

The Swimmer

A failed communication

Recently I read the testimonies of five witnesses to a criminal case against a Hong Kong resident accused of common assault.¹ The documents were provided in both Chinese and English. One of the statements was from the arresting police officer, one from a twenty-two year old Hong Kong instructor/student enrolled in a North American university, and three were from children twelve years of age and under. In the Chinese statements one of the children and the instructor/student referred to the defendant as "the Westerner"; the other three witnesses, including the arresting police officer, referred to him as "the foreigner". In the five English text versions only the word "foreigner" appeared. Though it is possible that some of the original testimonies were written in English, it is unlikely. All of the witnesses bore Chinese names, and with the exception of one, all of the names appeared to be those of native Hong Kongers. Moreover, the only English words the defendant recalled hearing among the witnesses during the discussion that preceded his arrest were "You're under arrest". With only one person accused of criminal wrongdoing and no obvious need to distinguish him from others defendants, surely the witnesses could have referred to the defendant as the man, the stranger, the assailant, or even the swimmer, as all of the crimes for which he was charged took place in a public swimming pool.

Was it that the defendant did not bare many of the racial characteristics typically used to identify ethnic Chinese? Or conversely, was it that all of the witnesses bore those characteristics? Or had it been decided among the witnesses that the defendant was obviously not a local Hong Konger, because he did not seek to defend himself in the lengthy Cantonese discussion that preceded his arrest? Had any of the witnesses bothered to ask, if the defendant were born and raised in Hong Kong, held Hong Kong citizenship, or even spoke English? Or did they just assume that he was a foreign English language instructor, who taught at a different school from the one they attended? According to the defendant's testimony he had been a regular user of the pool for more than two years! Finally, did the translator, the arresting officer, or the inspector, who wrote the summary and initiated the legal proceedings, consider that labelling the defendant a foreigner might place an unnecessary barrier between him and his accusers and thus impair the ability of the court to judge fairly?

Of the three charges brought against the swimmer the most serious was having pulled the aforementioned instructor/student into the water from the side of the pool. Apparently, the instructor landed first on her buttocks and then into the water, and thus suffered pain not intended by the defendant. According to the swimmer he had twice warned the instructor that the conduct of her class was improper. He did this by inhibiting her students in the water, so that they would complain to their instructor. These warnings were verified in both the defendant's statement and those of two of the children. Moreover the defendant tried to provide the instructor with an additional verbal warning in Cantonese before he took direct action against her, but was rebuked when she replied in English. As a result he made no further effort to engage her verbally and swam away. On his return lap he was kicked in the abdomen by one of her students, whereupon he took direct action in his own defense and pulled the instructor into the water. Obviously the instructor was responsible for the behavior of her students. Obviously it was her careless neglect or malicious intent that permitted them to swim in tandem across two swim lanes -- one of which was partially occupied by the defendant. There were eight children altogether. Though other legal

¹ Common assault differs from other crimes of assault in so far as no injury is received on the part of the victim. Assault itself is a crime whereby an individual intimidates another individual with the threat or use of force.

issues are at stake, the crux of the matter with regard to this essay is how the court will interpret the defendant's reaction to the instructor's English response when he sought to provide her with additional warning in Cantonese. After the incident the instructor complained that she did not know why she had been pulled into the water.

As responding in English to remarks made in Cantonese by non-native speakers is hardly unusual in Hong Kong, the judge could easily perceive the offense taken by the swimmer as unreasonable. He could determine that it is the obligation of those who live in a racist social environment to expect racially motivated responses and not take offense when it occurs. A more cosmopolitan judge eager to eliminate racist attitudes in his own society might on the other hand recognize the plight of the swimmer and judge differently. After all, would the instructor have responded to the swimmer in English, had he spoken the same broken Cantonese, but was more Chinese in appearance? Probably not, as the new racially motivated assumption would have been that the swimmer was from the Chinese mainland and could not speak either English or Cantonese. What if the swimmer had mixed racial features? Would the instructor still have replied to him in English, or would she have recognized that he was attempting to speak the predominant native language of his host country?

That any judge would be sympathetic with the swimmer will of course depend on his or her own overseas experience. Notwithstanding, what Chinese-ethnic Hong Kong judge who studied English overseas was ever confronted with an entire nation of native English speakers seeking to pass oral and written high school, college, and professional entrance examinations in Cantonese? What non-Chinese ethnic Hong Kong judge, who once formed a part of the British colonial administration, is not flattered when Chinese-ethnic Hong Kongers reply to him in English no matter what language he speaks to them? What Chinese-ethnic judge, who has never left Hong Kong for study abroad, even knows what it is like to learn the language of another people as an overseas guest? Are there any judges in Hong Kong who do not fall into one of these three categories?

Then too, there are those who believe that Hong Kong is a truly trilingual region, and that all Hong Kongers are equally comfortable in Cantonese, English, and Mandarin. No racial slight intended and none to be received....

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