

How I Got Started in Forensic Linguistics

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“I’m sorry, I simply don’t have time”

In my early 30s I was a recent PhD graduate working in Brisbane, Queensland, at the front-line of an exciting new development in what we now refer to as Indigenous education. The job, at a tertiary college, was to direct a recently established special entry program for Aboriginal and Torres Strait Islander people. Students admitted to this program had not completed secondary education but were admitted into teacher education training via a bridging course and a support centre. I loved working with this great group of lively, committed and diverse students who taught me much about Aboriginal and Torres Strait Islander experiences, expectations, values, attitudes and social life, while I helped them negotiate what was for many of them at times a daunting and alien institution. In those early days of special entry programs, helping college staff learn how to communicate with Indigenous students was one of the most challenging parts of my role.

Despite my energy and youthfulness, I found the job emotionally and socially draining, after what in hindsight seemed like the luxurious life of a PhD student (with two young children). The fact that my office was a small glass-lined inset in the common room of the students I was working with certainly intensified my immersion in the Aboriginal and Torres Strait Islander Group at this college.

Thus, when a young lawyer called me and asked if I might be able to assist with an expert report about the answers attributed to an Aboriginal man in a police interview, my response was clear: “I’m sorry, I simply don’t have time”. I knew that being able to say “no” to requests is crucial to time management. The lawyer respectfully ignored the propositional content of my answer, and proceeded to explain the seriousness of his imprisoned client’s allegation: that he had not said the words typed as his verbatim answers in the police record of interview. This interview typescript had been the major evidence resulting in his murder conviction and imprisonment two years earlier. In the Australian vernacular, his client was arguing that the typescript of his interview was a “verbal” (= fabricated confession).

The lawyer wanted my opinion because he had learned of my linguistics anthropology PhD research into Aboriginal use of English, and was hoping it would be relevant

to the allegedly verbatim typed record of this interview (which had not been audio- or video-recorded).

An expert linguistic opinion about the answers attributed to Mr Condren

It became clear that I should “just look at” the typescript of the interview. As the lawyer had hoped, before I finished reading the 155 questions and answers, it seemed to me that the answers attributed to the suspect, Mr Kelvin Condren, were most unlikely to have verbatim accuracy.

Before long, I had agreed to write an expert report, examining the interview questions and answers in detail, in the light of my knowledge of Aboriginal use of English generally, and Mr Condren’s participation in interviews more specifically. An early step was to make a visit to Stuart Prison in the north Queensland city of Townsville where Mr Condren was serving a life sentence for murder. Meeting and interviewing him enabled me to see that his recorded interview with myself and his lawyer in that semi-formal legal setting was consistent with my observations and expectations of Aboriginal English speakers. I had also requested permission for Mr Condren’s mother to join this meeting after some time. This enabled me to see that his conversation with his mother was quite different, and was consistent with Aboriginal ways of using English.

My report for the court compared the answers attributed to Mr Condren in the allegedly verbatim typescript with his answers in both the interview in the prison, and his evidence in his trial. My report found that “a significant number of the answers attributed to Condren in the [police record of interview] are not consistent with his speech patterns in the other two interviews, nor are they consistent with Condren’s dialect of English.” And I concluded that “it is not possible that all of the utterances attributed to Condren in reply to questions in [the police record of interview] are verbatim reports of his actual speech”. (I have written about this case in Eades 1993, 2013.)

One of my most terrifying professional experiences

I knew almost nothing about the legal system, and the role of expert witnesses, although I had given evidence the previous year in the same court (Queensland Supreme Court). In that case my evidence considered the police interview of a teenage Aboriginal boy, in which I concluded that it was likely that at least some of his answers of “I don’t know” indicated discomfort and possible confusion in the interview, rather than necessarily as a statement about his knowledge of the propositions being questioned.

The solicitor who had engaged me in the Condren case patiently explained my role and the pitfalls of undertaking the work of expert. My pre-trial meeting with the senior barrister was also very enlightening, despite being initially somewhat daunting. This barrister, Tony Fitzgerald, had not only read my report very carefully, but also my entire PhD thesis and my few publications to date, and asked excellent and exacting questions. He did this in the gentlest and most respectful manner, and I decided from that first meeting that he was just the kind of lawyer that Queensland needed. Indeed, within twelve months, he was appointed chair of the ground-breaking Commission of Inquiry into Official Corruption in Queensland (“The Fitzgerald Inquiry”), and later served as a judge of the Supreme Court of Queensland, then first President of that Appeals Division, then judge of the Appeals Division of the Supreme Court of New South Wales Supreme Court, and then judge of the Federal Court of Australia.

Although my experience of giving evidence in Condren's appeal was not my first appearance as an expert in court, it remains one of my most terrifying professional experiences. I shudder to think of some of my answers in cross-examination. On the day after I gave evidence, I came back to court to hear other witnesses. The Crown's barrister (who later went on to become a District Court judge) greeted me outside the court and said something like "I hope I wasn't too hard on you yesterday". I will never forget my reply: "Well, I'll never be scared of a student again!"

What I learnt from the judicial response to my evidence

Although my evidence was heard in full, it was later ruled as legally inadmissible, which of course disappointed me. It meant that my analysis and conclusions, which supported Mr Condren's allegation that he had been convicted on the basis of a verbal, had no influence on the court's decision. But some of the reasons for this ruling were such eye-openers to me that this appeal decision convinced me to pursue my research, about Aboriginal communication in English, in legal contexts specifically. For example, one of the judges ruled that

...evidence of what are said to be normal characteristics of Aboriginal speech and behaviour is no more admissible than evidence of any other aspect of normal human behaviour would be, or the normal behaviour of persons of Anglo-Saxon descent or the Australian community in general and is not a proper subject for expert testimony.

What alarmed me most about the appeal judges' reasons for ruling my evidence inadmissible involved their discourse of race. While it was no longer at that time accepted in the social sciences, the judges used the then still popular 'pathology of ethnicity' to discount the relevance of my research on Aboriginal English. For example, one of the judges referred to the '...absence of any clear evidence as to the genealogy of the appellant and to the fact that neither of his parents were full-blooded Aboriginals'. He also wrote

upon my assessment of [Condren's mother's] appearance and manner, I certainly formed the impression that she was of only partly Aboriginal extraction, and indeed that was not predominant.

Terms such as 'half-blooded', 'full-blooded' and 'of partly Aboriginal extraction' are used in the judgments in determining the question of applying evidence about Aboriginal people to Condren specifically. Of course, this is quite different from the findings of the social sciences that it is socialisation and cultural factors, rather than genealogy, that are most important in accounting for behaviour – including speech behaviour.

These judgments brought home to me the legal consequences of ignorance about the social and cultural dimensions of language and communication. At the same time, a few social workers and lawyers were telling me about the direct relevance to legal contexts of my work on Aboriginal ways of seeking and giving information. These two different, but related, dimensions of the participation of Aboriginal people in the legal system needed examination, and became a major focus of my research since then.

So what happened?

So what happened to Mr Condren? While his 1987 appeal, in which I gave evidence, was unsuccessful, the fight for justice in his case did not stop there. One of the country's top

investigative journalists, Chris Masters, undertook the “leg work” that had not been done by either the police or the overworked Aboriginal Legal Service that had represented him at trial. This revealed incontrovertible evidence that the murder for which Mr Condren was convicted and imprisoned had been committed in a time period during which he was in the police cells because of public drunkenness. After six years, his conviction was quashed, he was released from prison, and he received compensation for his wrongful imprisonment.

And what did I learn about saying “no” to requests when you are already overloaded? The seriousness of the allegation of fabricated confession, combined with the realisation that linguistic analysis could certainly shed light on this claim, led me to think “outside the box” and specifically outside my fishbowl office. Serendipitously, the college was starting to talk about Aboriginalisation of my position, which meant that it would not be appropriate for me to request extension of my two-year contract. My departure a few months before the end of my contract gave me time to write my expert report, as well as make up some of the time I had been unable to spend with my young children. Luckily, I was then able to take up a new academic position after a few months, in a time and place where such positions were not as scarce as they now are.

“Being a forensic linguist”

Most of my time, energy and output as a forensic linguist over more than 3 decades has focused on the broad area of forensic linguistics: namely the linguistic study of language in the legal process. Using a predominantly critical interactional sociolinguistics approach, I have focused on the use of varieties of English by, to and about Aboriginal people in the criminal justice system. I have also had many opportunities to provide training and workshops to lawyers and judicial officers about communication issues impacting Aboriginal participants in the legal system.

Much less of my work has been in terms of the narrow meaning of forensic linguistics: namely presenting expert linguistic evidence in courts and tribunals. In 34 years, I have written only 24 expert reports, and given oral evidence in only 10 cases. In my view, anyone starting out with the hope of “being a forensic linguist” needs to first become a good linguist. By specialising in an area of linguistics that is likely to be relevant to legal cases (such as cultural and linguistic aspects of Aboriginal uses of English, especially in legal contexts, in my case), you may have opportunities to respond to requests from lawyers for expert reports. And then some of these cases may result in you being required to give expert evidence in court. But these activities very rarely, if ever, comprise a full-time career.

References

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