

# Communication, Listening and Criminal Justice

*by*  
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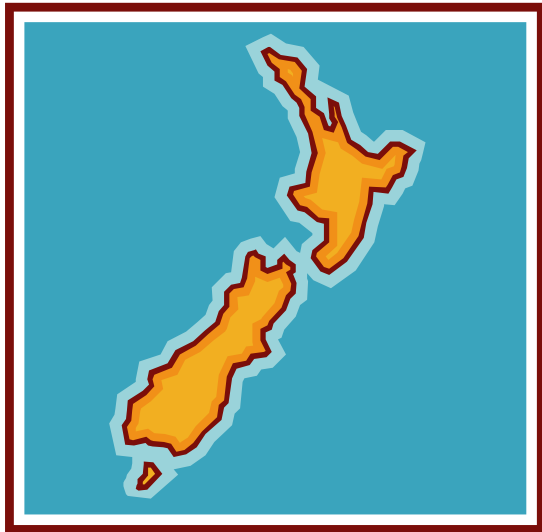
# Hearing loss among prisoners

# USA



- 8% of general population with hearing loss
- 40% of prisoners with hearing loss (Melnick 1970)
- 30% of prisoners with hearing loss (Belenchia and Crowe 1983)
- 36% prisoners with hearing loss (McRandle and Goldstein 1986)

# New Zealand

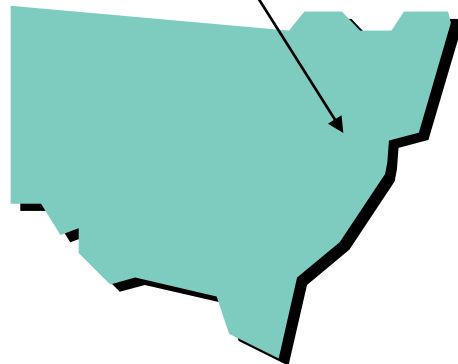


- 54% of the European prisoners with hearing loss
- 83% of Maori prisoners hearing loss (Bowers 1983)

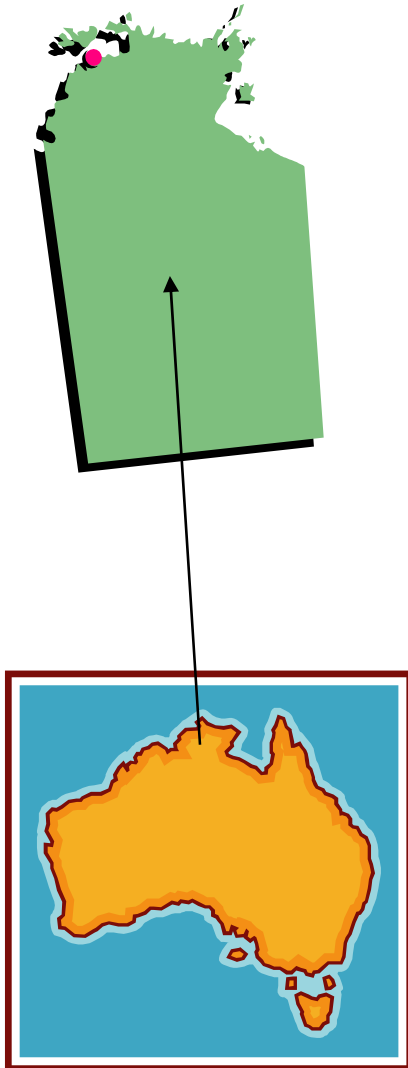
# Australia- New South Wales



- 50% Non Aboriginal with hearing loss
- 85% Aboriginal with hearing loss (Murray and La Page 2004)
- 25% in general Aboriginal population with hearing loss (Weeks 1991)



# Australia- Northern Territory



- 90 % of Aboriginal inmates in Darwin failed hearing screening (Yonovitz 2004)
- 60% of Aboriginal youth in detention had abnormal middle ear function (Yonovitz 2004)

# Hearing loss among Aboriginal witnesses

- 50% of Aboriginal students at Batchelor college found to have hearing loss of at least 15 decibels in the better ear. (Lay 1990)

# Indications of hearing loss in the courtroom




- Avoids or is reluctant to participate.
- Takes a long time to respond.
- Asks for questions to be repeated.
- Confused by topic changes.
- Has trouble maintaining attention.
- Often need to explain the meaning of words.
- Confused by linguistic complexity.



# Some anecdotes

- A defendant with hearing loss was crash tackled when being transported from court when did not obey order to stop.
- Defendant with hearing loss 'trashed' an unfamiliar room when new lawyer tried to explain court outcome.
- One ex petrol sniffing hearing impaired prisoner developed antagonistic relationship with prison officers.
  - Several injured and left sector with huge workers compensation costs
  - Prison Officers made contact with prisoner only when kitted with shield and with baton
- A feud developed between a hearing impaired prisoner and another prisoner after misunderstanding during a game of cricket.

A decorative border composed of a horizontal line at the top and a vertical line on the left side, both rendered in a rainbow gradient from red to purple. At the corners of this border, there are clusters of colored pencils in various colors (yellow, blue, green, pink, orange, red, purple).

# **Why the high prevalence of hearing loss among Indigenous peoples**

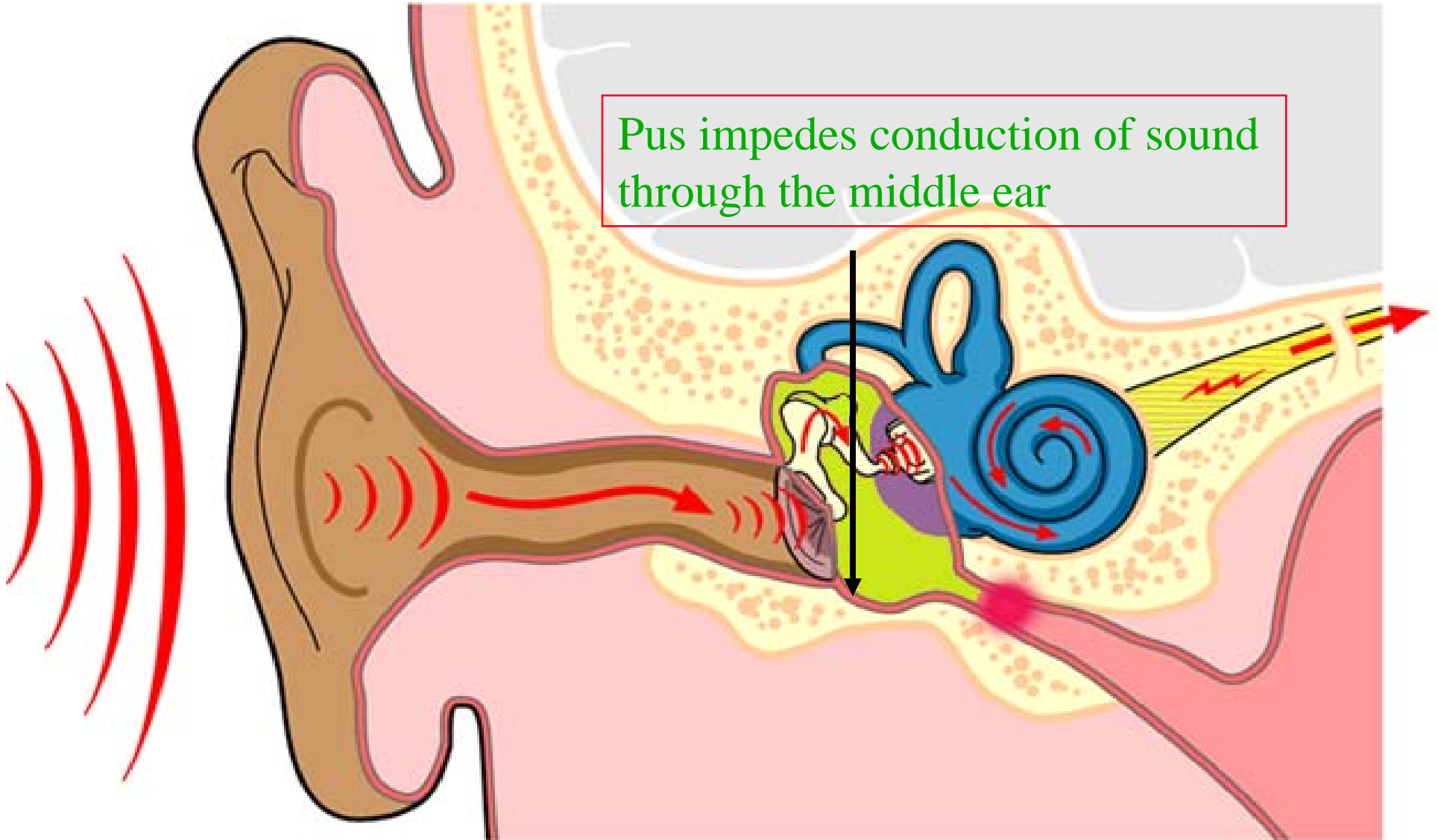
# Middle ear disease



- Middle ear disease, 'glue ear', is one of the most common childhood illnesses.
- Pus in the middle ear prevents sound being 'conducted'.
- **This results in Conductive Hearing Loss (CHL)**
- Middle ear disease is often seen as a relatively minor health problem but it can have major long term communication effects.

## Middle ear infection often leads to conductive hearing loss (CHL)

Pus impedes conduction of sound through the middle ear



# Aboriginal Middle Ear Disease



**Compared with other populations**

- **Disease starts earlier and last longer**
- **Occur more often for longer into childhood**

Time  
with  
hearing  
Loss  
during  
childhood



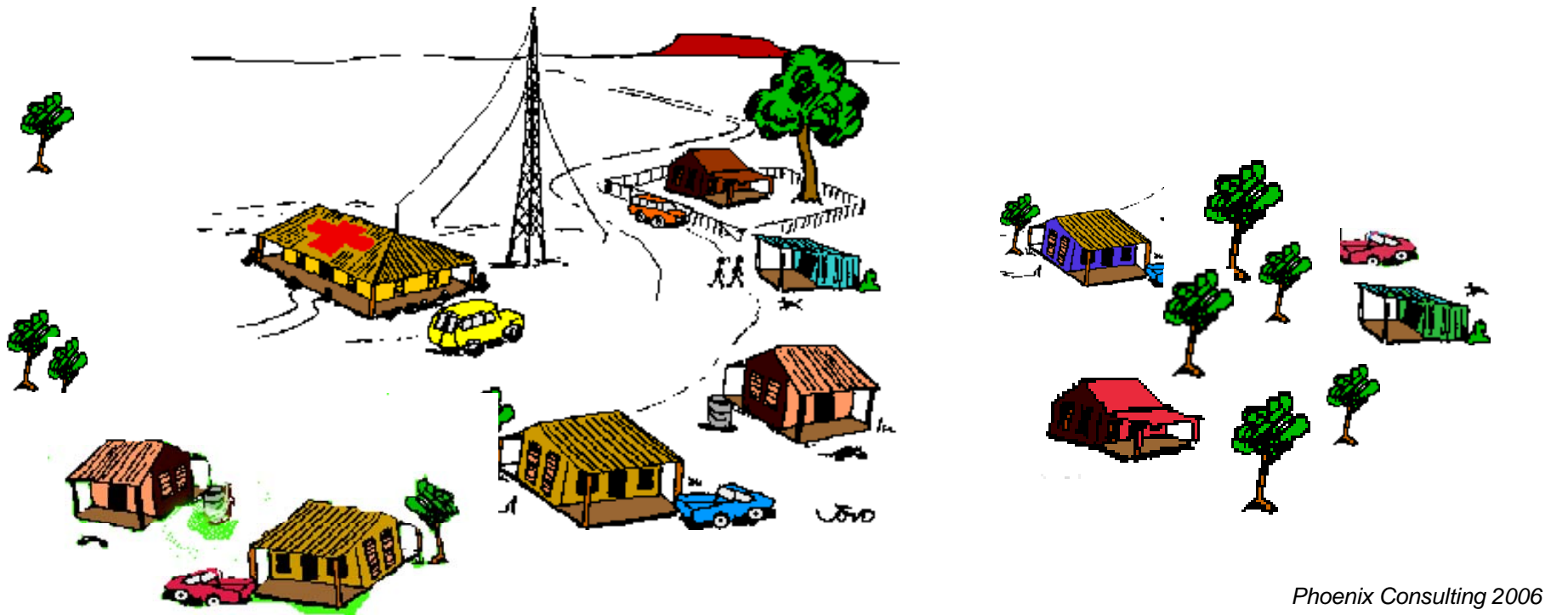
Average 2.6 years  
Aboriginal children



Average 3 months  
white children

# Risk factors for otitis media

- Crowded housing
- Poor nutrition
- Limited access to health care

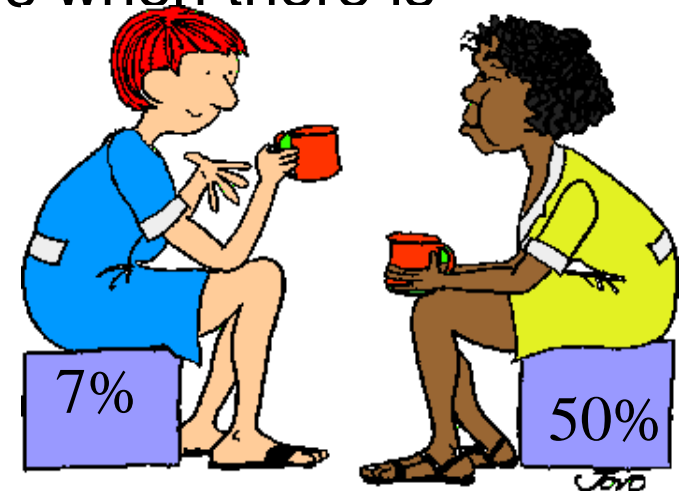


# Permanent Hearing Loss



- Children's conductive hearing loss can be temporary and fluctuating. Hearing loss occurs when there is
  - middle ear disease
  - perforations

**BUT**

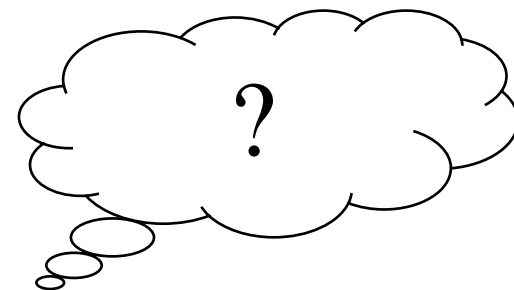
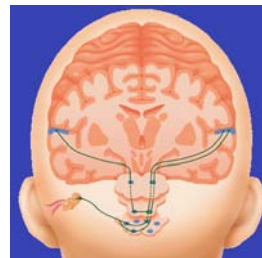
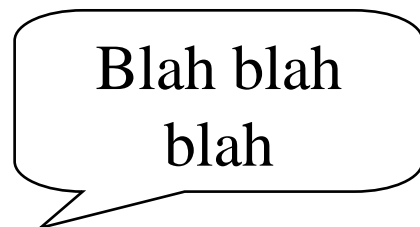


- Chronic otitis media can leave permanent hearing loss
  - More than 50 % of Indigenous adults in some communities have some hearing loss
  - 7% of wider community have some hearing loss

# Auditory Processing Problems



- With conductive hearing loss, children have a partial sensory deprivation
- This can impact on the child's developing their ability to process and interpret sounds of language.
- So temporary hearing loss in childhood can lead to permanent auditory processing problems in adulthood





# Problems listening ?



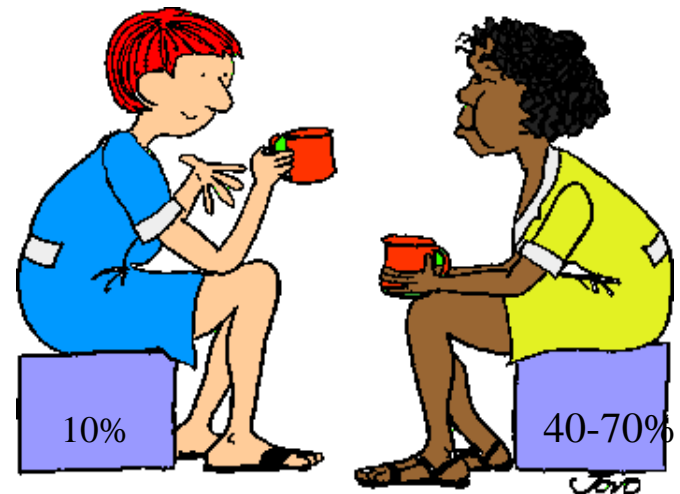
- People with auditory processing problems can have difficulties
  - understanding speech when it is noisy
  - following long conversations
  - multi-step verbal directions
  - remembering verbal information.



# How many people have it ?



- About 10% of people in the **general population** have Auditory Processing Disorder
- One study found 40% of **Aboriginal people** had signs of auditory processing problems. (Yonovitz and Yonovitz 2000)



# Some indicators



Indicators of listening problems in meetings can be that people

- Talk little
- Often ask for things to be repeated/clarified
- Often talk off the topic discussed
- Rely on others to explain things in 'language'/'with action'.
- Are very shy





# Hearing loss and criminal behavior

Research and informed speculation

# Anti social behaviour and current CHL

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- 90% of children with behaviour problems in early childhood classes had current conductive hearing loss or middle ear problems in **five Melbourne schools** (Moore and Best 1987).
- Disruptive students were overwhelmingly those with a conductive hearing loss among 167 students in **two NT remote schools** (Howard 1992).

Research



# Social and emotional wellbeing

- West Australian Aboriginal child health survey found middle ear disease associated with diminished social and emotional wellbeing. (Zubrick et al 2004)

# High levels of frustration/anger

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- Experience of failure from not understanding verbal instructions.
- Often feel excluded in many social situations.
- Find unfamiliar situations stressful.
- Difficulties in communicating to obtain what they want.
- Often is dependent on others.

# Poor self esteem



- Hearing loss contributes to:
  - regular experience of failure, peer rejection and punishment,
  - sensitive to sense of social exclusion and
  - can have volatile response to being teased.



# Poor social skills

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- Difficult to participate in normal social processes, especially group situations or when noisy.
- Tend to interrupt, avoid, 'ignore' and/or dominate.
- Tend to use teasing/bullying/coercion as social strategy.
- May be socially withdrawn but experience simmering frustration with occasional outbursts.

# Problems in cross cultural communication

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- Best in communication with other Indigenous people who know them well and
  - Use non verbal cues or signing
  - Speak most familiar language
  - Have developed effective strategies through shared communicative history
- Have problems communicating with people who don't have these skills

# A missing piece of the puzzle

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- Hearing loss and auditory processing problems are important and mostly neglected factors that contribute to antisocial behaviour and diminished social and emotional wellbeing that, in turn, contribute to the over representation of Indigenous people in the criminal justice system

# A neglected Issue

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- Despite this high prevalence of hearing loss among prisoners there has been no formal research into how hearing loss may contribute to crime.
- Given the prevalence of hearing loss it is as important an issue as cross cultural awareness for police, courts and corrections.
- Important but neglected consideration in crime prevention, management of correctional services and prisoner rehabilitation.

# Cycle of disadvantage





# Courtroom communication

# Legal culture

- Law (especially courts) focus on auditory/verbal/literate communication.



**The representation of 'blind' justice is apt.**

# Aboriginal communication styles

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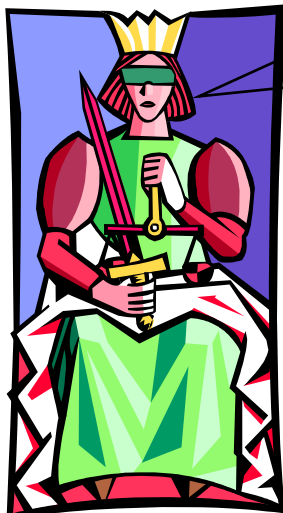
- Place greater reliance on ‘visual literacy’
  - Communicating meaning through body language and facial expression.
  - *“Aboriginal English makes considerable use of non-verbal signs... (they) are an integral part of the communication process ... they are systematised and integrated in a way that makes them an essential part of the vocabulary of the language.” Aboriginal English in the courts.*
- Aboriginal people with listening problems rely on non verbal signs and have least verbal/auditory skills.





# Aboriginal people with hearing loss in criminal justice system

- Aboriginal people with hearing loss are least able to cope with auditory/verbal/literate communication within a system that demands participants have a high level of these skills.



I talk and hear  
but see less

I watch and show  
but hear less



# Masking of listening problems



- Courtroom communication problems are most often seen related to limited language and literacy or to cultural differences.
- Listening difficulties contribute to language and literacy problems.
- It is also a neglected factor in communication problems.







# Listening, language and culture

Listening problems = hearing loss  
and/or auditory processing  
problems

A decorative graphic at the top of the slide features a speech bubble containing the word 'Language'. The bubble is connected to a horizontal brushstroke that transitions through colors from pink to yellow to green. On the left side, several colored pencils (yellow, blue, green, orange) are clustered together. On the right side, two purple pencils are shown pointing towards the center.

# Language

- Harder to learn language when don't hear some sounds, especially sounds not present in first language.
- Signing systems (action), help people with listening problems cope.
- But communication is fragile when talking in English, to someone not well known, who does not use action and when the topic or ideas are unfamiliar.

# Listening and speaking



- Limited vocabulary, reduced knowledge of grammar, poor auditory memory impacts on both understanding others and explaining things to others.
- Have most problems understanding when complex language is used.

# Literacy



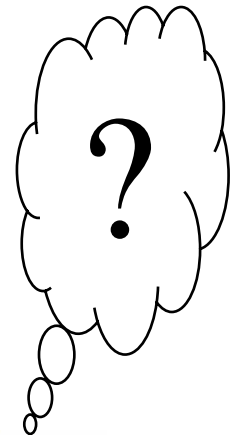
- Reading instruction reliant on relating sounds to letters.
- But this is difficult if it is hard to hear sounds.
- People with listening problems often find it more difficult to learn to read.



# Compounds cultural difference



- Aboriginal people with listening problems are most often those who are least comfortable in cross cultural communication.





# Cross cultural communication



- Non Aboriginal people are less skilled using the non verbal cues that Aboriginal people with hearing loss rely on.
- Aboriginal people with hearing loss
  - have less English
  - avoid the contact needed to build up understanding of non Aboriginal world view.

I try to avoid  
white people



# Courtroom responses related to listening problems

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- Uninvolved, unresponsive
- Slow to respond, more silence
- Greater use of Aboriginal English
- Misunderstands often
- Topic changes difficult
- Difficulties maintaining attention
- More “Linguistically vulnerable”

# Uninvolved, unresponsive

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- Difficulties understanding auditory/verbal events in unfamiliar sociolinguistic setting.
- Avoid being shamed by not responding.

# Slow to respond

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- Need more time to process auditory information.
- Listening involves more thinking to fill in the gaps and work out what has been said.

# More Aboriginal English

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- Less familiar with standard English.

# Misunderstands often

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- Because have not heard accurately or what is heard is unfamiliar



# Topic changes

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- Knowledge of topic helps to 'hear' better
- Harder to 'fill in the gaps' when don't know the topic.
- He was panicked by the rush of air from the \_\_\_\_\_ (hair, hatch, tap)

Topic is space travel

# Difficulties maintaining attention

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- Listening is harder work with hearing loss.
- Susceptible to listening overload then tune out.
- Danger that in long cross examination later testimony unreliable.



# Linguistically vulnerable

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- Aboriginal people with hearing loss will be more susceptible to counsel who wish to capitalise on their linguistic vulnerability.

*“Coercive leading questions, principally in declarative form, are highly valued by lawyers in conducting cross-examination, and are also particularly effective with these witnesses. Thus a strong argument can be made against their unfettered application. Mildren J 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 this category. (Cooke 2002)*

# Judicial role

“the judiciary retains a crucial role (and responsibility) to offset the linguistic disadvantage faced by NESB witnesses and many of their paraprofessional interpreters by exerting more control over counsel in the way in which they frame their questions, and to be particularly alert to those instances where counsel knowingly capitalise on a witness' linguistic handicap.” (Cooke 2002 p38)


- **Same can be said when handicap is listening/linguistic in nature**

# Beware of the glib

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Cooke (2002) considered linguistic challenges presented to NESB Aboriginal witnesses by some barristers.

- Barristers who are speakers of SAE- ie Scottish accent
- Barristers who speak quickly
- Who use linguistically challenging questioning (eg. rapid-fire questioning, trick questions, convoluted question forms, syntactically complex questions)
- Whose questions are conceptually complex and/or are culturally alien
- Who seek to use linguistic vulnerability for tactical advantage



# **Strategies to improve communication in courtrooms of Aboriginal people with hearing loss**

Based on knowledge from other sectors

- Acoustics and speech perception
- Amplification
- Judgment of credibility
- Visual barriers
- Visual literacy
- Judgments of credibility
- Listening overload
- Preparation

# Acoustics and speech perception

- Speech perception is harder for those with listening difficulties
  - When it is noisy
  - When language or concepts unfamiliar
  - When listening to a less familiar language

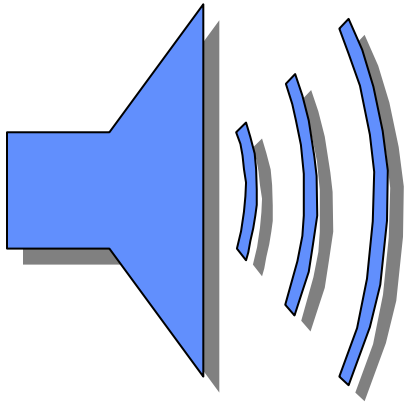


# Manage acoustics

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- Select or treat courtrooms and places where communicate with counsel to
  - Minimise reverberation (echo)
  - Eliminate intrusive noise
- Manage courtroom activity to create best listening environment for needs of NESB Aboriginal people with hearing loss
- “a range of 20 decibels to 30 decibels for speech-focused halls and rooms and reverberation time should not exceed 0.5 seconds.”

# Amplification



- Amplifying the speaker's voice over background noise makes speech perception easier.
- Especially for those with listening difficulties and/or from NESB background.
- In schools speakers in class found to increase Aboriginal children's capacity to learn from white teachers by 30%



# Interpreters and amplification



- Main focus on Aboriginal communication in the courtroom has been on linguistic factors.
- The importance of hearing loss also needs to be considered.
- Both interpreters and amplification are needed.
- When individual has idiosyncratic communication related severe/profound hearing loss family members may be needed to assist interpreter.

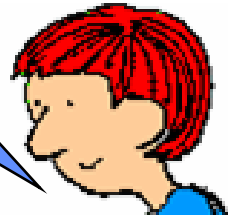
# Judgments of credibility



- Care needs to be taken to not judge credibility of Aboriginal witnesses on basis of their ability to understand questions put to them or explain themselves in English.
- judgments made and conveyed to witnesses by verbal or non verbal means will inhibit and/or distort testimony.



Blah, blah



Talk focused communication skills



Difficulties understanding



See as limited credibility, capacity or motivation

See judgments and become reticent or compliant



# Problems with testimony

# Visual barriers

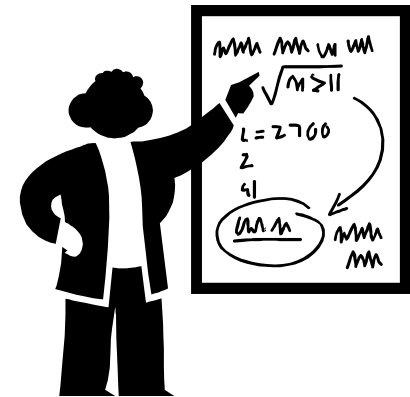


- Visual barriers inhibit compensatory strategies- face watching, lip reading, reading body language.
- Problem of visual barriers greater if background noise also present

# Visual literacy



- Use visual communication strategies to help ask questions as well as present or clarify information.
  - maps
  - diagrams
  - pictures
  - pictorial flow chart to show events
- Witnesses able to draw and tell answers.
- Witnesses able to 'act out' events.
  - Aboriginal people's visual and contextual communication skills means pictures and acting out may convey testimony more accurately than words alone.



# Listening overload



- It is very hard work for people with listening difficulties to listen for extended periods.
- People tire quickly, and often tune out.
- Responses may be unreliable if questioning goes on too long (in court or in police interviews).
- Important to have short interview sessions and sufficient break times.

# Preparation



- Understanding the context of what will be heard helps to listen better.
- Prepare defendants by having DVD explaining what will happen in court that is watched before hand.

# The bigger picture



- The criminal justice system deals with the outcomes of listening problems at a point where easy solutions are difficult.
- The failure of the health, education and welfare systems to address problems associated with hearing loss means they become matters for the criminal justice system.
- For a number of reasons Aboriginal communities have difficulties in advocating for the resources and services needed to address the issue.
- Is there a role for judicial advocacy in these areas to help prevent them becoming criminal justice problems?



# In 1993

- In 1993 Sue Quinn, Jenny Blokland, Martin Flynn and myself urged immediate action to research and address this problem (Howard et al 1993).
- This has not occurred.
- There is still an urgent need to consider hearing loss in the criminal justice system in the areas of crime prevention, communications with police, communication with counsel and in the courts, during rehabilitation and in the management of correctional facilities.

# In the meantime

- Hearing loss continues to
  - Contribute to criminal behaviour in ways we do not fully understand.
  - Create preventable frustration and stress among prisoners, legal counsel and the judiciary.
  - Influence communication in criminal justice proceedings.
  - Have an adverse influence on social and emotional wellbeing of many prisoners in the criminal justice system.
  - Create significant costs in management of correctional services. For example in workers compensation costs.

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# More information

- For more information on listening problems go to [www.eartroubles.com](http://www.eartroubles.com)
- For information on communications training contact Damien Howard on 89484444 or [damien@phoenixconsulting.com.au](mailto:damien@phoenixconsulting.com.au)
- I wish to thank Sue Quinn, David Abbott, Sheri Lochner and Peter Bellach for input into presentation.

