
WORKING WITH ABORIGINAL CLIENTS: WHAT MAKES A GOOD LAWYER?

by Peter Bellach

I work as a criminal defence lawyer for the North Australian Aboriginal Justice Agency ('NAAJA')—an Indigenous Legal Service in the Northern Territory. NAAJA has offices in Darwin, Katherine and Nhulunbuy (North-East Arnhem Land). I've been with NAAJA since 2004, though I've also undertaken positions with a community development organisation called Aboriginal Resource and Development Service and with the Northern Territory ('NT') Government's Aboriginal Interpreter Service during that time.

Being a good Indigenous Legal Aid lawyer in the NT is different to being a good criminal lawyer generally. Learning the substantive law and developing the advocacy skills you need for court are the relatively easy parts of the job. For me, the most challenging part of the job, but also the most satisfying, is communicating really well with your clients. I believe this requires a commitment to learning from knowledge areas which belong to the domains of linguistics and anthropology. Unfortunately many people currently working in the NT criminal justice system view these knowledge areas as irrelevant to their work in seeking justice for Aboriginal communities, defendants, victims and witnesses.

Communicating well with your client requires a commitment to learning from knowledge areas such as linguistics and anthropology.

As a lawyer working for an Indigenous legal service in the "Top End", many of your clients will come from remote parts of the Territory. Some clients live in and around the major centres of Darwin, Katherine and Nhulunbuy and have a dependency on alcohol. Other clients are from families who are part of the Stolen Generations. Most clients have had far less mainstream classroom-based education than their lawyers. Almost every client from a remote community will speak an Aboriginal language as their first language. There are around 20 Aboriginal languages that are still

spoken throughout the NT. Most of these clients will have limited or very limited proficiency in English. Most will also be attempting to understand the Northern Territory's criminal justice system from a cultural knowledge base and world view that is very different to that possessed by most non-Indigenous Australians of Anglo/Western descent.

WHAT DOES THIS MEAN FOR YOU AS THEIR LAWYER?

These characteristics mean that with some clients there is huge difficulty conveying abstract concepts about the criminal justice system. The caution administered by police to a suspect at the beginning of an interview is an example.¹ A lawyer's vocabulary is overflowing with abstract nouns: bail, not guilty, deterrence, adjournment, appeal and sentence. Understanding the concepts or processes signified by abstract nouns is very difficult for clients who do not have conceptual equivalents from within their own experience and cultural knowledge base. Such clients are expected to visualise and comprehend a step in the criminal justice process without an understanding of the complete process or the logic and the assumptions underpinning that process.

For some clients you will need to develop skills to work effectively with Aboriginal language interpreters. If you are mono-lingual and an English speaker, you might be surprised to learn that words such as guilty, not-guilty, bail, charge, brief of evidence, prosecutor, lawyer etc do not have direct conceptual equivalents in Aboriginal societies and languages. The concept of a legal practitioner, with its set of ethical obligations, does not exist in many Aboriginal societies. There will be no word for lawyer or prosecutor in Aboriginal languages. Aboriginal societies will have concepts which overlap with the concept of a legal practitioner. And they will have individuals or groups who perform roles and responsibilities which may be partially analogous to those undertaken by lawyers within the criminal justice system—but there is no direct equivalent of 'lawyer'. You can gain insight into these issues by learning an Aboriginal language. Some of the most inspiring people for me have been the lecturers at Charles Darwin University who teach the Yolngu Matha languages from the North-East Arnhem Land region.

Assessing whether you should work with an Aboriginal language interpreter is crucial but often poorly done by lawyers, prosecutors, police, magistrates and corrections staff working within the NT's criminal justice system. People like to think that because they have been in the NT for a long time, they know and understand Aboriginal clients, witnesses and victims. However, assessing English proficiency is complex and is ideally undertaken by a trained linguistic. Those who are untrained tend to significantly underestimate the level of miscommunication that occurs when they communicate in English with an Aboriginal person who does not speak English as a first language. When you make the decision about whether to work with an interpreter, keep this scenario in mind: if you were facing charges in a non-English speaking country, for example Indonesia, would you be happy to rely on your client or witness to interpret for you into English? If you would be reluctant, you shouldn't ask your client or witness to go through the same process without an interpreter.²

EFFECTIVE COMMUNICATION

Developing skills in Plain English will enhance communication with all clients, but particularly clients who speak an Aboriginal language as their first language. This means learning about the principles of Plain English and the grammatical structures used in Aboriginal languages. Lawyers often speak using a passive construction, for example, "when were you arrested?" This sentence is a passive sentence because the person doing the arresting is not clearly specified (though we as lawyers can infer it would have been a police officer). Passive constructions are generally not used in Aboriginal languages. If you use them when talking with your client, they are more likely to lead to confusion and an interpreter will have to do extra work in re-arranging the sentence to give it an actor (the person doing the action, in this case the arresting). Arrest is also legal jargon. A better way of asking the same thing using principles of plain English might be "When did the police lock you up?"

Commonly, lawyers also use idioms and figurative language: "the ball is in your court" or "he wants to avoid nailing his colours to the mast". These also present difficulties for interpreters. An interpreter will need to understand the meaning behind these phrases to be able to interpret them accurately. If the words are interpreted literally, the meaning conveyed will not be the meaning intended by the speaker. Literal interpretation can lead to absurdity or confusion. Working effectively with interpreters involves an appreciation of the fact that interpreters interpret meaning. A direction to an interpreter to 'only interpret the exact words that I say' misunderstands the concept of meaning-based interpreting. It assumes that every word in a phrase or sentence in one language can be interpreted with a directly equivalent word in another

language. That is, it assumes that because it takes 10 words to say something in English, it should also take 10 words to say the same thing in an Aboriginal language.

For other clients, communication will be improved by learning about the distinctive ways that Aboriginal people use English. If you are unaware of these communication styles and strategies, it is likely there will be ineffective communication or miscommunication between you and your client. This is particularly so if you use a communication style which you believe is professional and efficient, but which your client finds rude and uncomfortable because of their socio-cultural background. Some of the best resources on this topic are written by Dr Diana Eades. See for example: *Aboriginal Ways of Using English*, published in 2013.³

Peter Bellach is the Deputy Managing Solicitor – Criminal Section at the North Australian Aboriginal Justice Agency in Darwin.

- 1 For a discussion of the difficulties presented by the abstract concepts involved in the standard police caution and by the form of the words used to administer the caution see: The Hon Justice Dean Mildren 'Redressing the imbalance against Aboriginals in the criminal justice system' (1997) 21(1) *Criminal Law Journal* 7.
- 2 For more information on deciding whether to work with an interpreter see <http://www.ais.nt.gov.au/__data/assets/pdf_file/0020/152471/How_to_decide_interpreter_use_legal_Nov13.pdf>.
- 3 Diana Eades, *Aboriginal Ways of Using English* (Aboriginal Studies Press, 2013).

Crow & Seagull
Rust colourway
Lucy Simpson
Screen print on linen

