

**PART FIVE**

# **Focus on Miscommunication**

---

## Introduction

The analysis of Anglo/Yolngu communication in Parts Three and Four emphasised the dynamics of language use and control in police and courtroom settings with miscommunication arising in both contexts as an interactional feature, a matter of strategy and a judicial issue. The focus for Part Five, on the other hand, is an examination of Anglo/Yolngu miscommunication phenomena themselves, including their linguistic and cultural foundations, the mechanics of their construction, and the challenge of averting or resolving them.

Analysis of the PRI with 'M' (Chapter 5) revealed miscommunication as a sometimes useful interviewing tool for the native English speaking interviewer engaging a NESB interviewee. Its judicious use allows the interviewer to achieve the insertion of meanings into a collaboratively constructed text that are attributable to the interviewee without the interviewee necessarily being conscious of having contributed them. In Chapter 6 the investigation of Anglo/Yolngu miscommunication in the courtroom questioning of 'W' (*R v G*) established the inappropriateness of his performing a role as a legal interpreter and challenged judicial perspectives and legal processes that permit and condone the allocation of this role to persons lacking minimum attributes of competency and impartiality. In Chapter 7 endemic miscommunication was revealed as a social justice issue impacting at judicial and political levels within the larger context of Anglo/NESB-Aboriginal communication in the criminal justice system.

In Part Four, with its investigative emphasis upon the struggle for control over the process of communication in evidentiary discourse, miscommunication was revealed at times as the apparent purpose or the inevitable outcome of advocative ardour in eliciting evidence favourable to a client's interests and of suppressing information adverse to their interests. Thus the disposition of counsel at the *Elcho Coronial* towards the utilisation of interpreting assistance was more a tactical issue than a linguistic one—favourable when effective Anglo/Yolngu communication served their interest and unfavourable where *miscommunication* was advantageous.

In effect, the foundations for Part Five have been established in the process of investigating the dynamics of Anglo/Yolngu police and courtroom communication in previous chapters. Anglo/Yolngu dialogue involving 'M' (Chapter 5) and 'W' (Chapter 6) displayed frequent misinterpretation of sentence meaning and pragmatic meaning on both Anglo and Yolngu sides. W and M were handicapped in their comprehension by: L1 interference, grammatically complex questions, the rate of speech, limitations in English vocabulary, and insufficient cultural and contextual understandings of the discourses in which they were partaking. At the same time, their limited expressive ability in the English language meant that what they were

apparently intending to communicate was often inadequately communicated or miscommunicated. Of particular concern was insidious miscommunication—often masked by gratuitous concurrence and collaborative discourse, or by unrecognised influences of E-YM interlanguage on both comprehension and expression.

A number of extracts from the *Elcho Coronial* presented in Chapter 9 highlighted the exacerbation of miscommunication resulting from the use of coercive questions forms (see question typology, section 8.2.4). Miscommunication was also seen to emerge from: L1 interference (e.g. so that the meaning of *spear* can encompass *spear wood*); assumptions that secondary meanings of ordinary English words are transparent to NESB speakers (e.g. being expected to realise that having *seen* a document means having *read* it); and, failure to recognise that the semantics of E-YM interlanguage and SAE can be quite different (e.g. so that the E-YM expression *half moon* can mean the same as the SAE *crescent moon*).

In Part Five Anglo/Yolngu miscommunication phenomena are considered both in respect of monolingual and bilingual communicative contexts, with the *Elcho Coronial* providing data for both. In Chapter 10 a range of miscommunication issues will be investigated in the testimony of several Yolngu witnesses who gave their evidence in English. This will involve attending to extracts from the evidence of each witness in turn to expose and discuss problematic grammatical structures and semantic domains, and the interfering effects of contrasting cultural perspectives upon meaning interpretation.

In Chapter 11 the theme of miscommunication is followed through into the bilingual communicative context where barriers to successful intercultural communication are seen to persist despite interpreting assistance. Difficulties arise with utterances that presuppose understandings that are not shared by the hearer, and in semantic domains where translatability is challenged. Limits to effective Anglo/Yolngu communication are discussed with reference to two examples: the cross-examination of Police Aide Brian Gumbula by Queen's Counsel for the Commissioner of Police about matters of Yolngu custom and law; and, the Djambarrpuyngu translation of a particular section of the coroner's findings presenting the legal reasoning behind his decision not commit any police officer to trial.

With the data for Part Five coming from the *Elcho Coronial*, analysis can proceed with the contextual basis already established in the previous two chapters. In accordance with the guiding analytical principles established in Chapter 4, texts will be analysed with primary reference to their discursive and situational contexts—so extracts will be more conveniently grouped in sections according to the communicative event or participant(s) giving rise to them. Then within each section pertinent miscommunication issues will be identified and discussed.

## CHAPTER 10

## ENGLISH AS A LANGUAGE FOR MISCOMMUNICATION

## 10.1 Assessing Anglo/Yolngu courtroom miscommunication

Miscommunication was defined in the introduction to Part Two as a generic term encompassing all types of unsuccessful communication; that is, 'where communicative effect does not correspond to communicative intention'. Here, the investigation of intercultural miscommunication in evidentiary discourse is complicated for the analyst by instances where there is an apparent intent on the part of counsel to mask the ostensible meaning of a question from the Yolngu witness (this was discussed as a tactical issue in Chapter 9). If the attempt is successful then, it is argued, miscommunication is present nevertheless in that the witness's own communicative intent in comprehending the question was thwarted. But pursuing this matter a little further, how are we to view the case where an apparent attempt by counsel at misleading or confounding the witness apparently fails, so that the witness is *not* misled? Discussion of an example of this will clarify the extent to which the assessment of communicative intent and effect—based upon the interpretation of what interlocutors say and mean—is sensitive to the observer's linguistic and cultural perspective and to understandings about the communicative context. While this was discussed previously in the general case (section 4.2.3 above) the focus here is upon the problem of identifying communicative intent and upon the coexistent application of alternative forms of meaning-interpretation evident among Anglo participants to Anglo/Yolngu evidentiary discourse at the *Elcho Coronial*.

The following extract was examined previously in section 9.4.3.2 as an example of an interpreter 'shielding'. Here we are concerned with the problem of assessing CTF's communicative intent as he questioned BG about his statement to police that Ganamu had held a knife in '*the left hand*' when he was shot.<sup>93</sup>

- CTF: You told the police on the Sunday morning after the incident that it was on his left hand that the knife was held, didn't you?
- Int: Where is this, I'm sorry?
- CTF: In those bits I just read out to you.
- Int: It says 'On the left'.
- Cor: Yes, 'On the left hand'.
- CTF: That's what I just said, 'on the left hand'. That's what you told police on the Sunday morning, wasn't it?

<sup>93</sup> Recall from section 9.4.3.2 that BG had amended his statement clarifying that he had been speaking from his own perspective *facing* Ganamu, and thus that he had *meant* that the knife was in Ganamu's *right* hand. This had put BG's testimony at odds with statements from the Task Force police, all of whom had claimed that Ganamu had been holding the knife in his left hand. However, BG's testimony was consistent with the evidence of other Yolngu witnesses which established that Ganamu had been right-handed.

BG: Yes.

What can be said from this extract of CTF's communicative intent? Was the use of '*his left hand*' an inadvertent error, or was it an attempt to surreptitiously gain from the witness an admission that Ganamu had in fact held the knife in his left hand? Of course no unequivocal determination of this question can be given: it is impossible to know CTF's intent with certainty—even if CTF were to now state it (he might wish to deceive us with his answer). However, it is possible to usefully examine this exchange in the determination of *likely* intent. One approach is to deduce CTF's communicative intent by examining the ostensible meaning (semantic and pragmatic) of his question in the context of the exchange. A second is to examine the exchange in the context of the cross-examination and of the case as a whole, and from that perspective to form an assessment of his likely intent. Interestingly, they yield different results.

The ostensible meaning of the exchange is the outwardly appearing meaning; that is, meaning that is publicly available for interpretation<sup>94</sup>. On this level it appears that CTF has inadvertently misread from BG's statement to police in formulating his initial question. After CTF's mistake was picked up by the interpreter and confirmed by the coroner, he was able to rephrase his question and ask it again so that miscommunication was avoided. CTF's claim '*That's what I just said*' when that was not what he had said, can be plausibly interpreted as a conversational 'face-saving' stratagem. Accordingly, his intention appears to have been to have the witness confirm that he had told police the knife was held '*on the left hand*'.

Examination of the broader context presents a problem with this narrowly based analysis. In respect of CTF's role in the proceedings there is no obvious tactical advantage in having the witness affirm that the knife was in '*the left hand*' when BG had previously made it clear (transcript p724) that by saying this he had meant that the knife was in Ganamu's *right* hand. On the contrary, this would establish consistency in the witness's testimony on this point and so maintain the threat posed by his testimony to the credibility of his clients' statements that Ganamu had wielded the knife in his *left* hand. On the other hand, quite obvious tactical advantage can be seen to accrue to CTF by eliciting BG's concurrence that he had used the words '*his left hand*' since this would immediately establish a contradiction in this witness's evidence and allow the conclusion, at the very least, that he was confused and that therefore his evidence on this point was unreliable. It would also present an opportunity for an attempt at gaining admission that the knife *had* been in Ganamu's left hand after all.

From this perspective a more appealing hypothesis as to CTF's likely communicative intent is

---

<sup>94</sup> This, incidentally, is the only meaning that is available for linguistic analysis, as pointed out by Leech (1983:34) in the context of pragmatic analysis: 'In pragmatics, as elsewhere, the linguist is interested in making publicly confirmable observations about language'.

that it had been to present 'on *his left hand*' to BG as though they were his own words, and have him affirm them. CTF's chance of success was increased by the fact of BG's status as a NESB Aboriginal person. The appropriately experienced lawyer will be aware of frequent miscomprehension of questions by such witnesses and of how this complements their propensity towards gratuitous concurrence in increasing their manipulability under suggestive questioning. And while such a lawyer may not be attuned to exactly what the witness *is* likely to be understanding from particular questions, he or she can generally achieve a satisfactory result nonetheless. On this occasion CTF was not successful because of the interpreter's intervention ensuring that his 'mistake' was exposed.

Thus the decision as to whether this exchange constitutes a case of successful communication or of unsuccessful communication depends upon the observer's perspective. The monolingual Anglo-Australian observer who has no knowledge of the communicative features of Anglo/NESB-Aboriginal discourse will not recognise the limits in comprehension of Yolngu who are attending to questions in SAE and will not be aware of the extent of their susceptibility to linguistic manipulation nor indeed of the fact of their manipulation. Such a person in the role of juror or other tribunal of fact attending to the evidence of a Yolngu witness (or reading the transcript of that evidence) may easily misinterpret that evidence.

On one occasion during the *Elcho Coronial* the Anglo participants in Anglo/Yolngu evidentiary discourse explicated their different understandings of what a Yolngu witness was meaning by an answer. This occurred early in the inquiry (on the first day of Yolngu testimony) with a discussion involving coroner, interpreter and counsel over whether a witness had uttered *deceased man* or *diseased man* (in reference to Ganamu). The witness had been asked what he had heard Task Force police say to local people about why they (the police) had come to Elcho Island. This dialogue was conducted entirely in English with the interpreter, who was standing by to offer any assistance, interjecting at the point where he first perceived miscommunication (149):

- QCGF: Did they (the Task Force police) tell you anything about whether he was going to the hospital?
- Wit: Yes.
- QCGF: What did they say?
- Wit: They say "we just want to bring - - -"
- QCGF: Speak up loud so we can - - -
- Wit: "Just bring the deceased man to the hospital."
- Cor: They said they'd bring the diseased man to the hospital?
- Int: Deceased.
- QCGF: Deceased, it's pronounced often as diseased.
- Cor: I know, that's what he said, that's why I put it down that way.
- QCGF: Did you put it down as diseased?

#### Part Five: Focus on Miscommunication

---

- Cor: That's the way he said it and that's the way I've written it down.
- QCGF: All right.  
(addressing witness again:) By the diseased man, do you mean the man who died?
- Wit: Yes.
- Cor: It's quite accurate. They were treating him for sickness weren't they?
- QCGF: That's right, hadn't thought of it like that.

The witness's pronunciation of /s/ had exhibited little aspiration and a slight voicing to yield a sound in between [s] and [z]. In fact this reflects a typical feature of E-YM interlanguage that 'Yolngu frequently do not distinguish SAE voiced and voiceless consonants' (Elwell 1979:353, see section 2.8.3 above). In observing the Yolngu taboo against using the name of a recently deceased person, counsel were variously referring to Ganamu as the '*dead man*', '*dead person*', '*dead fellow*', '*deceased*', or '*deceased man*'.

These factors, together with the fact that *sick* is the English adjective that Yolngu use to refer to people who are ill (the adjective *diseased* is not heard in E-YM interlanguage) led me (as interpreter) to deduce that the witness was following the already established convention at the *Elcho Coronial* of using '*deceased man*' (among the other alternatives) to refer to Ganamu. And even if the witness did not recognise *deceased* and *diseased* as different lexemes—and though he may have thought that counsel were referring to the dead person as the *diseased* (i.e. sick) man—it is unlikely that he was indicating that this was the actual label that the police had applied to the mentally-ill man. In fact, evidence from another Yolngu witness given much later (p1124) indicated that the police could not remember Ganamu's name and so used the term *madman*:

- Cor: ... the white police couldn't say his name?
- Wit: Couldn't - they couldn't know what he was looks like and what was his name. Somehow - I told them their name - I told the deceased man's name during the search and somehow they forgot the name and they use - actually we all used "Madman", all of us. (i.e. the group of searchers)

In offering an explanation of the interpreter's interjection QCGF remarked that *deceased* is '*pronounced often [by Yolngu] as diseased*', revealing his acquaintance with at least some features of E-YM interlanguage. The coroner, on the other hand, chose to interpret the witness's response as though it was an SAE utterance embedded within SAE dialogue. Accordingly, given that the term *diseased/deceased man* had been used in the context of taking a mentally-ill person to hospital, the coroner had (quite reasonably) interpreted that the witness had consciously used the term *diseased man* in reporting verbatim the police officer's utterance.

Of course, no legal point turned on this difference of interpretation regarding precisely what the witness was intending to communicate by his reply in this instance. The extract does serve to illustrate the coexistent application of alternative forms of meaning-interpretation to Anglo/Yolngu dialogue: (1) narrowly-based interpretation of meaning—that is, where dialogue is interpreted as though it is conducted following the conventions of Anglo-Australian discourse; and, (2) broadly-based interpretation of meaning, informed by understandings encompassing both Anglo-Australian and Yolngu (socio)linguistic and cultural domains, as well as by experience with Anglo/Yolngu interactional contexts.

This chapter now discusses miscommunication issues arising from the evidence of three Yolngu witnesses at the Elcho Coronial who testified in English: Alfred Gondarra, Joe Gumbula and Geoffrey Walkundjawuy.

An extract from Alfred Gondarra's evidence appeared earlier (section 9.2) illustrating how even though his English was considered to have been excellent, his evidence was tainted by miscommunication (where he had failed in his attempt to communicate that Ganamu had not thrown a 'spear' at his brother, but an unformed spear shaft). In this chapter clear examples of pragmatic failure emerge in a series of questions accusing him of failing to ensure that Ganamu took his medication (Mr Gondarra was a relative of Ganamu living in the same household). Extracts highlight different Anglo/Yolngu conceptualisations of personal independence which, for Yolngu, is not nullified by the presence of mental illness.

Joe Gumbula was the other of the police aides at Galiwin'ku (apart from Brian Gumbula) and he gave his evidence entirely in English. While he had not been an eye-witness to the shooting he was nevertheless questioned at length about Ganamu's behaviour in other circumstances. An extract from his testimony appeared previously in section 9.4.5 in relation to the confusion over his use of *ha'f moon* (E-YM interlanguage) to mean *crescent moon* (SAE). For this witness the matter of interpreting assistance had never been raised, yet underlying his confidently delivered replies were frequent instances of miscommunication at the linguistic level, often the result of difficulty in the grammatical decoding of tagged declaratives containing embedded clauses.

Geoffrey Walkundjawuy was the volunteer tracker who had gone by boat across to Walwal Beach with the youth as part of the plan to capture Ganamu and hold him for the police. His evidence has already been discussed in section 9.2 in relation to CTF's successful submission to have him testify in English (although interpreting assistance was occasionally utilised during cross-examination by QCGF). The analysis of extracts from his testimony reveals how an underlying lack of proficiency in English on the part of a Yolngu witness can of itself threaten their credibility.



## 10.2 Miscommunication issues arising from AG's evidence

The cross-examination of Alfred Gondarra (AG) provides an example of someone who, while generally understanding questions put to him and generally able to express himself, is nonetheless affected through linguistic interference between Djambarrpuyngu and English at semantic and pragmatic levels. AG's capacity to communicate as a witness was demonstrably affected by the form in which questions are asked. His vulnerability to the *declarative plus tag* construction has already been exemplified in the extract concerning Ganamu's throwing of a 'spear' at his brother (section 9.2). His capacity to provide more reliable evidence under less coercive *yes-no/wh-* questions is indicated in this extract where he is being challenged to explain the nature of the relationship between Ganamu's mental illness, the phase of the moon and medication (p561):

- CTF: Did the dead man get sick in the head when the new moon came?  
AG: Certainly I believe that, yes.  
CTF: And if he took his tablets did he not get sick?  
AG: He can have a tablets but he's still infecting.  
CTF: But if he took his tablets did that stop him from getting sick in the head?  
AG: Well, I would keep on saying, even though he have a tablets he can feel himself that he still feels sick.

It is clear from this exchange that although AG sees a direct correlation between the deceased's state of mind and the phase of the moon he does not maintain a cause-and-effect relationship between the ingestion of medicine and remission of the sickness, nor is he prepared to concede a correlation. Not only were his responses appropriate in respect of the questions but he provided information using his own words. Thus he demonstrated comprehension of the question and provided specific and relevant information/opinion. This is in spite of his obvious NESB status where his grammatical errors indicate a proficiency no greater than 'Social Proficiency' (ASLPR Level 2+, see section 5.5 above).

The next extract (several questions later) addresses the responsibilities of Ganamu's family in administering medicine to him. Here, CTF's formulation of declarative *yes/no* questions serves to promote their affirmation (see question typology, section 8.2.4 above). In substance CTF's questions incorporate challenges to the family's behaviour on the basis of Anglo-Australian attitudes and values (p562):

- CTF: So the only time when you've seen him take the medication is once in the last year?  
AG: Yes, that's right.  
CTF: And surely the family would have been concerned - must have been concerned to make sure that he take his tablets to prevent him getting ill?  
AG: Well for that question I would say the family knew he was sick in the head and from my experience living in the one house,

- know him very well, the way he get sick in the head, we could wait for the right time and just cool ourself and just go politely to ask him if he wants a tablet or not.
- CTF: And if he didn't take them, you just let him get sick in the head?
- AG: Yes. If he didn't want to take it he could just walk away.
- CTF: And he'd just get sick in the head?
- AG: Yes.

There are cultural assumptions operating here on each side that are not understood by the other. Hidden from AG was the accusation by CTF that the family showed a lack of concern for their relative by not ensuring (forcing?) his taking of medicine, so that they themselves were responsible for the onset of illness. Hidden from CTF was that family members, in approaching Ganamu tentatively with the offer of medicine, were demonstrating both respect and concern for him. By not pestering him or forcing the medicine upon him they were acknowledging his status as an individual, a male and an elder, and they were also respecting his right to make decisions himself about his own being. His mental illness was acknowledged but this did not nullify his status nor these rights. (Personal independence is among the strongest of Yolngu values.)

AG's failure to respond to the illocutionary force of the question '*you just let him get sick in the head?*' indicates a case of pragmalinguistic failure. By not including explication of the prior place of personal independence among Yolngu mores, AG left his audience with a deficiency in essential contextual knowledge at the level of Yolngu world view.

The two extracts above also present a contradiction in AG's evidence. In the first extract he explained that in his experience there was no causal relationship between taking medicine and getting better, while in the second he concurred that Ganamu would get sick in the head if he did not take his tablets—leaving one to conclude that if he *did* take his tablets that he would *not* get sick. This contradiction is contained in the final response comprising the single word *yes*. This is given as affirmation of a summative statement posed in the series of questions from CTF. This exchange illustrates the danger of relying on *yes* as an affirmation of a proposition which is put within a grammatical framework which may actually serve to obscure the proposition from the NISB witness. CTF's total proposition was as follows: *And surely the family would have been concerned -- must have been concerned to make sure that he take his tablets to prevent him getting ill ... (witness responds) ... and if he didn't take them, you just let him get sick in the head ... (witness affirms) ... and he'd get sick in the head? ... (witness affirms).*

The question is begged, was AG following through over the three questions and saying *yes* to the proposition that: by taking his tablets Ganamu was prevented from getting ill, and that

by not taking them he'd get sick in the head, and furthermore that this is the sequence of events that actually transpired; *or* was he simply affirming that Ganamu habitually became sick in the head?

In considering this question it must be remembered that: AG had previously said in his own words that the taking of medicine was not sufficient to prevent illness; he has demonstrated difficulty in both comprehension and expression consistent with his status as a second language learner; and, that the proposition *if he didn't take them he would get sick in the head* is not contained unambiguously within a single question. For these reasons, it is suggested that the answer to this question is that it is not possible to determine with any precision what it was that AG was saying *yes* to. It may even have been a case of gratuitous concurrence.

### **10.3 Miscommunication issues arising from JG's evidence**

Judging by the length of his cross-examination, Police Aide Joe Gumbula (JG) was considered an important witness. Yet his testimony, given without interpreting assistance, was compromised, revealing instances of linguistic interference between Djambarrpuyngu and English and susceptibility to miscomprehension of grammatically complex questions, particularly those with an embedded clause.

#### **10.3.1 The problem of questions with embedded clauses**

'*That's correct*' was a frequent response by JG to questions. This expression, which sounds rather officious, is perhaps derived from his experience of law enforcement jargon. Its effect is to create an impression that he was confident in affirming what was being put to him. A close examination of texts where this response is deployed reveals that his replies to declaratives containing embedded clauses were often directed to those clauses. This behaviour, not confined to this witness, rendered simple affirmation of such questions inherently ambiguous.

On pp515-6 there is a long series of questions, each followed by the single response '*That's correct*'. The problem is that each question contained two propositions and JG's replies raise concern as to which of them he was addressing:

- CTF:       And you told them (Task Force police) that the dead man was sick in the head?
- JG:         That's correct.

Here, the two propositions are:

Proposition 1: The dead man was sick in the head; and,

Proposition 2: You told them (that the dead man was sick in the head).

In giving a *That's correct* response to this question an Anglo-Australian would be understood to be affirming Proposition 2. If this same question and answer were translated into

Djambarrpuyngu, the response *Nunni yuwalk* (*nunhi* = that; *yuwalk* = true/correct), would be taken as an affirmation of the immediately preceding clause—in this case, Proposition 1. Confirmation that JG's usage does not conform with the SAE pattern is provided by this instance (p520):

- CTF: (do you) Remember the statement that you made to the police at the police aide station after the dead man died?  
 JG: That's correct.

For this question *yes* or *no* would be an appropriate answer to indicate whether or not he remembered the statement. *That's correct* seems more appropriate as an affirmation that he did indeed make a statement to the police. However, his response is ambiguous even in respect of the point of the embedded clause—rather than affirming remembering *giving* the statement he may have been affirming remembering the *contents* of the statement.

Thus doubt is raised as to which pragmatic convention JG was following, if indeed he was following one exclusively. Which clause did he affirm—the principle clause (to do with remembering) or the embedded clause (to do with making a statement)?

JG was asked ten questions (p515) which have the form (*And*) *you told them ...* (plus proposition)?. The first of these questions was clarified by the use of an extended form *And you told them ..., didn't you?*:

- CTF: And you told the task force about those incidents, didn't you?  
 JG: That's correct

There is little doubt that *this* question refers only to the telling, rather than to the validity or accuracy of what was told. This was achieved not only by the attachment of *didn't you* (which draws attention to the telling) but also by avoiding the inclusion of a secondary proposition within the principal proposition *You told them ... , didn't you?*.

An abbreviated version of this question structure was also used in this series of questions: *And that* (plus proposition)?:

- CTF: And that he had threatened people with spears in the past?  
 JG: That's correct.

The omission of reference to the telling serves to lead JG into considering only the question of whether it is true that Ganamu had threatened people in the past.

Even when the embedded clause occurs within a *yes/no* question framework there can be ambiguity attached to the *yes/no* answer, as occurred with the subsequent question:

- CTF: Did you tell them that he never actually speared anybody in the past?

Part Five: Focus on Miscommunication

- JG: No.  
(Is this *No, he didn't spear anyone in the past* or *No, I didn't tell them?*)
- CTF: You didn't tell them that?
- JG: No - yes, I did, sorry.

The deployment by counsel of the truth tag *That's right, isn't it?* (frequently utilised by CTF in his cross-examination of Yolngu witnesses) exacerbated the problem. When this tag is appended to declaratives that include both principal and embedded clauses it tends to direct Yolngu witnesses to respond to the substance of the embedded clause. In this extract, while JG was asked simply to verify that he had heard reports, his response addressed the substance of the reports (p508):

- CTF: And there were also reports that he was in town with a blue rope around his waist. That's right isn't it?
- JG: Well, that's what - and other comments as well.
- CTF: And painted up?
- JG: For my belief I didn't see him.

*That's right, isn't it?* focussed JG on the issue of whether it was true or not true that Ganamu was wearing rope rather than on whether or not there were reports of this. JG's answer is indicative of this cross-linguistic transference of the focus of emphasis. On p516 CTF put a similar proposition to the same witness, but asked his question so as to direct the focus to the telling:

- CTF: And you told them that he had been seen in town the night before with rope around his waist and painted up. You told them about that too didn't you?
- JG: Yes, I told them about that.

This phenomenon of responding to the proposition(s) expressed in the embedded clause was prevalent among Yolngu witnesses. Brian Gumbula revealed this in many of his answers that were given without interpreting assistance, as in this case (p710):

- CTF: You told the police that you tried to stop the shooting, didn't you?
- BG: I've tried, yes.
- CTF: I'll rephrase that. I'll withdraw that question.

In fact, doubt as to which aspect Yolngu witnesses were addressing in questions such as these became a cause for concern during the *Elcho Coronial* so that they came to attract comment and objection. On one occasion, when BG had been answering a series of questions of this form without interpreting assistance, the interpreter (who was standing by) interjected following his perception that BG's answers were misleading (p823):

- Int: I beg your pardon. When he (BG) says 'yes' - as his interpreter I just mention when he says yes it's often verifying the

substance of what you are saying, not necessarily whether it was said. ...

CTF: Yes, I thought that was the case.

On another occasion QCGF interrupted a long series of questions from CTF who was asking BG to confirm that he had told police about various matters at a briefing. Comments from both the interpreter and coroner ensued, indicating that the problem was now recognised within the court (p1125):

CTF: Right. And you also told the Task Force officers about the incident where he had burnt the house and you said that the community didn't want to do anything about that at that time?

BG: Yes. Yes.

CTF: Do you agree with that?

QCGF: I am not sure that the witness understands whether these things are being put to him as a fact or whether he appreciates that it is alleged that that is what he said at the briefing.

Int: I agree. The first couple of questions, I felt it was clearly understood as Mr Feeves intended, but as it became a kind of narrative I think - - -

Cor: Yes ... I am not at all sure there about whether he wasn't speaking about the facts rather than what he told them ...

## 10.4 Miscommunication issues arising from GW's evidence

As an eye-witness to the shooting Geoffrey Walkundjawuy's (GW) evidence was obviously of immense importance. However, his testimony was marred by frequent and extensive miscommunication evident from an early stage in his evidence-in-chief. We begin with an example of confusion over the meaning of a common English expression, before moving on to consider other linguistically based miscommunication, problems based in the language of space, and ramifications of different Anglo/Yolngu perceptions about sickness and health.

### 10.4.1 Literal interpretation of meaning

Communication at cross purposes is a common occurrence in Anglo/Yolngu evidentiary discourse, even with the use of straightforward grammar and everyday words. This can result from the nuances, often deriving from cultural factors, that are built into ordinary English expressions which may simply be taken by second language learners at their face value.

A good example was provided in evidence-in-chief with a question inquiring as to where GW had slept on the night Ganamu had been killed (p367):

CAC: Where did you sleep?

(CAC is asking *Where did you spend the night?* GW is hearing *Where did you have a sleep?*)

GW: When was this, Saturday?

(GW is asking *Are you referring to the day, Saturday?* Counsel is hearing *Are you referring*

to the night of Saturday?)

CAC: On Saturday?

(CAC is meaning Saturday night. GW is hearing daytime on Saturday.)

GW: Where the people was at Dhayiri.

CAC: So you are saying you slept that night at Dhayiri?

(This is not what GW said; it is the first reference to night time.)

GW: You mean night?

(It dawns on GW that this conversation is about an overnight sleep.)

CAC: Night?

GW: No, I didn't sleep for night.

#### **10.4.2 Problems with *could see***

Much of GW's evidence was given to defining the relative locations and movements of Ganamu and the police in the moments prior to the shooting. The early part of GW's evidence-in-chief dealt with the question of whether or not the Task Force members had been visible from the water's edge while Ganamu and GW were speaking. This was a major issue because if they were visible then this may have contributed to the failure of the plan for GW to catch and hold Ganamu (i.e. if they were already visible to GW then they would also have been visible to Ganamu when he turned around, and may have caused him to panic and run). The following excerpts from the transcript refer to these matters with CAC questioning his witness in detail concerning whom he '*could see*'. This construction was confusing for GW, not so much from the function of *could* as a modal auxiliary, but because of its function in conferring a past tense reference upon *could see* (while *see* remains as a present tense form).

- (p369)

CAC: What was he [Ganamu] doing?

GW: Sittin' - he was sittin' where the tree is, and when he saw the boat coming across then he start to walk towards the boat, and from the boat I saw the task force members, they was there already when he left the tree.

CAC: When the dead man left that tree and was walking towards the boat, how many task force members could you see?

GW: Well, there was five task force plus Police Aide Gumbula.

CAC: And could you see all the task force members at that time?

GW: Yes, I can see it from the boat.

(In this extract CAC's two uses of *could see* were accompanied by adverbial phrases promoting GW's understanding of their reference to past events. In his response GW demonstrated difficulty with using *could see* himself, preferring the present tense form *can see*.)

- (p370)

CAC: When he turned around where were the task force men?

GW: They was there already where the trees.

CAC: Could you see all the task force men?

GW: Now I can see this man - and that bloke there, I don't know his name.

(Perhaps GW heard this question as *Can you now see (or identify) all the task force men?* (they were all present in the courtroom at the time of his evidence). Either way he has not demonstrated an understanding of the point of the question—namely, whether or not all five task force members had been visible to him.)

CAC: You could see one task force man?

GW: Yes.

Cor: He identifies Mr Grant.

(In the previous answer GW referred directly to two police officers who were recognisable to him: *'this man - and that bloke there'*. If indeed GW was confused by the construction *could see* in the earlier question then CAC's repeated use of the construction has not served to clarify the ambiguity, and on any account the fact that GW confirmed one sighting does not negate another.)

CAC: And the task force man that you could see, what was he doing?

GW: He was sitting there.

...

CAC: And you couldn't see any of the other task force men?

GW: No.

(Twice more the construction *could see* was employed. In the first instance GW was assisted by the addition of *'what was he doing.'* In the second there was no such cue. These difficulties mean that value of GW's answers remain dubious. There is no grammatical construction equivalent in form and meaning to *could see* in Djambarrpuyngu (perhaps the closest Djambarrpuyngu equivalent would be *nhāma manyakkum* (= see/saw well)). Within the context of the questions, to transpose *could see* into Djambarrpuyngu requires reference to a time, because the present tense forms of Djambarrpuyngu verbs also have past reference. In English the verb *see* is a present tense form which is given past reference by the attachment of the modal auxiliary *could*. Confusion with *could see* may be further compounded by its use to indicate a future event (e.g. *You could see him about that*). It appears that GW indicated discomfort with the construction by answering a *could see* question (above) with *'Now, I can see...'* as a preface to his answer. I interpret this as an attempt towards disambiguation by signalling to the listener the specific time frame within which he set his response. Thus there is every possibility that GW limited his description of whom he had seen on the beach to encompass only those whom he could now recognise in court.)

CAC: Could you see the police aide, at the time when the dead man turned around and started to walk away from you?

(On this occasion CAC specified the time.)

GW: Yes, I can see police aide.



**Part Five: Focus on Miscommunication**

---

(Note GW's continued refusal to use *could see* (preferring *can see*) even though it has been modelled for him in the question.)

• (p371)

CAC: And what happened when he turned around and started to run away from you?

GW: I run, follow him, and then I call him a name. I call him twice to stop and wait for me, and then we heard the shootings, and then the deceased man took the knife from his right hand side, and running towards that tree.

(Note the frequent use of present tense forms of English verbs to refer to past events—this is consistent with Djambarrpuyngu usage.)

CAC: And could you see any of the task force men at that time?

(The question is ambiguous, as it is not clear which instant in time CAC was referring to.)

GW: No.

(The fact that GW could describe how Ganamu had been responding required that he could see (i.e. *was able to see*) the Task Force members, who by that time had surrounded Ganamu on the open beach. It is possible that GW did not understand the meaning of *could see* as *able to see* and was interpreting the question as addressing whom he was looking at—and that was Ganamu.)

CAC: What about the man that had been sitting by the tree before, could you see him?

GW: Yes, he walked out from the tree, walked out through the beach.

CAC: Yes?

GW: Yes.

CAC: And that was the only task force man you could see at that time?

GW: Yes, that's him.

(Was GW pointing out the only Task Force member whom he was able to identify in court, or was he actually saying that there had only been one Task Force member visible to him on the beach?)

### 10.4.3 Problems with English locational prepositions

As explained in section 2.7.3 Djambarrpuyngu has a small number of case suffixes which fulfil the functions of the English locational prepositions and ambiguity is resolved where necessary by complementing case marking by the use of one or other of 12 locationals. The Djambarrpuyngu locative and ablative suffix *-ɲur* encodes a number of English prepositional meanings including *at*, *in*, *on*, *near*, *under* and *from* and Yolngu commonly display confusion in distinguishing these meanings when speaking in English. This then poses a challenge with spatial discourse where the source of the difficulty is linguistic (the case of miscommunication at a conceptual level in spatial discourse is considered further below). There was already an indication of difficulty in CAC's initial questioning concerning

Ganamu's location before he had walked down to the water's edge (p370):

- CAC: ... you said the dead man was near a tree?  
 GW: No, he was sittin' there in that tree, where the tree is.

This ambiguity that accompanies the use of English locational terminology in Yolngu evidence has further ramifications in questions which seek to identify a point in time by reference to the transitional location of a person. In the next extract GW was under cross-examination by QCGF who referred him to photographs taken at the beach on a day after the shooting. The transcript reveals that photographs 3 and 4 apparently refer to the time when GW was speaking with Ganamu '*at the boat*'. QCGF asked two questions seeking confirmation of this (p416):

- QCGF: Do those photographs show the people you could see when you were at the boat?  
 GW: Yes.  
 QCGF: When these photographs were taken, 3 and 4, do these photos show what you saw around the time when you had been talking to the dead man?  
 GW: Yes.

Given GW's demonstrated difficulty with English positional terminology, QCGF's use of the expression '*at the boat*' could have been heard by GW as *in the boat*, *beside the boat*, or *near the boat*. But GW was in each of these positions *at different times*.

QCGF's two questions, which sought to assign the scenario represented by the photos 3 and 4 to a specific time resulted in two single *yes* responses. In the absence of any further information volunteered by GW—which could have served to check the extent of GW's comprehension as to the moments referred to by QCGF and to allow GW himself to define the moments which the photos represent—there remains the element of vagueness as to the temporal conclusion that can be drawn.

#### 10.4.4 Negative questions

Questions put negatively to Yolngu witnesses at the *Elcho Coronial* commonly resulted in confusion because they would frequently say *yes* to confirm the veracity of a negatively framed proposition in a situation where the English speaker would say *no*. In doing so they were carrying over the Yolngu convention of answering negative questions by affirming or denying the negative proposition. The following excerpts from GW's evidence illustrate the difficulties inherent in these questions.

- (p435)

- CTF: And when he started running you couldn't see any of the task force men at that stage, could you?  
 GW: When he was running?

**Part Five: Focus on Miscommunication**

---

CTF: No, when he started to run?  
GW: Yes.  
CTF: When he started to run you couldn't see the task force?  
GW: Yes.

GW may either be saying, *Yes, you are right, I couldn't see them*, or *Yes, I could see them*. At different times GW followed the Yolngu *and* English conventions for answering negative propositions put as questions:

- Yolngu convention (p373):

CAC: You didn't see who fired the five shots?  
GW: Right - yes.

- English convention (p433):

CTF: But it wasn't part of the plan that young Kenny would try and catch the dead man, was it?  
GW: No.

This problem of ambiguity with negative questions put to Yolngu witnesses had surfaced from the very beginning of the *Elcho Coronial* with an earlier witness (also a volunteer tracker) who was asked by CTF to confirm that GW was not a resident of the outstation on the point across the bay from Walwal Beach (p56):

CTF: But Geoffrey doesn't live at that point, does he?  
Wit: Yes.  
CTF: Does he?  
Wit: No, he live in here. (i.e. Galiwin'ku township)

Since CTF relied extensively on declaratives (with optional tags) in his questioning of Yolngu witnesses (see section 9.1) he was particularly vulnerable to this phenomenon whenever they were framed in the negative, illustrated in a question of the same witness following soon after the above exchange. The question related to the fact that GW had not been accompanied in the boat by the old man who had previously agreed to do so. CTF became confused when the witness affirmed the negative proposition. This exchange was conducted entirely in English with the interpreter (who was standing by) choosing to interject after perceiving that CTF had become confused. His interjection was followed by others from the coroner and from QCGF, illustrating that at least some of the participating lawyers had come to understand the futility of relying on this form of questioning (p59):

CTF: But the old man didn't go in the boat, did he?  
Wit: Yes.  
CTF: I beg your pardon?  
Wit: Yes.  
Int: Yes, he's affirming he didn't go in the boat.

- Cor: The old man didn't go in the boat.  
QCGF: He's answering you exactly on point.  
Cor: You ask these questions that way and that's what you get.

In spite of the inherent ambiguity of *yes/no* replies by Yolngu witnesses to negative questions they continued to be put throughout the inquest. Being apparently reluctant to relinquish this form of question CTF was often forced to accommodate the Yolngu approach to answering them, even to the extent that *yes* was sometimes accepted as meaning *no*! This extract is taken from questions put to the same witness (p188-9):

- CTF: None of those men (i.e. members of Ganamu's family) were searching for him on the Thursday, were they?  
Wit: Yes.  
CTF: They weren't, were they?  
Cor: He says none of them were.  
CTF: And none of them were searching for him on the Friday either, were they?  
Wit: Yes.  
CTF: And none of them were searching for him on the Saturday, were they?  
Wit: Yes.

During the evidence of Brian Gumbula (much later in the proceedings—p745) the coroner was finally moved to actually demand of CTF that he refrain from putting negative questions. This occurred after one such question from CTF became obviously confusing for the witness, prompting CAC to interject with a suggestion that CTF rephrase his question. CTF concurred with the demand from the coroner that followed this, only to fail in his first attempt:

- CTF: ... you haven't told the police or anyone else about that before you told us today about it, have you? This is the first time that you've said that isn't it?  
BG: It is - could you - could you - - -  
CAC: Your Worship, I simply note that it's a negative question. We've had this issue arise previously and it caused some confusion with the previous question my learned friend put in the negative form. Simply, so there's no misunderstanding, he may wish to rephrase the question.  
Cor: Can you please put all questions positively so that we don't have a reply which produces what you might call the false negative?  
CTF: If Your Worship pleases.  
You haven't told anyone else - - -  
Cor: If he says yes to that, it means he hasn't told anyone else; if he says no to that, it means - - -

(At this point, CTF interrupted the Coroner to argue that BG's proficiency in English is sufficiently developed so as to not warrant this consideration:)

**Part Five: Focus on Miscommunication**

---

CTF: With respect, Your Worship, this witness doesn't fall into the category of other witnesses that are confused by that form of question - - -

Cor: I'm glad to hear it.

CTF: - - - because the witnesses concerned, Your Worship might recall, were old men who were in each case - in every case, requiring the assistance of an interpreter to interpret all of their evidence. It's not the case with this particular witness.

(CTF had overlooked a number of previous Yolngu witnesses who gave some or all of their evidence without interpreting assistance (such as GW) and who nevertheless exhibited the Yolngu style of answering of negative questions.)

Cor: He's still not a person who habitually uses English - well I suppose he habitually uses it, but English is clearly a second language to him, and I don't want to run the risk unnecessarily of confusing him or getting a confused answer.

(CTF then rephrased his question as an interrogative.)

CTF's argument that BG was immune from the effects of Yolngu conversational conventions in respect of negative questions is not sustained by the transcript which reveals a number of examples of BG following the Yolngu pattern:

- (p760)

CTF: You can't answer that?

BG: Yeah, I can't answer that.

- (p764)

CTF: You had never seen a person speared before in your life before you saw the spear in Ian Wurrawul, had you?

BG: Yes. I haven't seen. Sorry.

- (p764)

CTF: And you wouldn't go by yourself to get the vehicle, would you?

BG: Yes.

CTF: Because you were afraid that ...

#### **10.4.5 Seeing evidence in its cultural context**

CTF's cross-examination of GW provides further exemplification (to that of Alfred Gondarra) of the importance of being explicit about setting questions and responses in the appropriate cultural context. The same information can have quite different meaning depending on the cultural perspective. If counsel asks an Aboriginal witness to respond to a state of affairs interpreted according to an Anglo-Australian cultural perspective then the response will often be misconstrued when the witness responds according to a significantly different perspective and where the differences are not recognised or acknowledged.

An example of this occurs on pp429-430 when GW's opinion was sought as to Ganamu's physical fitness. It began with a discussion of his walking habits, which were attributed by GW as a sign of Ganamu's illness and by counsel as a sign of his good health:

- CTF: This dead man, did he used to catch fish all around the island?  
GW: Yes.  
CTF: And he'd move around the island on foot?  
GW: Yes.  
CTF: And he used to travel a long way by foot?  
GW: Yes, because of that sick, that's why he goes - he travels with his foot.  
CTF: But he could walk a long way by foot?  
GW: Yes, because of his sickness.  
CTF: Could he walk all the way to the other end of the island?  
GW: Yes.  
CTF: Could he do that in the dark?  
GW: Oh yeah.

(Later, under re-examination (p446), it was established that GW was actually envisaging overnight stops along the way—not an unbroken journey and not walking at night.)

- CTF: And apart from his sickness in the head was he physically fit?  
GW: Not really.  
CTF: There was something wrong with him apart - I'm not talking about the sickness in his head, I'm talking about his body?  
GW: Not really.  
CTF: Was there something wrong with him?  
GW: Yes.  
CTF: What was it?  
GW: Same thing, head.  
CTF: Yes, but apart from that, forget that. Was anything wrong with his body apart from his head?  
GW: What you mean, apart from his body?

(At this point GW turned towards me (I was sitting close by) and asked me what counsel was saying. Unfortunately, the court was not aware of his request for assistance because he had spoken in Djambarrpuyngu. Nevertheless, it should have been plain that counsel and witness were having difficulty communicating.)

- CTF: Was there anything wrong with him physically? Not mentally, physically? (no answer)  
Int: Do you mind if I assist?  
CTF: Yes, I do mind.  
Did he have anything wrong with his arms?  
GW: No.  
CTF: Or his legs?

GW: No.

CTF: Or in his stomach or chest?

GW: Yes, from his head to his body.

(This was accompanied by a hand gesture where GW raised his hands to his head and swept them down his body.)

This exchange brings into focus basic differences in Aboriginal and Western cultural perspectives on sickness and health. GW was trying to express that Ganamu's illness affected his total being. He could not accept the (common) Western compartmentalisation of the being into independent mental and physical entities. And counsel could not accept GW's refusal to see state of body and state of mind as distinct and separate issues. The matter was further complicated because Ganamu's penchant for walking was seen by the Yolngu witness as a sign of his sickness and by Anglo counsel as a sign of his health.

#### **10.4.6 Western and Yolngu reference systems for orientation and directions**

A frequent source of confusion during the *Elcho Coronial* was the difficulty experienced by counsel and witness in establishing a common basis for talking about geographical orientation and direction, even though there are precise ways of describing these within both cultures. This arose, for example, when witnesses were asked about which directions Ganamu had been following in his flight from the water's edge to the place where he died. During cross-examination counsel contrived (sometimes without witnesses fully understanding) a reference system based in the courtroom, with some person or physical feature in the courtroom being posed as a reference point from which to describe relative positions and directions of movement. A problem with this was that, in their gesturing, Yolngu witnesses sometimes pointed in the 'true' direction rather than following the reference system of counsel. This is not to say that Yolngu never construct a directional reference system independent of true directions. Rather, it is that they frequently discuss events in terms of true positions in situations where Europeans would not. This derives in part from a remarkable facility for maintaining an ongoing awareness of their own orientation in space with respect to the geographical locations and celestial bodies around them, even though they be out of sight (this orientation can often be maintained in closed rooms and in dense bush under overcast skies).

However, the fact that Arnhemlanders are constantly aware of their orientation in terms of true directions does not mean that they are familiar with the compass as an instrument or with compass terminology (i.e. *north, south, east* and *west*). Djambarrpuyngu directional terms (listed in section 2.7.3) are derived from specific seasonal wind names. While there is one-to-one correspondence between Djambarrpuyngu wind-based terms and the English words *north, south, east* and *west*, there is not necessarily an overt shared conceptual basis in the

compass, so that explicit use of the term *compass point* by counsel sometimes resulted in confusion.

The following extracts show QCGF, and later CTF, attempting to ascertain from GW the directions in which Ganamu had run after turning away from him at the shore.

• (p415)

QCGF: And you also told us - you indicated to us the direction that the dead man was moving in. You pointed across the courtroom. Did you do that?

GW: Yes.

QCGF: When you pointed across the courtroom were you working on compass direction?

GW: Yes.

QCGF: What direction was he running in by a compass?

GW: Well, first he was running angle and then he turned toward the tree.

(This reply raises a doubt as to what GW understood from the expression *by a compass*.)

QCGF: When he was running on the angle what direction was that by compass, north, south, east, west? Which way, do you know?

GW: North, I think. Yes, north.

(GW demonstrated familiarity with these terms but did not establish that he could use them correctly—this could have been checked by asking him to give the Djambarrpuynngu term.)

QCGF: When he changed direction which way was he going by compass then?

GW: West.

(GW demonstrated that he has learnt what is meant by *'going by compass'*, but there still remains the possibility that he used *west* and *north* inaccurately.)

• (pp436-7)

CTF: You said that the deceased ran firstly - remember Mr Ross asked you what compass direction it was? Do you think you might have been a bit mixed up about that?

GW: No

CTF: Because I think I can tell you that on the maps we've got here that north is out to sea?

GW: Yes, but I'm sittin' this way that's why I am telling this different way. If I sit on the other side, yes, I can tell the directions.

(In referring to a map CTF could see which way north was in relation to the beach. GW had the advantage of knowing where the beach and ocean were in relation to where he was sitting in the courtroom and of being confident in his knowledge of directions, although he had not demonstrated accuracy in the use of the English terms. Anglo-Australians will often refer to a map and discuss directions without necessarily knowing their orientation relative to true directions. And, while Yolngu are constantly aware of where places are in reference to



**Part Five: Focus on Miscommunication**

---

themselves and in relation to each other, the reference point remains themselves (though they might mentally transport themselves to some place in order to talk about the position of that place with respect to another). Thus the direction in which Yolngu witnesses were facing *at the time of cross-examination* affected their ability to address matters of direction raised by counsel. Also, without a basis in Yolngu culture for the European convention of directing north to the 'top' of a page, placing a map in front of a witness such as GW did not provide sufficient basis for effective communication. Opportunity was required to become familiarised with the map, relating its markings to the places that are actually known, and to orient the map according to true directions. The exchange continued:)

CTF: Okay. You weren't talking about the position on the compass when you said north, were you?

(Reference to the compass as an instrument may be a source of confusion.)

GW: Yes.

(*Yes, I was or Yes, I wasn't ?*)

CTF: You were talking about north up the beach?

(If '*up the beach*' means from the water towards the bush then it cannot be north if north is indeed out to sea (as CTF asserted earlier). Was CTF introducing a second referential system whereby north was deemed to be up the beach from sea to bush, west to the left, and east to the right? If so it was unlikely to have been understood GW since this re-referencing seems rather to emerge from the European idea of a four sided page with north uppermost.)

GW: Yes.

CTF: Is that right?

GW: Which north?

(GW indicated confusion as to what exactly the word *north* was referring to. This might have derived from CTF using the word in two (opposite) ways—out to sea, and up the beach.)

CTF: Well, when you said he was running north - remember you told Mr Ross - he asked you what direction he was running on the compass and you said north?

GW: Yes, what's you call this way?

(GW pointed in a direction across the court room seeking to establish with counsel a common understanding of the meaning of this word *north* before proceeding further.)

CTF: I beg your pardon?

GW: What's you call this way? I just want to get it clear.

(Again he gestured in the same direction. Counsel was put in a difficult position as, in common with most Europeans, he was unlikely to be able to spontaneously respond with the correct compass direction.)

CTF: When he asked you the question about compass - - - ?

GW: Yes, I know, but I just want to - - -

CTF: Did you know what he meant about compasses?

GW: Yes, I know, but I just want to get it clear first, see. Don't mix me up.

(Communication breakdown has degenerated into communication conflict. GW was perhaps frustrated because CTF challenged his knowledge and yet would not allow him the opportunity to clear himself by actually stating what direction he, CTF, meant by north—not by the map—but by physical demonstration.)

CTF: When you said he was running north?

GW: Yes.

CTF: Did you mean north to be up the beach towards the trees?

(If north means the direction out to sea (as CTF's map showed) then '*up the beach*' would be south, in which case it may be that GW had confused the English terms *north* and *south*.)

GW: Yes.

CTF: Is that right?

GW: Yes.

CTF: Is that what you meant by north?

GW: Yes.

CTF: And when you said he was running to the west, did you mean from where you were standing he was running left?

(CTF seems to have tried understanding GW's evidence by re-defining directional terms such that *front* is north (i.e. at the time in question GW was himself facing away from the sea towards the trees), *left* is west and *right* is east. Though this may be an acceptable Anglo-Australian convention it appears contrived and confusing when put in Yolngu terms, since their directional terms (and use of the *n*) are firmly rooted in their physical surroundings.)

GW: I can show it.

CTF: Yes, okay, that might be just as well.

Counsel and witness agreed to forgo compass terminology for the moment and referred to photographs of the beach in question. A few questions later CTF again raised the matter of directional terms whereupon miscommunication resumed (p437):

CTF: So when he was running that first part, you are talking about north?

GW: Well, I want to call it - I just tried my best, whatever.

CTF: Yes, I understand that. So then he ran towards the tree?

GW: Yes, just like that. (gesturing)

CTF: That was what you said was towards the west?

GW: Yes.

CTF: So are we agreed that when you talked about north we were talking about running basically up the beach towards the tree, is that right?

GW: Yes.

CTF: And when you were talking about west, you were talking about going along the beach towards the left?

GW: You mean the beach beach?

CTF: Yes?

Part Five: Focus on Miscommunication

GW: No, no, no.  
CTF: Well, what did you mean when you talked about - which direction is west when you said west?  
GW: Well, I don't know about the map or what you got there. I can only see it.

It was obvious by now that witness and counsel could establish no common basis for talking together about directions using compass terminology. GW could not accept counsel's redefinition of true directions as up and down the beach, and left and right along the beach. CTF would not (or could not) accede to GW's requests to negotiate understanding by means of physically pointing in a direction and then agreeing upon the term to represent it.

### 10.5 Discussion

These extracts from the evidence of these three Yolngu witnesses at the *Elcho Coronial* identify a pattern of pervasive and sometimes insidious miscommunication during Anglo/Yolngu evidentiary discourse conducted in English. For witnesses whose English skills were sufficiently developed so that interpreting assistance was considered unwarranted, confident responses belied miscomprehension of grammatically complex questions and the failure to appreciate the pragmatic force of some questions. As a result, there were occasions when a response may have been taken as addressing one proposition whereas in fact it addressed some other.

In spite of the acknowledged NESB status of Yolngu witnesses testifying in English at the *Elcho Coronial* their comprehension of questions was rarely monitored so that the court was often left without a firm basis for assessing the accuracy, veracity or applicability of their responses. Witnesses were frequently guided by *yes/no* questions and even cued as to which of the two alternatives was being sought. They were often presented with a proposition by counsel—the specificity of which may have been obscured by complex syntax or by the proposition being linked grammatically over more than one question—and asked to agree. Confusion as to what witnesses were agreeing to (or disagreeing with) was compounded when propositions were framed negatively.

While coercive leading questions, principally in the form of declaratives, are highly valued by lawyers in conducting cross-examination (see section 8.2.4) there is a strong argument against their unfettered application in the case of NESB Aboriginal witnesses giving evidence in English. Mildren (1997:14-16) has pointed out that a trial judge has the power to 'disallow questions, or forms of questioning, which are unfair' and expresses the opinion that leading questions put to NESB Aboriginal witnesses frequently fall into the unfair category.

Mildren cites *Mooney v James* (1949) VLR 22 as the basis for a trial judge's (and by extension, a magistrate's) discretion to disallow leading questions—even during cross-

examination—in situations where the witness is not protected from *suggestibility*:

The basis of the rule that leading questions may be put in cross-examination is the assumption that the witness's partisanship, conscious or unconscious, in combination that he is being questioned by an adversary will produce a state of mind that will protect him against suggestibility. But if the judge is satisfied that there is no ground for the assumption, the rule has no application, and the judge may forbid cross-examination by questions which go to the length of putting into the witness's mouth the very words he is to echo back again.

Mildren suggests that linguistic and cultural factors serve to activate this power where NESB Aboriginal people are giving evidence in English:

Apart from gratuitous concurrence, 'scaffolding' (where the witness adopts a word or phrase not familiar to him put by the questioner) is not uncommon particularly among language learners. As a general rule it is submitted that the cross-examiner of a witness who is plainly Aboriginal by culture should not put leading questions to such a witness without the leave of the trial judge.

Mildren has made this suggestion in the context of proceedings conducted in situations where competent interpreters are not available (ibid:7). In the case of the *Elcho Coronial* the 'suggestibility' of those Yolngu witnesses who were given access to the interpreter was offset by his assistance (or sometimes by his interjections). However, for those who gave their evidence in English the assumption that they were protected from suggestibility under cross-examination was rarely questioned.

There was a tendency at the *Elcho Coronial* to overestimate the English language proficiency of Yolngu witnesses without due consideration being given to the demands of courtroom questioning. Even when Yolngu witnesses do understand sentence meaning it cannot automatically be assumed that they understand a question's intent or that they are aware of nuance, idiom and cultural values which colour meaning. Conversely it cannot be assumed that counsel are hearing a witness's message when they themselves have minimal familiarity with Yolngu culture or are unaware of the distinctive features of the variety of English (i.e. E-YM interlanguage) that Yolngu use. And the need for the court to be aware of specific intercultural differences becomes critical when witnesses are asked to answer to criticisms (whether explicit or implied) of their own or other people's behaviour, on the basis of Anglo-Australian values held by counsel.

The analysis of extracts from GW's testimony in particular, reveals that failure to recognise a NESB witness's difficulty with even commonly used English grammatical constructions (as with *could see*) can result in their testimony appearing confused or incoherent to the point that a court will be effectively unable to hear and receive their evidence. The preclusion of interpreting assistance effectively prevented this witness from providing a full account under examination-in-chief of what he had seen at Walwal Beach and ensured that the reliability of any substantial evidence which he did manage to give about the location and movement of

people could be subsequently discredited in the absence of a meaningful discursive framework for dialogue in the spatial domain.

While it is true that grammatically based types of miscommunication were recognised as operating (the problem of embedded clauses and of negative questions, for example) their elimination was not achieved in this case. The obvious solution to miscommunication of a linguistic nature is to utilise an interpreter—provided that the interpreter is not constrained to the ‘conduit’ role. If the interpreter is so constrained then problems with negative questions and embedded clauses would simply be carried over in the translation.

For example, if the Djambarrpuyngu reply of *Yo* (= yes) to a negative question (such as *The old man didn't go in the boat, did he?*) were directly translated as *Yes* then this would be misleading—conveying the impression that the witness disagrees with the proposition whereas in fact it has been confirmed. In order to convey the intended meaning the interpreter requires the opportunity of either free translation (i.e. translate *yo* as *no*); explication (*yes, the old man didn't go in the boat*); or, explanation (*the witness said 'yes', but in doing so was following the Yolngu conversational convention in affirming the truth of your proposition; namely, that the old man didn't go in the boat*). Similarly if counsel asks a question with an embedded clause then to ensure that the witness addresses the principal proposition the interpreter requires the opportunity to reconstruct the question in the translation.

The avoidance or resolution of miscommunication in spatial discourse is also relatively straightforward—requiring the provision of interpreting assistance, again with the qualification that this will not succeed with the constraint of only direct translation. In the case of CTF's questioning of GW about which way Ganamu had been running, miscommunication was heavily based in lexico-semantic factors that would have required some explanation.

There *are* equivalents in Djambarrpuyngu for English compass directions, for *left* and *right* (section 2.7.3), and for the expressions *towards the sea* (= *yarrupthun*) and *away from the sea* (= *duwatthun*). But there are differences in the way these terms are used in describing directional movement. Yolngu do not usually use *left* or *right* in speaking about the direction of movement. Also it is confusing to place a map on a table and discuss directions in reference to the map alone, without explaining symbolism and ensuring that the map is aligned so that north on the map is aligned with north in the real world. In order to avert or resolve miscommunication in this discursive context an interpreter requires the opportunity to alert each side as to how their conventions differ and to facilitate the negotiation of an agreed method allowing the meaningful exchange of information to proceed.

Much more problematic is the question of how to deal with miscommunication that emerges from pronounced intercultural differences. In questions put to AG under cross-examination by CTF, Ganamu's family stood accused of showing a lack of concern for Ganamu by not ensuring he took his medicine (*'you just let him get sick in the head'*). To the Anglo-Australian observer this accusation and its implication, that his family ultimately played a part in his death, were plain to see. However, AG's reply *'Yes, ... he could just walk away'* indicated that he had not perceived these meanings (for the reasons already discussed above in section 10.2). An interpreter could have ensured that the accusation of neglect, which although implicit was nevertheless heavily signalled in CTF's use *'just'*, was explicated in the translation. However, this would require the interpreter to go beyond a translation of sentence meaning which, on its own, would fail to account for the question's illocutionary force. In order to convey the pragmatic meaning of the question as an accusation the interpreter may need to expose the Anglo-Australian cultural value that gives the question this sense. Namely, that it is bad if people allow a person to become mentally sick when they can stop it, and it is acceptable to override someone's personal independence in favour of their mental stability, even if this requires physical assault (which becomes redefined as an act of caring).

In taking this approach an interpreter would be expected to have the approbation of the court (over the probable objection of counsel) since it clearly involves imparting information which is in addition to that strictly contained in the question. And, while in some judicial quarters it is considered occasionally acceptable to explain underlying concepts in order to ensure that communication is fully effected, in general it is not (Laster & Taylor 1994:111-28).

While in this example the meaning of the question could be adequately exposed with a brief explication of the implied accusation and so need not interrupt the flow of testimony (apart from possible diversion arising from counsel objections), we have not yet considered the implications of conceptual hurdles to intercultural communication that are much more prominent, to the extent that the possibility of conveying each party's intended messages to the other becomes problematic. This can arise where parties do not share a common conceptual framework which can allow discussion of the matter in question. In Chapter 11 we turn to examine limits to Anglo/Yolngu communication under circumstances where the interpreter is extended an active and discretionary role akin to that of Laster Taylor's (1994) 'communication facilitator' (see section 8.1.3).

## CHAPTER 11

### PROBLEMATIC INTERCULTURAL COMMUNICATION IN BILINGUAL CONTEXTS

Interpreting assistance is not sufficient of itself to ensure the removal of culturally based barriers to Anglo/Yolngu communication if the interpreter's role is narrowly defined. In Chapter 3 it was shown that translation requires attention to meaning at different levels—semantic meaning, intended meaning, implied meaning, presupposed meaning—and recognition that many concepts pertaining to a given language and cultural framework cannot be rendered meaningful within the terms of another language/culture system without recourse to explication and sometimes to explanation. In the Anglo/Yolngu communication context significant linguistic and cultural differences mean that the interpreter must frequently step outside a confined role if the intended messages of one party are to be rendered meaningfully to the other. And even then there are some conceptual domains where the capacity for an interpreter to facilitate intercultural communication is severely tested.

In this chapter the complexity of Anglo/Yolngu communication will be discussed in circumstances where the interpreter was relatively unconstrained and where communication appeared to be sincere (i.e. in the sense that any advocacy tactics involving intentional miscommunication were not seen to be operative). While the examples that are to be discussed are sufficiently distinctive in their circumstances so as to require separate description, they are united by the presence in each of conceptual barriers to Anglo/Yolngu communication that can be traced to the presence of significant intercultural differences. Yet the purpose of this chapter does not lie in identifying and highlighting areas of radical Anglo/Yolngu cultural differences and so to argue that the challenges to intercultural communication in these domains are insuperable. Rather it is to discuss particular challenges to intercultural communication that surfaced during the *Elcho Coronial* and to show what is involved in dealing with them.

The initial examples (section 11.1) concern the disorientation of a middle-aged Yolngu witness with very little English who faced questions about written transcripts of his oral statements. Communication floundered when counsel took for granted that the witness understood the relationship between a written document placed in front of him and a conversation at another time and place. These examples are intended to demonstrate the high degree of communicative difficulty experienced by some Yolngu as participants in court proceedings—not as result of language barriers (they have interpreters)—but because of the extent to which Western cultural knowledge is presupposed in typical courtroom questions (such as referring a witness to their statement).

Section 11.2 presents extracts from a probing cross-examination of Brian Gumbula by Queen's Counsel for the Commissioner of Police. While the discussion was conducted mainly in English it also relied heavily on the participation of the interpreter and centred on exploring Yolngu concepts of kinship, mental illness, death and dying. Analysis reveals the intense and yet faltering struggle to negotiate understanding in this Yolngu cultural domain with counsel and coroner being obstructed in their understanding of the witness's explanations by interference from the Western delineation of spiritual and secular domains.

In section 11.3 the issue of intertranslatability between English and Djambarrpuyngu is considered with respect to the coroner's findings which he had prepared in English and which were then translated into Djambarrpuyngu for oral delivery to a Yolngu audience at Galiwin'ku. One crucial paragraph in the coroner's 24 page document explains the legal reasoning behind his finding that no credible evidence had emerged that would justify committing Ganamu's killer to trial for an indictable offence. The challenge for the two translators was that this reasoning lost its logic in transition to the Yolngu cultural framework.

### **11.1 Written statements used in court**

Yilikari Bakamumu (YB) was the old man, trusted by Ganamu, whom police had asked to assist with Ganamu's capture at Wawal Beach but who, at the appointed time, declined to take part in what he saw as a police activity against his trusting relative. Through an interpreter he had been interviewed by police and by lawyers with several statements resulting.

YB was one of the Yolngu witnesses whose understanding of English was so limited that most questions and answers required full translation. For such witnesses translation alone was often insufficient and there were frequent occasions when interpreter and witness would require some discussion prior to the interpreter relaying the answer to a question. The most frequent cause for discussion was the need to provide necessary background information for the witness to understand the question. In the case of questions relating to their statements there was often a need to explain the origin, nature and courtroom significance of the transcription of an interview conducted by police (in Q/A format) months before the witness's court appearance. Such interviews had been audio-recorded, were then transcribed verbatim, and appeared in this form in court as witness statements.

Whether or not the witness had been interviewed with the assistance of an interpreter these transcripts only carried what was said in English. If during the course of cross-examination segments of such statements were back-translated by the interpreter into Djambarrpuyngu then witnesses would naturally fail to recognise the utterances as their own. Furthermore, some witnesses had spoken very little in their interviews with police—it was often the police officer who provided the wording of much of a statement. This arises where questions from



the police officer are followed by short responses (often simply a murmur or a *yes*) from the witness. Yet during cross-examination it was common for counsel to question a witness about something that was contained in the witness's statement as if it were the witness's own words.

Thus the interpreter would have to spend a considerable amount of time in court assisting counsel in working back with the witness along the pathway which connects a strange, typed document to a conversation of months before where no such document existed; or trying to explain to the witness how a lawyer comes to attribute strange words to the witness without the lawyer having been present at the interview to hear what was said.

The following excerpts from the transcript show the kind of difficulty that was encountered with the witness YB. In the first example QCGF was referring the witness to a statement that he had taken himself in his capacity as senior counsel representing Ganamu's family. YB requested information which would enable him to understand what the piece of paper purported to be, and he was intent on recalling the conversation that had led to it. In the second extract Counsel representing the Commissioner of Police began questioning YB regarding another statement he had made to QCGF. Here, YB placed the relevant conversation more easily and his attention shifted to the writing itself. The third extract is from cross-examination by CTF and refers to a statement taken by police. Here, the principal problem was YB's reluctance to accept responsibility for the contents of a document produced after the fact of the electronically recorded interview and containing many pages of paper—when his 'story' had been only short.

- (p334)

This excerpt presents the initial section of YB's cross-examination by QCGF where he was referred to a statement taken several months prior. At that time YB had related a short account about having gone by boat to Walwal Beach with another Yolngu man (Larry) after the shooting. The story had been told through an interpreter, written down in English and then signed by YB (YB was literate to the extent of being able to write down some of the letters of his Yolngu given-name). QCGF's initial questions sought to establish that YB recognised the document. YB's difficulty lay in identifying the conversation that gave rise to it. The official transcript has been augmented with transcription prepared from an audio-recording.

QCGF: I have some questions, sir, but I want to ask you about this paper that you put your name on.

(Int): Nhe ga nhäma dharajan nünhiyi djorra'? (*Do you see with recognition that paper?*)

(YB): Ne. (*Yeah*)

(Int): Nhokun dhuwali wukirriwuy? (*This is your writing?*) (interpreter points at signature)

(YB:) Mmm. (*Mmm*)

- ... (Another barrister interrupts to ensure the paper's tender.)
- QCGF: This paper, sir, says that you and Larry went over to the beach on Saturday night. Is that right?
- Int: Before I interpret that question can I ask you which beach?
- QCGF: ~~Walwal~~. **Walwal**.
- (Int:) Nuruŋ ga lakaram be nhuma Dhunguparri marrtji Saturday munhawu bala Walwallil. Nhä ŋunhi yuwalk? (*This says supposedly that you and Dhunguparri [Larry's Yolngu name] went to Walwal on Saturday night. What is that, true?*)
- YB: < Yo, ŋarra marrtji balayi.> *Yes I went there.*
- QCGF: Have you had a chance to read this statement over recently?
- (Int:) Wanha ŋula yolthu yo ŋuy dhuwandja dorra' nhokal milkum, wo milkuŋal, gäthur wo barpuru? (*Did perhaps some person show you this paper earlier today or in the recent past?*)
- YB: < Bäjŋu. > *No.*
- (YB:) (referring to the paper, witness speaks aside to the interpreter) Nunhi nhä? Yolthu ga djäma? (*What is that? Who made that?*)
- QCGF: Can you translate it for him?
- (YB:) Yolthu ŋunhiyi ga djäma? (*Who worked that (paper)?*)
- (Int:) Be nhokuŋ dhuwal dhäruktja. (*Supposedly, these are your words.*)
- (YB:) Nhätharjuwuy? (*From which time?*)
- Int: He's asking when was this written?
- QCGF: It was written, I think, the night of 18 June 1990, or the morning of 19 June, just before court started here (i.e. at Galiwin'ku) the very first time. (i.e. three months prior)
- Int: The first time?
- QCGF: Yes.
- (Int:) Dhuwandja dhäwu nhokuŋ ga Dhunguparriwuy. Dhuwandja dhäwu nhe gurrupan walalaŋ mak nhätha? — courtmirriy, yurr ŋurrununy, ŋurruŋu ŋunhi courttja, ŋurru-yirr'yunawuy. Balanyamirriy walal ga dhiyal nhina, court. Yurr yaka dhiyal ALPA-ŋur. Nunha bala Art-and-Craft-ŋur, yurr yaka Resource Centre. Ga balanyamirriy nhe dhuwandja dhäwu lakaram, yurr yaka court-ŋur. Mak wanha? Mak wanhal?
- (*This story comes from you and Dhunguparri. You gave this story to them, but when? — perhaps at the time of the court, but the beginning, the first court, at the start. At that time they were here, the court. But not here at the Arnhem Land Progress Association training centre. It was over there at the Art and Craft centre, but not the Resource Centre section. And at that time you told this story, although not in the courtroom. Where perhaps? Where perhaps?*)
- (YB:) Yakarray! Wanhal ŋarra ga lakaram? Yo ŋunhal, ŋunha bala ŋurruyirr'yunawuy dhyalnydjä? Yurr ŋunhal? Nunhal mak linyu ga nhina, mak bäy Yulkurruwuywial. Yo. (*What exasperation! Where was I speaking? Yes over there, over there at the commencement here (at Galiwin'ku). But whereabouts? Over there perhaps we were sitting, maybe at Yulkurruwuy's house. Yes.*)

(The witness has now indicated recalling the setting of the conversation that the paper records

Part Five: Focus on Miscommunication

and so the interpreter informed counsel, in a sentence, of the essence of his previous discussion with the witness:)

Int: Yes, he was just placing the time and place where he gave his statement because he doesn't recognise the typing **and the writing**. (i.e. referring to YB's earlier comment 'What is that? Who made that?')

• (p335)

This extract begins with the first question put to this witness by Counsel for the Commissioner of Police (CCP) in which he referred without explanation to 'an earlier statement'. Because of YB's frequent contact with Ganamu in the days leading up to the shooting various officials had cause for conversation with him. Some of these conversations came to be 'statements' yet YB could not have known which of many conversations were being indicated by the documents shown to him in court. The interpreter asked for additional information to allow the witness and interpreter to determine this. Then he proceeded to explain to YB how his narrative had been translated and transcribed on to the paper. (The official court transcript is augmented by transcription and translation of conversation between witness and interpreter.)

CCP: Mr Bakamumu, I'd just like to ask you a couple of questions on behalf of the Commissioner of Police. You said in your earlier statement that when the time came to go from Dhayiri over to Walwal Beach, that you told Joe Gumbula that you weren't going to go. Is that correct?

Int: I'm not sure he can understand such a long question, and I also find it difficult, if you wouldn't mind taking it in stages.

CCP: Would it be easier if I was to ... produce his original statement. This one here. Perhaps you could translate it ... Would that be easier? I suppose I am interested in the last third of page 5, and also the first sentence at the top of page 6.

Int: Can I just make sure that he remembers ~~it~~ **this paper**?

CCP: Just make sure that he remembers the statement and if he says that's true.

(Int:) Djorra' nhe ga nhäma dharajan? (Do you recognise this paper?)

(YB:) Ne. (Yeah.)

(Int:) Nhe ga waja — ga manyak— yolthu ga wukirri dhuwandja? (You were talking—OK—who was writing this?)

(YB:) Yakarra marngi. (I don't know.)

Int: I need to have some assistance as well because this is the first time I've seen this statement. I assume it's the one, from the signature at the back, where Bakamumu, assisted by Colin Baker, is making a statement to Mr Ross, who was writing it down.

CCP: It was, yes. Would it be easier for me to simply ask him questions about that - - -

Int: No, if you give me time I will place it but I had to be clear myself, I don't want to lead him up the garden path.

- (Int:) Njuringi bala court — nhe ga Colin - - - (*At the time of the previous court — you and Colin- - -*)
- (YB:) Yol dirramu? — Mmm. (*Which man? -- Mmm.*)
- (Int:) - - -ga nhina Colingal wāṅaṅur. Dhāwu nhe ga gurrupan balanyamirriy. Ga nhe wāṅa ga. Colin, ṅa/i ṅunhi ḡuṅga'yundja, dhāruktja. Ga ṅayi wukirri- - - (*- - - were sitting at Colin's house. You were giving a story at that time. And you were talking. Colin, he was helping, with the words. And he wrote- - -*)
- (YB:) Yo, yo, yo! (*Yes, yes, yes!*)
- (Int:) Bili nhe ga thinking? (*Are you already thinking?*)
- (YB:) Yo. (*Yes.*)
- Int: Now the story is in place. Now would you like to ask your questions?
- CCP: If he understands that, can he now tell us if what he said there in that statement is the truth.

(Before the interpreter can deal with this request YB seeks further clarification. He recalled the conversation but did not understand that the writing of Colin represented his own story. The interpreter explained how YB's oral account came to be represented on paper:)

- (YB:) Yolkuṅ dhuwal, Colirguṅ? Njanydja? (*From whom does this (story) originate? From Colin?*)
- (Int:) Yaka, nhokuṅ dhuwal, yurr dhuwal muka Balanda matha. Nhe ṅunhili wāṅa Yolṅukurr, bala ṅayi ṅunhi bilmaram matha balandawal. Ga ṅuruṅ — ṅayipi wukirri djorra'lilnydja. Dhāwu dhuwal nhokuṅ. Njarra dhu reading ga nhe dhu ṅāma maymakkum. Ga guyaṅa nhe dhu, wanha balan ṅunhi yuwalk, wo bāyṅu. Nhe ṅāku!
- (*No, this comes from you, but it, of course, is in English. You were talking in Yolngu Matha, then he turned the language into English. And that person — he himself wrote it on to paper. This story is from you. I will read it and you will listen carefully. And you will think, whether it is true, or not. You listen!*)

(The interpreter then sight-translated the narrative from English into Djambarrpuyngu.)

• (p337)

By this stage YB had been questioned by three barristers. The third of these had questioned YB about the nature and progress of Ganamu's mental illness. The fourth counsel was CTF whose first question (as with previous counsel) could not be answered until contextual information was provided. In this longer extract the often lengthy discussion in Djambarrpuyngu between interpreter and witness has been summarised (in English) from the audio-recording:

- CTF: Mr Bakamumu, did you make a - did you talk to the Police officers about what happened a day or so after the deceased died.

(As the interpreter began translating, YB interrupted to ask if this reference was to a conversation at Walwal Beach. The interpreter sought clarification:)

Part Five: Focus on Miscommunication

Int: Can I ask you Mr Reeves, he's - the witness is asking in what location do you refer to? Where was the conversation taking place?

CTF: At the Police Aide station down here.

(YB had evidently spoken to police on a number of occasions. Following discussion about the location and the time of this interview, YB recalled the particular conversation:)

Wit: *Yes I remember.*

CTF: Could the witness be shown ... the transcript of the tape.  
When you spoke to those police officers did they have a tape recorder there?

(YB did not recall the conversation being taped and wanted to know where and when this taping had taken place.)

Int: We are still establishing something. Could I ask which day is this referring to?

CTF: It appears on the top of it to have been taken ... on the morning of the second day after he died.

(While CTF was talking YB spoke to the interpreter challenging this document on the basis that it comprised many pieces of paper (14 pages) while his story had only been short. The interpreter disregarded this comment in favour of helping YB recall his taped interview, which he finally did:)

YB: *Yes, I remember, that was a long time ago in the new building for the police aides.*

CTF: Do you remember ... Keith Djiniyini being there too ... did he help you answer the questions that the policemen were asking you? ...

Wit: *Yes.*

CTF: And did the policemen ask you whether you were aware that the dead man had been involved in some trouble before he died.

YB: *I don't know about trouble on this side.*

CTF: Well did the policeman ask you...?

(YB turned to the interpreter to reject responsibility for the contents of the document:)

YB: *My story is a short story, this paper is many pages. I don't understand why this is supposed to be my story.*

CTF: Do you remember the policeman asking you whether you were aware that the dead man had been in some trouble before he died?

YB: *Yes, I remember it - I remember it now but the Keith, the chairman, would say it was quite a short story.*

(YB grew more and more to reject ownership of the written document for which he was purportedly responsible. CTF ignored this difficulty and YB continued discussing this problem with the interpreter even while the interpreter relayed two more of CTF's questions directing YB to confirm what had been said to him and what he had replied. Obviously, the transcript carried the English translation of what had been said so that when the interpreter back-translated this conversation he could not do so using the words that were actually used. Finally the interpreter intervened to inform counsel of this difficulty:)

Int: Before I persevere, I'd just like to explain something. He - the witness remembers his own words. When I read the English he doesn't remember those words because he didn't speak in English. When I translate it, obviously I translate it into different words to the ones he used. ...

(CTF suggested the possibility of listening to the tape. In an aside to the interpreter YB asked to be read some more and so the interpreter offered to try with the witness once more. The next question again addressed the matter of what YB had said to the police at the interview and the same type of difficulty arose. The interpreter finally asked CTF to put the statement away:)

Int: I'd like to put this paper down because it's causing problems, because he doesn't accept that this is his words. If ... you can avoid reference to that paper, I suggest that you perhaps ask him again...

This particular witness was not the only one to have difficulty with a transcription of an interview. Such difficulties are understandable, especially when the witness is asked to comment upon a text based on a conversation with police to which the witness contributed little. The actual quantity of text which comes from the mouth of the witness during a police interview can be very small. For example, the youth who had driven the boat was interviewed as an eye-witness by police for 30 minutes out of which a 20 page transcript was produced. At one stage in the proceedings I was asked as interpreter to check the transcript (ref. CIB1/000001, 29/4/1990) against the tape for accuracy. Whilst correcting the transcript I was surprised to discover that the first four pages of transcript showed that although 41 questions had been asked of the witness, he had only uttered four audible words apart from *yeah* and *no* (13 of the questions were not answered). It should come as no surprise then that when the time comes for the witness to be cross-examined on his 'statement', a significant amount of discussion is required between interpreter and witness to resolve inevitable confusion.

Clearly, in framing their questions of non English speaking Yolngu witnesses counsel should consider the limited extent of their Western cultural knowledge. Questions may falsely presuppose understandings about how Djambarrpuyngu conversation can become transformed into English print accurately reflecting that conversation. These understandings must be established before the witness can usefully respond to questions about any previous statement.

## 11.2 To guide the spirit or give first-aid?

The cross-examination of Police Aide Brian Gumbula by Queen's Counsel for the Commissioner of Police shows the court struggling to accommodate Yolngu understandings about orientation and reality. The probing style of cross-examination (see section 9.1 above) that QCCP adopted enabled him to draw BG into discussion about matters of Yolngu kinship, ceremony and law in the context of BG's responsibilities in assisting the passage of

Ganamu's spirit to its place of rest following his death. QCCP was particularly interested in exploring the aide's fears, anxieties and responsibilities as they applied at the time of death and while he was giving his statements to police.

QCCP revealed two motives. One was to establish that BG had been terrified of being infected with the dying man's spirit and so had not wanted to be near Ganamu (BG had already claimed to have been denied access to the dying man). Secondly, he sought to establish that this fear, combined with anxiety in respect of various ceremonial and cultural responsibilities, prevented him from thinking and recollecting clearly (QCCP explicated this motive at the conclusion of his cross-examination—p1155, see section 9.4.6 above). Achievement of these outcomes was inhibited by a failure to take into account that, for Yolngu, ceremonial concerns in respect to guiding a dying man's spirit are not inconsistent with a concern for the urgent physical needs of the gravely wounded man.

QCCP began by taking up a point concerning Yolngu perspectives on death and dying that had arisen when BG had earlier been cross-examined by CTF. There (p736) BG had stated '*we have a belief that the spirit of a dead person attach itself to the people around*'. He had also expressed a concern that a mentally-ill person who has died may infect another with his sick or bad spirit, saying '*the spirit gets into me and I get the same reaction as that dead person*'. BG reaffirmed this earlier testimony concerning his fear of becoming possessed through being physically close to a dead person in an isolated area. (It should be noted though, that Ganamu had not died for almost an hour after he was shot and that evidence of this fear applying during the period when he was still alive had not been adduced through this questioning.)

### 11.2.1 The meaning of Yirralka

QCCP proceeded to inquire as to where the spirit of a dead person should go and of the role of ceremonies in assisting the journey. BG spoke of a spirit's original source or *Yirralka*—which he gave as a generic term for this sacred source located in a person's tribal land (p1142-3; the official transcript is augmented by transcription and translation of Djambarrpuyngu conversation):

QCCP: Do they (ceremonies) try to make sure that the dead person and his or her spirit will go back perhaps to a special place for that person?

BG: Yeah, that's correct.

QCCP: Maybe that person's birth place? Where he was born or conceived or - - -

BG: Yeah, we call it **Yirralka** which is the special place of - that's the special place that our spirit goes to, original- - -

QCCP: Where you started?

BG: Yeah, where we started.

- Cor: Do all the spirits of your community return to the same place or - - -
- BG: Well we - some of us are different tribes and we've got our own homelands.
- ...
- QCCP: And I wonder if I can ask Mr Cooke also, is there a European interpretation of that word?
- (BG:) Heaven-nha, ya' balanya nhakun. (*Heaven; kind of like that.*)
- Int: There isn't really a literal interpretation. It could be explained that that's a source of the spirits, each particular tribe has that place. If we were to look for an equivalent we might say heaven, that's where the spirits come from and that's where the spirits go to.

BG's introduction of the concept *Yirralka* prompted coroner and counsel to pursue its meaning in questions to both witness and interpreter. The coroner appeared to seek to understand the word in terms of the Christian concept of a universal home of all spirits (i.e. heaven) when he asked '*Do all the spirits of your community return to the same place or ...?*'. QCCP's request for '*a European interpretation*' as opposed to a mere English translation indicates that he was seeking to understand *Yirralka* as a concept rather than to simply establish an English label.

The challenge in translating *Yirralka* was indicated by the interpreter with '*there isn't really a literal interpretation*'<sup>95</sup>. The usefulness of the *heaven* analogy proffered by BG is restricted. In Anglo-Australian culture heaven, as the place where the spirit goes, is not locatable. Christians generally do not place heaven in the material domain although they speak about it in locational terms. But to Yolngu the place where the spirits go is not only physically locatable but material. Each clan has one or a series of places and people may know precisely where their spirit will come to reside. A fully informative exposition of the *Yirralka* concept would have required discussion of differing notions of *spirit* (for the Yolngu it is tangible and proactive and for the Anglo-Australian it is ethereal at best) and of the meaning of clan identity in the Yolngu world.

This extract, incidentally, has provided some validation of an interpreter's role as 'communication facilitator' (see section 8.1.3 above). The interpreter explained that an attempt at literal interpretation was not useful and, based upon information provided by the witness, gave sufficient explanation of the term so as to enable the discussion to continue:

- QCCP: Thank you. And so there are different places on Elcho Island that are special for different people?
- Wit: Yes.
- QCCP: And I think, for instance the mission site (i.e. the Galiwin'ku

<sup>95</sup> In section 1.1 (above) a definition of *Yirralka* as 'clan estate' was given. This is the primary meaning of this polysemous term (Dayngumbu, G. 1994, pers. comm., August).



- township) is a special place for you and your family. Is that right?
- Wit: The mission, Galiwin'ku itself, township, that belongs - traditionally belongs to my father's mother's land. Belongs to - - -
- QCCP: The Gunbirrtji clan?
- BG: Gunbirrtji. Gunbirrtji tribe<sup>96</sup>.
- ... (The interpreter was asked to provide spelling.)
- (Wit:) Ga nhawiku, Gunbirrtjiw ga nhawiku Garrawurraw — Liyagawumirriw walalaŋ. (And to what's-its-name, belongs to Gunbirrtji mob and what's-their-name, to Garrawurra mob — that's the Liyagawumirr people.)
- ... (The interpreter was asked to clarify spelling.)
- BG: And it also belongs to the Liyagawumirr tribe, which is the Garrawurra surname, which now (INAUDIBLE) **I'm adding as** interpreter, is the same name as the deceased ...
- QCCP: Thank you. Sorry, Mr Cooke, you said Leo someone?
- Int: Liyagawumirr is the name of the tribe ... this tribe is <(BG:) ŋarraku bāpa'mirriŋuw (my father's)> Brian's <(BG:) ŋāndi'mirriŋuw (mother)> father's mother's tribe.

BG has identified two tribes as being landowning where one of these was put forward by QCCP himself and affirmed by BG. BG had then gone on to clarify that his connection with the township is through his father's mother's tribe, which is not the same as his own. It is implicit in this answer that he is not a landowner himself. This is because Yolngu law holds that tribal identity, and thus land ownership, is patrilineally acquired and, since Yolngu law holds that people must not marry within their own clan, BG could not be in the same tribe as his father's mother (cf. discussion of Yolngu kinship in section 3.2.2.2 above). The next excerpt shows QCCP mistakenly identifying BG as a traditional landowner for the Galiwin'ku township in spite of BG's clarification that it was the land of his father's mother.

### **11.2.2 Referential disorientation in relation to Yolngu kinship structure**

In spite of QCCP's obvious preparation for this interview (evident in his prompting of BG in respect of the Gunbirrtji clan as landowners for Galiwin'ku township) and BG's willingness to give informative replies to his probing questions about clans and lands, QCCP proved unable to process BG's explanation about his relationship to the Galiwin'ku 'mission site'. He showed no understanding, even at a basic level, of Yolngu kinship structure that could enable him to appreciate the explicit information that he has been given about BG's association through his father's mother's clan (p1150):

- QCCP: But you also (i.e. in addition to being a policeman) had important roles at the mission site, didn't you, because you belonged to one of the tribes which owned that site?
- (Wit:) Yaka ŋarrany wāŋa-waŋaŋu ŋuriki wāŋaw, Galiwin'ku mission. Yaka ŋarraku ŋunhi wāŋa. ŋanydja, ŋarrakalaŋaw bāpa'mirriŋuw ŋāndi' mirriŋuw.

---

<sup>96</sup> The terms *tribe* and *clan* are used interchangeably although many Yolngu tend to prefer *tribe*.

*(I'm not the landowner for that place, the Galiwin'ku mission. That's not my place. Rather, it's my father's mother's.)*

BG: No, I think you misunderstood. I didn't say, or I'm not saying that I am a landowner. It's my father's mother's tribe which is a landowner - - -

QCCP: I see - - -

BG: - - - which owns the land. In other words, my tribe and my father's mother's tribe are different.

(In comparing the translation of the witness's reply (given above in brackets) with the interpreter's rendition of it to counsel one can see that the interpreter has provided a preface on behalf of the witness: *'I think you misunderstood,'* and added a further point (also on the witness's behalf): *'In other words, my tribe and my father's mother's tribe are different'*. The interpreter's foray outside the bounds of translation and into the domain of explanation followed evidence of QCCP's confusion. The interpreter supplied him with culturally-specific information that was inherent but unstated in the witness's answers.)

QCCP: So your tribe owns land somewhere else on Elcho Island?

Wit: Yeah, somewhere.

QCCP: But the deceased, did he belong to your tribe or did he belong to a different tribe.

Wit: He belong to - he belong to Galiwin'ku.

QCCP: Galiwin'ku?

Wit: Galiwin'ku. He belong there.

BG's answer is unusual from a European perspective. However, given that Ganamu's spirit is held within its *Yirralka* at Galiwin'ku then this answer become entirely logical.

### 11.2.3 Guiding the spirit

The next excerpt (p1143-4) shows QCCP and BG discussing the role of ceremonial activity in guiding a dying or dead person's spirit to its *Yirralka* and begins where QCCP asked if the ceremonies should start before a person dies. However, he hypothesised the case of someone old and sick rather than someone seriously wounded. BG effectively restricted the reference of his answer by prefacing it with *'that's when the person is sick and ill and about to die'*.

QCCP: That ceremony should start before that person dies, if possible, is that right? If you know that a person is getting old and maybe he's going to die one day - - -?

BG: Well, yeah, that's when the person is sick and ill and about to - about to die, we normally make special ceremonies, that's some special songs ... which gives breeze to a man when he's just about losing breath. There's a song that gives - - -

Cor: Gives him breath?

BG: Gives him breath, and there's some songs that - when his eyes, you know, close, and there's some special songs that we sing ... when he just pass away, there's a special song. Then continue - - -

QCCP: And more after that - - -

**Part Five: Focus on Miscommunication**

---

- BG: Some more more more after that.
- QCCP: And those songs that are sung just before he dies, are they partly to try and help that person's spirit go back towards his - - -?
- BG: Yes. Yes.
- QCCP: - - - Yirralka?
- QCCP: And you also have clapsticks, I think, do you?
- BG: Yes, clapsticks and didgeridoo.
- QCCP: And didgeridoo. So it's a big ceremony?
- BG: It's - yeah.
- QCCP: To try to help that person's spirit find its Yirralka, go back to its Yirralka - - - ?
- BG: I just correct there. Before person ~~pass~~ **goes** away, there's special songs that try and make person live and if that song doesn't - I mean if the man just passes away then we just continue song ...
- QCCP: And then after the person dies, as you say you keep singing, but people also paint onto the person's body to help the spirit know where it should be going?
- BG: We normally paint them when they're dead and we put their special paint. The paint represents the place where ~~the~~ **their** spirit will be - - -
- QCCP: Where it will finish up?
- BG: Yes.

BG has clarified that before death the ceremonies are focused on maintaining life and after death they enable the land to reclaim its spirit. QCCP went on to discuss a number of related matters with BG. This discussion ranged over: the names of the ceremonies involved; BG's dominant role in respect of ceremonies conducted on Ganamu's behalf (a role conferred upon BG by his father and consistent with his kin-relationship with Ganamu); the Yolngu way of investigating deaths that may not have been from natural causes; and, BG's meeting with the elders to inform them of the death. By this stage the court had been attending to over an hour of cultural evidence with both coroner and counsel intent on grasping the Yolngu mind at work. QCCP then moved back to the issue of BG's fear of being infected with the spirit of a mentally-ill man, suggesting that this fear became operative when Ganamu was shot, so that BG had not wanted to be near to him (pp1152-3):

- QCCP: So, at the time when that man was shot, that is after he was shot, were you then worried that maybe that spirit might attach to you?
- BG: Yes.
- QCCP: If you got - sorry?
- BG: Yes, I could feel at the present, I could feel I was acting strange there and I had a packet of cigarette I finished in five minutes time, wandering around making fire and - - -
- QCCP: And was it important that you not go too close to that dead man

after he was shot because that spirit might get stronger onto you?

BG: You're saying was or wasn't?

Int: I think you should make it clear whether you are talking about before he died or after he died, because he's shot and then there's a period where he was still alive.

QCCP: Yes, I am talking about after he was shot, but before he passed away. In that time?

BG: Yeah, after when he passed away ...

(QCCP's attempt at time delineation resulted in miscommunication, probably due to language interference. When the clause '*but before he passed away*' is translated word-for-word into Djambarrpuyngu it yields the meaning *but previously he (had) died*—referring to the time after death. It is relevant to note here that in English *before* can be placed before or after the verb yielding different meanings—a feature that may elude the NESB Yolngu listener. In English *but before he passed away* indicates a different time from *but he passed away before*. In Djambarrpuyngu, with its free word order, the placement of *n̄athil* (= before) makes no difference: the meaning remains as *but he passed away before*; namely, that he was already dead—opposite to the meaning intended by counsel.)

QCCP: No, before he passed away?

(To remove the ambiguity the interpreter spoke to the witness in English but using a Yolngu discursive method for specifying time, which is to follow the sequence of events as they occurred and stop at the point which requires attention:)

(Int:) He got shot. He lied there. He is still alive. That time.

(BG:) Nunhiliyi, narra ga still — narra ga bitjan gam': Nayanu narraku gan — walnathi gatjpu — Walnathi! Walnathi! (*At that time, I was still — I was like this: My feeling was — hoping for him to live — Come to life! Come to life!*)

BG: *At that time, I was still hoping and praying for his life.*

Cor: By that time you should, in the proper Yolngu way been singing special songs too, shouldn't you?

BG: No, it's - - -

Cor: No?

BG: ... no, no, it's when a person is sick, that's when we make ceremonies to make them alive again. When is shot or speared or whatever, that's - treatment comes first, then the person - - -

Cor: Right, first aid first and then ceremonies. Yes, you have got to be practical to survive in the Australian bush.

BG: Water has to be serve and all those stuff, you know, and - - -

What is it that caused counsel and coroner to be closed to such obvious practical concerns? It appears that they inferred from the witness's explanations of ceremonies, spirits and fears, that he had somehow been operating on a level divorced from the reality of secular concern for a critically wounded relative. They had 'played along' with the witness on his seemingly superstitious plane, speaking with him about spirits as though they themselves acknowledged

their reality. QCCP spoke as though they were real to him, ascribing Ganamu's spirit with location and substance such that it could 'attach' and 'get stronger onto you'. Yet they had not internalised that for Yolngu the spirit and corpus are as real as one another—that prayer, ceremonies and first-aid belong to the one reality. Their perception of the domination of superstition and ritual over the pragmatic and secular reflects their own culture's fundamental conceptual dichotomies of spiritual/physical, animate/inanimate and real/imaginary. These categorical boundaries reflect a conceptual framework that proved limiting to the court in dealing with this Yolngu evidence. The attempt on the part of counsel and coroner to accommodate a discussion of spirits in Yolngu terms did not extend to permitting the suspension of their own conceptual dichotomies held firmly within their Western world view.

#### **11.2.4 Hypothetical questioning**

The above cross-examination also caused conceptual difficulty for the witness on a number of occasions, mainly arising from hypothetical questioning. Examples included: '*...if I died and I was an Aboriginal person on Elcho Island, would you try to find out whose fault it was that made me die*' (QCCP: p1146), and '*Were you the only person there that his spirit was likely to attach to or could he have attached himself to a Balanda in pure maliciousness and spite?*' (Cor: p1152). Repeated paraphrasing of these questions was required, sometimes with assistance from the interpreter, before BG was prepared to answer them.

BG's difficulty and his responses were consistent with the findings of Stephen Harris concerning hypothetical questions asked of Yolngu that cannot be related to a real-life situation or a known cultural ideal—Yolngu will usually try to pull the question back into a familiar context in order to answer it (1984:157, see section 1.2 above). These reactions were evident following the question: '*You would not ever have been willing to hurt him in the course of having to arrest him?*'. The interpreter explained that the problem with this question was that BG had already explained in response to a previous question that if he was required to intervene in some confrontation involving Ganamu then he would do so by seizing his arms. He could not understand why he should now have to contemplate the prospect of harming him. The excerpt begins at the point where the interpreter explained that he could not convey the question's sense (p1160):

Int: He's having - the witness is having difficulty in understanding the sense of your question. The words are being put across but the question as a whole is not making sense.

QCCP: All right.

Cor: I wonder - why is that, do you think? What's wrong with it conceptually?

Int: Conceptually he's already explained how he can stop the person - stop his nephew (i.e. Ganamu) from being involved in a fight, he can restrain him, take him away, hold him, that sort of thing.

Cor: Well we're going beyond that, to hurting. Hurting him.

...

QCCP: All right, perhaps I will put it in another context of self defence. If he was attacking you, maybe a spear or knife or something, would you have to let him hurt you or do you believe that you could hurt him back to stop him from attacking you?

(The interpreter asked the witness at this point if he had understood this question whereupon he answered that he had, and proceeded to answer through the interpreter:)

BG: *That situation to which you refer has already happened in the past when he was armed and where he wasn't willing to give up his arms - give up his knife, that was when he had a knife. I managed to grab the knife, to discipline him with words, and physically I had to struggle with him, but then afterwards he came to recognise me and calmed down.*

During an earlier cross-examination—by CTF (p776)—the court experienced a similar difficulty in conveying to BG the hypothetical sense of the question put to him, but eventually succeeded in having him see that the question was not addressing an actual event but a potential one. The court had previously heard evidence that Ganamu had been seen in the township on the evening that the volunteer searcher had been speared in the hand. He had reputedly been wearing ceremonial body paint and had a blue rope around his waist. BG had only heard rumours of these sightings and had not seen Ganamu himself at that time. Nevertheless, he was asked in court whether these were signs of a man being angry and defiant. This exchange took place without the interpreter's participation:

CTF: Do you agree that being painted up and having a rope around his waist was a sign or were signs that he was angry and didn't want to be captured?

BG: Not until - not unless I saw him with a painted - no.

CTF: But if you heard - or will I ask you this - - -?

BG: Yeah, if I heard - - -

CTF: - - - if you saw a person painted up with a rope around their waist - - -

BG: Say it again?

CTF: If you saw a person - if you had seen the deceased with a rope around his waist and painted up, on Thursday afternoon, that would be a sign to you that he was angry and didn't want to be captured, wouldn't it?

BG: Can you say just slowly say that again?

CTF: If you had seen the deceased on Thursday night, painted up with a rope around his waist, that would have been a sign to you or signs to you that he was angry and didn't want to be captured. That's right, isn't it?

BG: Can't recall on that.

Cor: No-one is asking you to recall it, we are asking you to imagine it?

BG: Well in my - three occasions I haven't seen him painted that way.

### Part Five: Focus on Miscommunication

- CTF: No, but if he was. Being painted up with a rope round his waist means he is angry, doesn't it?
- Cor: Look, you are being asked for your interpretation of a custom of your people. Now, if you're not able to give an interpretation of it, if it's not a custom of your people and utterly meaningless to you, say so. If I saw it happen - - -
- BG: Are you - - -
- Cor: - - - I might think he was going to a fancy dress party, but I don't know the customs of your people.
- BG: If I seen a person painted and with spear, I would imagine he would go to ceremonies, that's all I know. Our customs.

The coroner was thus eventually successful in persuading BG that he was not being asked about what he had or had not seen that evening, but instead to comment on what he may have thought had he seen a person dressed in a certain way. But BG still pulled the question back into a real-life situation to comment upon a common occurrence in a Yolngu community where men wearing paint and carrying their spears are typically on their way to ceremonies. He did not address the matter of the blue rope, the colour of which probably had no cultural significance. (The colour blue has no significance in Yolngu ceremonial contexts that I know of; it is not represented except as an English loan word in the Yolngu Matha lexicon, and it is not used in traditional designs.)

The difficulty that this witness exhibited (as did others) in dealing satisfactorily with hypothetical questioning is perhaps best categorised as a linguistic difficulty reflected at the pragmatic level—a case of sociopragmatic failure (see section 4.2.5 above). In the context of a court case where a witness is patently present to speak on some aspect of their experience, the Anglo custom of asking people to comment upon matters explicitly outside of their direct experience is perhaps understandably confusing.

### **11.3 Intercultural translation of legal reasoning**

The *Elcho Coronial* findings comprise a 24 page document which summarises Yolngu and police perspectives on the killing and the events that led to it, and which presents a judicially reasoned decision that 'the evidence is insufficient to put any person upon his trial for any indictable offence' (p23). With the assistance of a respected Yolngu community leader (K. R. Dhurrkay) I was asked as interpreter to translate the coroner's findings into Djambarrpuyngu so that they could be delivered in that language to a Yolngu audience at Galiwin'ku (both versions were to be delivered simultaneously: the Djambarrpuyngu version at Galiwin'ku and the English version in Darwin). We were provided with the findings nine days ahead of their delivery and devoted 125 hours to the task.

This section presents a discussion of how the task was approached and of translation issues that surfaced in relation to a specific paragraph explaining the legal reasoning behind the

decision not to commit any Task Force officer to trial. The translation of this section was by no means straightforward. The manner in which the task was undertaken and the product itself confirm Joseph's (1995) assessment (discussed in section 3.2.2.4 above) that the active intervention of the translator in texts is a necessary and inevitable aspect of the process of legal translation. The translators necessarily engaged in reformulation of the coroner's messages and in semantic and stylistic modification. Without this intervention his communicative intent, in so far as it was determinable, could not be effected in the translation.

At the same time, the necessity for intervention in the source text was a cause of concern for the translators who were faced with conflicting responsibilities: (1) the responsibility to be faithful to the source text—'interpreters and translators shall not alter, make additions to, or omit anything from their assigned work' (AUSIT 'Code of Practice', see section 6.2 above); (2) the obligation to 'convey the whole message' (ibid.), requiring the translator to attend to 'intended meaning, implied meaning and presupposed meaning' (Hatim & Mason 1990:33, see section 3.2.1 above). Explication of these meanings is sometimes necessary to prevent their loss in the translation and yet the intervention that is entailed can constitute alteration.

The following elucidation of this tension in respect of the *Elcho Coronial* findings also serves as an investigation of challenges beyond the linguistic level that compromise the communication of legal argument between cultures. For example, there is the problem that rational premises upon which an argument is founded may not be held as reasonable in the world view of the culturally-other target audience. Then there is the need to deal with the problem of presupposition that is manifest in omission of elements in a sequenced argument. I refer to cultural knowledge shared between speaker and listener (or writer and audience) where they are of the same background. This body of shared knowledge allows some of the steps in a sequence of statements to be left as implicit—they are assumed to be obvious or understood, so as to be superfluous. In the intercultural communicative context these shared understandings may be absent and so the argument may lose its reason.

The interpreter who is engaged in the oral facilitation of intercultural communication usually has opportunity to draw the attention of either party to any lack of explicitness that might render an utterance incommunicable. Parties are then able to negotiate a pathway for dealing with it. In some situations it will be the interpreter who provides any explanation that is necessary to communicate the sense of an utterance. Alternatively, counsel may seek to retain full control in determining what (if anything) is to be explained or explicated. The probing cross-examination of BG by QCCP that was analysed in the previous section is an example of the former situation whereas in section 9.4.2.2 we saw an example of the same barrister seeking to assert full control through constraining the interpreter to literal translation.



### 11.3.1 The legal translator's dilemma

In translating from legal documents the translator is without immediate access to the parties concerned so that conferring over issues of meaning may not be possible. Yet the need to explicate implicit information such as is required to give sense to the text in the target language presents a particular dilemma where this entails explication of an aspect of law. This may well amount to legal interpretation and entails the risk of usurping the role of the legal/judicial source from whom the communication has emanated. This dilemma was faced at a number of points in the translation of the coroner's findings. The translators were bound by secrecy preventing them from conferring with anyone at all apart from the coroner himself, to whom there was very limited access (and in any case the translators did not consider it appropriate to attempt to engage the coroner in discussion about his reasoning).

The laws which the coroner called upon in his judgement concerning the police shooting, and the reasoning he deployed in suggesting that the killing was probably lawful, could cause confusion for the educated native speaker of English. The attempt to meaningfully translate this reasoning to a Yolngu audience living by a different legal code carried the real risk that the argument would remain as obscure in Djambarrpuynngu as it would have been to them in English.

Section 5 of the coroner's findings (the 'Coroner's Form of Inquisition'—Case No: 9009338) presented in legal terms, '*(t)he reasons for my decision about whether a policeman should be charged with an indictable offence*'. The coroner's conclusions were compromised by one point, and this was that the shooter (Constable Grant) chose to remain silent and refrain from giving sworn evidence. He had merely tendered a statement. Thus the coroner had to make a circumspect assessment as to his state of mind at the moment that he pulled the trigger. Legally, Grant's state of mind was a crucial consideration. This is what the coroner found:

Although I do not make positive findings of innocence because of self defence or other justifications, I am firmly of the view that the evidence is insufficient to put Grant or any other person upon his trial for any indictable offence. In particular, the evidence from his colleagues that Grant was acting in his own reasonable self defence is cogent credible and compelling, and there is no credible evidence to the contrary, so that, were Grant placed upon his trial for murder, manslaughter or any other indictable offence arising from the shooting, the evidence for the prosecution would be insufficient to lead to a conviction. A reasonable jury, properly instructed, could not, in my view, convict Grant of any indictable offence.

This paragraph is preceded by another (the fourth paragraph in section 5) where the coroner explained the legal reasoning behind this decision. It is a complex paragraph made more difficult because it also constructs another message which is never stated explicitly—it is

implied. The paragraph is annotated with my comments (in square brackets) concerning some of the main messages the coroner was imparting. I have also underlined words which, in my opinion, may be significant in signalling more implicit messages.

As Grant has called in aid section 33A of the Coroners Act [Grant acts by invoking specific protective law] and has declined to be sworn or to answer questions on the ground that the answers may tend to incriminate him [the statute referred to is explicated], I do not make positive findings about Grant's state of mind on two important aspects [judicial consequence of invocation introduced]. First, I do not decide whether he believed that the killing was necessary for the preservation of his own life [first judicial declaration] or, in the words of section 28(f) of the Criminal Code, whether he apprehended that death or grievous harm would result to him [reference to relevant statute]. I note however his statement given to police investigators in which he claims such a belief [qualification of declaration]. Although that statement is totally consistent with the sworn evidence of his colleagues, [second qualification of declaration] in the absence of his own evidence I do not go the next step of determining as a fact that he held that belief [Grant's invocation has prevented his complete exoneration on this point]. Secondly, I do not decide whether, in terms of section 28(a) of the Criminal Code, he believed that the deceased was a person who, unless arrested, might commit an offence punishable with imprisonment for life [second judicial declaration given in terms of relevant statute]. What was known by Grant of the recent behaviour of the deceased certainly justified him holding such a belief [judicial declaration qualified]. Again Grant's failure to testify has produced this result [Grant's invocation has prevented complete exoneration on this point]. (I return to this in part 7, but for the moment assume that section 28(a) can be read broadly, so that the three warning shots by Sergeant Smith were sufficient compliance with the paragraph and that Grant's calling upon the deceased to drop the knife, although the deceased might not have understood the words, was, in the circumstances on the beach that day, sufficient compliance with the requirement to call upon the person to surrender and allow him a reasonable chance to do so.) [This section, given by the coroner in parentheses, serves to separate the issue of Grant's beliefs from the police action, though he also flags impending acceptance of the legality of these actions] I do not mean that any unfavourable inference should be drawn against Grant for his refusal. He has exercised his right: he remains innocent until proven guilty [the coroner acts to prevent implicit criticism of Grant for not testifying from being extended to the primary judicial issue of Grant's beliefs and actions].

I believe the coroner has *implied* that he believed Grant to be innocent and was only prevented from declaring him so by Grant's own silence. This implicit message is carried by the qualifying and equivocal effects of the words which have been underlined. There is a dilemma for the translator posed by such messages which are not explicit but implied, because in raising an implicit message out from a text one assumes the role of an interpreter of text—in the other sense of that word. And yet to perceive a message, but not attend to it in the translation, is to risk losing it altogether in the target language. It is sometimes the implied message which is the key and theme to a whole text.

Another difficulty presented by this text was the coroner's reference to the weak judicial force carried in the statement provided by Grant compared to the sworn testimony given by the

other police (i.e. the strength of sworn evidence could be judicially tested in cross-examination while Grant's statement could not)—the coroner '*note(ed) ... his statement*' but denied its evidentiary value in the next sentence by referring to '*the absence of his own evidence*'. How much of the legal force and nuance couched obliquely in legal jargon is the translator expected or permitted to explicate? How is the legal translator (or interpreter) to deal with the situation where translation of legal argument may require analytical interpretation of the law if it is to be clearly understood by the target audience for whom it is prepared?<sup>97</sup>

### 11.3.2 Intercultural translation of legal reasoning: a process

The general method for translating the coroner's document was as follows:

1. As the native-English speaking translator, I prepared a front-translation of the coroner's findings. This entailed paraphrasing the document into a plain style of English which I felt would translate naturally into an Aboriginal language. It often meant deconstructing Anglo-Australian concepts into elements which have, or can be given, meaning in an Aboriginal way, and then reconstructing them following Aboriginal discursive patterns.
2. My Yolngu colleague dictated a preliminary translation from this front-translation which I typed onto computer.
3. We questioned, discussed and edited at will until we were both satisfied that the Djambarrpuyngu rendition was an accurate representation of the front-translation.

The front-translation of the 4th paragraph of section 5 (quoted above) required particular care because of its conceptual complexity and because it constituted the prelude to the coroner's principal finding that Grant had apparently acted in reasonable self-defence. The propositions that the coroner communicated through his text had to be supplemented by background information and explanation if they were to make sense to a Yolngu audience. Then the added information was incorporated in the paraphrase and care was taken in sequencing the steps of his argument so that the basis for each step was given prior to the step being taken. With these points in mind the following front-translation emerged (with comments now added in square brackets):

#### First front-translation

*According to Balanda [Anglo-Australian] law Grant did not have to answer questions in court. [i.e. Grant was entitled to remain silent.]*

*This law is for anyone who is frightened because he might put himself in trouble by answering questions in front of a coroner. He can decide to talk or he can decide not to talk. [i.e. The protection is universally available and so was available to Grant.]*

*According to Balanda law other people must prove that a man is guilty. You cannot make a person speak against himself. [i.e. The protection is part of a legal principle that others must establish guilt.]*

---

<sup>97</sup> The strategy of extensive footnoting which might be appropriate for a literary audience was not appropriate here since the translation was for oral delivery.

*This doesn't mean that he was guilty or innocent. It means that he is worried that his words might make serious trouble for him. [i.e. Silence does not imply guilt nor innocence—merely anxiety.]*

*Because he didn't answer questions I could not make up my mind about two things. I couldn't decide if he believed that he was forced to kill the deceased to save his own life. He says in his written statement that he thought he might be killed or badly hurt. The other policemen also said that they were worried for him. But because he didn't speak in court I can't say if it is true or not true. [i.e. Although it appears that Grant killed because he feared for his own life, his silence prevents this from being asserted as truth.]*

*There is another law about policemen arresting people. This says that if a policeman believes that a man will escape and do something so serious that he could go to jail for life, then he can also shoot his gun. But first he must fire warning shots and call out for the person to stop and give him a chance to give himself up. Grant knew that the deceased was mad and that he had speared two men. So maybe he did believe that the deceased might try and kill someone else if he ran away. But Grant didn't speak in court and so I can't say that this is the truth that Grant believed it. But I am not saying that it is a lie. [i.e. Apart from self-defence an officer can use a gun to prevent a dangerous person from evading custody provided due warning is given. Although the man was dangerous Grant's silence prevents assertion as truth that Grant believed him to be so.]*

*Smith fired warning shots and Grant called out to the man to drop the knife. Because of this Grant was standing within the law, even if we now know that Garrawurra maybe didn't understand the words. [i.e. Grant applied lawful procedure in providing opportunity for the man to give himself up, even if the man did not know it.]*

*I am not saying that Grant is bad or wrong because he didn't talk in court. It was up to him. And until someone proves that he is guilty then he is innocent. [i.e. Exercising the right to silence does not imply guilt.]*

When I read this out to my colleague (whose English proficiency is estimated at ASLPR Level 3) he could not see the argument as being logical since, from his Yolngu perspective, to be silent about a killing in which you are implicated is a sign of shame or guilt.<sup>98</sup> In any case, since it was undisputed and patently clear that Grant had wilfully shot a man in the head, and so had taken his life, there was no question about innocence or guilt—he had killed a man. My colleague had believed that the purpose of the court case had surely been to establish the nature and circumstances of the killing only in order to help decide what price there was to be paid by whom over it.

Therefore to talk about the right to silence is one thing. But to say Grant's silence did not imply his guilt, when his status as a killer was beyond doubt, was not sensible reasoning. There was a missing element necessary to render the argument sensible. This was that there are times when a police officer is legally allowed to kill, in which case there has been no offence, and that therefore the question of guilt or innocence does not actually relate to killing or not killing, but to lawful killing or unlawful killing. This information about Australian law would have to precede mention of guilt or innocence in order to prevent the Yolngu audience from associating the question of guilt or innocence with the fact of the policeman's action instead of its *legality* (this distinction is carried in the legal sense of the word *guilt*.).

<sup>98</sup> Also, in the context of Yolngu dispute resolution processes, the making of full admissions by all parties to an offence is considered essential (as was discussed in section 7.1.3 above with reference to Williams 1987).

There was no alternative but to re-arrange the order of the messages in order to make sense. Explanation of the legal meaning of Grant's silence had to be prefaced with an explanation of the legal rights and obligations of a police officer in shooting someone, and the critical role of a police officer's beliefs in conferring this right. This was the result:

### **Resequenced front-translation**

*I will explain the law which tells about when a policeman can shoot at someone. This is a law which tells the policeman which path he must follow when he is arresting someone. This says that if someone tries to run away from a policeman and if the policeman truly believes that the man will escape and break a big law which can send him to jail for ever, then he can also shoot his gun if he has no other way to stop him. But first he must fire warning shots and call out for the person to stop. This is very important because it gives the man a chance to stop running and give himself up. Grant knew that the deceased was mad and that he had speared two men. So maybe he did believe that the deceased might try and kill someone else if he ran away. But Grant didn't speak in court and so I can't say that Grant truly believed this. But I am not saying that it is a lie.*

*Smith fired warning shots and Grant called out to the man to drop the knife. Because of this Grant was standing within the law, even if he found out afterwards that Garrawurra maybe didn't understand the words.*

*As well as this, if a policeman is truly frightened that he will be severely injured or killed, then he can also shoot his gun if there is no other way to save himself.*

*We all know that I did not make Grant speak in Court. Here I was following another Balanda law. This law is for anyone who is frightened because he might put himself into trouble through his own words by answering questions in front of a coroner. So it's up to him. He can decide to talk or he can decide not to talk. According to Balanda law other people must prove that a man is guilty. You cannot make a person speak against himself. According to Balanda law, Grant did not have to answer questions in court. This doesn't mean that he was guilty or innocent. It means that he is worried that his words might make serious trouble for him.*

*Because he didn't answer questions I could not become certain about two things. I couldn't decide if he truly believed that he was forced to kill Garrawurra to save his own life. He says in his written statement that he thought he might be killed or badly hurt. The other policemen also said that they were worried for him. But because he didn't speak in court I can't say if it is true or not true. Also I couldn't decide if he truly believed that the deceased would have run away and injured or killed someone else. I am not saying that Grant is bad or wrong because he didn't talk in court. It was up to him. And until someone proves that he is guilty then he is innocent. This is the law.*

### **11.3.3 Intercultural translation of legal reasoning: the result**

We can now look at what was involved in making a sample of the coroner's text accessible to a Yolngu audience by considering just the first few lines of paragraph 4:

*As Grant has called in aid section 33A of the Coroners Act and has declined to be sworn or to answer questions on the ground that the answers may tend to incriminate him ...*

This segment was paraphrased in the second front-translation (above) by the paragraph beginning '*We all know that I did not make Grant speak in court ...*'.

The segment is complicated by including reference to the legal concept of the right to remain silent. Here, the right was specified in respect of witnesses appearing before a coroner. The following presents a comparison between various versions of the segment: front-translation, Djambarrpuyngu version, 'word for word' translation, and two back-translations. The back-

translations were obtained from native speakers of Djambarrpuyngu some months after the findings had been delivered—a literacy worker who was present at Galiwin’ku during the hearings, and a school teacher who had been distanced by living interstate. Neither had heard the findings being delivered.

KEY: front translation

*Djambarrpuyngu version*

‘WORD FOR WORD’ BACK-TRANSLATION<sup>99</sup>

– back-translation (Yolngu literacy worker; ASLPR estimated at Level 2+)

= back-translation (Yolngu university graduate; ASLPR estimated at Level 4)

We all know that I did not make Grant speak in court.

*Warrpam’ limurr marngi nunhi Grant bayingu wana court-nur.*  
ALL WE KNOW THAT GRANT NOTHING SPOKE IN COURT

– We all know that Grant did not say anything in court.

= We all know that Grant did not say anything in court.

Here I was following another Balanda law.

*Ga nunhi nayi bayingu wana court-nur, dhuwaliyiny*  
AND THAT HE NOTHING SPOKE IN COURT THAT AFORESAID  
*ga wiripu Balanda rom nunhi narra ga malthun.*  
[VP]<sup>100</sup> ANOTHER EUROPEAN LAW THAT I [VP] AM FOLLOWING

– that’s another rule for Europeans that I have to follow.

= This is another Western law, where I will explain and do a follow-up.

This law is for anyone who is frightened

*Ga dhuwaliyiny rom bukmakku nurikiwurrun nunhi walal ga barrarirr.*  
AND THAT AFORESAID LAW FOR ALL FOR THOSE WHEN THEY [VP] ARE AFRAID

– That rule is for everybody who is afraid to speak up.

= This law is made for all of those people who are afraid to speak.

because he might put himself into trouble through his own words by answering questions in front of a coroner.

*Barrarirr walal ga nunhi balan walal wani walalawuy*  
ARE FRIGHTENED THEY [VP] IF SHOULD THEY SPEAK ABOUT THEMSELVES  
*walalangiyinal birrka’yuna ay ga walalangiyinal mathay.*  
BY THEIR OWN ACCUSATION AND BY THEIR OWN TONGUE/SPEECH  
*Manuji mara yolnuwal walalangal wo gumurrnur coroner-wal*  
EYE IN FRONT OF WITH PEOPLE WITH THEM OR AT THE CHEST WITH THE CORONER  
*nayi balan galkanmirra nanyapinya-nayi.*  
HE/SHE MIGHT PUT INSIDE [REFLEXIVE] HIM/HER-SELF

– If they speak about what they are thinking and in their own language in front of the crowd or the coroner, he will get himself in a lot of trouble, or he can go to jail.

= If that person speaks in the presence of the coroner he may be putting himself into a very awkward position and if he speaks he might be convicted or charged, or may face imprisonment,

So it is up to him. He can decide to talk or he can decide not to talk

*Yurr nunhiyiny nhanukiyinal, nayi balan wananha wo yaka dhu wana.*  
BUT THAT AFORESAID FOR HIM/HER ONLY HE/SHE MIGHT SPEAK OR NOT WILL SPEAK

– That’s up to him, whether he can talk or not.

= so it is up to that person to speak or not to speak at all.

<sup>99</sup> Individual morphemes are linguistically glossed in square brackets only where meaning cannot be clearly and conveniently denoted by lexical substitution. Wherever a Djambarrpuyngu word/morpheme can be variously denoted, any meanings that are precluded by virtue of the grammatical/semantic environment will be ignored.

<sup>100</sup> *ga* is a Djambarrpuyngu homonym, being either a conjunction (*and*) or a Verb Particle (marking present tense or continuity in the past tense).

**Part Five: Focus on Miscommunication**

---

According to Balanda law other people must prove that a man is guilty.

*Ga balandawalnydja romdhu ga lakaram bitjan, wiripuwurr*  
AND WITH EUROPEAN(S) LAW [VP] SPEAKS THUS OTHERS  
*dhu ga waŋanhamirr dhäwu lakaranhamirr monuŋuwalaŋawuy, nhä*  
WILL [VP] DISCUSS STORY TELL EACH OTHER ABOUT A KILLER WHAT  
*ŋayi yätjkurr wo ŋamakurr. Walal ŋanya dhu ga dhuburr-lakaranhamirr,*  
HE/SHE BAD OR GOOD THEY HIM/HER WILL [VP] BEHAVIOUR-DISCUSS

– In balanda way, some people can talk about the murderer, whether he’s a good person or not, they can say whether he’s all right or not,  
= In a Western society people have discussions, in this case about the deceased person, making criticism whether he was good or bad, they discussed this amongst themselves,

You cannot make a person speak against himself. According to Balanda law, Grant did not have to answer questions in court.

*ŋayipiny bäyŋu. Ga dhuwalatjandhi romgurr ŋunhi*  
HE HIMSELF NOTHING AND THROUGH THIS AFORESAID THROUGH LAW THAT  
*Grant-tja mukthun ga nhina waŋanhamiriwnha.*  
GRANT WAS SILENT [VP] WAS SITTING SPEECHLESS

– but he, himself can’t say whether he’s innocent. That’s why Grant didn’t say anything.  
= and Grant was not involved in the conversation, he just sat in silence.

This does not mean that he was guilty or innocent.

*Yurr yaka ŋunhi maŋutji-lakaram ga mukthunaray nhinanharay,*  
BUT NOT THAT EYE-INFORMS [VP] THROUGH SILENCE BY SITTING  
*ŋunhi ŋayi yätjkurr wo ŋamakurr.*  
THAT HE BAD OR GOOD

– By sitting quiet, that doesn’t show that he’s innocent or not.  
= But that doesn’t tell us whether Grant is a perfect person or not,

It means that he is worried that his words might make serious trouble for him.

*Ŋunhi ga mukthundja ŋayi nhina, bili ŋayi ga barrarirr*  
THAT [VP] WAS QUIET HE WAS SITTING BECAUSE HE [VP] WAS FRIGHTENED  
*ŋayi balaŋ gärrin marilila yindilila, gumurmirriy-dhäwuy,*  
HE MIGHT ENTER INTO TROUBLE INTO BIG BY MEANS OF SPREAD-OUT STORY  
*ga yakan marŋgi wanhan yuwalktja dhäwu.*  
AND NOT KNOW WHERE TRUE STORY

– When he was sitting quiet at the court, because he was too frighten (sic), he might get himself into big trouble. Because there were so many rumours going on, and he didn’t know which one was true.

= and whether he had the right to remain in silence. He was scared and if he spoke he might get into big trouble, so we don’t know who is telling the truth.

Comment

- (a) There was no communication at all between the back-translators or between myself and the back-translators while they were working, except that the graduate asked how to translate words with ambiguous meanings—I suggested choosing the meaning appropriate to the context.
- (b) Neither back-translator had read the findings or had heard them being delivered.
- (c) Both back-translations indicate that the translators’ explanation has been imparted reasonably, though certainly not perfectly; and that the two back-translations are reasonably consistent, one with the other. It should be considered that the back-translators were given only the single paragraph in Djambarrpuynyu and could not refer to the whole document. This deprivation of contextual information contained in the previous pages of the document gave them a significant handicap.
- (d) The first sentence in the front-translation (‘We all know that I did not make Grant

speak in court.’) lost the causative in the translation and consequently in the back-translation. The notion of *compelling* a person to speak (as opposed to there being some obligation) is alien to Yolngu custom. Incorporation of this notion in the translation would therefore have proven complicating and, since the aspect of compulsion had not been explicit in the coroner’s text, the sentence was reframed in the translation so as to avoid the causative element.

- (e) It is of concern that the first back-translation indicates that it may possibly have been thought that the right to silence is reserved for Europeans only.
- (f) It is of concern that the second back-translator, after obviously taking on board the message, loses grasp of it in: ‘But that doesn’t tell us whether Grant is a perfect person or not, and whether he had the right to remain in silence’. However, she translated as one sentence what were two sentences in the Djambarrpuyngu text. She may not have noticed the full stop (.), leading her to apply the verb *manutji-lakaram* (meaning *shows*) to the next sentence. It is doubtful whether the reading out loud of the document would have resulted in the same misperception.
- (g) Notice that the English ‘guilty or innocent’ was translated into Djambarrpuyngu as *yätjkurr wo ñamakurr*, which glosses as *bad or good*.
- (h) It is transparent that the translators added far more information than is explicitly contained in the coroner’s words. In effect the right to remain silent has not only been stated, it has been interpreted.

#### 11.3.4 Translation without explication: the cost

We now turn to consider the alternative choice faced by legal translator—and that is to remain more faithful to the original text. Explanation of all Australian legal concepts appearing in the coroner’s text would have resulted in a book-length translation. The translators were thus constrained to make their choices as to which concepts would be fully explicated. Even so, the Djambarrpuyngu version grew to almost twice the length of the original English.

One of those concepts that was paraphrased but not explained in the translation was ‘*section 28(a) of the Criminal Code*’. This reference occurs in another segment of the 4th paragraph of section 5 of the ‘Coroner’s Form of Inquisition’ (i.e. the paragraph quoted in full at the beginning of section 11.3.1 above) and concerns the circumstances under which shooting may be warranted while making an arrest (the relevant segment is italicised):

Secondly, I do not decide whether, in terms of *section 28(a) of the Criminal Code*, he believed that the deceased was a person who, unless arrested, might commit an offence punishable with imprisonment for life. What was known by Grant of the recent behaviour of the deceased certainly justified him holding such a belief. Again Grant’s failure to testify has produced this result. (I return to this in part 7, but for the moment assume that section 28(a) can be read broadly, so that the three warning shots by Sergeant Smith were sufficient compliance with the paragraph and that Grant’s calling upon the deceased to drop the knife, although



**Part Five: Focus on Miscommunication**

the deceased might not have understood the words, was, in the circumstances on the beach that day, sufficient compliance with the requirement to call upon the person to surrender and allow him a reasonable chance to do so.)

The coroner did not give the text of *section 28(a)* and did not state explicitly that it provided grounds for the Task Force police to use their firearms. However, the translators could infer this meaning from the two sentences (quoted above) containing reference to *section 28(a)*. Thus the front-translation of the segment quoted above in italics could include—on the basis of the coroner’s words—an explication of the meaning of *section 28(a)*:

I will explain the law which tells about when a policeman can shoot at someone. This is a law which tells the policeman which path he must follow when he is arresting someone. This says that if someone tries to run away from a policeman and if the policeman truly believes that the man will escape and break a big law, which can send him to jail for ever, then he can also shoot his gun if he has no other way to stop him.

Notice that there is a hidden step in the argument as to why a person who might put himself in jail forever becomes a potential shooting target. This is presumably that crimes of extreme violence, or perhaps treason (which can also send one to jail for life) make one such a danger to society that the law condones risking injury or death to such an individual in preference to their escaping. The translators could not merely have simplified this provision to express it in reference to someone wild or physically dangerous since that would obviously have misrepresented the law. In this instance the choice was made to ignore the missing step, with the consequence that this strangely framed justification for shooting makes little sense in Djambarrpuyngu, as the back-translations will show:

**Djambarrpuyngu version (glossed):**

*Ga dhuwanna nunhi romdja ga bitjan wana bilitjumangu manutji-lakaram*  
AND THIS NOW THAT LAW [VP] DOES THUS SAY FOR POLICE SHOWS  
*wuthunharaw nula yolku birrka'mirriw ga bilitjumandhu dhu baki*  
FOR HITTING/SHOOTING WHOM-SO-EVER AND POLICE WILL USE  
*dhuwaliyiny rom nunhi nayi dhu mata'maramany yoljuny.*  
THIS AFORESAID LAW WHEN HE/SHE WILL TIE-UP A PERSON  
*Bitjan ga wana nunhi dhu nula-yol wandirryndja bilitjumangalanarur*  
THUS DOES [VP] SAY WHEN [FUT.] WHO-EVER RUN AWAY FROM POLICE  
*nunhi dhu bilitjumandhu yuwalktja guwana, nunhi dhu yolnu wandirryndja,*  
WHEN [FUT.] POLICE TRULY THINK THAT [FUT.] PERSON RUN (AWAY)  
*ga wandinyarayndja dhuwurryu, nayiny dhu galkanmirra*  
AND BY RUNNING AWAY BEHAVIOUR HE WILL NOW PUT INSIDE [REFLEXIVE]  
*nanyapinya-nayi dharrungulila munbunaman yan.*  
HIM/HER-SELF INTO JAIL NOW FOREVER THOUGH  
*Ga wiripuny nayi dhu bilitjumandhu wuthuna-yan wandinyarur,*  
AND ALSO HE/SHE [FUT] POLICE JUST HIT/SHOOT FROM RUNNING  
*nuli nayi dhu baynun nayatham ga wiripu dhuwurr gulmaranharaw.*  
IF HE/SHE WILL NOTHING HOLD [VP] ANOTHER BEHAVIOUR FOR HALTING

**Back-Translation (1):** And these are the rules, what the policemen are saying to whoever they kill, the police will use that rule when they put someone in handcuffs. If someone tries to run away from the police, then the police will think that it's true, if he runs away, and by running away he puts himself into prison for years.

**Back-Translation (2):** This is the law, the police have to follow, as set down in the regulations, where the police can shoot anyone; the police use this law to arrest people. It says that if you run away or escape from police custody and the police think it's true that you have escaped, a person is liable for imprisonment forever. Another law says police can shoot a person who is running away and cannot be caught; this is another way they can catch them.

Not only are these back-translations unfaithful to the front-translation but the fact that the two are so disparate is an indication that the translated text did not carry a clear message at all. I suggest that this is a consequence of the circumspect way in which the provision to shoot is expressed. In order to 'make sense' for a Yolngu audience the hidden step in the argument—the relationship between the prospect of a person committing a crime attracting life imprisonment and the threat they pose to society—must be explicitly added.

#### 11.4 Discussion

The situations that have been discussed in this chapter illustrate the importance of acknowledging and attending to cultural elements that emerge during Anglo/Yolngu discourse as challenges to successful intercultural communication. In section 11.1 we saw YB, whose experience of the Anglo world was limited, unable to deal with questions that presupposed his understanding of literacy, transcription and the relationship between prior conversation and present courtroom documents. Then in QCCP's cross-examination of BG, both counsel and coroner were confounded by Western dualism preventing them from appreciating that, for Yolngu, material and spiritual are the one reality (section 11.2.3). This led to a misunderstanding of BG's evidence, where they assumed from his discussion of spiritual concerns with respect to Ganamu, that this implied a detachment from concerns of the body. Finally, the coroner's findings posed a particular translation challenge in that Anglo legal argument could not be transposed, without loss of meaning, directly into Yolngu terms. A significant level of intervention in the original text was therefore necessary.

The main communicative challenge presented in the courtroom questioning of YB was addressing a problem identifiable as the signalling within a text of meaning(s) unknown to the intended hearer/audience, not encoded either explicitly or implicitly as messages, but prerequisite to an understanding of the text. Consider, for example, CCP's first question to YB where he referred him (through the interpreter) to a statement by saying '*You said in your earlier statement that ...*'. There is no suggestion from this utterance that CCP was intending to communicate to YB information about how YB's conversations had come to be rendered as an official document written in English (when he had spoken in Djambarrpuyngu) for which he was now expected to accept responsibility. These meanings, signalled by '*your ... statement*', did not constitute CCP's intended communication and yet they had to be explicitly conveyed by the interpreter to YB so that he could comprehend the reference and thus the question.

This requirement of attending to presupposed meanings returns us to the intertranslatability problem previously discussed in section 3.2.2. In the above example it was certainly possible to find a way by means of Djambarrpuyngu language to get the meaning of *your statement* across to the witness, but this can only be considered as translation if translation is conceived in the broadest sense. Accordingly, the conceptualisation of Hatim and Mason (1990, see section 3.2.1 above) allows the translator freedom to intervene in the negotiation of a text's meaning by attending to such matters as implied meaning and presupposed meanings, as was essential in our example. And within the terms of the weakest formulation of the intertranslatability postulate—such as Jakobson's (1971:263, see section 3.2.2.3 above) which insists only that all cognitive experience is *conveyable* in any language and permits loan-translations and circumlocutions in order to help do so—it could be argued that the translation of *your statement*, so as to be understood by YB, is achievable.

These conceptualisations of translation and intertranslatability are, however, vulnerable to the charge of being too broad (see section 3.2.2.3 above) and the overlay of explanation in conveying the meaning of a text renders the court interpreter who does this vulnerable to criticism for exceeding their courtroom role (see section 8.1.3 above). On the other hand, it is clear that constraint to a narrow 'conduit' type role would, in circumstances such as were operative in YB's case, render cross-examination tortuously protracted and unproductive. The solution to the challenge presented here lay in the interpreter having a free hand to discuss the question with the witness in order to identify and explain the presupposed meanings signalled by '*your ... statement*' but that were unknown to him. In the general case this strategy is also plausible provided each party approves this function of the interpreter (of course, the interpreter may be required to repeat or summarise what is being explained to allow the interviewer to monitor discussion and intervene as necessary).

The intercultural communicative challenges posed by QCCP's cross-examination of the police aide also included instances of miscommunication arising because of cultural meaning signalled in the speaker's utterance being unknown to the hearer, but in this case it was counsel who required assistance. For example, when QCCP asked BG if '*the mission site is a special place for you and your family*' BG replied that his father's mother's tribe were traditional owners. While there was no indication that BG was intending to communicate to QCCP that his own tribe were *not* traditional landowners, this meaning was nevertheless signalled in his reply and was available to any listener with a rudimentary understanding of Yolngu kinship structures (a paternal grandmother and her grandson cannot be owners of the same estate). When, in a subsequent question, it became obvious that QCCP had no knowledge of this meaning the interpreter supplemented BG's response with an explication of it: '*In other words, my tribe and my father's mother's tribe are different*'.

There was, however, a deeper culturally-based challenge to Anglo/Yolngu communication

illustrated within this cross-examination. This was a difficulty arising in those semantic domains where fundamental intercultural incongruity in world view affects each party's interpretation of the other's meaning, even when the surface meaning of a text may be clearly understood. We saw this in section 11.2.3 (above) where the essential problem was of cultural interference—BG's messages emanating from an 'Aboriginal world inhabited as much by supernatural as by natural beings' (Christie 1985:1) were reconstructed by QCCP and the coroner within their dualistic conceptual framework, separating spiritual and secular planes, to yield another meaning. BG's explanation of kinsmen attending to a dying person's physical and spiritual needs through ceremonial activity was reframed to yield the inference that since Yolngu are engaged on these occasions at the spiritual plane they are not engaged at the secular level, whereas for Yolngu there is no disjuncture.

An interpreter's capacity to assist with this type of miscommunication is more limited. If the interpreter has a solid bicultural perspective then there may be the opportunity to provide appropriate explanation as requested. However, this may take the interpreter into the anthropological or philosophical realm in which case, as Laster and Taylor suggest (1994:123), it would be more appropriate for an interpreter with the requisite competence to be sworn and to testify as an expert witness.

The process of translating the coroner's findings into Djambarrpuynu (section 11.3) exposed a number of obstacles to effective intercultural communication. First there was the problem presented by presupposed meaning attached to legal jargon, such as where the coroner referred to 'sworn evidence' without giving any explicit or implicit (i.e. pragmatically derivable) indication as to the legal meaning of 'sworn'. There was also the problem of cultural interference where the meanings of some ideas expressed by the coroner were radically altered or lost their sense when viewed from the perspective of the Yolngu world view. One of these was the coroner's assertion that no unfavourable inference should be drawn against Grant for his refusal to answer questions in terms of his innocence or guilt since, from a Yolngu perspective on disputes and their resolution, inferences were unavoidable.

The challenge to intercultural communication in the legal context that was particularly highlighted in section 11.3 was that a sequenced series of propositions that comprise reasoned argument in one cultural context may lose their reason in other. This was particularly problematic in respect of section 5 of the coroner's findings which was specifically directed at presenting his reasoning (it is entitled: 'The reasons for my decision about whether a policeman should be charged with an indictable offence'). Effectively, the fact that his reasoning was developed and constructed within the Anglo legal framework required that the translators give their attention as much to explaining relevant features of this framework as to the propositions themselves. Anglo and Yolngu legal systems are

sufficiently distinct (see references to Williams 1987 in section 1.1 above) so as to preclude the transposition of legal reasoning without the consequence of cultural interference. Since the intent of the coroner was to convey to his Yolngu audience the reasons for his decision then this cultural interference had to be anticipated and addressed in the translation to prevent reason becoming nonsense, requiring a degree of intervention in the text that can only be described as extensive.

The interactions that have been exemplified in this chapter have all reflected circumstances where parties exhibited positive disposition in respect of their communicative interaction. In particular, QCCP's 'communicative leniency' (Meeuwis 1994, see section 4.3.1 above) in the cross-examination of BG enabled miscommunication to be resolved through negotiation of meaning and repair. In combination with the inclusion of the interpreter, whom QCCP encouraged to adopt a pro-active role in the mediation of meaning, this positive disposition permitted his extensive probing of the witness's belief system to succeed. Commissioning the translation of the coroner's findings in the attempt to avert miscommunication was also an example of this attitude. So too was the freedom extended to the interpreter in his facilitation of communication with YB. In so far as the challenges to communication in all these circumstances were met, the functioning of interpreter (and translator) as communication facilitator, as opposed to conduit (Laster & Taylor 1994, see section 8.1.3 above), was clearly critical.