as interpreter (§6.4.2.2**Error! Reference source not found.**). However, this remains a fraught area as some interpreters may indeed prefer for the community to view them as impartial participants rather than advocates. As I discuss below, impartiality can be a shield that protects interpreters from potential blame from clients and community members.

9.2.5 Blame

Blame is one of the considerations involved in interpreters deciding whether to take on specific assignments. I examine the impact of potential blame on the interpreting process in §7.4, particularly regarding the importance of educating communities about the expectation of impartiality and the ethical restrictions around advocacy. I discussed the issue of blame with Miliwanga and she expressed that the fear of blame is in fact a

significant source of anxiety for her. Here, she discusses how she has dealt with occasions where she was the subject of blame.

> *There has been people blaming like that with interpreters from the community, honestly, oh my gosh. And you have to be careful when going back. So, wherever you are [blamed] you just stay put until one day you can go out to your community, talk to your elder and that will make a meeting and say* "look, this one, they do this, you know, in a hospital, court, everywhere, so it's not their fault"*... I would also take my Code of Ethic and then begin to read it so they understand. That is what needs to be done in the community.*
>
> *[Katherine_Jun2018_Miliwanga Wurrben_Interpreter_Interview]*

Miliwanga also revealed a cultural perspective on blame that extends beyond worrying about being ostracized by her community. She is also concerned about a client's family using magic as a form of payback if they are unhappy with the outcome of a legal case. In particular, she is anxious about being 'sung', a practice where a member of the community would call on spirits to do harm to her and her loved ones.

> *It can even become worse than that. You have that payback system too. You have to be aware. You can be cursed at and the next minute you're screaming out like a bird or an animal, then [people will say]* "Oh, she's no good now, she can't interpret because her mind is not focused, not her own mind anymore". *Why? Because the family thought that you have said a wrong thing instead of helping. What the family doesn't understand is they think we're there to help them. No, no, no, we're in the middle, we're like mediators. So that's what they must get in their mind…If we don't tell them that we might be cursed, you know, they might get this witch doctor to sing us.*
>
> *[Katherine_Jun2018_Miliwanga Wurrben_Interpreter_Interview]*

The use of sorcery in communities is often centred on conflicts between individuals or groups, especially in cases involving real or perceived breaches of social order or customary law (Reid, 1982, p. 44). As I discuss in §7.4, these perspectives are rarely acknowledged by the justice system due to its lack of understanding of the cultural and spiritual foundations of Indigenous laws and customs.

The above section has discussed Miliwanga's personal experiences and perspectives as an Indigenous interpreter. As I aim to demonstrate in this chapter, some of these perspectives are common to most interpreters, while others stem from individual experiences. The following section describes the personal insights of Greg who, as a non-Indigenous interpreter, has a different personal and professional journey and, in turn, some different insights into his interpreting role.

9.3 Greg Dickson

Greg is a non-Indigenous linguist who has worked with Indigenous people for many years, having lived and worked periodically in Katherine and the communities of Minyerri and Ngukurr in the Northern Territory since 2002. He acquired proficiency in Kriol while working with Marra and Kriol speakers in the Roper River Region. Like Miliwanga, Greg holds an accreditation as a paraprofessional Kriol interpreter from the National Accreditation Authority for Translators and Interpreters (NAATI). He has worked extensively as an AIS interpreter both in legal and medical contexts. At the time of writing, Greg is the manager of the Meigim Kriol Strongbala program (Making Kriol Strong), a Kriol literacy program at Ngukurr School. He also continues to work as an interpreter for AIS and is active in recruiting new Kriol interpreters from within the community.

Unlike Miliwanga who decided to become an interpreter from a very young age, Greg's interpreting journey began after being asked to assist during the Intervention when demand for interpreting services increased considerably. At the time Greg was not a qualified interpreter, so he was working in an informal capacity. He recognized the need for professional interpreters when he witnessed how many Indigenous people were being disadvantaged by the lack of interpreting assistance. This experience became an impetus for him seeking accreditation a few years later.

> *I was working at the Language Centre, and this is years ago when Katherine didn't have an AIS office and they used the Language Centre as their sort of agency. Then I started doing [interpreting] before I had much training. They just needed interpreters and I said* "well I can do some"*... It was weird because when the intervention happened, part of the policy was that they had to use interpreters a lot. So the Language Centre went from having, I don't know, maybe 10 interpreting jobs a week to having 30 jobs a week because of the intervention. Anyway, a couple of years later, I was doing my PhD and I was spending a lot of time up here [the NT]. Then it all moved over to AIS and there was the opportunity to do training and induction and whoever did well at that could go on to do NAATI testing to get accreditation....So I did that in 2010 and so that's how I got into it I suppose.*
>
> *[Ngukurr_Nov2019_Greg Dickson_Interpreter_Interview]*

In some regards, Greg and Miliwanga's motivations to become interpreters are similar. Both were spurred on by witnessing the injustices experienced by speakers of Kriol and other Indigenous languages when navigating the justice system. While Miliwanga had first-hand experience of the consequences of being unable to communicate with police officers, Greg was motivated by observing the communities in which he worked struggle with linguistic disadvantage.

Working as an interpreter has given Greg further insight into the inner workings of the legal process and reinforced his perception that the very structure of the justice system disadvantages and marginalizes Indigenous people. He is clearly aware of how racism oils the cogs in the justice system machinery.

> *Every day in court I've learned a new way in which the system fucks over Aboriginal people.*
>
> *[Ngukurr_Nov2019_Greg Dickson_Interpreter_Interview]*

Greg views interpreting as an important step in redressing the structural inequity that sees Indigenous language speakers excluded from the legal process. He continues to work for AIS and encourages others to follow suit in order to ensure that interpreters are always available, especially during circuit courts where linguistically diverse communities benefit most from interpreting services. For this reason, Greg regularly holds recruiting sessions in Ngukurr where he explains the process of becoming a qualified and accredited interpreter and supports community members who are interested in joining the profession.

9.3.1 Language proficiency

As a native Standard Australian English speaker, Greg's proficiency in English is a given. On the other hand, he admits that although he is very proficient in Kriol, there are some areas where he strives to improve his knowledge and accuracy.

Greg: *The disadvantages are gaps in my Kriol knowledge. Of course there are gaps there. The one issue that makes me self-conscious is anything to do with sex, sexual assault, yeah anything to do with sex. That's my weakest area of knowledge. And I get that they're serious matters that you want good interpreting for the client, so that's tricky.*

Dima: *You mean navigating taboo etc.?*

Greg: *Yeah.*

[Ngukurr_Nov2019_Greg Dickson_Interpreter_Interview]

It is not surprising that Greg finds his knowledge of aspects of language like taboo to be relatively weaker compared to other areas of Kriol. Apart from the social and cultural restrictions around taboo, the language used to describe taboo topics tends to rely heavily on the use of euphemism and idiomatic expressions (Allan & Burridge, 2000, 2006). Similar to metaphorical language, euphemisms are generally culturally-dependent and acquired through immersion into the speech community (Hale, 2007, p. 76). These aspects of language can therefore present a challenge to interpreting accuracy especially for an interpreter who is not a native speaker.

9.3.2 Cultural knowledge

Greg identifies similar gaps in his cultural knowledge which may stem from the fact that he was not socialized into Indigenous culture as a child. Having lived and worked in Indigenous communities for some time, Greg has attained a high level of cultural competence. However, there are some aspects of Indigenous culture which he is still learning.

Greg: *I don't always have all the shared knowledge that Kriol speakers have. So, like, I have to get Kriol speakers to explain things to me that another Kriol speaker would just know straight away. Like places and people...just procedures of day-to-day life. Things that they just know intrinsically.*

Dima: *So how do you navigate that?*

Greg: *It just means that I have to ask for clarification, but then I do worry sometimes that it loses a bit of confidence with the client. If there's something that is to them really obvious and I have to clarify, then I'm like the white person who doesn't know things, like the lawyers don't know many things.*

[Ngukurr_Nov2019_Greg Dickson_Interpreter_Interview]

Here, Greg is describing the importance of shared cultural knowledge to building rapport between the interpreter and the client, especially for non-Indigenous interpreters. His concern about gaining and maintaining the confidence of his clients is understandable given the scepticism that Indigenous people have about cultural competence in legal settings. An unfortunate feature of the justice system in the Northern Territory is that a significant proportion of lawyers who represent Indigenous people in the courts come from other parts of Australia and, although well-meaning and dedicated, many have little knowledge of the Territory or of the cultural and linguistic practices of its Indigenous communities. The result is that many Indigenous people have come to associate non-Indigenous legal professionals with low cultural competence. This legacy is clearly a source of apprehension for Greg, and he feels compelled to counteract it by demonstrating his shared cultural knowledge to his clients.

9.3.3 Perspective on racism and power imbalance

In §4.5.1 I describe how the lack of a pathway to accreditation at a professional level for Indigenous language interpreters impacts the way legal professionals perceive the quality and competence of interpreters. As someone who is accredited at a paraprofessional level, Greg would be facing these same conceptions. However, in Greg's case, his other academic qualifications, which include a doctorate, have ensured that he is usually taken seriously in the court. When I asked him if he ever felt dismissed by the court, he noted:

> ***Greg:*** *I mean, I am so lucky. When the lawyers found out that I have a PhD and my official title is 'Doctor', they were straight away* "We love that. We're going to make sure that we refer to you as Dr. Dickson".
>
> ***Dima:*** *In the court?*
>
> ***Greg:*** *Yes.*
>
> ***Dima:*** *To give you more authority?*
>
> ***Greg:*** *Yes. And the magistrate loved it. So, every time I was in court, it was 'Dr. Dickson blah blah blah' and I was like* "Oh my God, can you just not, please".
>
> *[Ngukurr_Nov2019_Greg Dickson_Interpreter_Interview]*

Greg is indicating a clear discomfort with his title being used as a way to increase credibility in his professional abilities as an interpreter. He notes that his academic qualifications in fact have little bearing on his interpreting competence.

Greg: *...It's stupid because it shouldn't matter, because I'm still an interpreter. I'm no better qualified or trained than the other interpreters. I just have this stupid title that people who give a shit about that stuff, it means something to them. I'm not using my degree when I'm an interpreter.*

Dima: *But you probably would be taken more seriously.*

Greg: *Yeah, that's other people's conceptions. It's stupid.*

[Ngukurr_Nov2019_Greg Dickson_Interpreter_Interview]

The way Greg's qualifications are so highly regarded by the court speaks to the privileging of Western knowledge at the expense of Indigenous ways of knowing. Miliwanga's deep cultural knowledge would in fact contribute immensely to the context of many court cases, but she is often sidelined by the court. On the other hand, Greg's qualifications which are of less relevance are instead touted and emphasized.

Greg's other advantage is the fact that he uses Standard Australian English, the dialect favoured by the court. This gives Greg an impression of competence and authority that is not always afforded to speakers of non-standard varieties of English. The association between perceptions of intelligence and competence with speaking standard varieties of English has been widely explored (see, for example, Fuertes et al., 2012; Fuse et al., 2018; L. R. Nelson et al., 2016). Interpreters are subject to the same kinds of misconceptions, although with varied impacts on their job (Hale et al., 2011). Greg is able to speak to judges and lawyers not only in their language, but also in the variety they associate with their own professionalism.

> *It definitely helps me being able to talk to other professionals as [air quotes] 'equal' and interrupt if I need to.*
>
> *[Ngukurr_Nov2019_Greg Dickson_Interpreter_Interview]*

Like Miliwanga, Greg recognizes that his linguistic and cultural competence and the way he is perceived by legal professionals can give him the confidence required to interrupt in court or speak up if he needs a break from interpreting. Greg is particularly aware of the advantage that his whiteness affords him when engaging with white legal professionals. While Miliwanga reported that Indigenous clients are at times afraid that she is insulting the judge by interrupting the court, Greg noted that some of his clients probably consider confidence in the court an advantage, which he attributes to the fact that he is white.

> *I think because being white, I'm more confident talking to other white professionals. Maybe clients might think that's an advantage. I think that's an advantage. I see how hard it is for most Indigenous interpreters. It took me ages to feel more confident talking to a judge, and I still have moments when I'm not feeling confident on a particular day where it's hard to put yourself out there or interrupt things or talk to the police, all the things that you need to do to be strong in your interpreting. For most Indigenous interpreters, it would be so much harder for them to be confident.*
>
> *[Ngukurr_Nov2019_Greg Dickson_Interpreter_Interview]*

Indigenous clients recognize the advantages of Greg's whiteness because they are cognizant of the power differentials in court and understand that Indigenous interpreters are viewed through the same racial lens as they are. Many of these clients

would have grown up associating whiteness with power and Indigeneity with fear and trepidation in courtrooms and other legal contexts. They may consider having a confident and empowered white interpreter as a means of redressing some of the power imbalances they themselves are subject to in legal settings.

9.3.4 Impartiality

Greg and Miliwanga had similar views about impartiality, including its importance to the process of professional interpreting. Having both been motivated by a desire to help Indigenous communities overcome some of the linguistic disadvantages they face in the court, it was unsurprising that Greg and Miliwanga viewed impartiality as a complex expectation. However, while Miliwanga struggled to remain neutral and impartial during the Intervention and opted to step down from her interpreting duties, Greg felt duty-bound to take on more interpreting because he could perceive the positive impact interpreting would make to communities trying to come to terms with a slew of new and complicated policies that were poorly explained. These two different approaches highlight the nuances of impartiality and the individual contexts within which it operates.

Interpreters are trained to be impartial, but they still have to contend with the perceptions of the court and the community regarding their impartiality. If the justice system perceives Indigenous interpreters as unable to act impartially, they are less likely to engage interpreting services which can have a great impact on access to justice for Indigenous language speakers. Greg indicates that judges and lawyers rarely seemed concerned about his ability to work impartially. However, he is conscious that as white interpreter working in a predominantly white setting, some Indigenous clients may worry about him being on the side of the court rather than an independent and impartial officer of the court.

> *…there's definitely a thing of if I'm sitting next to lawyer and they're white and I'm white, then they [the client] just think that we're the same, we're on the same side. I don't know. It's hard to tell. You just don't know. It's case by case really. Some people I interpret for either know me or know of me, but some don't at all. And if they don't know me at all, sometimes as soon as they hear me talk and they can hear that my Kriol is really strong then it says straight away 'this person has definitely spent a lot of time here and knows Aboriginal people well, knows Kriol speakers well'. So then for some people that can dissolve [their perception of partiality].*
>
> *[Ngukurr_Nov2019_Greg Dickson_Interpreter_Interview]*

Greg here touches on the link between proficiency in an Indigenous language and perceived solidarity with its other speakers. Immersion into a speech community is arguably the most likely path to language proficiency so clients would link Greg's fluency in Kriol with him having lived and worked with Indigenous people for extended periods. This time of prolonged contact would also be associated with increased cultural competency, which is equally important for many Indigenous people engaging with the justice system. Greg's long association with Indigenous communities likely leads to being perceived as much more of an insider or, in the least, as a trustworthy ally.

9.3.5 Blame

As I describe in §9.2.5 Miliwanga frequently needs to contend with the issue of blame from her own community and other Indigenous communities. Greg, on the other hand, indicates that he is less concerned about community members expecting him to act as an advocate or perceiving him as someone who can sway the outcome of a court case. He has not personally experienced blame from community members, nor has he needed

to speak to the elders about this issue. However, he is aware that his position as a facilitator of communication can give some clients the impression that his assistance will inevitably lead to a better result in a court trial, which of course is not always the case. He is also conscious of the tendency among some clients, especially ones facing uncertainty in legal settings, to develop a dependency on the interpreter and envisage them as a support person (Morris, 1999).

> *No one has ever blamed me, but I've been worried that they may think that I've contributed to the bad outcome. I think the reason that I thought that is just because of maybe [the client] not clearly understanding the court process. I remember someone got sent to jail and it was just kind of all these stupid things, all these little factors kept building up that affected what the outcome was. I remember, it wasn't fair and it didn't make logical sense. And I remember him feeling positive about me being there and being useful and then the outcome came out badly anyway. So I just came out feeling like that guy must be thinking* "What use was the interpreter?"*, if that makes sense.*
>
> *[Ngukurr_Nov2019_Greg Dickson_Interpreter_Interview]*

Greg's feelings here are understandable. Rather than fearing potential blame, he is primarily concerned about being powerless to help in the face of a clear miscarriage of justice. Although he cannot influence the outcome of a trial other than by mitigating the risk of miscommunication, Greg nonetheless carries the burden of being a participant in a legal process that inherently disadvantages Indigenous people. The guilt that can be experienced by interpreters in these situations is a particularly complex aspect of the profession which deserves greater attention from the justice system as well as from interpreting organizations.

9.4 Discussion

Indigenous languages interpreting in legal contexts presents unique challenges that relate to the sociocultural and political context in which the interpreting act takes place. Although many of these challenges are common to all interpreters, there are also specific issues that pertain to the individual interpreter. Miliwanga's and Greg's experience demonstrate how interpreters who are equally qualified and work in the same contexts can still have starkly different experiences.

Indigeneity undeniably plays a major role in shaping the day-to-day experiences of these two interpreters. Miliwanga speaks of feeling intimidated by white judges and lawyers because of their distrust of her professionalism and competency. These sceptic views are likely founded on nothing other than her indigeneity. By his own admission, Greg's whiteness gives him access to legitimacy that is untethered to his interpreting accreditation and professional capabilities. Both Greg and Miliwanga are competent interpreters, but unlike Miliwanga, Greg does not feel compelled to prove his competency simply to counteract unfair assumptions made about him on the basis of his skin colour.

From the perspective of language proficiency, Miliwanga and Greg again face differing challenges. They are both native speakers of one language and proficient non-native speakers of another, but the values assigned to their native languages by the justice system to are not the same. By virtue of speaking the variety of English most often used by those in power in the justice system, Greg is at an immediate advantage. The quality of his interpreting is probably judged more favourably. Without knowledge of the Kriol language, judges and lawyers witnessing Kriol interpreting likely assess the quality of interpreting based on the interpreter's proficiency in the language they understand, English. Miliwanga, on the other hand, must contend with potential negative attitudes towards Aboriginal English and its speakers which expose her to perceptions of reduced competency. In fact, many aspects of Miliwanga's experience parallel those of numerous Indigenous people, including other Indigenous interpreters. Her linguistic abilities are

often mistrusted, her cultural knowledge dismissed, and her professionalism questioned.

From a social and cultural standpoint, Greg and Miliwanga both face the struggle of working in a system that places little value on Indigenous laws and culture. However, they each have distinct advantages and disadvantages that force them to navigate the boundaries of their professional roles differently. Miliwanga has to deal with community expectations that challenge her impartiality and expose her to potential blame. She is frequently in the impossible position of having her impartiality questioned by both the justice system and her own community members. For that reason, Miliwanga sees the interpreting Code of Ethics as a shield that protects her from accusations of partiality. She in fact takes a copy of the code with her when she speaks to elders and she tries to recite her responsibilities to the court if given the chance to do so at the beginning of proceedings *[Katherine_Dec2018_Miliwanga Wurrben_Interpreter_Field Notes_p. 30]*. Greg has fewer concerns about impartiality. He feels less scrutinized by the judges and lawyers but shares the unease undoubtedly experienced by other interpreters when taking part in an inherently discriminatory legal process.

9.5 Concluding remarks

For many Indigenous language interpreters, the interpreting journey is deeply personal. It is a journey often forged in the past and continually reshaped by first-hand familiarity, by the witnessing of other people's experiences, and by a deep understanding of the structures and institutions that govern Indigenous lives and livelihoods. This chapter brings to the fore the importance of considering the lived and professional experiences of individual interpreters when examining factors that impact legal interpreting. To truly understand the challenges faced by interpreters, they must be given a larger platform to share their invaluable personal insights into interpreting. This will benefit interpreters, the justice system, and the community at large.

10 CONCLUSION

"Treating different things the same can generate as much inequality as treating the same things differently".

(Crenshaw, 1997, p. 285)

On the basis of field notes, stakeholder interviews and court observations, this thesis has demonstrated the many ways in which Indigenous language interpreting is shaped by forces of power, place, kin, and culture. Failing to attend to these factors and treating Indigenous language interpreting in precisely the same way as the interpreting of other languages, inevitably generates more inequality for Indigenous communities. To be sure, many of the underlying issues that can determine the effectiveness of the provision of Indigenous language interpreting, such as linguistic proficiency and cultural competency, are shared with other types of interpreting, but there are also fundamental historical and racio-political aspects that must be taken into account. These aspects have been a common thread throughout this thesis, shaping its main aims and informing my methodological and conceptual choices.

In this final chapter, I revisit the aims of my research and explicate how I approached them throughout the thesis (§10.1). I then list some of the practical implications of the research (§10.2), particularly in relation to specific strategies to improve access and availability of interpreting in the short and medium term. In §10.3 I describe the potential contribution of this thesis to the conceptual and methodological approaches to examining Indigenous language interpreting. Finally, in §10.4 I suggest further avenues of enquiry to build on from this research.

10.1 Revisiting the research aims

The research aims in this thesis are described in §1.2 and are summarized as follows:

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 localized contexts.

Aim 4: To use Kriol as a case study in pursuing the above aims.

Although I articulate these aims separately, I emphasize that many of the interpreting aspects I investigated while addressing my aims frequently intersected and overlapped. As my research progressed, I began to view interpreting less as an isolated topic and more as a nexus point where the currents of language, power, race, culture, society, knowledge, and agency crossed. This perspective was instrumental in my choice to adopt a decolonial standpoint in this thesis, which I described in Chapter 2 where I outlined the conceptual framework for the research. The methodology I used to collect and analyse data also supports the aims of the research, particularly regarding attentiveness to the power relations that often suppress the voices of Indigenous interpreters (Chapter 3).

10.1.1 Situating the act of Indigenous language interpreting

A core aim of this thesis is to contextualize the act of interpreting by taking into account not only the linguistic aspects that impact interpreting, but also other influencing factors including cultural backdrops, power relations, and the narratives of knowledge that underly linguistic interactions. As I have argued throughout the thesis, in order to

truly understand the dynamic and iterative nature of Indigenous language interpreting, we must examine how it is impacted by the confluence of the above factors (Figure 9).

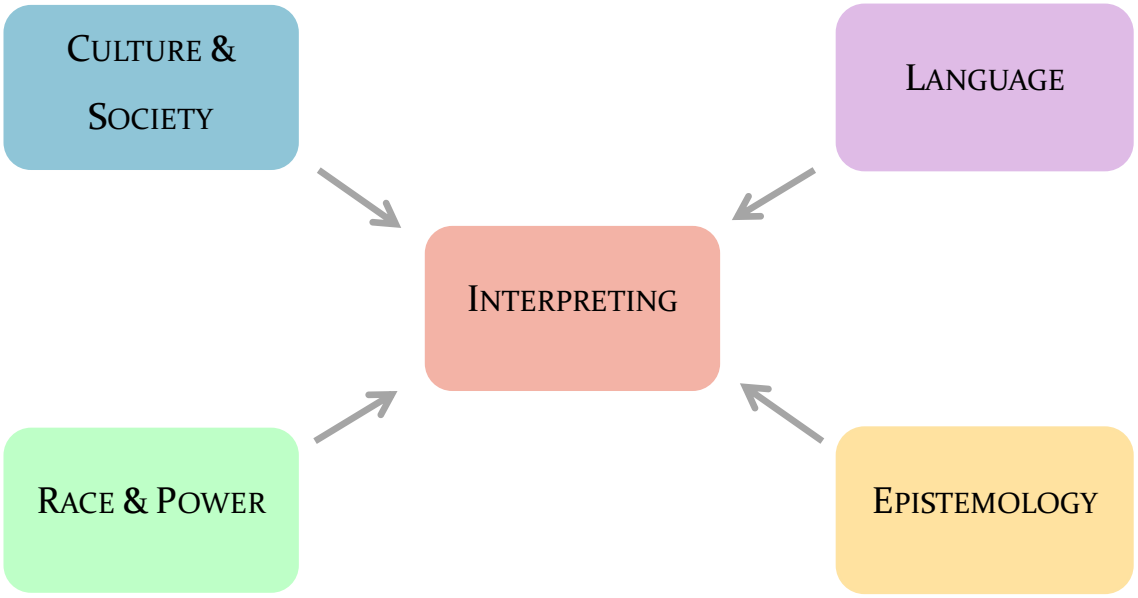

Figure 9: Factors influencing Indigenous language interpreting

10.1.1.1 Language

Chapters 4 and 5 examined some of the language-related issues that can impact the provision of interpreting, including the challenges of assessing language proficiency and ascertaining the need for interpreting services. In Chapter 4, I discussed the perennial problem of 'masked miscommunication' 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. I also examined the challenges faced by staff in legal and government organizations in assessing the English proficiency of their clients for the purpose of ascertaining the need for an interpreter. An important finding in the chapter is that the risk of miscommunication can be compounded by the varying English proficiency among some of the government staff who engage with Indigenous language speakers.

In Chapter 5 I focused on some of the linguistic aspects of Kriol interpreting, particularly the impact of the creole continuum, dialectal variation, and inconsistent nomenclature.

I found that the blurred boundaries within the creole continuum can cause uncertainty among legal professionals about when to engage interpreting services. Clients who speak 'lighter' varieties of Kriol are at risk of having their language conflated with AE and, in turn, may be less likely to be offered interpreting assistance.

I also investigated how dialectal variation in Kriol can impact the provision of appropriate interpreters. A significant finding in this chapter is that the practice of delineating Kriol dialects into Eastside and Westside Kriol, while widely accepted by interpreting services and legal professionals, was nonetheless a cause of concern for some interpreters. They noted that in cases where an interpreter of one variety was not available, the decision was occasionally made by legal professionals to forgo booking an interpreter altogether, leading to clients being left without crucial interpreting assistance. In other words, focusing on dialectal differences as a way of ensuring accuracy was paradoxically hindering the effective delivery of interpreting services.

10.1.1.2 Race and power

Another important aspect of interpreting examined in this thesis is the role of race and power relations in influencing both the availability and professional experience of interpreters. A central objective was to interrogate how the law's conceptualization of Indigenous language interpreting is racially inflected. This objective is explored in Chapter 6 , particularly in regard to the power and race relations in the Katherine region. In this chapter I also posited that when deciding to engage interpreters, discretion is essentially power by another name. I used anecdotal data provided by interpreters and legal professionals to investigate the discretionary use of interpreting services by different parts of the justice system (see §10.3 below). The data suggests that there is still a low degree of engagement of interpreters by police, NT Correctional Services, and certain government organizations such as Territory Families.

In Chapter 6 I examined the potential impact of uneven power relations on the confidence levels among interpreters. An important finding is that some interpreters

felt more empowered and respected in formal settings such as the Supreme Court compared to local and circuit courts. A major reason given for this was that in the Supreme Court, interpreters were introduced by the presiding judge and given the opportunity to describe their role and explain the Code of Ethics by which they abide. This made interpreters feel more visible and recognized, which increased their confidence.

Race and power relations also heavily influence the degree to which interpreters feel themselves 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, friends, and communities can challenge their ability to remain entirely neutral and impartial. Section 6.4.2 explored this particular tension and found that although blurring the line between being an impartial interpreter and an advocate can leave interpreters vulnerable to blame, some interpreters wanted the opportunity to take on an advocacy role rather than stepping away from assignments if they feel that they cannot be impartial. This raises the question whether there is scope to widen the parameters of the role of the interpreter to include the option of advocacy while also protecting their right to declare impartiality when they wish.

10.1.1.3 Culture and society

The sociocultural aspects of interpreting are examined in Chapter 7 with a particular focus on kinship relations, *shame*, and blame. Section 7.2.1 explored how the binding kinship relations that interpreters have with other members of their community can impact the provision of interpreting, especially in smaller communities with few available interpreters. Interpreters may be called to interpret for a member of their community with whom they happen to be 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 means placing them in the physical vicinity of particular kin, or if they are required to communicate with them. My

research found 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 will be interpreting for.

I also examined the impact of *shame* on the experience of interpreters. I began by exploring the Indigenous conceptualizations of the notion of *shame* and examined its role in Indigenous language speakers' reluctance to engage interpreters. In §7.3.2 I discussed how *shame* can be experienced by interpreters and its influence on their professional experience. I hypothesized that *shame* in interpreters can stem from a number of causes, including witnessing the *shame* of others, engaging in taboo topics, and interpreting in the first person.

Fear of being blamed by their communities for the outcome of a legal case was also cited as a major reason why some interpreters were reluctant to take on specific assignments. The risk of being blamed is perpetuated by a lack of awareness among some community members of the role of the interpreter, the optics of the court where interpreters may be perceived as working for one side rather than the court, and the dubious practice of summoning interpreters as witnesses (§7.4)

10.1.1.4 Epistemology

In Chapter 8 I interrogated how the different Indigenous and Western conceptualizations of language and interpreting can influence the identification of speakers and lead to inconsistent provision of interpreting services. In particular, the way the role of the interpreter is conceptualized by some members of Indigenous communities as belonging to elders and spokespeople has led to a paucity of young interpreters. This in turn has been disadvantageous for young people who may require an interpreter but are too ashamed or intimidated by the presence of elders in court and therefore decline the offer of interpreting services.

In this chapter I also argued for the need to recognize how the legacy of colonial thinking continues to shape attitudes towards Indigenous languages, including Kriol. Through the lens of 'coloniality of language' I explored how pervasive negative attitudes towards Kriol as a 'bastard language' or 'improper English' have been internalized by some speakers, leading to feelings of *shame* for speaking neither 'proper' English nor their traditional language. Such attitudes have at times resulted in Kriol speakers refusing to engage interpreters, an issue that needs be addressed through collaborative work to improve the status of Kriol as bona fide Indigenous language.

10.1.2 The importance of stories

"We are all connected. We all exist within a nexus of relationships that link us to one another, and to all life. Everything we do affects these connections. In our different ways, we all tell the story of the world as it is, and the world as we want it to be – and, in this land, stories have power"

(Kwaymullina, 2008)

As I describe in Chapter 3, the methodological choices made in this project are consistently centred on the notion of privileging words as data. From the outset, it was vital that I recorded the experiences and perspectives of people taking part in the legal process, particularly the interpreters who play an essential and often overlooked role in facilitating access to justice for Indigenous communities. The stories told to me by interpreters are at the heart of this thesis; they shaped and reshaped my understanding of the challenges they face and the way they perceive the justice system's treatment of their communities and the people they work with. Chapter 9 of the thesis was dedicated to telling the stories and perspectives of two Kriol interpreters, Miliwanga Wurrben and Greg Dickson, whose professional and personal experiences provided invaluable insight into the issues surrounding Indigenous language interpreting.

I also recognize that the voices of Indigenous language interpreters have often been sidelined by the justice system. There are some indications of a shift in this position, with Indigenous interpreters increasingly taking part in legal conferences and workshops,[71] but for many, such opportunities remain elusive. As such, elevating the voices of interpreters became one of the central aims of this thesis. I endeavoured to speak to as many interpreters as possible and the majority were happy to share their stories, although most were reluctant to speak on record for fear of upsetting others or jeopardising their own employment. This too speaks to the power differentials that continue to bear on the professional standing and experience of interpreters.

10.1.3 The localized context of interpreting

Another main aim of the thesis is to bring to the fore the localized contexts in which Indigenous language interpreting takes place. As part of addressing this aim, I collected data from court observations in Katherine's local court as well as circuit courts in the communities of Mataranka, Barunga, and Ngukurr. As this thesis demonstrates, many of the day-to-day challenges to the provision of interpreting are in fact manifestations of larger issues, such as race and power, at a localized level. For example, conversations with interpreters revealed that their views about the legal system were moulded by personal experiences of race and power relations, including witnessing of the heightened racial tension during the Katherine Area Land Claim in 1970s and 1980s. Power differentials are especially palpable in smaller communities where chronic over-policing and the fragmenting of families by government agencies has caused irreparable damage to the sociocultural structures that hold communities together. Interpreters who live in these communities have an added burden of being required to maintain impartiality despite witnessing daily injustices.

[71] The *Language and the Law* conference is one example of academic and legal conferences that involve interpreters taking part in presenting their experiences and views on a wide range of legal topics.

Interpreting in the localized setting of an Indigenous community is additionally influenced by kinship relations, traditional law, and societal expectations. These are central factors that affect how communities are structured and the politics within which they operate. In order to truly understand interpreting in Indigenous communities, we must acknowledge that a community is not merely a congregation of people who share a defined space, rather an assemblage of families linked by history, country, language, and kinship. Only then can we appreciate the challenges faced by some Indigenous interpreters. For example, in smaller communities, the families of victims, defendants, witnesses, and interpreters are frequently one and the same. Interpreters who either reside in these communities or regularly return to them face the challenge of balancing their professional role with the many social and cultural obligations they have. As these challenges vary from community to community, localized approaches and solutions are needed to ensure the continuity of interpreting availability. These include recruiting more interpreters from each community and working closely with elders and spokespeople to improve community's understanding of the role of the interpreter.

10.1.4 Kriol as a case study

In pursing the aims of this thesis, I chose to focus on Kriol. Given the ever-growing number of Kriol speakers, the demand for Kriol interpreting is likely to continue increasing. As such, there is rising urgency to address any issues that affect the provision of Kriol interpreting. In addition, unlike many Indigenous languages that are normally spoken in a defined number of communities, the vast geographical spread of Kriol means that speakers generally come from communities with varying societal structures and cultural norms. Kriol, in fact, is a poignant illustration that the intersections of linguistic and cultural practices cannot always be mapped out neatly. A good understanding of the specific needs of Kriol speakers and interpreters in different communities must therefore be woven into interpreting policies. This again brings to the fore the importance of adopting localized approaches to addressing interpreting issues in the law.

Kriol also presents an important case study for examining the lasting impact of colonial thinking around the linguistic practices of Indigenous Australians. As I describe in Chapter 8, the attitudes towards Kriol are unquestionably rooted in the colonial notion of the supremacy of the English language, and in turn, the legitimacy of its speakers. These attitudes influence interpreting in multiple ways, including the decision by legal professionals and others in power to engage interpreters and the willingness of speakers to request or accept interpreting assistance.

10.2 Practical implications

As well examining the theoretical basis of some of the issues surrounding the provision of interpreting, this thesis explores the day-to-day practical aspects that directly impact access to and availability of interpreters. This builds on existing scholarship on the topic, particularly by Cooke (1998, 2002, 2004). Unfortunately, more than two decades after Cooke interrogated these issues, they remain a serious challenge to the provision of Indigenous language interpreting.

Table 3 below summarizes the practical aspects impacting the provision of Indigenous language interpreting and potential measures to improve access and availability. The measures recommended are based on specific concerns raised by participants and the solutions occasionally offered by them, as well as my own analysis of the issues I observed during field trips. To assist the reader in recognizing the basis of the recommendations, the table includes cross-references to the precise sections in the thesis where the issues and recommendations are discussed.

Table 3: Summary of practical implications

	FACTORS IMPACTING INDIGENOUS LANGUAGE INTERPRETING	MEASURES TO FACILITATE THE USE OF QUALIFIED/ACCREDITED INTERPRETERS	SECTION DISCUSSED
ORGANIZATIONAL/ INSTITUTIONAL LEVEL	Paucity of available qualification, training, and accreditation pathways for interpreters	Providing further Commonwealth and State/Territory funding to create extra qualification pathways including more Diplomas of Interpreting in Indigenous Languages. Increasing the number of available trainers. Creating opportunities for Indigenous people to be trained in community. Ensuring adequate remuneration for trainers moving away from home to deliver training in Indigenous communities. Producing NAATI testing for more Indigenous languages to increase the number of Certified Provisional interpreters.	§4.5.1.2

ORGANIZATIONAL/ INSTITUTIONAL LEVEL	Discretionary powers in the use of interpreters by different parts of the justice system	Higher accountability for the use of interpreters in all aspects of the justice system including by police, courts, legal professionals, NT Correctional Services etc. Suitable avenues for complaints about the lack of interpreting assistance. Conducting regular reviews of the procedures relating to interpreter use. Establishing comprehensive recording and collection of data on the use of interpreters by various organizations. Employing duty interpreters at all court sessions, particularly during circuit courts. Working toward having interpreters on staff in police stations, NT Correctional Services, and Territory Families for the most widely spoken languages in the area, such as Kriol.	§4.3, §6.3.2

ORGANIZATIONAL/ INSTITUTIONAL LEVEL	Unfavourable working conditions for interpreters – low remuneration, casualization, precarious employment, unpredictable income, risk of vicarious trauma.	Ensuring adequate remuneration for current interpreters. Limiting the casualization of the interpreting workforce when possible, especially for larger languages. Increasing the number of fulltime and duty interpreters. Briefing interpreters about cases beforehand to mitigate risk of unexpected trauma. Exploring the option of funding community-based or traditional healing assistance for interpreters experiencing vicarious trauma.	§4.5.2
	Lack of institutional awareness about the importance and role of interpreting services	Increasing training in the justice system and government/non-government organizations about the importance of engaging interpreters. Revising and implementing current guidelines on working with interpreters. Continuing funding of the Aboriginal Interpreter Services to run more 'working with Interpreters' workshops.	§4.3

USER/CLIENT-BASED LEVEL	Low awareness about the right to interpreting assistance	Raising awareness in communities through a collaboration of interpreting services, legal education providers, and community members.	§4.2.1
	Low understanding about the role of interpreters and the limitations of the Code of Ethics	Producing linguistically and culturally accessible legal education material about the role of interpreters. When practical, providing translations of the interpreters Code of Ethics to Indigenous communities.	§4.2, §7.4
	Resistance to interpreting services due to *shame* or fear	Offering the option of interpreting assistance in a way that assures clients that interpreters are needed by all parties to facilitate effective communication.	§4.3.1, §7.3.3
LANGUAGE LEVEL *English proficiency*	Legal professionals overestimating a client's English proficiency	Increasing training about the factors masking miscommunication such as collaborative discourse, verbal scaffolding, gratuitous concurrence, and code switching. Encouraging legal professionals to engage interpreters as soon as potential miscommunication is identified.	§4.4

LANGUAGE LEVEL *Kriol*	Confusion in the justice system about the relationship between Kriol and English	Raising awareness in the justice system and government agencies about Kriol as a bona fide Indigenous language, rather than a dialect of English, with potential for miscommunication. Boosting operational funding for programs promoting Kriol including the Kriol Awareness Course at Ngukurr and rolling out similar courses across the Northern Territory and Western Australia.	§5.1.1
	Significant dialectal variation in Kriol to impact the accuracy of interpreting	Increasing recognition in the justice system of the different dialects of Kriol and emphasizing the importance of engaging interpreters who speak the same dialect as clients whenever possible. Recruiting more interpreters of different varieties of Kriol to ensure clients are provided with suitable interpreters.	§5.1.2
SOCIOCULTURAL LEVEL	Interpreters in kin/avoidance relationship with clients	Recruiting more interpreters from each community to provide viable alternatives when kinship-related issues arise Briefing interpreters about cases in advance in order to identify potential kinship-related issues and arrange timely alternative interpreting services.	§7.2

SOCIOCULTURAL LEVEL	Lack of trust of outside interpreters	Working with communities to explain the interpreter's obligation to maintain confidentiality.	§7.2.1
	Interpreters fearing blame	Allocating a specific section of the court for interpreters to sit before proceedings begin to demonstrate impartiality. Encouraging interpreters to explain their role to the client as impartial participants of the legal process. Avoiding the practice of summoning interpreters as witnesses in court cases. Educating communities about the impartiality of interpreters. Working with communities to ensure interpreters feel safe to return in cases where they are blamed.	§7.4

SOCIOCULTURAL LEVEL	Interpreters unable to maintain neutrality impartiality	Briefing interpreters about cases to identify any issues with impartiality in advance. Working towards establishing bilingual advocacy programs to give interpreters the option of acting as advocates in line with existing programs in the US and UK, while also protecting their right to remain impartial.	§6.4.2
	Interpreters feeling intimidated/unrecognized in legal settings	Classifying interpreters as officers of the court. Encouraging judges and legal professionals to introduce the interpreter to the court and address their role.	§6.4.1.1

10.3 Theoretical contributions

This thesis offers a number of theoretical and methodological contributions to the study of legal interpreting. Its use of a holistic approach to interpreting that considers the linguistic, racio-political, and sociocultural factors impacting interpreting aligns it with previous research on community legal interpreting (see Berk-Seligson, 2002; Conley et al., 2019; Garber, 2000; Hale, 2007, 2014). However, by also examining the under-explored epistemological aspects of interpreting, this research adds another dimension to the understanding of the complex and contingent act of interpreting (see also Cooke, 1998, 2004; Moore, 2014). Worldviews and narratives of knowledge are intertwined with the linguistic norms and practices of Indigenous communities, yet they can be either overlooked by the justice system or simply conflated with 'culture'. As I argue in Chapter 8, the differences in the way Indigenous people and Western law conceptualize both language and the act of interpreting are not merely notional – they have a real and immediate impact on the availability of interpreting, and in turn, on access to justice for Indigenous communities.

The added focus on the relationship between language, interpreting, and knowledge was one of the driving forces for my decision to adopt a decolonial approach in this thesis (Chapter 2). A decolonial lens provides unique means to interrogating the persistent effect of colonial attitudes on the way Indigenous people, and their ways of knowing and speaking, are viewed by Western institutions like the justice system. This thesis endeavours to demonstrate the value of explicitly articulating a decolonial position as a way of addressing issues around interpreting. For example, the notion of a 'coloniality of power' (Quijano, 2000) was used to analyse the historical and socio-political backdrop of interpreting in Katherine and the surrounding region. It proved a powerful tool in examining the power relations at play in the decision to establish professional Indigenous language interpreting services, as well as the discretionary power involved in the process of engaging interpreters. This approach complements existing scholarship on the role of colonialism in shaping linguistic interactions in legal settings (Eades, 2008b), particularly in relation to interpreted interactions (Tarr, 2017).

Similarly, the concepts of 'coloniality of knowledge' (W. Mignolo, 2009, 2011a) and 'coloniality of language' (Veronelli, 2015) were used to highlight how Australia's legal system, deeply rooted in the Western paradigms of knowledge and 'enlightenment', plays a continuing role in subverting Indigenous knowledges and languages. For example, unless the justice system begins to appreciate Indigenous conceptualizations of interpreting and other forms of language use and work with interpreters to address topics like impartiality and expected communicative norms, the availability of interpreters will remain problematic. Efforts towards remedying the inadequate engagement of interpreting services must include the recognition by the justice system of its failure to understand the narratives of knowledge that inhere in many acts of Indigenous language interpreting.

Finally, the notion of 'coloniality of being' (Maldonado-Torres, 2007) sheds important light on the internalized negative attitudes that Kriol speakers can have towards their own language and the impact such attitudes can have on the identification of speakers for interpreting purposes and their willingness to accept interpreting assistance.

Fundamentally, this thesis calls for wider adoption of decolonial perspectives on issues relating to language and the law. Such perspectives have the potential to shift the current paradigm of treating the act of interpreting and the interpreters themselves as insulated from colonial forces.

From a methodological perspective, the use of multiple methods of data collection including field notes, court observations, and semi-structured interviews proved instrumental in analysing the nexus points where theory meets practice. For example, in informal chats and interviews with judges and legal professionals, there was wide agreement regarding the value of engaging interpreters, yet court observations highlighted a frequent absence of interpreting services despite clear need (see §5.5, §7.5). This exposes a possible disjuncture between what the justice system knows it should do and what it is actually doing. The method of combining different forms of data collection helps to illustrate this disjuncture from varying angles and is potentially

applicable to investigating other aspects of the delivery of justice in Australia's legal system.

10.4 Looking forward

This thesis lays the groundwork for further examination of Indigenous language interpreting in various ways. One of the aims of the thesis is to closely examine the localized context of interpreting. In the course of addressing this aim, I explored some of the particular challenges of interpreting in circuit courts in the communities of Mataranka, Barunga, and Ngukurr. Court observations gave me a glimpse of the complexities that are inherent to interpreting in these specific settings. They also impressed on me the need to examine circuit courts as unique settings where the confluence of societal structures, linguistic and cultural norms, and power relations can impact interpreting in varying ways. Given that circuit courts operate regularly in multiple locations around the Northern Territory (see Appendix VII), there is ample opportunity for further research involving both court observations and, importantly, discussions with community members who are the main stakeholders in the effort to deliver justice to Indigenous communities. Such research could also be expanded to other regions where Indigenous language interpreting is carried out regularly, including Western Australia and South Australia.

Further research can also be carried out to capture the views of more participants in the justice system and beyond. This thesis aimed to elevate the voices of interpreters and explore the views of others working in legal settings. For a number of different reasons, including the refusal of members of the police force to engage with the research on record, the main views investigated were those of interpreters, lawyers, and judges. There is scope for additional research to include the perspectives of other participants in the justice system and beyond, including police and correctional officers as well as staff at government organizations such as Territory Families. In particular, it is pertinent to seek the insights of Indigenous people working in these sectors. For example, Police Aboriginal Liaison Officers are often present during police interviews and court

hearings where interpreters may be needed. Their perspectives can be invaluable in illuminating some of the interpreting-related issues that continue to stymie efforts to improve access to justice.

10.5 Final remarks

Cases of wrongful conviction, like that of Gene Gibson, have brought to the fore the grave disadvantages experienced by Indigenous language speakers who are not afforded access to interpreting services (Tulich et al., 2017). That egregious miscarriage of justice also galvanized efforts to improve the provision of interpreters. However, any progress that resulted from this case seemingly still eludes countless Indigenous communities. As the case study presented in §5.5 and §7.5 demonstrated, it is not only extraordinary cases like Gene's that fray the relationship between Indigenous communities and the justice system, but also the day-to-day injustices. These recurrent injustices, which often go unrecognized and unaddressed, do not merely affect individuals. They ricochet into communities, adding to intergenerational trauma and creating a legacy of tangible and intangible damage.

This is by no means a helpless situation, however. The notion of a symbiotic relationship between Indigenous language interpreting and the justice system may at times seem an impossible ideal, but it is not. There are many instances where qualified interpreters are being engaged by the legal system and supported in their professional role. These are the instances that give us a glimpse of what can be achieved. But realizing the ideal of a symbiotic relationship requires more than the justice system merely recognizing the importance of interpreting. What is needed is a recalibration of the current balance of power so that communities are given greater control of how their linguistic needs are met in legal settings. Equally necessary is a genuinely collaborative approach in which the justice system must choose to listen to marginalized communities. This would invariably result in better provision of interpreting, improved access to justice, and ultimately, a more equitable society.

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Appendix I SUMMARY OF FINDINGS AND RECOMMENDATIONS FROM PREVIOUS REPORTS

Report name	*Date of release*	*Relevant Key Findings*	*Relevant Key Recommendations*
Recognition of Aboriginal Customary Laws (ALRC Report 31)	**1986**	'The current law relating to interpreters, which relies on the court's discretion rather than conferring a right to an interpreter in appropriate cases, is unsatisfactory' 'The role that interpreters are currently permitted to perform in the courts needs reconsideration' 'There is a clear need for interpreting services to be available for traditionally oriented Aborigines, but there is a lack of trained interpreters in many localities'	'Legislation should provide that, in a criminal proceeding against an Aboriginal defendant who appears not to be fluent in English, the court should not accept a plea of guilt unless it is satisfied that the defendant sufficiently understands the effect of the plea, and the nature of the proceedings. If necessary, the court should adjourn the proceedings to allow legal advice or an interpreter to be provided, to assist in explaining the plea and its effect' (para 585). 'Existing programs for the training and accreditation of Aboriginal interpreters should be supported and extended. The aim should be to ensure that interpreters are available where needed at all stages of the criminal justice process (i.e. during police interrogation, as well as in the courts)' (para 600).

Report name	*Date of release*	*Relevant Key Findings*	*Relevant Key Recommendations*
Royal Commission into Aboriginal Deaths in Custody (RCIADIC)	1991	2.9.4 There is very little formal use of interpreters in the Northern Territory, despite many government departments recognising the value of interpreters for specific projects 21.4.21 Aboriginal people are still being denied bail because of the problems of language and understanding. Such a situation demands the provision of interpreters whenever the need arises. 22.4.21 There is a popular misconception that if Aboriginal people appear to understand conversational English they do not need interpreters. 22.4.22 There are practical problems in providing trained interpreters in remote communities	**Recommendation 2.13** 'A comprehensive strategy for incorporating Aboriginal interpreters into the Northern Territory Interpreters Service should be created' **Recommendation 99** 'That legislation in all jurisdictions should provide that where an Aboriginal defendant appears before a Court and there is doubt as to whether the person has the ability to fully understand proceedings in the English language and is fully able to express himself or herself in the English language, the court be obliged to satisfy itself that the person has that ability. Where there is doubt or reservations as to these matters proceedings should not continue until a competent interpreter is provided to the person without cost to that person' **Recommendation 100** 'That governments should take more positive steps to recruit and train Aboriginal people as court staff and interpreters in locations where significant numbers of Aboriginal people appear before the courts'

Report name	*Date of release*	*Relevant Key Findings*	*Relevant Key Recommendations*
Commonwealth Ombudsman – Talking in Language: Indigenous Language Interpreters and Government Communication	2011	4.3 The information provided to this office indicates that most agencies lack a unified and consistent approach to the use of Indigenous language interpreters 4.5 It is evident from the information provided by agencies that little has been done to ensure that contracts and funding agreements with service providers require those entities to use interpreters. There is a great need for training to keep appropriate records of the use of Indigenous language interpreters – but awareness is patchy. With so many programs being devolved to third party service providers it is critical that service providers are required to meet the same service delivery standards as those expected of agencies.	**Recommendation 1** 'Until the National Framework is developed, agencies should review their own approach to the use of, and engagement with Indigenous language interpreters, against the Best Practice Principles detailed in the Ombudsman's March 2009 Use of interpreters report. At the same time, agencies should review the key messages detailed in this report, having particular regard for the need: to raise awareness of the importance of using Indigenous language interpreters amongst agency and third party service provider staff'.

Report name	*Date of release*	*Relevant Key Findings*	*Relevant Key Recommendations*
Doing Time – Time for Doing: Indigenous Youth in the criminal justice system	2011	7.48…In the Northern Territory, police officers generally resort to communicating in a form of Pidgin English rather than seek an interpreter (p.206). The Committee is concerned by the evidence it received indicating that in many cases qualified interpreters are not available to Indigenous youth who come into contact with the criminal justice system (p.209).	7.60 The Committee further concludes that all criminal justice system guidelines, including police protocols, should include formal recognition of the need to ensure timely access to interpreters when required in order for current practices to change (p.209) Recommendation 25 – National interpreter service 7.62 The Committee recommends that the Commonwealth Attorney-General's Department, in partnership with state and territory governments, establish and fund a national Indigenous interpreter service that includes a dedicated criminal justice resource and is suitably resourced to service remote areas. The Committee recommends that initial services are introduced in targeted areas of need by 2012 with full services nationwide by 2015 (p.210).

Report name	*Date of release*	*Relevant Key Findings*	*Relevant Key Recommendations*
Access to Justice Arrangements Productivity Commission Inquiry Report No. 72	2014	'While there is some scope to improve the practices of legal assistance providers, this alone will not address the gap in services. More resources are required to better meet the legal needs of disadvantaged Australians' (p. 2)	**Recommendation 22.3** "The Australian, State and Territory Governments should continue to work together to explore the use of the Northern Territory Aboriginal Interpreter Service as a platform for a National Indigenous Interpreter Service funded by ongoing contributions from the Australian, State and Territory Governments. While this service is being developed, governments should focus their initial efforts on improving the availability of Aboriginal and Torres Strait Islander interpreter services in high need areas, such as in courts and disputes in rural and remote communities"

Report name	*Date of release*	*Relevant Key Findings*	*Relevant Key Recommendations*
Corruption and Crime Commission – Report on Operation Aviemore: Major Crime Squad investigation into the unlawful killing of Mr Joshua Warneke	2015	178. There was no reasonable excuse for not obtaining the assistance of an interpreter. All the objective indications were that an interpreter was required. Such inquiries as were made to determine the English language proficiency of the accused were inadequate. There is no reason to think that suitably qualified interpreters could not have been located - several were called as witnesses in these proceedings.	**Recommendation Four** The Commission recommends that attention is given to the administration of a caution for a person unfamiliar with their right to silence when English is not that person's first language. It is for WA Police to identify the best approach to improving the administration of a caution.

Report name	*Date of release*	*Relevant Key Findings*	*Relevant Key Recommendations*
Review of the Implementation of RCIADIC	2015	Implementation of Recommendation 100: South Australia, the Northern Territory and Queensland have each partially implemented the Recommendations but we have not been able to establish the success of the measures implemented. (p. 299) A submission by the Aboriginal Legal services of Western Australia reported Western Australia and the Northern Territory lack a state-wide/territory-wide, properly qualified and adequately resourced interpreter service in Indigenous languages available to assist Indigenous people in the court process. (p. 307)	"While there is a greater recognition of the need for Indigenous language interpreters in the criminal justice system, a deeper and more coordinated effort is required to provide training and accreditation for prospective Indigenous language interpreters despite the problem of resources" (p. 308).

Report name	*Date of release*	*Relevant Key Findings*	*Relevant Key Recommendations*
Commonwealth Ombudsman— Accessibility of Indigenous Interpreters: Talking in Language Follow Up Investigation	2016	1.3 At the time of the 2011 Report it was anticipated that some issues identified in the report would be addressed in a National Framework for Indigenous Interpreters that the then FaHCSIA was charged with developing. However, while a draft National Framework was developed, it was never finalised and implemented. 2.2 Overall, despite some positive progress, most or all of the issues identified in 2011 and 2013, both in our 2011 Report and the draft National Framework respectively, continue to present today.	1 PM&C should work with the States and Territories to prioritise finalisation and adoption of a National Framework. In the absence of agreement from all States and Territories, PM&C should consider entering bilateral agreements on a state by state basis.

Report name	*Date of release*	*Relevant Key Findings*	*Relevant Key Recommendations*
Royal Commission and Board of Enquiry into the Protection and Detention of Children in the Northern Territory	2017	Chapter 11 (Detention centre operations) – Vol. 2A 'The centres' staff failed to explain the rules, rights and responsibilities in a way that could be understood by the children and young people coming into detention, and to use interpreters where required' (p. 2 of Findings and Recommendations report) Chapter 16 (Education in detention) – Vol. 2A 'During the relevant period, staff members from the Department of Correctional Services and the Department of Education: • on occasions directed children and young people not to use Aboriginal language, and • failed sufficiently to recognise the benefits of using Aboriginal interpreters and interpreting services' (p. 10)	**Recommendation 25.19** 'The Bail Act (NT) be amended: 3. to require that at the time bail is granted to a young person, each bail condition and the consequences of breach of that condition be explained to the young person, taking steps to ensure their understanding, using interpreters or modified means of communication if necessary' (p. 43) **Recommendation 34.11** 'Territory Families ensure access to Aboriginal interpreters as required' (p. 543) **Recommendation 34.12** "Territory Families ensure that their data management system formally records the languages spoken by families and their proficiency in English so that incoming and subsequent caseworkers have advance notice as to whether an interpreter is required" (p. 53)

Report name	*Date of release*	*Relevant Key Findings*	*Relevant Key Recommendations*
ALRC Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples 2018	2018	1.36 Rural communities '… A lack of interpreters as well as limited access to legal representation with a reliance on 'fly in fly out' judicial officers and legal practitioners. In some cases this can lead to the provision of compromised advice and representation and a greater incidence of incarceration of offenders" (p. 45) 10.14 'The failure to incorporate interpreters across all parts of the criminal justice system was also identified. A number of stakeholders stated, for example, that interpreters were not used during police interactions, when orders such as restraining orders or domestic violence orders were served, or when explaining bail conditions, bonds or warrants. Stakeholders also emphasised the need to use interpreters in delivering prison programs' (p.323)	**Recommendation 10–1** 'State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to: · Establish interpreter services within the criminal justice system where needed; and · Monitor and evaluate their use.'

Report name	*Date of release*	*Relevant Key Findings*	*Relevant Key Recommendations*
Corruption and Crime Commission- The implementation of recommendations arising from the commission's investigation into Operation Aviemore: A further report	**2018**	**Implementation of Recommendation Four** **Police advised that they were considering adopting the Northern Territory model whereby the caution is recorded in a variety of Aboriginal languages and the correct version is played to the interviewee prior to an interview. This initiative has not significantly progressed. (p. 11)**	**The Commission does not regard this recommendation as complete and will seek a further update on progress in 12 months time. (p. 12)**

Appendix II EXPLANATORY STATEMENT

Project: ***Communication in Australia's Justice System: The case of Kriol***

Ethics ID No. 10718

Dr Alice Gaby- Chief Investigator
School of Languages, Literatures, Cultures and Linguistics, Monash University
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Dima Rusho – PhD Candidate
School of Languages, Literatures, Cultures and Linguistics, Monash University
Phone: 0439090777
email: dima.rusho@monash.edu

You are invited to take part in this study. Please read this Explanatory Statement in full before deciding whether or not to participate in this research. This statement is yours to retain. If you would like further information regarding any aspect of this project, you are encouraged to contact the researchers via the phone numbers or email addresses listed above.

What does the research involve?

- This study aims to explore issues of communication between Kriol and non-Kriol speakers in Australia's justice system.

- If you agree to participate in this project, you may be asked to take part in face-to face interviews with the researcher lasting around 30 minutes. If you consent to being interviewed, you will be asked whether or not you also consent to the interviews being audio recorded.

Why were you chosen for this research?

- You were chosen because you are either a Kriol or a non-Kriol speaker who occasionally or routinely engages with Kriol speakers in a legal setting and can therefore provide an important personal perspective on communication between Kriol and non-Kriol speakers.

Consenting to participate in the project and withdrawing from the research

- Participation in this project is for research purposes only.
- To provide your consent, you need to read this Explanatory Statement, then sign and return the Consent Form which will be provided to you. The signed Consent Form will be retained by the researcher.
- Your participation is voluntary and you are free to withdraw from part or all of the project anytime without explanation or prejudice, and to withdraw any unprocessed data you have provided.

Confidentiality

- When participating in an interview, you will be asked to provide some personal details, including your name and contact details, for the researcher's records. However, the responses collected will be de-coupled from identifying information by giving each participant a unique code or pseudonym that can only be identified by the researcher. The same care will be taken with the names or characteristics of anyone you mention in the interview.
- Please note that if you are part of a small pool of participants, your anonymity cannot always be guaranteed, including through the use of pseudonyms. In this case, you may choose not to answer certain questions in an interview or to redact parts of the interview that may lead to your identification.
- Anonymized data from this project will form part of the researcher's PhD thesis and may be used in the future by the researcher in reports to community or organisations, books/book chapters, conference presentations, and journal articles.

- Aggregate de-identified data from this research project may be used for future projects involving the researcher, only if ethics approval has been obtained.

Possible benefits and risks to participants

- Effective communication facilitates the process of carrying out justice, and is beneficial to all parties. As someone who engages with the legal system, this project gives you the opportunity to discuss your experiences of communicating with Kriol speakers, to voice your opinion on the existing measures intended to ensure proper communication, and to suggest improvements to these measures.

- There are minimal anticipated risks of participating in the project. As explained above, due to the small pool of participants in certain groups, your anonymity cannot be guaranteed. However, at no stage will your name be included in the reports from this research unless you explicitly request it on the Consent Form provided to you.

- Should you experience great discomfort at any stage of the interview, for example when discussing potentially sensitive matters such as legal cases involving children or domestic violence, you may request to change the subject matter or pause/stop the interview. If you require counselling, below is a list of some counselling and mental health services available in your area

Katherine Mental Health Services	PH: 08 8973 8724
Katherine West Health Board	PH: 08 8971 9300
Catholiccare NT	PH: 08 8944 2000
Somerville – Katherine	PH: 08 8972 5100

Storage of data

- Data from this research will be stored securely, with all electronic data stored in password-protected external hard drives that are only accessible by the named

researchers. Physical and electronic copies of the data will be destroyed after a 10-year period unless you consent to the data being used in future research.

Results

- Results from this project will be published in a PhD thesis and can be obtained by contacting Dima Rusho using the phone number or email listed above.

Complaints

Should you have any concerns or complaints about the conduct of the project, you are welcome to contact the Executive Officer, Monash University Human Research Ethics (MUHREC):

Executive Officer
Monash University Human Research Ethics Committee (MUHREC)
Room 111, Chancellery Building E,
24 Sports Walk, Clayton Campus
Research Office
Monash University VIC 3800

Tel: +61 3 9905 2052 Email: ____Fax: +61 3 9905 3831

Thank you,

Alice Gaby

Appendix III CONSENT FORM

Project: *Communication in Australia's Justice System: The case of Kriol*

Ethics ID No. 10718

Chief Investigator: **Dr Alice Gaby**
School of Languages, Literatures, Cultures and Linguistics
Monash University.

- **I have been asked to take part in the Monash University research project specified above. I have read and understood the Explanatory Statement and I hereby consent to participate in this project. I understand that after I sign and return this consent form, it will be retained by the researcher.**

I consent to the following:	**Yes**	**No**
Being interviewed by the researcher	☐	☐
Audio recording during the interview	☐	☐
Any information I provide to be used for future research in the form of aggregate de-identified data	☐	☐
I would like my name to appear in publications related to this project	☐	☐

Other comments

Name of Participant

Participant Signature Date

Appendix IV ANUNGA RULES

R v Anunga (1976) 11 ALR 412 at 414- 415

(1) When an Aboriginal person is being interrogated as a suspect, unless he is as fluent in English as the average white man of English descent, an interpreter able to interpret in and from the Aboriginal person's language should be present …

(2) When an Aboriginal is being interrogated it is desirable where practicable that a 'prisoner's friend' (who may also be the interpreter) be present. The 'prisoner's friend' should be someone in whom the Aboriginal has apparent confidence …

(3) Great care should be taken in administering the caution… It is simply not adequate to administer it in the usual terms and say, 'Do you understand that?' or 'Do you understand you do not have to answer questions?'

(4) Great care should be taken in formulating questions so that so far as possible the answer which is wanted or expected is not suggested in any way …

(5) Even when an apparently frank and free confession has been obtained relating to the commission of an offence, police should continue to investigate the matter in an endeavour to obtain proof of the commission of the offence from other sources …

(6) Because Aboriginal people are often nervous and ill at ease in the presence of white authority figures like policemen it is particularly important that they be offered a meal …

(7) It is particularly important that Aboriginal and other people are not interrogated when they are disabled by illness or drunkenness or tiredness …

(8) Should an Aboriginal seek legal assistance reasonable steps should be taken to obtain such assistance …

(9) When it is necessary to remove clothing for forensic examination or for the purposes of medical examination, steps must be taken forthwith to supply substitute clothing.

Appendix V THE HISTORY OF KRIOL AND RELEVANT SCHOLARLY WORKS

A brief history of the Kriol language

The genesis of Kriol has been traced to Queensland and/or Northern Territory Pidgin English and, before that, to New South Wales Pidgin, which arose out of the need for communication between European colonizers and the Aboriginal inhabitants of the Sydney area. (Dutton, 1983; Harris, 1986; Mühlhäusler, 1996; Munro, 2000; J. Simpson, 1996, 2001; Troy, 1990, 1992, 1994; Tryon & Charpentier, 2004).

Munro (2000) suggests that Kriol originated abruptly at Roper River Mission as the result of an expansion of an existing English Pidgin, before later extending across northern Australia. In his earlier works, Harris (1986, pp. 184–239), however, suggests that Kriol may have developed due to the spread of Pidgin English through the pastoral industry, and the subsequent creolization in different regions. In subsequent works, Harris maintains that while the Roper River Mission did not create Kriol, it was nonetheless the site where Pidgin English first expanded to create the Kriol language and certainly played a large role in expediting its growth (Harris, 1993, p. 149).

To understand the process behind the emergence of Kriol in the Roper River Mission, I provide a very brief history of the mission. In 1908, the Church Mission Society of Australia established the Roper River Mission in Mirlinbarrwarr before moving it in 1940 to what is nowadays the community of Ngukurr. The mission was intended to bring Christianity and 'civilization' to Aboriginal people of the area, as well as providing them with safety and protection in an era marred by violence towards Aboriginal inhabitants at the hands of European settlers.

There were a number of factors that contributed to the rise of Kriol at the Roper River Mission. Firstly, there was a great deal of linguistic disruption of Aboriginal societies as

many of the traditional languages of the Aboriginal people in the surrounding areas had been either entirely or mostly decimated by the sustained massacring and removal of their speakers. This led to an often-permanent interruption in intergenerational transmission of these languages and subsequently, a rapid decline in speaker numbers.

Secondly, the mission brought together Aboriginal people from a number of distinct language groups including the Mara, Wandarang, Alawa, Ngalakan and Ngandi people, the easternmost Mangarayi people and the southernmost members of the Rembarrnga and Nunggubuyu (Harris, 1993, p. 148). While many of the adults in the mission were multilingual, and as such could communicate with each other, this was not the case for some seventy children who attended the mission soon after its establishment. As Harris contends, those children who were housed in dormitories separately from their parents 'needed a primary language, and they needed it immediately' (1993, p. 149).

The only common languages immediately available to the children of the mission were the English used in the mission's school and the English-lexified Pidgin that had become a means of communication between Aboriginal people and the Colonial settlers. As is the case with creoles around the globe, it was the children who creolized the existing pidgin and continued adding to it over many generations culminating in current-day Kriol.

Despite the obvious emergence of a new creole and its use by an ever-increasing number of Aboriginal people in the missions and beyond, the push to recognize it as a language in its own right did not occur until the early 1970's. Missionaries and linguists at the Summer Institute of Linguistics (SIL) looking to translate the Holy Bible to Indigenous vernaculars, as a way of spreading Christianity among Indigenous population, recognized the need to include the recently-formed creole. The name Kriol was adopted, and a number of scholarly works soon followed, including an orthography and grammatical descriptions (see §5.3.1). A Bible translation project was also started and took almost three decades to complete. In 2007, the Kriol Holi Baibul, the first complete

translation of the Bible into any Australian Indigenous language was finally launched to great fanfare.

Major scholarly works on Kriol

A substantial part of research about Kriol is attributable to the SIL linguist John Sandefur, whose lifework included documenting Kriol's linguistic features, its history, and the sociolinguistic aspects of its use (Sandefur, 1981b, 1984b, 1985, 1986b, 1986c, 1990a, 1991; Sandefur & Harris, 1986; Sandefur & Sandefur, 1979, 1979, 1981; Sharpe & Sandefur, 1976, 1977), as well as developing a writing system (Sandefur, 1984a, 1984c). Sandefur also advocated for Kriol to be recognized as an Indigenous language by government institutions and the community at large (Sandefur, 1981a, 1981c, 1984b, 1990b). Sandefur's work has been supplemented by others in the field who have explored Kriol's historical development and its status (Harris, 1986, 1993; H. Koch, 2011b, 2011a; Munro, 2000, 2011)

With regards to grammars, the most comprehensive grammars of Kriol to date pertain to the Barunga-Ngukurr/Roper River and Kimberley/Fitzroy Valley varieties (Hudson, 1985; Sandefur, 1979, respectively). There are also works that have focused on specific mixed language such as Gurindji Kriol (Jones et al., 2011; Jones & Meakins, 2013; McConvell, 2008; McConvell & Meakins, 2005; Meakins, 2008a, 2008b, 2009, 2010, 2011a, 2011b, 2013, 2014), Light Warlpiri (Meakins & O'Shannessy, 2005, 2010; O'Shannessy, 2005, 2013, 2016; O'Shannessy & Meakins, 2012), and Wumpurrarni English (Disbray, 2008, 2016b; Disbray & Simpson, 2005).

A Kriol dictionary compiled, and later revised, by SIL (SIL-IAAB, 1986, 1996), as well as a work by Sandefur & Sandefur (1979), formed the basis for an online interactive Kriol-English dictionary edited by Lee (2014). The dictionary currently allows users to search alphabetically as well as by one of 26 categories. Another useful online source is Schultze-Berndt & Angelo's (2013) Kriol entry in the *Atlas of Pidgin and Creole Language Structures Online* .

There is a plethora of academic works that focus on specific linguistic aspects of Kriol such as phonology (Baker et al., 2014; Fraser, 1977), morphology and syntax (Adone, 2013; Graber, 1987b; Hudson, 1983; Nicholls, 2009, 2016; Ponsonnet, 2016; Steffensen, 1980), semantics (Rumsey, 1983), and dialectal variation (Dickson, 2019).

The influence of substrate languages on Kriol and Pidgin has been examined by Dickson (2016), Koch (2011a, 2011b), Munro (2004, 2011), and Ponsonett (2012). Schultze-Berndt (2013), on the other hand, examines borrowing from Kriol into the endangered Aboriginal language Jaminjung.

Sociolinguistic and cognitive linguistics works on the language have focused on social cognition (Nicholls, 2013), interactional pragmatics (Mushin, 2010), and spatial cognition (Hoffman, 2009).

A lone but significant examination of the biological and cultural knowledge encoded in Kriol is Dickson's (2015) PhD dissertation on language shift from the Indigenous language Marra to Kriol.

An applied approach to literacy and education in Kriol is found in the works of Hudson & Taylor (1987), Meehan (1981), Mickan (1992), and Rhydwen (1993, 1996).

Appendix VI AUSIT CODE OF ETHICS

GENERAL PRINCIPLES

1. PROFESSIONAL CONDUCT

Interpreters and translators act at all times in accordance with the standards of conduct and decorum appropriate to the aims of AUSIT, the national professional association of interpreting and translation practitioners.

> **Explanation:** Interpreters and translators take responsibility for their work and conduct; they are committed to providing quality service in a respectful and culturally sensitive manner, dealing honestly and fairly with other parties and colleagues, and dealing honestly in all business practices. They disclose any conflict of interest or any matter that may compromise their impartiality. They observe common professional ethics of diligence and responsiveness to the needs of other participants in their work.

2. CONFIDENTIALITY

Interpreters and translators maintain confidentiality and do not disclose information acquired in the course of their work.

> **Explanation:** Interpreters and translators are bound by strict rules of confidentiality, as are the persons they work with in professional or business fields.

3. COMPETENCE

Interpreters and translators only undertake work they are competent to perform in the languages for which they are professionally qualified through training and credentials.

> **Explanation:** In order to practise, interpreters and translators need to have particular levels of expertise for particular types of work. Those who work with interpreters and translators are entitled to expect that they are working with appropriately qualified practitioners. Practitioners always represent their credentials honestly. Where formal training or accreditation is not available (e.g. in less frequently used language combinations and new and emerging languages), practitioners have an obligation to increase and maintain skills through their own professional development (see Principle 8 below) or request employers, agencies or institutions to provide it.

4. IMPARTIALITY

Interpreters and translators observe impartiality in all professional contacts. Interpreters remain unbiased throughout the communication exchanged between the participants in any interpreted encounter. Translators do not show bias towards either the author of the source text or the intended readers of their translation.

> **Explanation:** Interpreters and translators play an important role in facilitating parties who do not share a common language to communicate effectively with each other. They aim to ensure that the full intent of the communication is conveyed. Interpreters and translators are not responsible for what the parties communicate, only for complete and accurate transfer of the message. They do not allow bias to influence their performance; likewise they do not soften, strengthen or alter the messages being conveyed.

5. ACCURACY

Interpreters and translators use their best professional judgement in remaining faithful

at all times to the meaning of texts and messages.

> **Explanation:** Accuracy for the purpose of this Code means optimal and complete message transfer into the target language preserving the content and intent of the source message or text without omission or distortion.

6. CLARITY OF ROLE BOUNDARIES

Interpreters and translators maintain clear boundaries between their task as facilitators of communication through message transfer and any tasks that may be undertaken by other parties involved in the assignment.

> **Explanation:** The focus of interpreters and translators is on message transfer. Practitioners do not, in the course of their interpreting or translation duties, engage in other tasks such as advocacy, guidance or advice. Even where such other tasks are mandated by particular employment arrangements, practitioners insist that a clear demarcation is agreed on between interpreting and translating and other tasks. For this purpose, interpreters and translators will, where the situation requires it, provide an explanation of their role in line with the principles of this Code.

7. MAINTAINING PROFESSIONAL RELATIONSHIPS

Interpreters and translators are responsible for the quality of their work, whether as employees, freelance practitioners or contractors with interpreting and translation agencies. They always endeavour to secure satisfactory working conditions for the performance of their duties, including physical facilities, appropriate briefing, a clear commission, and clear conduct protocols where needed in specific institutional settings. They ensure that they have allocated adequate time to complete their work; they foster a mutually respectful business relationship with the people with whom they work and encourage them to become familiar with the interpreter or translator

role.

Explanation: Interpreters and translators work in a variety of settings with specific institutional demands and a wide range of professional and business contexts. Some settings involve strict protocols where the interpreter or translator is a totally independent party, while others are marked by cooperation and shared responsibilities. Interpreters and translators must be familiar with these contexts, and endeavour to have the people they work with understand their role. For practitioners who work through agencies, the agency providing them with the work is one of their clients, and practitioners maintain the same professional standards when working with them as when working with individual clients. At the same time agencies must have appropriate and fair procedures in place that recognise and foster the professionalism of interpreting and translating practitioners.

8. PROFESSIONAL DEVELOPMENT

Interpreters and translators continue to develop their professional knowledge and skills.

Explanation: Practitioners commit themselves to lifelong learning, recognising that individuals, services and practices evolve and change over time. They continually upgrade their language and transfer skills and their contextual and cultural understanding. They keep up to date with the technological advances pertinent to their practice in order to continue to provide quality service. Practitioners working in languages where there is no standard training or credential may need to assess, maintain and update their standards independently

9. PROFESSIONAL SOLIDARITY

Interpreters and translators respect and support their fellow professionals, and they

uphold the reputation and trustworthiness of the profession of interpreting and translating.

> **Explanation:** Practitioners have a loyalty to the profession that extends beyond their individual interest. They support and further the interests of the profession and their colleagues and offer each other assistance.

Appendix VII KATHERINE CIRCUIT COURT LOCATIONS AND DATES 2021

9/10/20

KATHERINE - CIRCUIT COURT 2021

	January	February	March	April	May	June	July	August	September	October	November	December
Sat					1							
Sun					2			1				
Mon		1 KA	1 KA		3 May Day			2 Picnic Day			1 KA	
Tue		2 KA Admin Judge	2 KA		4 KA	1 KA Admin Judge		3 KA			2 KA	
Wed		3 KA CPC BA	3 KA CPC		5 KA CPC	2 KA CPC BA		4 KA CPC BA	1 KA CPC		3 KA CPC	1 KA CPC BA
Thu		4 KA	4 KA	1 KA	6 KA	3 KA	1	5 KA	2 KA		4 KA	2 KA
Fri	1 New Years Day	5 KA	5 KA	2 Good Friday	7 KA	4 KA	2	6 KA	3 KA	1	5 KA	3 KA
Sat	2	6	6	3	8	5	3	7	4	2	6	4
Sun	3	7	7	4	9	6	4	8	5	3	7	5
Mon	4	8	8	5 Easter Monday	10	7	5	9 Judges	6	4	8	6
Tue	5	9 YA	9 NGK	6	11 NGK	8 YA	6	10 Conference	7 NGK	5	9 NGK	7 YA
Wed	6 CPC	10 TK	10 NGK	7 BA	12	9 TK	7	11	8	6 BA	10 NGK	8 TK
Thu	7	11	11	8	13	10	8	12	9	7	11	9
Fri	8	12 YJC	12 YJC	9	14 YJC	11 YJC	9 YJC	13 YJC	10 YJC	8 YJC	12 YJC	10 YJC
Sat	9	13	13	10	15	12	10	14	11	9	13	11
Sun	10	14	14	11	16	13	11	15	12	10	14	12
Mon	11	15	15	12	17	14 Queen's Bthday	12	16	13	11	15	13
Tue	12 NGK	16	16 LAJ	13 YA	18 KAL	15	13 NGK	17	14 KAL	12 YA	16 LAJ	14
Wed	13	17 KA CPC MAT	17 KA CPC LAJ	14 TK	19 KA CPC KAL	16 KA CPC MAT	14 NGK	18 KA CPC MAT	15 KA CPC KAL	13 TK	17 KA CPC LAJ	15 KA CPC MAT
Thu	14	18 KA	18 KA	15	20 KA	17 KA	15	19 KA	16 KA	14	18 KA	16 KA
Fri	15 YJC	19 KA	19 KA	16 YJC	21 KA	18 KA	16 Katherine Show	20 KA	17 KA	15	19 KA	17 KA
Sat	16	20	20	17	22	19	17	21	18	16	20	18
Sun	17	21	21	18	23	20	18	22	19	17	21	19
Mon	18 DPP HGS	22 DPP HGS	22 DPP HGS	19 KA	24 DPP HGS	21 DPP HGS	19	23 DPP HGS	20 DPP HGS	18	22 DPP HGS	20
Tue	19 DPP HGS	23 DPP HGS	23 DPP HGS	20 KA	25 DPP HGS	22 DPP HGS	20 LAJ	24 DPP HGS	21 DPP HGS	19	23 DPP HGS	21
Wed	20 DPP HGS	24 DPP HGS	24 DPP HGS	21 KA CPC MAT	26 DPP HGS	23 DPP HGS	21 CPC TCG LAJ	25 DPP HGS	22 DPP HGS	20 KA CPC MAT	24 DPP HGS	22
Thu	21 DPP HGS	25 DPP HGS	25 DPP HGS	22 KA	27 DPP HGS	24 DPP HGS	22	26 DPP HGS	23 DPP HGS	21 KA	25 DPP HGS	23
Fri	22 DPP HGS	26 DPP HGS YJC	26 DPP HGS YJC	23 KA	28 DPP HGS YJC	25 DPP HGS YJC	23	27 DPP HGS YJC	24 DPP HGS YJC	22 KA	26 DPP HGS YJC	24
Sat	23	27	27	24	29	26	24	28	25	23	27	25
Sun	24	28	28	25	30	27	25	29	26	24	28	26
Mon	25		29 KA	26 ANZAC Day	31 KA	28	26 DPP HGS	30 KA	27	25 DPP HGS	29 KA	27 Christmas Day
Tue	26 Australia Day		30 KA Admin Judge	27 DPP HGS		29	27 DPP HGS	31 KA Admin Judge	28	26 DPP HGS	30 KA Admin Judge	28 Boxing Day
Wed	27 CPC		31 KA CPC	28 DPP HGS		30 CPC	28 DPP HGS		29 CPC	27 DPP HGS		29 V/L
Thu	28			29 DPP HGS			29 DPP HGS		30	28 DPP HGS		30 V/L
Fri	29 YJC			30 DPP HGS YJC			30 DPP HGS YJC			29 DPP HGS YJC		31 V/L
Sat	30						31			30		
Sun	31									31		

Katherine Legend: LAJ – Lajamanu (Hooker Creek), **YA** – Yarralin (Walangeri), **TK** – Timber Creek, **BA** – Barunga (Bamyili), **NGK** – Ngukurr (Roper River), **KAL** – Kalkaringi (Wave Hill), **MAT** - Mataranka
DPP/HGS – DPP/HGS Matters, **CPC** – Care and Protection of Children List (No criminal hearings to be listed), **V/L** – Video link to Darwin (in-custody only), **YJC** – Youth Justice Matters
KA – Katherine Assisting, **DPP** – Katherine DPP, **KA** – Katherine Assist, **In Custody cut off time is 1:00pm (Mon to Thurs) and 11:00am (Fri)**

Extra Local Court Judge Sittings **Public Holidays** **School Holidays** **Judges Conference**