
UNFRIENDLY TERMS IN COURT: ABORIGINAL LANGUAGES AND INTERPRETING IN THE NORTHERN TERRITORY

by David Moore

INTRODUCTION

Courts and police in the Northern Territory ('NT') favour literal translation where an interpreter is encouraged to interpret between English and Aboriginal languages as literally as possible. Literal (aka 'direct') translation is equated with accurate translation. This word-for-word rendering of information from one language to another is known as the 'conduit pipe metaphor'.¹ As outlined in the General Professional Conduct Rules of the *NT Interpreter Protocols*², an interpreter must accurately convey the meaning from the source language to the receptor language. For many words, a simple substitution of a word in the other language works as a means of conveying the meaning of the word. For other terms, literal translation leads to miscommunication. In a monolingual courtroom, an assumption is made that Aboriginal witnesses know and understand the English language; and can testify with minimal interpreting assistance. But what variety of English do they know? This article will focus on communication failures in legal interpreting, based upon the author's recent experiences as a legal interpreter in courts and in police interviews.

APPROPRIATE TRANSLATION

Many words of Aboriginal languages have a single word equivalent in English. However there are many words for which there are a range of senses—and they can vary according to context. Some of the complexities in translating one language to another can be seen by looking at an English definition of a word from the Arrernte language of Central Australia. Arrernte *apure* is often translated as 'shame' or 'shamed' in local Englishes. According to the *Eastern and Central Arrernte to English Dictionary* ('ECAED'), senses of *apure* are 'the feeling someone gets about doing something wrong, stupid or inappropriate and what other people think or say about that; shyness, embarrassment, shame, not sure of the right way to behave'.³ Consideration for certain relatives is shown by 'giving them room or space' and this is part of *apure*. The definition and example sentences take up a column in the dictionary and there is another column of *apure*-related words such as *apurenge* or 'because of *apure*'. The authors of ECAED have attempted to explain the cultural context around *apure* and have taken over a page to explain it in

English with examples. Examples in the ECAED like 'that man has no shame' indicate that having a degree of *apure* is a positive and healthy attitude and that the lack of *apure* is a social problem. As ECAED further explains 'these mean more than just standard English 'shame'.⁴ To translate *apure* simply as 'shame' could be misleading because the word means something different from what it means in Standard Australian English—which is the language spoken and understood by legal practitioners in courts. An equivalent word was once explained to me by a speaker of Nyiyaparli (a language of the Pilbara region in Western Australia) as 'respect'. *Apure* could also be translated appropriately by some senses of Standard English as 'reserve' which the Macquarie Dictionary defines as 'avoidance of familiarity in social relationships, self-restraint in action or speech'.⁵ The only way of knowing what the correct meaning is, is to understand the context and speaker's intention. The most appropriate translation will be the one that fits the context.

POLYSEMY

A word such as *kulini* in Western Desert languages has English translations which cover the senses of 'understand'; 'hear'; 'know'; 'think'; 'listen'; 'believe' and 'obey'. Polysemy means that a word has multiple senses, therefore a range of translations into English are possible. A single word translation can create misunderstanding, especially where a word is polysemous as we've seen with *apure*. Standard English *shame* as a noun also has at least six senses in the Macquarie Dictionary, one which is taken from Aboriginal Englishes that seem close to *apure*. What sense of Standard English *shame* is being used to translate Arrernte *apure* when it is used by speakers of local English? There are also other senses which are not close to *apure*; eg the transitive Standard English verb *to shame* (someone). A single word translation gives us no indication of which sense of the word or which sense of its translation equivalent are in focus.

FALSE FRIENDS

False friends are one of the reasons why direct translation between languages is not recommended. False friends can be defined as words which sound the same and usually have a common origin, but which have different meanings. Differences in meaning can

lead to serious miscommunication in legal contexts when the listener understands the word with the meaning of their own language or dialect. False friends have long been recognised in English and other languages of Europe. Related languages pose the greatest problems with false friends because it is likely that words in each language came from the same source and that, over the centuries, the words have taken on different meanings in the two different languages. There are many examples of English and German which share a common origin and it is easy to assume the understanding when the word sounds familiar. *Haus* and *house*, *Mann* and *man* are clearly from common origins and mean much the same thing. German *fremd* is related to *friend*, however when translated means ‘alien’; ‘strange’ and ‘unfamiliar’. A local English *friend* in the NT means ‘sexual partner’ and is not close to the Standard English *friend*. Some false friends behave subtly and are hard to detect. In translating Carl Strehlow’s wordlist from German to English, the translator made a number of errors; translating German *wer* into similar-sounding English *where*. The translation should be English *who*, equivalent to what Strehlow’s wordlist has for the Western Arrarnta *ngunha* and Luritja *ngananya*.

FALSE FRIENDS AND ENGLISH DIALECTS: WHAT DOES IT MEAN IN THE COURT ROOM?

False friends occur between English dialects in Australia. In Central Australian Aboriginal Englishes there are a number of words which sound the same as those of Standard Australian English, but which have very different meanings. Many Aboriginal people from Central Australia speak ‘Learner’s English’ which is where someone has learned English incompletely; forming a new type of English language system. It is not just a random collection of errors or ‘bad English’ but rather a kind of ‘inter-language’.⁶

Well known in courts is the use of *kill*. In the early twentieth century it was recognised that the Luritja word *punganyi* can be translated ‘hit, strike’.⁷ In some contexts—such hunting goannas on a hunting trip—it must be translated ‘kill dead’. Similarly, local English *kill* may be translated ‘hit, strike’ in Standard English. Defence lawyers have at times made use of the ambiguity in *punganyi* by claiming that their client’s threat to *punganyi* ‘I’ll kill you!’ is not a threat to kill someone dead, rather only a threat to hit them. However, the use of *mirri punganyi* is unambiguous—it means to ‘kill someone so that they die’.

DANGEROUS FALSE FRIENDS

Dangerous false friends such as *kill* may create miscommunication and can lead to a defendant admitting to something that they didn’t do, which of course has serious consequences. Another such word is ‘rape’. The word is defined by the Macquarie Dictionary as, ‘the act of having sexual intercourse with any person against his

or her will’.⁸ In the High Court case of *Stuart v The Queen (1959)* 101 CLR 1 (*Stuart*)⁹ Western Aranda translator Theodor Strehlow commented on the defendant’s “confession” during the trial and subsequent High Court hearings, arguing that the confession contained words such as ‘raped’ but that there was no word for ‘rape’ in the Western Aranda language (the language he spoke in when communicating with the defendant). Strehlow’s work revealed *patterned differences* between Standard English and what he called NT English.¹⁰

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The element of ‘will’ or ‘consent’ is missing from the local English use of *rape*. Indeed there is no term for ‘rape’ in the languages of Central Australia, only a word ‘to have sex’. Local English *rape* has the underlying semantics of Central Australian languages, such as Alyawarr *anterneyel* meaning ‘to have sex’. The difference has resulted in a defendant pleading guilty to a charge of rape without understanding what that word means in a court of law. In *R v Janima (2012)* NTSC 35 (*Janima*) a charge of sexual intercourse without consent was made against the defendant.¹¹ The Police Officer conducting the interview was surprised when the accused confessed that he had ‘tempted rape’. His explanation was that the woman had tempted him and he had ‘raped’ her. The *tempted* component of his response, similar to the Standard English *attempted* was used to explain that she had consented and even encouraged sexual intercourse. Later the Defense Counsel were able to question what the word *rape* meant in the defendant’s variety of English. The difference between the *Janima* and *Stuart* cases is that *Janima* used the term *rape* as a false friend, with a different meaning from Standard English. Patterned differences mean that a defendant, who appears to speak English at a relatively high level, will use false friends that are then misunderstood in court.

EXAMPLES OF MISCOMMUNICATIONS BELIEVE OR SUSPECT?

In my experiences as a translator I have heard police interviews where defendants respond to police questioning in English using *believe* to mean ‘suspect’. For example the term ‘they are just trying to believe me’ means ‘they are trying to set me up, get me charged with the offence’. Another defendant who appeared to speak English confidently said that he ‘*spill* rum’. The police officer

recorded 'some of the rum spilled out' not realising that *spill* means to 'pour liquid out to fill a container' in local English. Even at high levels of English language proficiency, the non-English speaking background Aboriginal person can remain vulnerable to misinterpretation.¹²

TOUCHING OR DISTRACTING?

The Alyawarr word *iyarneyel* is rendered *touch* in local English. The meaning in Standard English however is something more like 'distract someone by touching them' or 'provoke someone or something'. In one case, *iyarneyel* was used to describe a person in the back of the car distracting the driver, by shaking their shoulder and asking him for a cigarette while they were travelling along an unmade road. The driver turned around in response to the request and lost control of the vehicle. The vehicle overturned resulting in the death of a passenger. In a trial involving a charge of dangerous driving, the interpreter needed to go beyond *touch* and to give a more adequate translation conveying that *iyarneyel* involves physically touching someone with the intention of getting a response from them.

CONCLUSION

There is a need for ongoing work in the area of communication in NT courts. Legal professionals are often unaware of the issues of different Englishes in courts and the miscommunications which often occur and are unreported. It is important that courts understand how English is used by those who speak Learner's English. Courts need to recognise that English words are used with distinctive meanings. It is also important for interpreters to be aware of miscommunications and aim for the best equivalent they can find for terms in the courts—even if this mean taking more time to think of the best translation to use. Courts should allow the time that is necessary for interpreters to find the best interpretation and negotiate meaning. Time needs to be allowed for adequate explanation of words that are contextually-determined and have meanings that are unlike English.

Although the NT Supreme Court has developed protocols for working with interpreters, there remains an urgent need for forensic linguists to conduct research into this area, particularly to find the kinds of miscommunications that are occurring in NT courts. This could lead to more appropriate support for interpreters enabling them to better understand the differences in the way that Central Aboriginal and English Language words are used. Further research also needs to be carried out on court transcripts so that errors being made in legal communication are known and a plan to address these errors can be developed.

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language of Central Australia and works as an interpreter in courts, tribunals and police interviews.

- 1 Kathy Laster and Veronica Taylor, *Interpreters and the legal system* (Federation Press, 1994).
- 2 Northern Territory Supreme Court, *Interpreter Protocols* (3 June 2013), 11 <<http://www.supremecourt.nt.gov.au/media/documents/InterpreterProtocols.pdf>>.
- 3 John Henderson and Veronica Dobson, *Eastern and Central Arrernte to English Dictionary* (IAD Press, 1994) 189.
- 4 Ibid.
- 5 Macquarie Dictionary, <https://www.macquariedictionary.com.au/features/word/search/?word=reserve&search_word_type=Dictionary>.
- 6 Michael Cooke, *Anglo/Yolngu communication in the criminal justice system* (Doctoral dissertation, University of New England, Armidale, 1998).
- 7 Herbert Basedow, *Vergleichende Vokabularien der Aluridja- und Arundnta-Dialekte Zentral-Australiens. Zeitschrift für Ethnologie* (1908) 207-228.
- 8 Macquarie Dictionary, <https://www.macquariedictionary.com.au/features/word/search/?word=rape&search_word_type=Dictionary>.
- 9 *Stuart v The Queen* (1959) 101 CLR 1.
- 10 Diana Eades, *Aboriginal Ways of Using English* (Aboriginal Studies Press, 2013) 146.
- 11 *R v Janima* (2012) NTSC 12.
- 12 Cooke, above n 7.

How To Vote Part 1, 2009

Bindi Cole Chocka in collaboration with Jirra Lulla Harvey and Lorraine Connelly Northey

Pigment print on rag paper
 Courtesy of the artist and Nellie Castan Projects

