

Predictable miscommunication: improving legal communication with people who speak English as an additional language

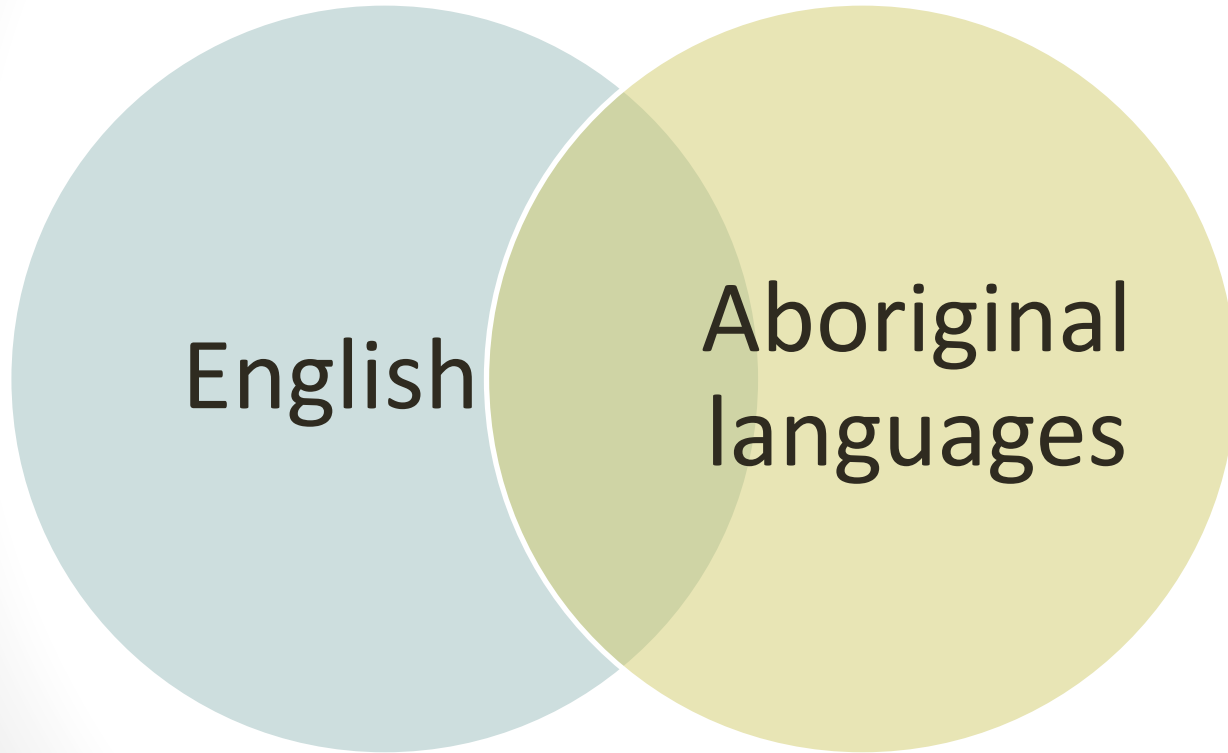
Ben Grimes, 11 May 2022

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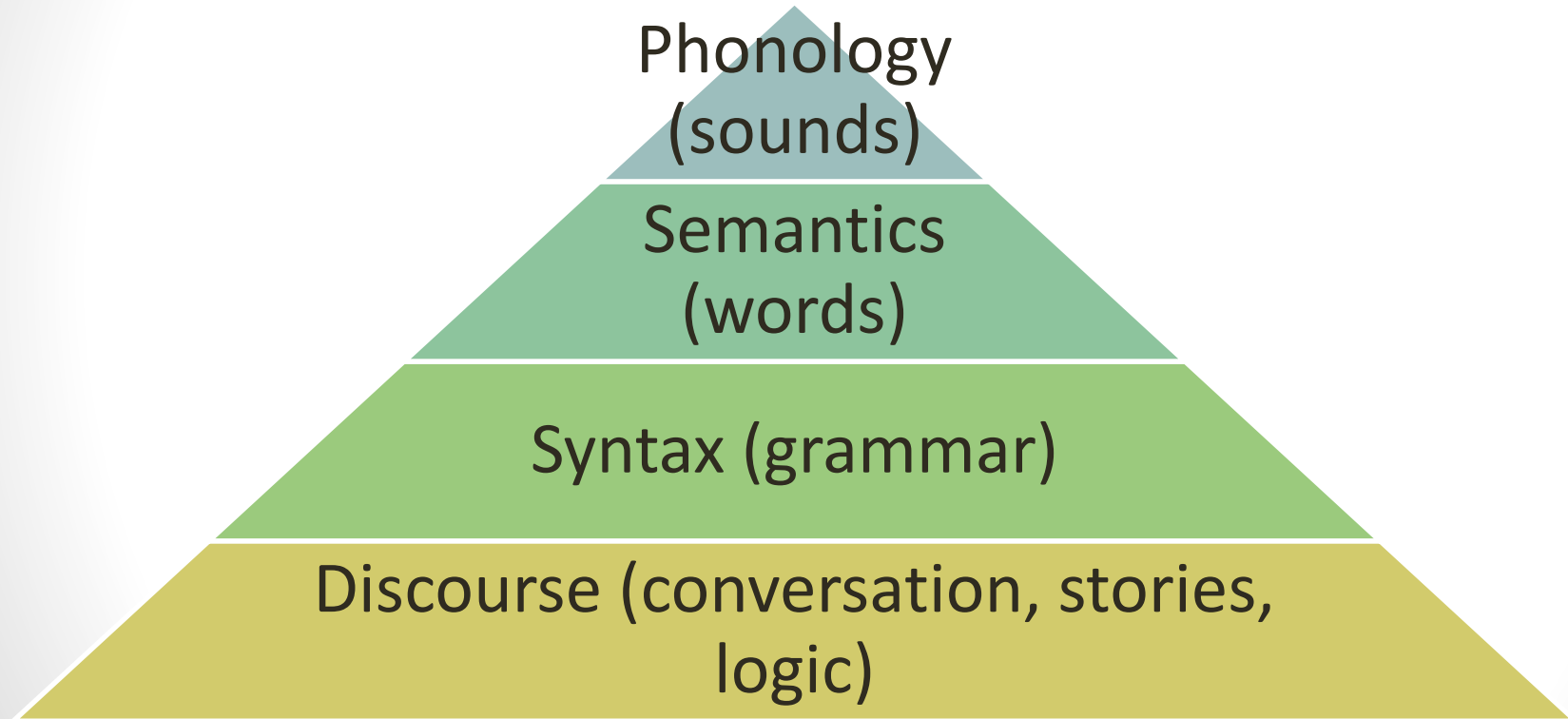
‘First language
interference’

A person's first
language will
influence how they
speak and
understand a
second language

'Contrastive Analysis'



Levels of language



Framing culture: the mental map of the world

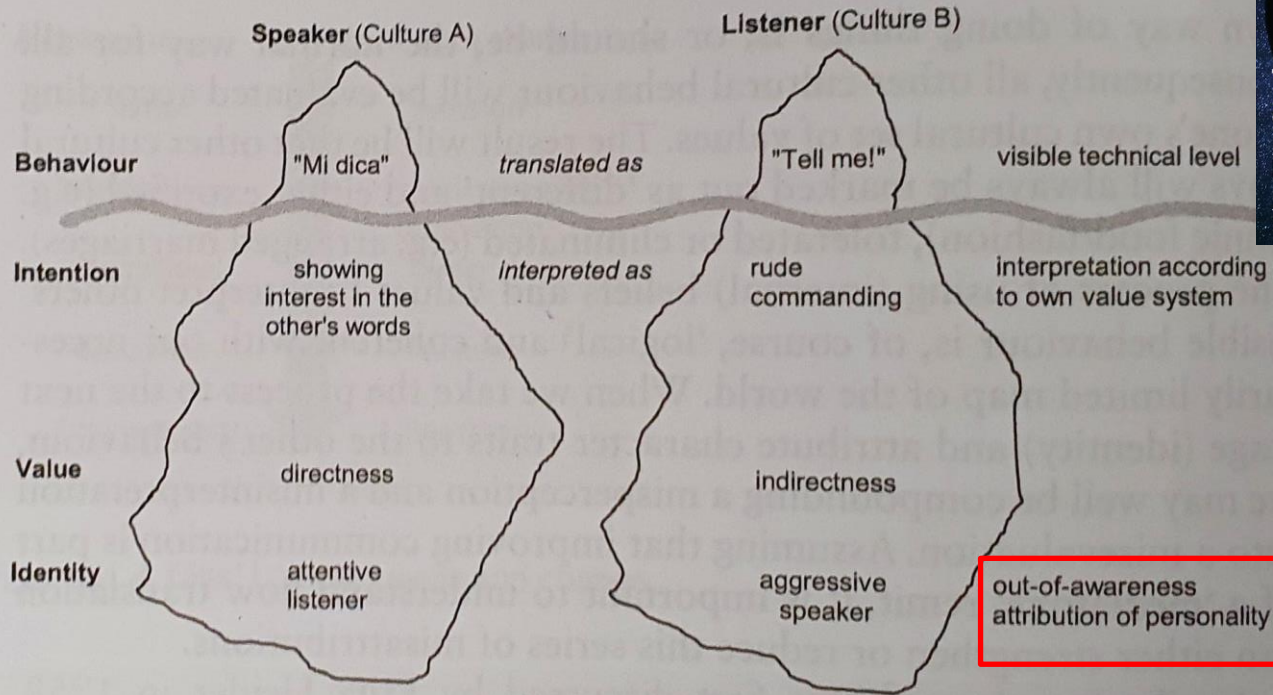


Figure 4.5 Culture-bound misinterpretation



TRANSLATING CULTURES

An Introduction for Translators, Interpreters and Mediators

Third Edition



An illusion of understanding: how native and non-native speakers of English understand (and misunderstand) their *Miranda* rights

Aneta Pavlenko,^a Elizabeth Hepford^b and Scott Jarvis^c

Research design

- 82 - L1 English speakers
- 117 – L1 Chinese Mandarin speakers (all enrolled in English language programs at 3 American universities)
- 66 – L1 Arabic speakers (all enrolled in English language programs at 3 American universities)
- All but 4 of the L2 participants had taken English proficiency tests and scored in the advanced – superior range.

Methodology

Task 1 – listening and dictation. Participants listened to a mixture of simple and complex sentences, and wrote down what they heard.

Task 3a – recall (listen and repeat orally)

Task 3b – listen and paraphrase in own words (one sentence at a time)

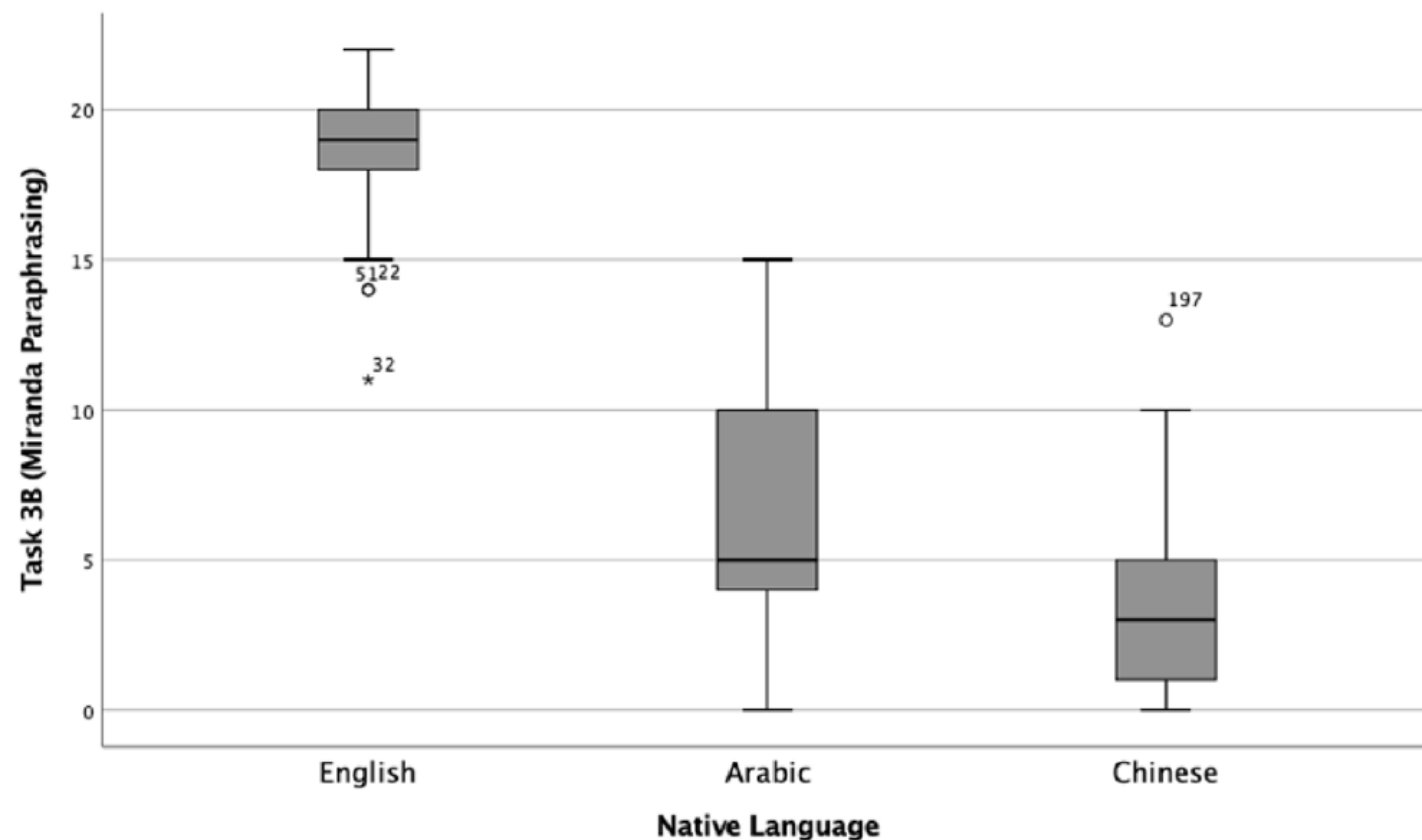


Figure 1: Boxplot for Task 3b *Miranda* Paraphrase (maximum possible score = 22).

Table 5. Group listening comprehension performance by sentence type (max score = 1.00)

Sentence type	Mean lexical frequency	Mean sentence length (words)	Mean syntactic complexity	L1 English Task 1 (<i>n</i> = 82)	L1 Arabic Task 1 (<i>n</i> = 66)	L1 Chinese Task 1 (<i>n</i> = 117)
Set 1: short sentences, simple syntax, high-frequency words	650.84	5.2	0.000	<i>M</i> = .966 <i>SD</i> = .053	<i>M</i> = .823 <i>SD</i> = .163	<i>M</i> = .738 <i>SD</i> = .190
Set 2: long sentences, complex syntax, high-frequency words	725.45	15.4	0.800	<i>M</i> = .907 <i>SD</i> = .083	<i>M</i> = .432 <i>SD</i> = .186	<i>M</i> = .330 <i>SD</i> = .144
Set 3: short sentences, simple syntax, legal terms	2420.97	8.6	0.200	<i>M</i> = .937 <i>SD</i> = .089	<i>M</i> = .242 <i>SD</i> = .202	<i>M</i> = .162 <i>SD</i> = .110
Set 4: long sentences, complex syntax, legal terms	3697.14	14.2	0.600	<i>M</i> = .482 <i>SD</i> = .160	<i>M</i> = .080 <i>SD</i> = .080	<i>M</i> = .052 <i>SD</i> = .042

Strikingly, our L2 participants were not always conscious of their own challenges. Our qualitative analysis revealed that, while some participants left blank spaces in place of legal terms, other participants filled the spaces with the words they inferred or thought they heard. Thus, in the sentence *Jurors decide who is guilty*, the unfamiliar term *jurors* was commonly substituted with *judge* or, alternatively, *Joe, Judy, George or Jews*. In turn, the sentence *The American legal system depends on the precedents set by previous cases* was rendered by several participants as *The American legal system depends on the President*. These substitutions – based on phonological similarity and approximate semantic fit – remind us that word meanings are not simply ‘retrieved’ from the bilingual lexicon but actively constructed online, with the mind filling in the gaps based on pre-existing knowledge. Insofar as this is true, did these compensatory strategies affect the L2 speak-

... before any questioning if you wish. (0%)

N/A

You can decide at any time to exercise these rights and not answer any questions or make any statements.
(18.3%)

You can choose to use your right at any time.
You have the right to talk or keep silent anytime you want.

You can get an appointment before you present if you want.

You will be in the prison if you can afford that.

You should answer.

You can write any time.

You can practise any time.

You can decide at any time to do exercise right.

You can exercise without do other things.

You can choose the time for exercises any time you want.

What we saw then was consistent reliance on compensatory strategies that created plausible alternative meanings to fill the gaps created by incomplete vocabulary knowledge and weak listening skills, both involving BLC. The resulting errors were facilitated by phonological, morphological and semantic properties of high-frequency English words:

1. homophony and phonological similarity (*right/write, present/prison/president*);
2. derivational morphology (*questioned/questioning/question*);
3. polysemy (*right* as *correct*, e.g., *to do exercise right*; *exercise* as *practice*, e.g., *You can practice any time*).

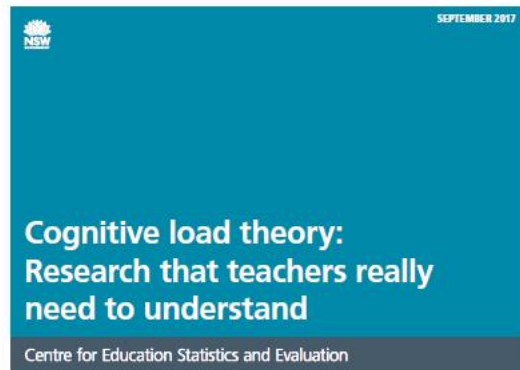
Incidental findings

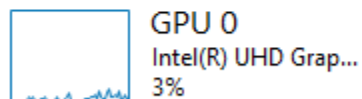
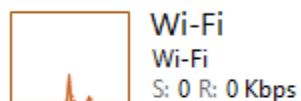
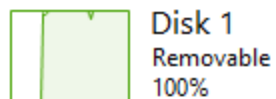
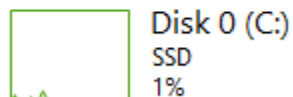
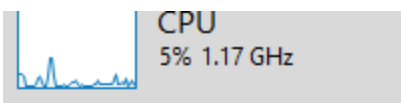
- Increased contact with the criminal justice system does not correlate with increased understanding of rights (>40 arrests did not have greater comprehension than <5 arrests).
- Police would increase rate of speech when delivering the caution (average 262 words per minute, compared with 198 wpm in average conversation).
 - The upper range of most L2 speakers of English is 150-200 wpm.

Language and cognitive load

Information is processed in the working memory, where small amounts of information are stored for a very short time. The average person can only hold about four 'chunks' of information in their working memory at one time.

We become mentally fatigued at a quicker rate when interacting in a second language (approx. 3 times the cognitive load)



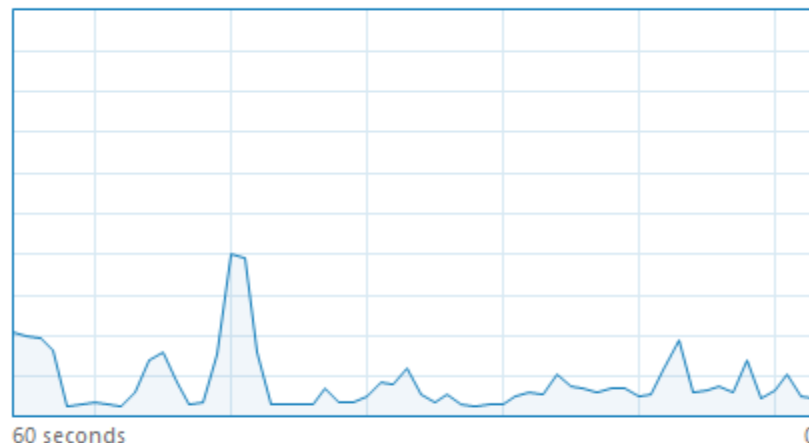


CPU

Intel(R) Core(TM) i5-10210U CPU @ 1.60GHz

% Utilization

100%



Utilization

Speed

Base speed:

2.11 GHz

5%

1.17 GHz

Sockets:

1

Processes

Threads

Handles

Cores:

4

268

3221

126079

Logical processors:

8

Virtualization:

Enabled

L1 cache:

256 KB

L2 cache:

1.0 MB

Up time

Proficiency can be uneven

- “[There is] a tendency in all of us to assume that as we may understand a person who is talking in his second language in a simple conversation in English, his understanding of our conversation is reciprocal.”
- per Muirhead J, *R v Jabarula* (1984) 11 A Crim R 131 at 137.

Language proficiency is a spectrum

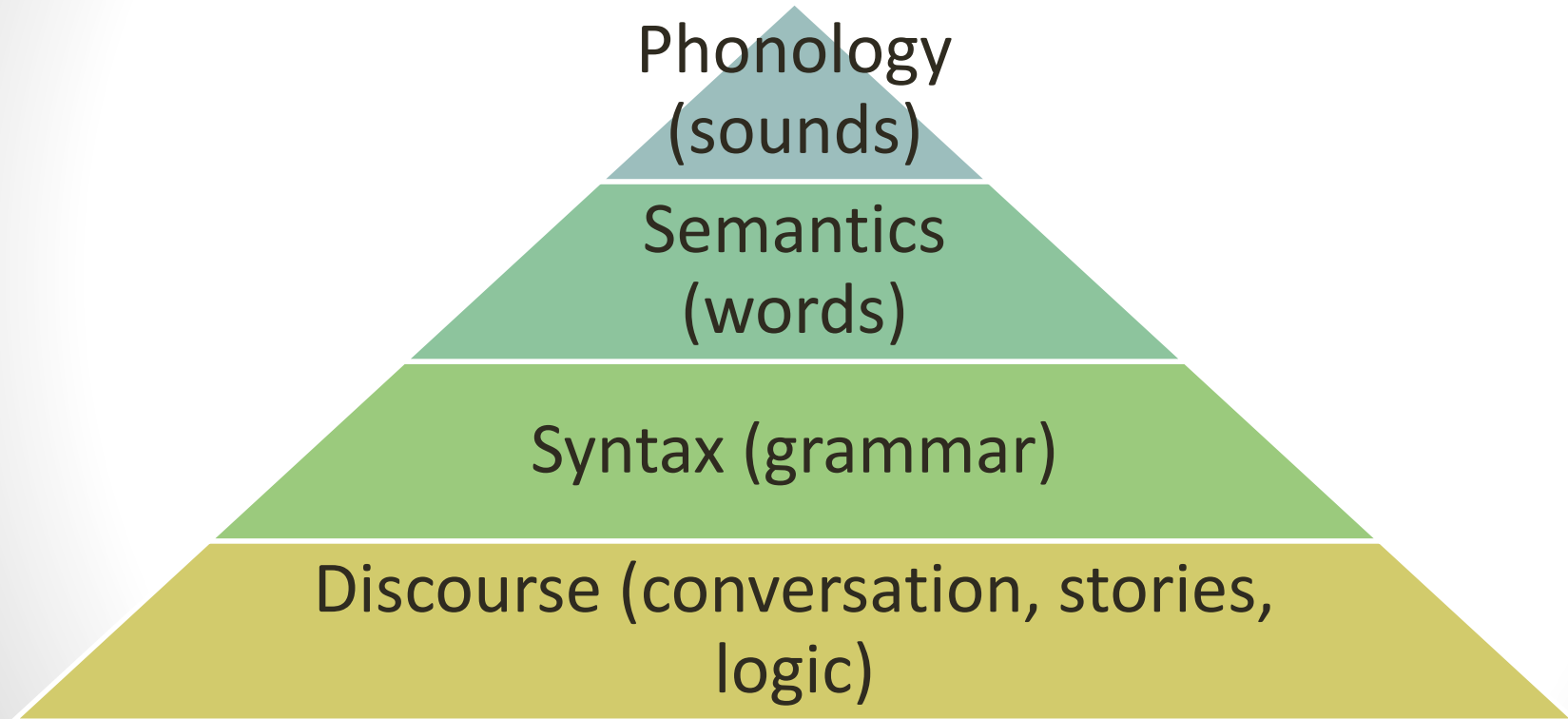
The mere fact that a person can sufficiently speak the English language to perform mundane or social tasks or even business obligations at the person's own pace does not necessarily mean that he or she is able to cope with the added stresses imposed by appearing as a witness in a court of law. Still more powerful are the reasons for affording a person the assistance of an interpreter if he or she must present the case without the help of legal counsel. Some of the earlier legal authorities about access to an interpreter reflect an attitude of a society, racially and linguistically homogeneous and often unsympathetic to the problems of others struggling in an alien environment. It is typical of a country with poor skills in languages other than English that even educated judicial officers sometimes show an intolerance to the predicament of parties and witnesses whose first language is not English and who seek the provision of an interpreter. Those who, in formal public environments, of which courts are but one example, have struggled with their own imperfect command of foreign languages, will understand more readily the problem then presented. The words which come adequately in the relaxed environment of the supermarket disappear from recollection. The technical expressions cannot be recalled, if ever they were known. The difficulties cause panic. A relationship in which the speaker is in command (as when dealing with friends or purchasing or selling goods and services) is quite different from a potentially hostile environment of a courtroom.⁶⁷

Per Kirby P in *Adamopoulos v Olympic Airways SA* (1991)
25 NSWLR 75 at 77-78.

1-in-4 exercise (Indonesian)

To what extent can we predict
intercultural
miscommunication?

Levels of language



Different sound systems

z, s, ch, sh
→ dj/tj

p = b

k = g

t = d

v, f → p/b

Bought = port = bot = pot = board =
poured

See Andy Butcher, 'Linguistic aspects of Australian Aboriginal English' (2008) 22:8 *Clinical Linguistics & Phonetics* 625, 628.

Consider a client's accent as
a factor that contributes to
unconscious bias.

Words

Words with no
close equivalent

Words with
partially
overlapping
meaning

Words with
multiple
meanings

Ordinary words with multiple meanings

- Did you **take** your medicine?
- Are you **happy** with these conditions?
- You can leave after you **see** the lawyer.
- Your nose is **running**.
- How did you **feel** when she said that?
- He was **charged**.



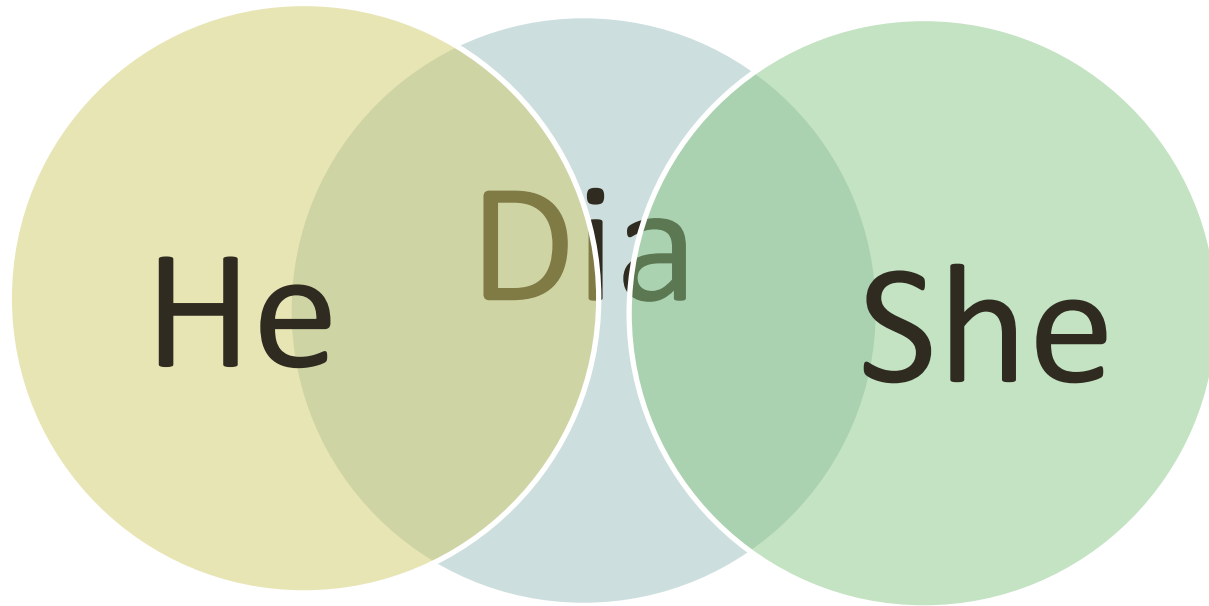
A Venn diagram with two overlapping circles. The left circle is light blue and labeled 'Buma (v)'. The right circle is light yellow and labeled 'Kill (v)'. The intersection of the two circles is shaded a darker greenish-yellow. The left circle contains a list of six items, and the right circle contains a list of two items.

Buma (v)

- Hunt
- Hit
- Cause death
- Weave
- Pinch (a child)
- Dolphins jumping

Kill (v)

- Murder
- Cause death



Some examples of Aboriginal English terms with different meanings (NT)

- Cheeky
- Force
- Half, half-way
- Stop, stopping
- Business
- Poison
- Fight
- Country
- Relationship terms (mum, dad, auntie etc)
- Kill
- Deadly
- Shame

Common problem words; partial overlap or no close equivalent

Can / Will

If / when

→ is allowed
→ might
→ has power to
→ will

→ maybe...maybe...

Should

A wide range of meanings in English.

Can express possibility or social/moral expectations. 'you shouldn't do that.'

'might'

'will'

'the [law] says he must...'

'you are allowed to...I think it is good to do that.'

You should talk to a lawyer before you talk to police. → The law says you are allowed to talk to a lawyer before you talk to the police. I think it is good for you to talk to a lawyer.

Could/would

Expresses possibility and uncertainty.

A wide range of meanings in English

'might'

'maybe'

'is allowed to'

He could be released on bail next week. → The judge might give him bail next week.

Serious

Meaning is culturally and context dependant; no equivalent that matches the English range of meanings

Define what makes something serious

This is a serious crime. →
This is a serious crime, that is, the law says you might go to jail for 14 years or more.

Need

This word has a wide range of meanings in English (want, desire, must, require). 'I need medical treatment.' 'I need some coffee.' 'I need to take your instructions.' 'what do you need?'

'must'

'will'

'want'

Before you can go, you need to sign your order.
→ You must sign your name on this order, then you can go.

Unless

This word reverses the chronological order of clauses within a sentence.

No close equivalent in many Aboriginal languages

Reverse the order of the clauses

You cannot go unless you get permission. → You must get permission, then you can go.

Instead

Requires an abstract/hypothetical substitution. No close equivalent in many Aboriginal languages.

'will / will not'

Remove from sentence

The judge will give you community work instead of jail. → The judge decided she will not send you to jail. She will make you do community work.

Grammar - Wangurri

- *Ga milmitjpayim ŋanapilingu*
- **And afternoon-became our/for us (ex)**
- *wapthunma ŋanapu, ŋaykaman ŋanapu,*
- **hop we (ex) go we (ex)**
- *bus-lim ŋanapu ŋal'ŋalun bala ŋaykaman*
- **bus-to we (ex) climb then go**
- *ga ŋanapu dhiŋgiŋ' yana-warri*
- **and we (ex) thinking only-contra**
- *bitjan, "Galki," bitjana.*
- **like this, "Close," like that.**

- **Meaning based translation:**

- And in the afternoon, we hopped (off the plane) and walked to the bus. We climbed on it and went on our way. And we were thinking, “We’re close!” But we were wrong.

- - example courtesy of Dr Marilyn Mclellan,
ARDS

Warlpiri

“You were sentenced to 18 months imprisonment, suspended after 12 months, with an operational period of 2 years.”

- *Yilyajangu magistrate-rli jalangu jail-kirra.*

Sent-you [the] magistrate today jail-to.

- *Kapunpa nyina 12 months-ki, ngula-jangka kapunpa wilypi-pardimi.*

You will stay for 12 months, after that you will exit.

- *Ngula-jangkaju, ngurrju-nyinaya jirrama year-ku.*

After that, be good for 2 years.

- *Nyampu jirrama year-puru, kajinpa rdilyki-pinyi law jirrama year-puruju, kapunpa pina yukami jail-kirra 6 months-kariki.*

During these 2 years, if you break the law during the two years, you re-enter jail for another 6 months.

“The offender is currently unsuitable for supervision because she has failed to demonstrate an understanding of what supervision would involve. She has a history of non-compliance with orders of the court and a disregard for authority.”

- *Kulalparnarla nyampuku rdujuku yungkarla order. Nyiya-jangka-wiyi?*
I cannot give this woman a order. Why not?
- *Panu-karirli magistrate-rlu yungu-lurla kamparrurlu-wiyi panu order-patu.*
Many magistrates previously gave her many orders.
- *Kula-ka jungangku milya-pinyi order nyampu-patuju. Manu kula kajana linpangku purda-nyanyi.*
She doesn't truly understand these orders. And she doesn't obey them.
- *Wilji-nyayirni nyampuju mina-nyayirni!*
She's persistently belligerent and contemptuously defiant [of the magistrates orders]!

Grammar

passives

tense

Prepositions
to talk about
time

cause & effect

Negative
questions

nominalisation
(abstract
nouns)

Passives

Her car **was
stolen.**

- Someone stole her car.

She **was
sentenced** to
imprisonment.

- The judge sent her to prison.

3 problems with passives

- 1. grammatically not possible in some languages
- 2. Hearer attaches verb to the wrong person; 'She was assaulted.'
- 3. Requires hearer to supply missing information; hearer may incorrectly supply missing information. 'Your application was rejected.'

Abstract nouns

His **anger** led him to **violence**.

- He was angry. That is why he became violent.

Poor **management** resulted in insufficient **housing**.

- [The government] did not manage this properly. That is why there are not enough houses.

Cause and effect

She went to hospital **because** she was sick.

- She was sick. So [that is why] she went to hospital.

She saw a lawyer **because** she had legal problems.

- She had legal problems. That is why she talked with a lawyer.

Prepositions to discuss time

Your contract is
under review.

- They are deciding about your contract.
- (the managers are deciding about giving you a work contract. Next week they will tell you what they decided.)

The course runs
from Monday
to Wednesday.

- The course starts Monday morning and finishes Wednesday afternoon.

Negative questions

You never
reported, did
you?

• Did you report?

She was angry,
wasn't she?

• She was angry.
Is that true?

Tense (and aspect)

- I work.
- I worked.
- I will work.
- I did work.
- I do work.
- I have worked.
- I will have worked.
- I was working.
- I am working.
- I will be working.
- I had been working.
- I have been working.
- I will have been working.

Tense (and aspect)

- I work.
- I worked.
- I will work.
- I did work.
- I do work.
- I have worked.
- I will have worked.
- I was working.
- I am working.
- I will be working.
- I had been working.
- I have been working.
- I will have been working.

- “You are going to be imprisoned for 3 months because you didn’t comply with your orders.”

- “You are going to **be imprisoned** for 3 months **because** you didn’t **comply** with **your orders**.”



“[Last year] the judge gave you rules to follow. You did not follow those rules. That is why today I am sending you to jail for 3 months.”

- There is no way that you can be allowed to attend that funeral. You should accept this reality and focus on dealing with your anger issues.

There is no way that you **can be** allowed to attend that funeral. You **should** accept this **reality** and **focus on dealing** with your **anger issues**. →

I will not give you permission to go to that funeral. You cannot change what I have decided. The best thing for you is to think about the things that will help you become less angry. [there is a program that will help you].

- A person is guilty of contempt of the court if they do not, in the face of the court, comply with a lawful direction of the court.

- A person is **guilty of** contempt of the court if they do not, **in the face of** the court, **comply** with **a lawful direction of the court.** →
- There is a law called contempt of court. This law says that a person in a courtroom must obey what the judge tells them to do. A person who does not obey what a judge tells them to do in a court room might be breaking the law and the judge might punish them with a fine or time in jail.

- “Before you can leave, you need to sign your orders.”

- “**Before** you **can** leave, you **need** to **sign** your **orders**.”
- → “You must sign your name on that paper, then you are allowed to leave the court building.”
- “The court orderly will write these rules on paper, called your ‘order’. You must sign your name on that paper. [When you sign your name, you are promising to follow those rules.] After you sign your name, you are allowed to leave [the court building].”

- “You were sentenced to 2 years imprisonment, suspended after 12 months, with an operational period of 18 months.”

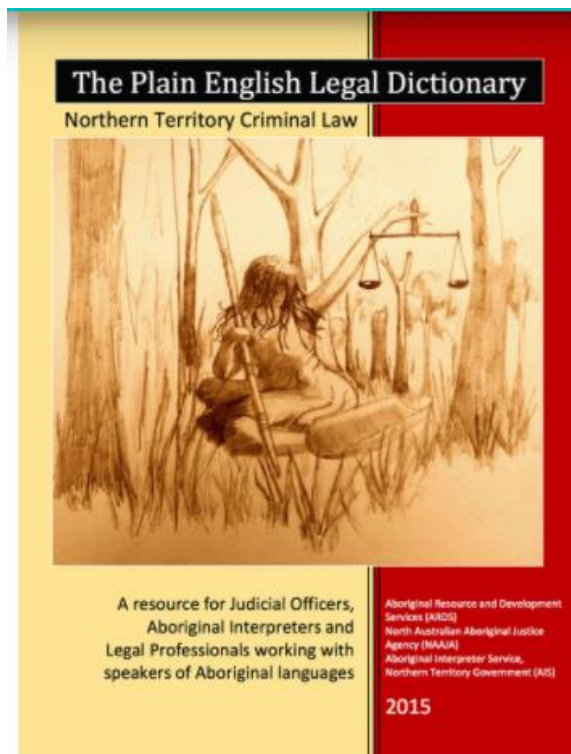
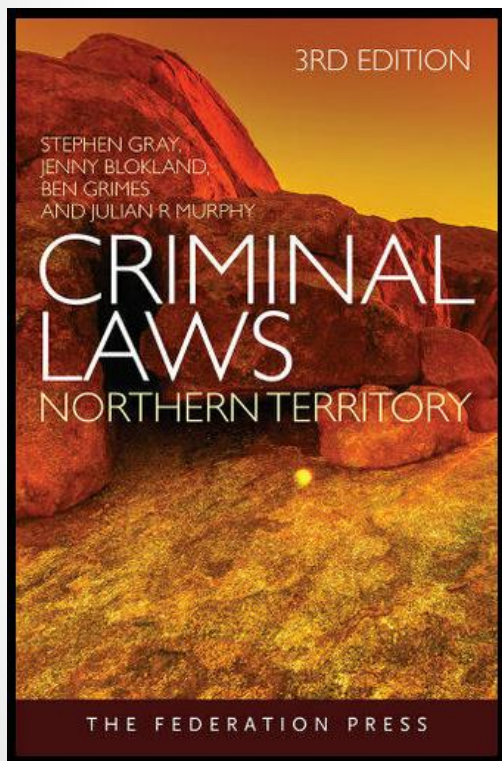
- “You **were sentenced** to 2 years imprisonment, **suspended after** 12 months, with an **operational period** of 18 months.”
- →
- “Today I am sending you to jail for 12 months. After that, you will come out of jail. After you come out of jail you must [follow these rules / not break the law] for 18 months. If you break the law/rules during those 18 months, you will come back to court. A judge will decide about sending you back to jail for 12 months, or maybe longer.”

- “There are 4 things you must remember/understand;
- 1. How long you are going to jail for, starting today.
- 2. what rules you must follow after you come out of jail.
- 3. How long you must follow those rules.
- 4. How long you might go back to jail for if(when) you break any of those rules.”

- “You can only go to the football game if the corrections officer approves it.”

- “You **can only** go to the football game **if** the corrections officer **approves it.**”
- →
- “You must ask the corrections officer about going to the football game. Maybe she will say yes, maybe she will say no. You must do what she says.”

Additional resources



Annexure 3 — Plain English Strategies

1. Use active voice, avoid passives

All parties in the legal system should change a passive statement to an active statement by supplying an actor (the doer). If the actor is unclear, use 'they' or 'somebody'.

Instead of:	Try:
He was arrested.	The police arrested him.
"You will be paid extra for overtime work."	"If you work overtime, they will pay you more money."
"He broke the law, so he was jailed."	"He broke the law, so they put him in jail."
"His money was stolen."	"Somebody stole his money."

2. Avoid abstract nouns

An abstract noun is something that is intangible, like an idea or feeling, and cannot be detected with the senses. Judicial officers and lawyers in court frequently use abstract nouns, but many of these are special court words, not common English words which ordinary people might use and understand.

All parties in the legal system should replace abstract nouns with verbs (doing words) or adjectives (describing words).

The secret to replacing English abstract nouns correctly is to discover the actions that are hidden inside of them. An abstract noun may often hide more than one action and each of these actions will have one or more person or things involved in either doing the action or being affected by the action. So in order to properly replace abstract nouns with plain English, judicial officers and lawyers should:

- identify the hidden action within the abstract noun;
- identify who or what is involved with the action;
- restate the abstract noun in a sentence using ordinary nouns and verbs.¹²⁸

Recommended National Standards
for Working with Interpreters
in Courts and Tribunals

Factors contributing to linguistic vulnerability in the legal system

L1 – dominant v
non-dominant
language

Language family –
closeness to
English

Similarity of home
legal system to
Aust legal system

Understanding
and assertiveness
re language rights

Availability of
professional
interpreters

Availability of
legal education
resources

Some linguistic considerations

‘National’
language

‘minority’
language

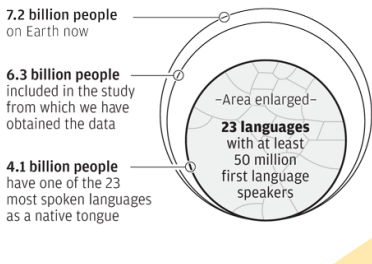
Standardised
language
variety

‘non-standard’
variety

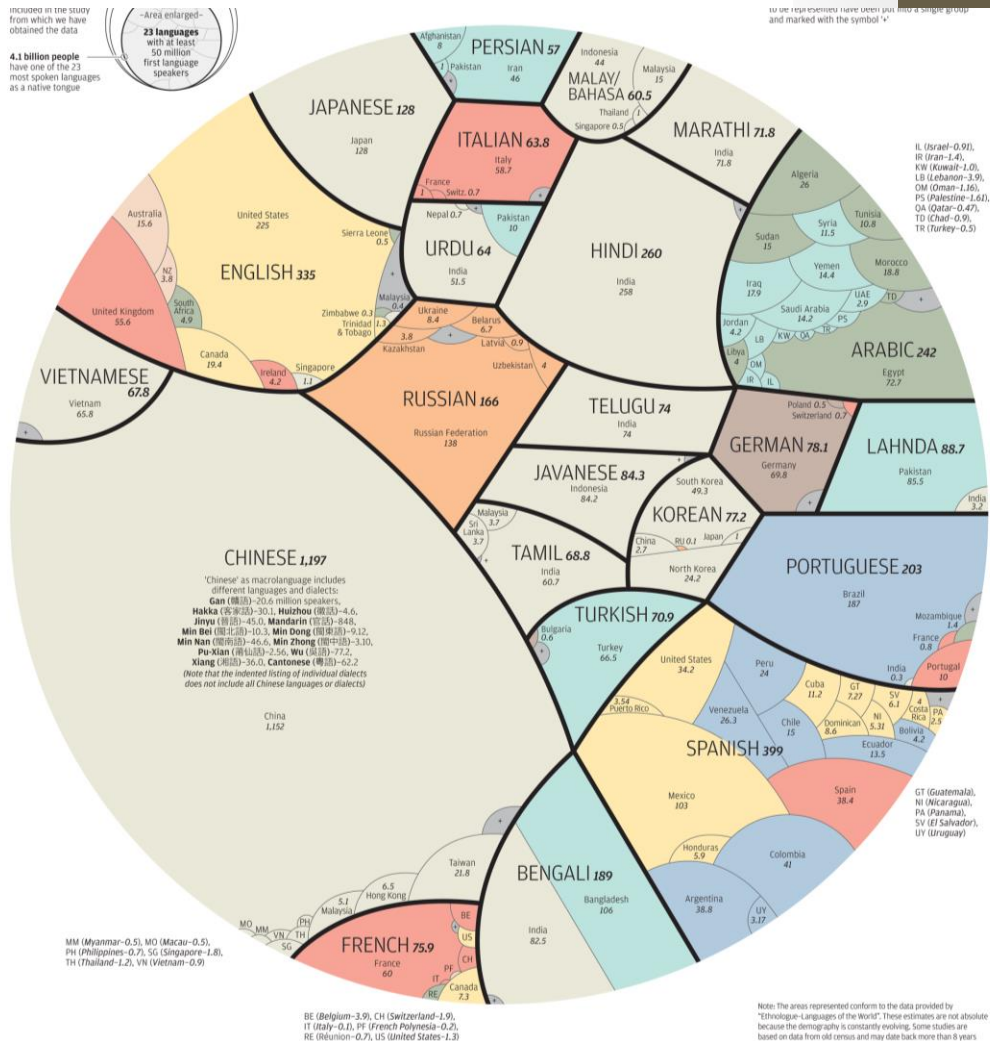
There are at least 7,102 known languages alive in the world today. Twenty-three of these languages are a mother tongue for more than 50 million people. The 23 languages make up the native tongue of 4.1 billion people. We represent each language within black borders and then provide the numbers of native speakers (in millions) by country. The colour of these countries shows how languages have taken root in many different regions

6.3 billion people
included in the study
from which we have
obtained the data

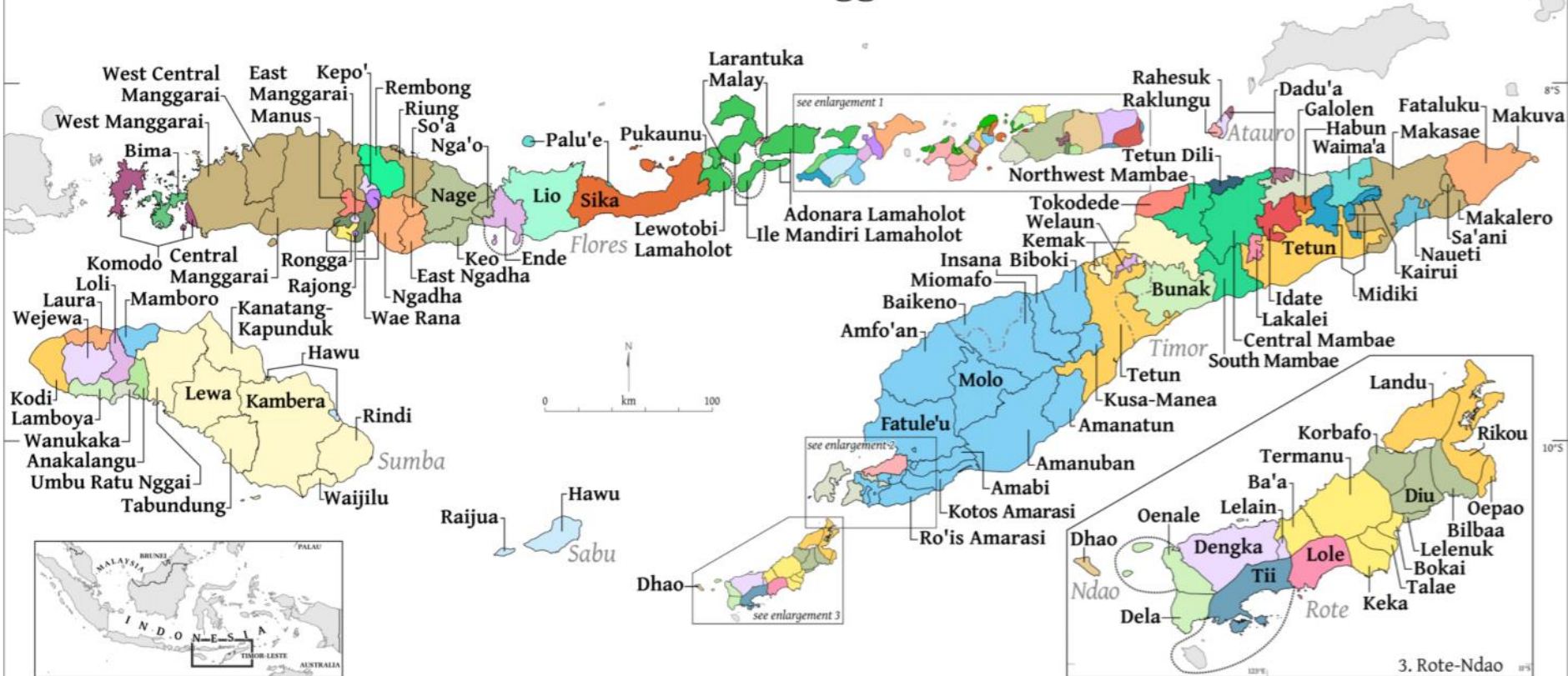
4.1 billion people — have one of the 23 most spoken languages as a native tongue



<https://www.scmp.com/infographics/article/1810040/infographic-world-languages>



Bahasa-bahasa daerah di Nusa Tenggara Timur dan Timor-Leste



A fairly typical 'language profile'

Local
language

Regional trade
language

National
language

Dela

Kupang Malay

Indonesian

Identify potential communicational vulnerabilities

French

Japanese

Dela

Yumplatok
/ TS Creole

Aboriginal
English