

CHAPTER 1

INTRODUCTION

I...solemnly affirm that I will always in my office of interpreter... well and truly without fear or favour or the hope or promise of reward interpret the questions put and the answers given by the witness and also the statements made by the Court or by the parties or prisoner...and I understand that under the Penal Code it is a criminal offence to give false evidence.

The Interpreter's Oath

1.1 Overview

This research is a study on the system of court interpreting in Malaysia. The system is viewed as comprising groups of individuals and their perceptions of the interpreting service and the role of interpreters in the Malaysian courts. The process and the problems relating to the system is closely related to the country's national language planning and policies which began to take effect at Independence in 1957. The policies are well articulated, with clear and specific goals, being the result of careful long-term forward planning. They have been progressively implemented over the past 45 years. Naturally, the implementation of a national official language entails spread of the language into all the official communicative domains of a state: social, economic, and political including its legal and judicial system.

In the daily operations of the court of law, there are bound to be individuals who are not proficient in the national language. Such individuals require the assistance of an interpreter to enable them to understand the process of trial and to

gain adequate access to justice. How the court provides this service to the public, its perception of issues related to the provision of the service including the interpreters it engages, is the concern of this research. The ultimate aim is to describe and explain the system as it currently operates, uncover weaknesses and strengths in it, and propose appropriate strategies for change and improvement.

1.2 Definitions

The term 'interpreting' covers a range of techniques and contexts of use (Chapter 2.2). The best-known and longest established, conference interpreting provides simultaneous spoken translation at international conferences and organisations (for example the United Nations and the European Parliament). It first made an impact on the international community at the end of the Second World War at the Nuremberg trials¹ (1945-46) and Tokyo war trials (1946-48) after which it became widespread (Gile 1998).

Mastery of the difficult technique of simultaneous interpreting gave these interpreters a high status and substantial remuneration and led, in 1953, to the establishment of the International Association of Conference Interpreters (AIIC) and their professional separation from interpreters in other fields, including court interpreting.

Outside conference interpreting, another type, which has developed rapidly during the last 20 years, is Community or Public Service Interpreting (PSI). PSI typically makes use of the bi-directional, face-to-face, consecutive rather than the

unidirectional simultaneous mode (Wadensjö 1998). It is a particularly loose and diverse collection of interpreting contexts including the social, medical, educational, and legal services and takes place in a range of communicative settings, for example, in the local government office, the accident or emergency unit of a hospital, and the court.

Court interpreting is recognised as an aspect of legal interpreting which is, itself, a major subdivision of Public Service Interpreting (Roberts 1995). The mode of interpreting employed in court is usually short consecutive, though simultaneous, whispered simultaneous and sight translation are also used but less frequently. One outstanding characteristic of court interpreting is the requirement of the interpreter to swear on oath that (s)he will interpret 'without fear or favour or the hope or promise of reward' and that (s)he recognises and accepts that the giving of false evidence is a criminal act for which (s)he may (her)himself be tried and, if convicted, severely punished. The obligation to interpret 'well and truly' and the requirement of impartiality are both part of the ethical code of all interpreters. However, the court interpreter stands out as having to publicly and explicitly assert what is implicit in the ethical standards of other interpreters (Gamal 1998). Further, the notions of 'well' and 'truly' are so vague that they are open to a very large range of interpretations. These colour the perceptions of the nature of interpreting and the role of the interpreter in ways, which, as will be shown later, are a source of confusion and inefficiency in the system.

In discussing interpreting in the legal system, Corsellis (1995a) defines it as the transfer of the meaning of what is spoken in a first (source) language into a

second (target) language, adding that it is 'crucial to appreciate that accurate transfer of meaning can rarely be approached "word-for-word"' (op cit: 18). This point is highlighted at this early stage for the reason that in the legal circle the transfer of meaning in the course of interpreting is often expected to be 'literal' and 'faithful', but often, in practice, the complexity of the task makes it very difficult to satisfy such a requirement. This will be one of the fundamental issues discussed in the present work.

For the purpose of this study, a working definition of court interpreting which distinguishes it from conference and public service (or community) interpreting is offered by the researcher as: the oral or signed translation of proceedings in a civil or criminal court from one language or dialect into another for a witness, an accused or a litigant who has inadequate control of the language of trial. The court interpreter is, at least, a bilingual individual working either full time or on a part time basis, to interpret evidence and court proceedings from one language into another, in order to facilitate the process of trial.

Interpreting in court has its own particular processes and problems, no less complex and arduous than the much publicised and more glamorous conference interpreting. It requires not only high level linguistic ability in the target and source languages but also a knowledge of appropriate legal procedures and terminology and the presence of mind and the confidence to deliver the interpreted message in a way which satisfies all interested parties. In the course of his/her work, a court interpreter has to ensure accurate interpreting for both the legal professionals (the lawyers, the Bench) and other professionals (for example expert witnesses), who

are likely to be highly educated and possess superior communicative competence, as well as for members of the public who come from all walks of life and appear in court as witnesses or as the accused. The latter may have little education and limited linguistic skills and, even if they are well educated and articulate, they will have little knowledge of court procedure or the ritualised language of the court. Each group presents varying challenges to the court interpreter.

Court interpreters do not act as isolated individuals. They form part of a complex, integrated system which, in this study, is conceived of as a subsystem (court interpreting) of a subsystem (judicial services) of a subsystem (the Public Service Department) of the larger governmental administrative system.

1.2.1 Court Interpreting and Language Policy

As part of the government machinery, the service is inevitably affected by government policies and in Malaysia, in particular, by language policy which is directly related to the provision of interpreting services in the Malaysian Justice System (Chapter 3.7).

Malaysia, in common with most other nations, particularly those which gained their independence in the period after the Second World War, has a clearly articulated language policy; the promotion of the language of the ethnic majority of the country as the sole national and official language of the state that is, Malay². At the level of implementation in the legal and judicial system, such a policy runs into an obstacle in a multilingual society. There is an inalienable right to a fair trial and

inability to use the language of the court constitutes a threat to that right. In short, there is a potential clash between language policy and linguistic and judicial rights and this comes to a head in the provision of an interpreter service for those who are not proficient in the language of the court.

Such a provision is clearly stated in the Criminal Procedure Code (CPC) Chapter XXV Clauses 269 and 270 with regard to the taking and recording of evidence in an inquiry or trial (Clause 269), and specifically referring to the interpreting of evidence to the accused (Clause 270):

The evidence so taken down shall be interpreted to the witness. If necessary in the language in which it was given or in a language which he understands

Criminal Procedure Code 1997
Chapter XXV Clause 269 (3): 85

Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language which he understands.

Op cit. Clause 270 (1): 85

1.3 Background to the Research Problem

The court interpreting service in Malaysia has been in place as part of the establishment of the judiciary since the British colonial times, as early as the 19th century when the English legal system was adopted in this region (see this chapter section 1.7). The distinctly multilingual and multicultural population necessitated the services of interpreters to assist the judges in all trials and proceedings when

non-English speaking persons were involved. The language of the court, for trial proceedings as well as for record, has changed considerably since then, that is, from English to Malay, the national language of the country. However, the services of the interpreters are still required, to interpret from other languages (for examples Chinese, Tamil, East Malaysian and other languages into Malay) and even within the Malay language itself interpreting may be needed for regional dialects such as Kelantanese and Kedahan.

After more than fifty years of existence, the Malaysian court interpreting service, instead of developing into a more sophisticated institution, exhibits severe problems which seem to be a permanent feature of the system. At a closer look, the problems are highly complex and multi-layered, involving the conflicting interests of several groups: the politicians, the policy makers, the judicial administrators, the interpreters, the Bench and the Bar, and the individuals who are brought to court and have to deal with the legal system. If we are to understand this complexity, it is necessary to examine how the system works, who the main participants in the system are and where the problems lie.

A survey was conducted in 1998 (Zubaidah 1999) to gauge the perceptions of Malaysian interpreters, their hopes and expectations for the new millennium. The review (presented in Chapters 2 and 5) revealed a great deal of dissatisfaction on the part of the interpreters towards the whole system, with 374 of 471 (79%) of them indicating that if the situation did not change, they would leave the service.

In March 2000, it was reported in the press that there was a huge backlog of cases (nearly 800,000, both civil and criminal) with substantial numbers of individuals remanded in custody awaiting trial³. This caused a public outcry and the question was asked: why had this happened? what had caused the backlog? Several factors were identified, including the non-appearance of lawyers, defendants and witnesses and insufficient court space. However, according to the then Chief Justice, 'the main problem faced by the courts is the shortage of 267 interpreters...' (*Mingguan Malaysia* 26th March 2000).

The issue above is the motivation for this research, especially since the shortage of court interpreters in the system is not a new phenomenon but one which goes back at least 20 years. There is evidence of this from Teo (1984) who documented it in the early 1980s. Such problems, in a court of justice, not only hinder the process of trial but also have the possibility of causing injustice to those seeking redress. There is therefore an urgent need to investigate the system and explain the situation it is in now, to arrive at an understanding of the situation and to enable informed suggestions to reduce the problem.

1.4 The Research Problem and Research Questions

The research problem or the key, 'grand tour question' (Creswell 1994:70) of this research is: How does the Malaysian court interpreting system provide an adequate interpreting service in a multilingual society? This key question breaks down into four specific research questions:

1. What is the role of interpreters in the Malaysian court interpreting system?

2. What training is required for court interpreters in Malaysia and what provision does the system make for it?
3. What scheme of remuneration is there in the Malaysian judicial system and what implications does this have for the provision of a satisfactory court interpreting service?
4. To what extent does the national language policy and planning affect the provision of court interpreting in multilingual Malaysia?

Essentially, the researcher would argue that appropriate measures involving a change in perceptions towards interpreting and interpreters and specific re-organisation of the system are imperative.

1.5 Justification for the Research

The development of linguistics as an autonomous field of study during the last century has involved an overwhelming focus on the usage of the context-free code. This is typified by the concentration of research and publication on, for example, grammar, phonology, text and discourse. It was only in the mid-1960s, when attention began to shift onto semantics and language use (Widdowson 1979), that the importance of context began to be re-emphasised (Firth 1969).

Research on court interpreting has typically been conducted either by linguists or legal scholars. Linguistics has tended to approach the topic from an ethnographic point of view (Gibbons 1998; Wadensjö op cit; Hale 1999), while legal studies have adopted the perspective of jurisprudence (MacCormick 1982;

Campbell 1983; Goodrich 1987). Noticeably missing is the placing of both in the wider socio-political context in which they operate. From an applied linguistics viewpoint, the provision of interpreting services and their realisation as multilingual interaction necessarily falls within the macro linguistic orientation of language planning.

This study proposes, therefore, not the analysis of courtroom discourse in the multilingual Malaysian court (valuable though that would be) but the siting of such discourse within the public service provision of the judiciary, itself a manifestation of long-term national policy planning.

The key aspects of this study are not only what is involved in interpreting in court but also the perceptions of the participants in the system (the judicial officers: judges, magistrates and interpreters) of the problems facing the Malaysian court. Equally important are the assumptions, decisions and forward projections of the planners and politicians who influence the whole system.

1.6 Research Approach

The research approach is essentially exploratory and based on what is known as *soft systems methodology* (SSM) introduced by Checkland in the early 1980s (Checkland 1999). In this approach, the concept of 'system' is viewed as central and is defined as 'a set of elements connected together to form a cohesive whole', which can be planned and 'managed' depending on the extent to which the

variables in the system can be specified and controlled and future states of the system can be predicted.

There is an essential distinction between *hard* and *soft* systems. 'Hard' *artificial, planned* mechanical systems, such as industrial processes have finite input-output structures and clear boundaries which make 'management' relatively easy. Malfunctions are immediately recognised and specified and can be dealt with through well-established problem-solving procedures (Argenti 1977; Bell 1998a; Zubaidah 1998b) which assume that there is *one optimal solution* to any problem and that following the methodology will inevitably lead to it. On the other hand, *natural* systems (the ecology, for example) and *human* activity systems (including the court interpreting system) are, in contrast, typically 'soft', with fuzzy boundaries and variables.

Social systems may be planned and purposeful (that is, willed; see Checkland op cit. 316 on the distinction between 'activity' and 'action') but they are by no means mechanical and the variables they contain are the attitudes, values and perceptions of human beings who, far from being easy to control, are notoriously unpredictable. When such systems malfunction, it is excessive to claim to be able to provide a 'solution', when the very definition of the problem is itself problematic. A more realistic aim is to gain greater and more sophisticated understanding of the system which contains the problem situation.

In keeping with such an orientation, the differing perceptions of those involved in the provision of court interpreting are highlighted and discussed; the

main objective being to enhance and share understanding, which then may suggest ways for improvements rather than 'solve' the 'problem'. A more detailed discussion of the approach is given in Chapter 4.

1.6.1 Applied Research

A distinction is frequently made between 'basic research' and 'applied research' (Patton op cit; Creswell 1994; Dunn 1999). In 'basic research', the source of the research question is the tradition within the scholarly discipline itself and emphasis is placed on theory rather than practice. 'Applied research' is, in contrast, people-oriented. The source of the research question is the problems and concerns expressed by people, and emphasis is based on *practice* and *use* rather than *theory*.

In this study, the researcher is interested in human problems and finding ways of redressing those problems. This is, of course, a strongly practical orientation but not one which excludes theory. In order to find solutions, it is necessary to find explanations, and explanations are theories. A piece of practically oriented research must not only depend on theory as its underpinning but ought to enrich theory by testing out theoretical assumptions against actual experience and, as a result, provide evidence which supports or undermines the theory.

1.6.2 Methodology

Given the fact that the system of court interpreting in Malaysia consists of the interaction between several groups of role players and the character of that interaction is strongly influenced by their perceptions, expectations, hopes and fears, a qualitative approach appears most appropriate. However, the very complexity of the data and the variation between the groups involved makes it unwise to rely on any single methodology and for this reason this research makes use of a combination of methods and multiple sources of data giving rise to what is known as triangulation.

In this research, following the principles of triangulation, considerable use is made of qualitative techniques such as face-to-face interviews (both at the beginning of the research and later as a check on the findings) which seek to tap individual (and, potentially, group) perceptions of the situation and observations of court proceedings to document what the duties of the interpreters actually are. Where quantitative measures are used, for example, in a survey administered to Registrars, Magistrates and Judges, the main purpose is to collect data, to gauge respondents' perceptions through open-ended questions and, overall, to serve as one of the sources for gathering information in the field rather than to test any hypothesis statistically.

By adopting a holistic multi-method, multi-source approach, it is hoped that the differing views of the situation will provide, when combined together, a rich picture which will lead to a fuller understanding of the complexity of the

system and point towards ways in which it can be improved (Checkland op cit. 317).

In contrast, the focus on unique phenomena makes it unlikely that there will be much directly relevant prior research available which can be presented in the literature review (Creswell op cit). This is the situation with the topic of the current research. Previous research in Malaysia in the field of court interpreting is extremely limited, although there are several examples from other countries which provide valuable insights and help to broaden the scope of the discussion. As a result, useful information which is directly relevant to the topic is scattered throughout the intellectual community and not gathered together under a single title or recognised as part of the domain of a single discipline.

1.7 Court Interpreting in Malaysia: Historical Antecedents

The history of court interpreting in Malaysia began with the imposition of British colonial rule in the Malay Peninsula, starting when the British acquired the island of Penang from the Sultan of Kedah in 1786 and, in the midst of Anglo-Dutch rivalry, founded the island of Singapore in 1819. By 1824, Malacca had been added to the British colonies and, in 1826, all three territories were given the name the Straits Settlements (Wu 1990). The Federal system was initially begun in 1895 in the form of the Federated Malay States comprising the central states of Perak, Selangor, Pahang and Negeri Sembilan. British influence was extended to the four northern states of Kedah, Perlis, Kelantan and Terengganu in 1909, and Johore in the south in 1914 and these states were collectively known as

Unfederated Malay States, in contrast with the four which constituted the Federation.

According to Wu, the main concern of the British administrators in the final years of the 18th century (the last two decades after the founding of Penang) was to maintain some form of order, and to this end, local customs and law were allowed to continue 'tempered with such portions of the English law as were considered just and expedient.' (Wu op cit. 12). There was at this time some uncertainty as to the extent of the application of the English law, but in 1826, by the grant of a Charter of Justice, a court called 'The Court of Judicature of Prince of Wales Island, Singapore and Malacca' was created. By this Charter, English law was to be applied to the Straits Settlements. From this point on, further development (changes and reorganisation) took place and in 1868, the Court of Judicature was replaced by the Supreme Court of the Straits Settlements.

A Criminal Court and an Appeal Court were later constituted and English commercial law was formally introduced in 1878. This set of arrangements slowly evolved up to the present through three major structural revisions and two technical changes.

The structural revisions occurred (1) in 1946 on the formation of Malayan Union (the Malay Peninsula but excluding the Straits Settlements), (2) in 1957 on the creation of the independent state of Malaya (The Federation of Malaya: the Malay Peninsula plus the Straits Settlements) and (3) in 1963 with the creation of Malaysia (The Federation of Malaya plus Sabah and Sarawak). The two technical

changes consisted of (1) the abolition, in 1985, of appeal to the Yang Di Pertuan Agong⁴ (the elected Constitutional Monarch) and to the Privy Council in Britain and (2), in 1997, the abolition of the jury system.

The last of the three structural revisions and both of the technical changes are all significant in relation to the language and communicative demands placed on the interpreter. The 1963 revision brought into the judicial and legal system not only the native courts and traditional law but also a range of indigenous languages and the requirement to interpret between them and English (see this chapter section 6.3). The removal of the two appeal mechanisms reduced the need for very high level interpreting and translation of complex appeal documents in Malay and in English and the abolition of the jury system removed the need for interpreters to be able to handle counsels' addresses and judges' directions to a group of lay persons whose understanding and verdict was crucial to the trial.

None of the literature on Malaysian legal history or the court system mentions the existence of any kind of court interpreting system nor the role of court interpreters in Malayan courts. Nevertheless, interpreters, as silent and indispensable role players, certainly did exist, since their service had to be obtained as the intermediaries between the locals and the British judges throughout this time to facilitate trials.

The fact that interpreters were essential in courts throughout the whole of Malaya is demonstrated by the formation of an association⁵ and, in 1948, by the establishment of the Association as a trade union. The union was set up with the

objective of raising the status of the interpreters' service and promoting their material, economic, professional, educational and social welfare. By 1949, there were no less than 306 interpreters in various government departments; nearly 90% of them (273) being in the judicial department that is, in the courts of justice (Interpreters' Union 1949).

The provision in Malaysia differs in two major respects from the legal interpreting system in the United Kingdom and many other countries. First, perhaps surprisingly, as a system the Malaysian court interpreter service is actually far older than most of them and, secondly, it is staffed, almost exclusively, by full time government employees. In the UK, for example, Public Service Interpreters (including Court Interpreters) are freelance professionals, normally accredited and listed on the National Register, hired on a case-by-case basis.

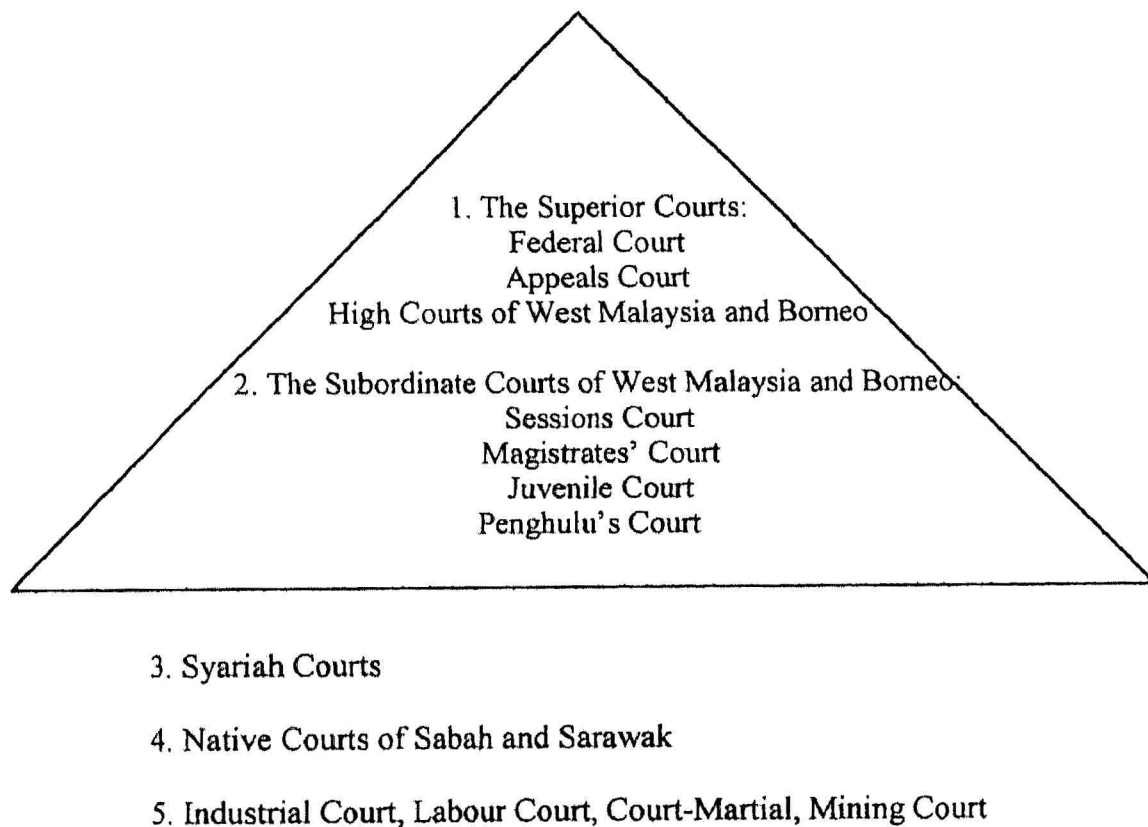
1.7.1 A Profile of the Malaysian Judiciary

It is necessary, at this point, to provide a brief profile of the Malaysian judiciary in order to give an idea of the kind of activities that take place in the courts and the ways in which the interpreter is involved in these activities.

Malaysia has a two-tier judicial system consisting of the superior and the subordinate court. The subordinate courts are the broad base (Figure 1.1), the superior courts above it, and the Federal Court is at the apex. These are the judicial powers of the country as specified in the Federal Constitution.

At the highest level of the judiciary is the Lord President (now known as the Chief Justice), who presides over the Federal Court which is the ultimate court of appeal.

Fig. 1.1
Structure of the Malaysian Court System



The superior court comprises the Federal Court and two High Courts: one for Peninsular Malaysia and the other for East Malaysia. The Federal Court consists of the Chief Justice as President of the Court, two Chief Judges of the High Court, plus four more judges as provided for by Article 122 (1) of the Federal Constitution. The Federal Court mainly hears civil and criminal appeals, and cases in the first instance. It also determines constitutional questions, which may have arisen in the proceedings of another court. It also acts in a supervisory capacity,

Sessions Court judges are appointed by the Prime Minister on the recommendation of the Chief Justice, and magistrates are appointed by the respective Ruler or Governor depending on where the magistrate's court is located.

The Juvenile Court, presided over by a magistrate sitting with two other lay advisers (established by the Juvenile Court Act 1947) tries offenders between the age of 10 and 18 years for all offences except those punishable by death which are tried in the ordinary court. As young offenders, they are not treated in the same way as adults, but 'with compassion so that they do not grow up to be criminals' (Mohamed Suffian 1989: 69). Hence, the trial is usually conducted in the Magistrate's chambers to protect the juveniles from negative publicity. In its judgement, the court may decide on corrective education, probation or discharging them conditionally depending on their general conduct, home environment, school and medical record.

The *Penghulu's* court is at the lowest level of the court hierarchy and is presided over by a *Penghulu* or Headman appointed by the State Government for an administrative district (called a *mukim*). Although it is a statutory provision, it is rarely used, but the *Penghulu* does have some powers (including the same powers of arrest as the Police: CPC 23 and 25) and influence which can lead to his being invited to settle disputes informally without calling a formal court trial.

The administration of justice outlined above is a federal matter and therefore subject to federal laws. The only exceptions to this are the Syariah Courts and Native Courts in East Malaysia: Sabah and Sarawak. The Syariah Court

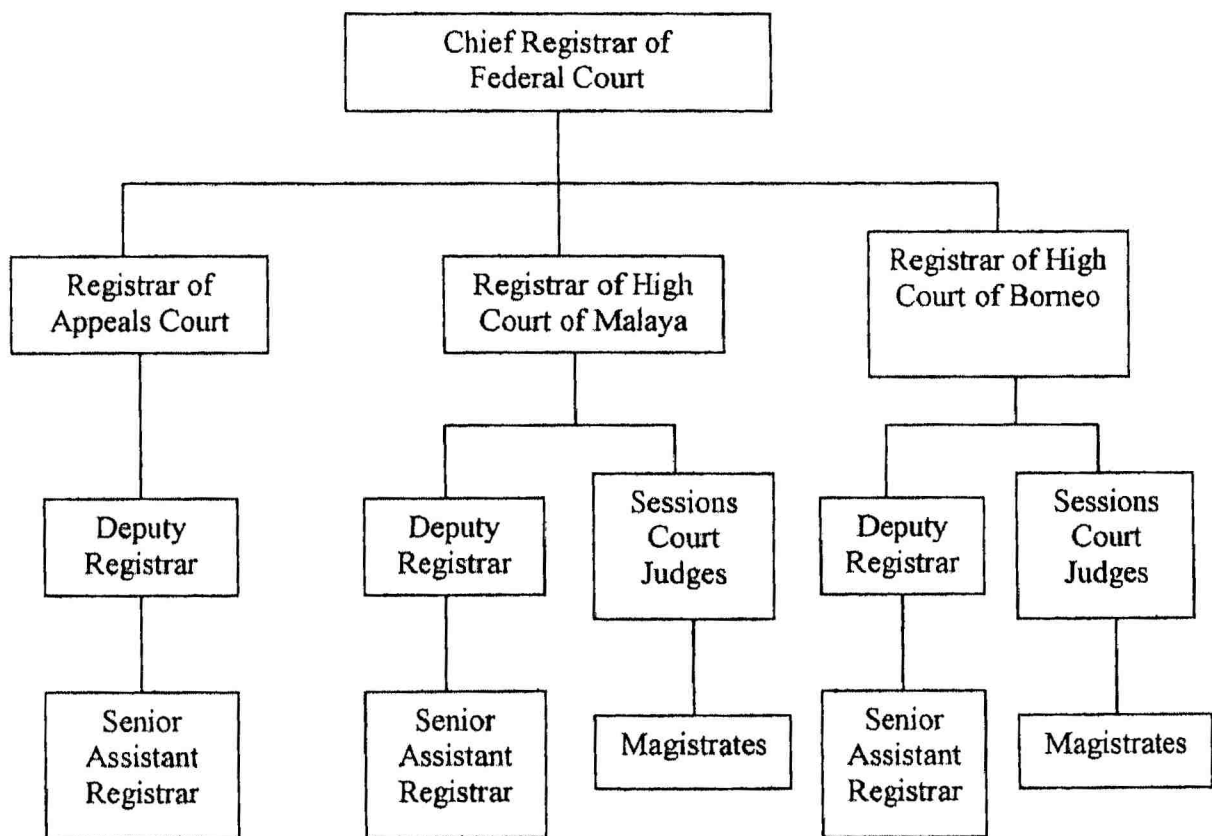
system comprises the Chief Kadi and the Court of Kadis. It is presided over by the Chief Kadi or a Kadi appointed by the Ruler (in the case of the individual States) or by the Monarch (in the case of Penang, Malacca, Sabah and Sarawak and the Federal Territories of Kuala Lumpur and Labuan). The courts possess jurisdiction in proceedings between Muslim parties, and this may well include non-Malay persons and non-Malay speaking converts, including Europeans. The Syariah Court deals with civil matters such as matrimonial problems relating to marriage and divorce, property and with religious offences such as unlawful sex, consumption of liquor and failure to fast during the month of *Ramadan*.

The native courts are peculiar to Sabah and Sarawak, established under the Native Courts Ordinance 1953 and 1955 respectively, to hear and settle disputes among natives under customary and *adat*⁶ laws. They have limited jurisdiction and generally deal with cases arising from a breach of native law or custom.

Finally, there are the Bodies with Specialised Jurisdictions: The Industrial Court, which deals with matters relating to trade disputes and the dismissal of a worker who is not a union member; the Labour Court, which is part of the Labour Department, operates throughout the country and settles disputes between employers and employees on the question of outstanding wages; the Court-martial has jurisdiction over persons who are members of the armed forces as well as civilians employed by the armed forces; and the Mining Court hears disputes between occupiers of mining lands.

Administration of the courts is headed by the Chief Registrar, who receives directives from the Chief Justice to whom he is responsible for all matters connected with the proceedings in all courts in Peninsular Malaysia (Figure 1.2). The Chief Registrar of the High Court of Borneo has the same responsibility for courts in Sabah and Sarawak.

Figure 1.2
Administration of the Federal Court



Source : The Federal Court, Kuala Lumpur 2001.

[The diagram does not include the posts of Registrar of Special Courts, Legal Officer of the Translation Bureau (which translates legislation into and from Malay and English), the Deputy Registrar of the Federal Courts and the Director of Administration and Development Planning, all of which exist as part of the organisation but are not relevant to the topic under discussion].

Interpreting takes place in almost all the magistrates', sessions and high courts throughout the country. It is also required to a lesser degree in other types

of court, for example in the industrial and *syariah* courts. Three interpreters, sometimes four (all of whom are expected to be proficient in English) are normally assigned to a court to deal with the three main languages in Malaysia: Malay, varieties of Chinese, and Indian languages.

1.7.2 The Malaysian Court System

As in other Common Law countries, essentially the Commonwealth and the United States, the most significant feature of courtroom procedure in the judicial process in Malaysia is the adversarial nature of the system of trial. This means each party to the proceedings tries to prove its case by pitting two advocates against one another before an impartial judge who administers rules of evidence and procedure to ensure the competition is fair and just. The adversarial system originated from the English legal system in the eighteenth century which in turn had evolved from the medieval system of trial by battle or ordeal (Wu op cit; Laster & Taylor 1994). In this system, the accused or his or her representative was required to compete in a form of contest, the outcome of which would establish guilt or innocence, based on the 'mystical belief that truth emerged because of goodness' (Laster and Taylor op cit. 162).

In a court of law, the responsibility and control over much of the trial process depends on the contesting parties themselves, including initiating proceedings and presenting evidence. When they are ready, the trial will take place in court before an adjudicator. The final decision as to which side will win, lies with the court, based on the arguments and the evidence presented. To ensure

probity and justice, the judge enforces a strict set of rules and ensures both sides are given adequate opportunity to present their case. In such a situation, it is clear that the justice system favours the side which verbally presents the most convincing version of the facts of the case and that the less linguistically competent (especially the unrepresented accused or the non-Malay speaking defendant or witness) is put at a serious disadvantage.

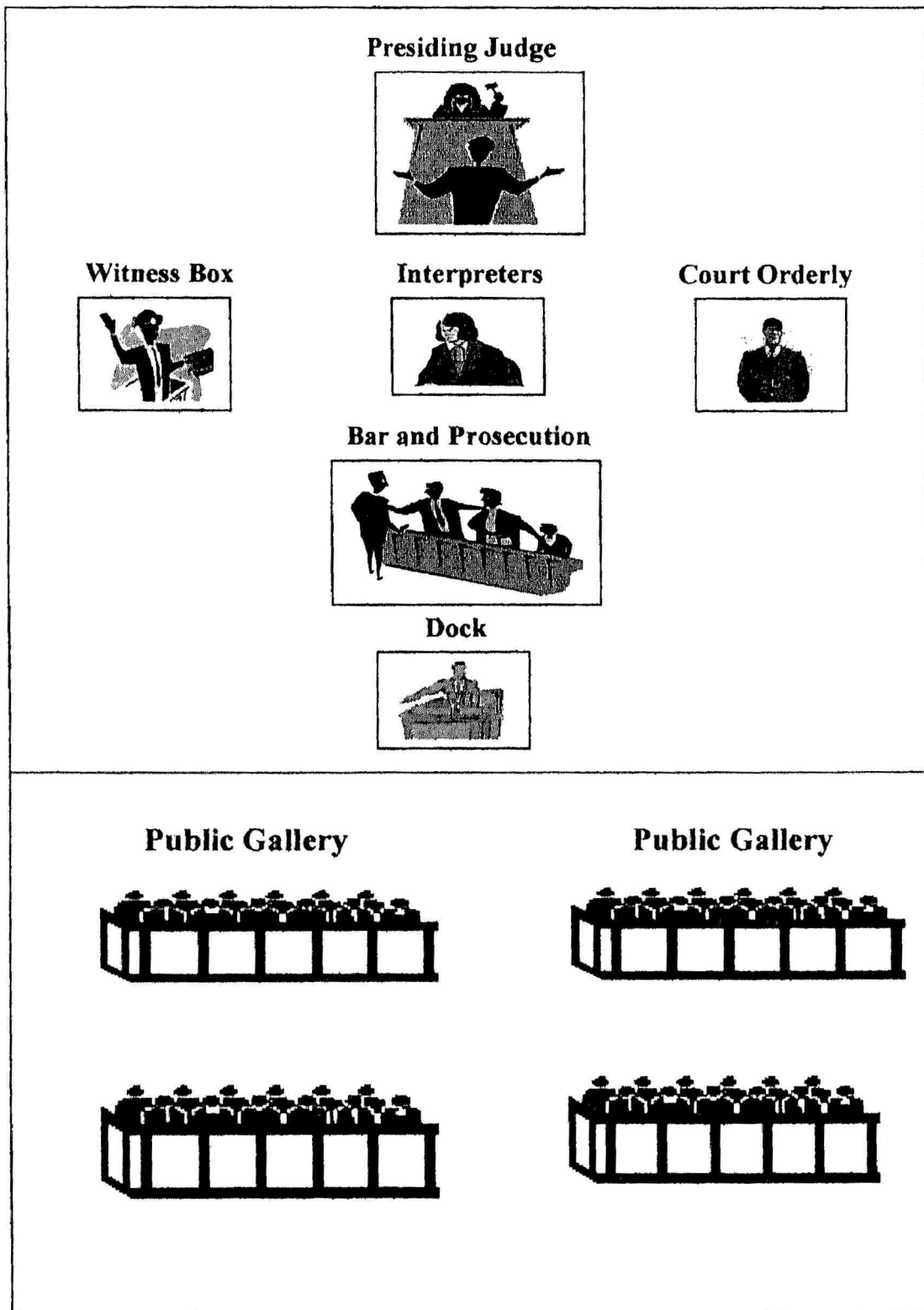
The Malaysian court and its role players can be graphically presented in the diagram in the following page.

1.7.2.1 The Administrators

The administration of the Judiciary (for both judicial and administrative matters) is the responsibility of the Chief Registrar, who is assisted by the registrar of the Court of Appeal, the Registrar of the High Court in Malaya and the Registrar of the High Court in Sabah and Sarawak. They, in turn, are assisted by Deputy Registrars, Senior Assistant Registrars, Administrators, Librarians, Information Systems Officers and support staff.

Registrars are normally legally qualified but senior officers without legal qualifications who have exemplary service may also be appointed to the position. They also act as Magistrates: a Deputy Registrar has the jurisdiction of First Class Magistrate, while a Senior Assistant Registrar and Lower Court Registrar have that of Second Class Magistrates.

Figure 1.3
Layout of Malaysian Courtroom



1.7.2.2 The Bench

The Judge or Magistrate sits alone on the Bench, facing the prosecutors and the counsel for the defence, who sit at the Bar. The police, who accompany the accused brought in from remand prison, sit at the side or in the front row. The interpreters are positioned in front of the Bench at a lower level between the Judge and the Bar.

There is no equivalent in Malaysia to the British Lay Magistrate. All magistrates in Malaysia are civil servants with formal legal qualifications (at least an LLB). There are, however, (as noted above) two levels of Magistrate: First Class and Second Class.

First Class Magistrates try offences such as robbery and housebreaking where the sentence is limited to a fine or ten years imprisonment. The Second Class Magistrate has much more limited powers (including criminal cases where the maximum sentence does not exceed one year's imprisonment) and is concerned mainly with procedural matters such as granting bail and mentioning cases. Since the abolition of the jury system in 1997, the Judge/Magistrate decides alone, notwithstanding, (s)he is almost always assisted by the court interpreters.

One exceptional feature of the Malaysian court is that there is no court stenographer, clerk or mechanical device to keep a record of the proceedings. The Presiding Officer in the High Court is required by the Criminal Procedure Code (CPC) to make notes in his own hand:

In all criminal cases tried before the High Court the Judge shall take down in writing notes of the evidence adduced.

Op cit. F.M.S. Chapter 6, section 272

The lack of any other recording system has had the effect of spreading this practice to all other courts (and both civil and criminal hearings) and for the presiding officer to take lengthy (frequently verbatim), notes, in spite of the fact that judges are not actually obliged to do so (or to take notes at all outside the High Court) or to be the only recorder of evidence as the next section of the CPC makes clear:

Nothing in this Chapter shall prevent a Judge or Magistrate in an inquiry or trial causing verbatim notes to be taken by another person of what each witness disposes in addition to any note of a substance thereof which may be made or taken by the Judge or Magistrate himself; and such note shall form part of the record.

Criminal Procedure Code,
F.M.S. Cap 6, section 272A

1.7.2.3 The Interpreters

The system normally provides for three interpreters for each court to interpret between Malay and English, Malay/English and Chinese (Mandarin and dialects) and Malay/English and the Indian languages. In East Malaysia, the interpreters usually speak the local languages/dialects and interpret between these languages/dialects and English/Malay.

The interpreter sits between the presiding officer (the Judge or Magistrate), the witness box and the Bar. (S)he is always present, not only for any interpreting that is required but also in order to carry out his/her many other duties as will be shown in the next section.

Interpreters are part of the administrative system, and are employed and governed by the Public Service Department. They serve all superior and subordinate courts in the country.

1.7.2.4 The Prosecution

The Attorney General heads the Prosecution Division. Cases prosecuted by the Division extend to all criminal offences. However, for purposes of expediency, the police and other enforcement officers of the various ministries and law-enforcement agencies (for example, the Health Department, the Immigration Department, the Road Transport Department) have also been authorised by law to conduct prosecutions under the general control and direction of the Attorney General's Office.

Deputy Public Prosecutors (DPPs) are appointed by the Attorney General and part of their duties is issuing directions and advising the various law-enforcement agencies in matters concerning the conduct of investigations and prosecutions. The DPPs prosecute in all cases before the superior courts: the High Court, the Court of Appeal and the Federal Court as well as the Sessions Court including criminal appeals, criminal applications, revision and reference to

questions of constitutional law. The cases prosecuted by the DPPs in the High Court usually involve drug trafficking offences under the Dangerous Drugs Act 1952, murder, kidnapping, offences involving firearms and generally cases of public interest.

In the Subordinate Courts, prosecution is usually conducted by Prosecuting Officers from the Police and the various Government Ministries and Departments whose regulations have been breached. In matters where the police investigate, an officer with the rank of Inspector will prosecute in the Magistrate's Court and an officer with the rank of Assistant Superintendent of Police (ASP) will prosecute in the Sessions Court. In matters investigated by other Government Departments, an officer appointed as a prosecuting officer will prosecute on behalf of the department.

1.7.2.5 The Bar

The Bar, represented by the defence counsel, has the main duty of protecting the interests of its client and is also an officer of the Court who comes into frequent contact with the interpreters in the course of their work. Members of the Bar may bring their own interpreters in civil cases but for criminal cases, the court provides the service as part of its administrative and judicial functions. Members of the Bar are either educated in local or overseas universities, usually in the United Kingdom or Australia. In order to practice, they have to pass the Certificate of Legal Practice examination, conducted by the Federal Court

annually. Several senior members of the Bar are former magistrates and several have been appointed to be judges in the high courts.

1.7.2.6 The Public

Members of the public are normally permitted, under the provisions of the CPC, to observe or follow any proceedings:

The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open and public Court to which the public generally may have access.

Op cit. Part II paragraph 7

The exception to this is when the public is barred from being present at cases where the Court believes it is more expedient in the interest of justice or for public safety or security or for some other sufficient reason to hear a case in a closed court or 'in camera'.

1.8 The Need for Interpreters in a Multilingual Society

The interpreter has a prominent and significant role in the administration of justice in Malaysian courts. The position, as described by Teo nearly twenty years ago, still holds today:

...it is primarily through interpreters that criminal as well as civil justice is obtained in this country.

Teo op cit: 2

Malaysia is a highly complex, linguistically and culturally heterogeneous country. It has a single national language - Bahasa Melayu (BM) - (under the terms of the Federal Constitution article 152) but provides secondary official status for English (articles 152 and 161) and for a number of indigenous languages (article 161). Apart from Malay, which is the official and dominant language, English is spoken alongside the languages of long-settled Indian, Chinese and indigenous communities i.e. Tamil, Telugu, Malayalam, Punjabi, Urdu, Pushtu, Mandarin, Hokkien, Cantonese, Hakka, Kek, Foo Chow, East Malaysian languages such as Kadazan, Iban, Dayak, Bajau, Murut and, within Malay itself, such as the regional dialects of Kelantanese and Kedahan. The following table illustrates this diversity at the time of independence, with Malays, Chinese and Indians as the dominant groups.

Table 1.1
The Population of Federation of Malaysia 1957

Ethnic Group	Number
Malay	2,803,000
Indonesian	281,000
Aborigine	41,000
Chinese	2,334,000
Indian	696,000
Ceylon Tamil	25,000
British	28,000
Thai	21,000
Eurasian	11,000
Pakistani	11,000
Other	28,000
Total	6,279,000

Source: R.B. Le Page, 1964:66

When the Federation was expanded with the accession of Borneo (Sabah and Sarawak) in 1963 to form the present state of Malaysia, the following ethnic groups were added to the above to bring the total population to over 7.5 million:

Table 1.2
Ethnic Composition of Sabah and Sarawak 1963

	Ethnic Group	Number
Sarawak	Chinese	244,000
	Sea Dayak (Iban)	240,000
	Malay	136,000
	Land Dayak	61,000
	Melanau	46,000
	Other	48,000
	Total	777,000
Sabah	Dusun (Kadazan)	145,000
	Chinese	105,000
	Bajau	60,000
	Murut	22,000
	Other	79,000
Immigrant	Indonesian	25,000
Total		1,988,000

Source: R.B. Le Page, 1964: 72

According to the 2000 national census, the Malaysian population reached 23.27 million, of whom 45% are non-Malays who may or may not be proficient in the Malay language, depending on their education and linguistic backgrounds.

Table 1.3
Population of Malaysia including Non-Citizens

Status	1991		2000	
	No.(mill)	%	No (mill)	%
Malaysian	17.57	95.60	22.03	94.70
Non-Malaysian	0.81	4.40	1.24	5.30
Total	18.38	100.00	23.27	100.00

Source: Census Report 2001, Statistics Department

Included within this group is the large number of foreigners (at least 5% of the total population) who have been attracted into the country by the government's emphasis on economic development and the goal of making Malaysia a fully industrialised society by the year 2020. There are now (according to the Census) 1.24 million immigrants and expatriates from regions extending from the immediate neighbouring countries to the Middle East, Africa and Europe, speaking languages ranging from Bangla, Burmese, Thai, Tagalog, and Indonesian dialects such as Javanese, Madurese, Boyanese, to other languages including Arabic, Hausa, Bosniak, Russian and Uzbek and major European languages such as French, German and Spanish.

Table 1.4
Population of Malaysia 1991 and 2000

Ethnic Group	1991 No.(mill)	%	2000 No.(mill)	%
Bumiputra	10.65	60.6	14.56	66.1
Malay	8.77	50.0	12.07	54.8
Non Malay	1.88	10.6	2.49	11.3
Chinese	4.95	28.1	5.58	25.3
Indians	1.39	7.9	1.63	7.4
Others	0.59	3.4	0.26	1.2
Total	17.57	100.00	22.03	100.00

Source: Census Report 2001, Statistics Department

Along with this growth of population, there has been increased pressure on social services – health, housing, education, transport - and a greater number of criminal and civil actions, involving both citizens and foreigners, brought before the courts.

Each of these actions, initiates a series of legal procedures which, because of the English Common Law system inherited from Colonial times, involves complex adversarial and sometimes lengthy spoken language procedures (Laster and Taylor op cit. 57-58): first in the police station, and subsequently in a court of justice where the charge will be made known to the party arrested, a plea will be taken, the consequences of the plea explained and, depending on the plea, either a sentence is pronounced or a trial procedure begins, leading to verdict.

The official language of trial and of record is Malay and most trials are conducted in Malay. This raises a problem when the accused person or witness wishes to give evidence in a language other than Malay. With 45% of the population potentially insufficiently competent to plead in Malay and 5% almost certainly unable to do so, an interpreter is frequently required to facilitate trials.

The formal variety of standard Malay in court is a specialised register which makes extensive use of legal terminology and unique meanings not readily understood by the layman. An individual may be fluent in a non-standard variety of the language but incapable of dealing with the language of the Court. In terms of common law, international law and natural justice, such an individual needs and is entitled to an interpreter since a fair trial requires the full understanding and participation of the accused.

The Federal Constitution and the Criminal Procedure Code (CPC 269 and 270), in fact, enshrine the right of an individual to the services of an interpreter, if (s)he is involved in a court appearance, as accused, litigant, defendant or witness,

and does not speak the national language well enough to take part in the proceedings.

The need for the interpreter in a court of law derives from the inability of one or more of the participants to operate adequately in the language of trial. In colonial times, the interpreter was essential in almost all trials, since the language of trial was then English and the vast majority of witnesses and accused were not competent in the language. This situation is clearly expressed in the quotation below from Spencer Wilkinson J (1952). Today, the language of trial is Malay and most judges and magistrates are fluent in the language. As a result, the demand for interpreting has reduced but the language pairs involved have increased. There are still substantial numbers of individuals appearing before the courts who are not sufficiently competent in the language to fully participate in a trial without the help of an interpreter.

In a large number of cases in the Magistrates' courts in this country the accused speaks a language not understood by the Magistrate, so that what transpires between the accused and the interpreter is unknown to the court. It is, therefore, the duty of the interpreter not only to make sure that he and the accused understand one another but it is also his duty to inform the Court, if there is any difference of language which might cause any difficulty. If the interpreter present cannot converse freely with the accused in the language of his choice the Court must be informed so that a suitable interpreter can be found, however inconvenient this may be to the Court, to the parties or to the witnesses.

Huang Chin Shiu v. R [1952]
MLJ 7: 1952: 9

The presence of interpreters in the Malaysian court also arises from the stipulated rights of the witness or accused to have proceedings explained to him in

the language of his choice (CPC 270) so that there is no room for confusion in understanding the proceedings. This was asserted very strongly in an appeal judgement in favour of the appellant on the grounds of inadequate interpreting. The quotation is lengthy but important since it sets out the ground rules for the provision of interpreting services in the courts and the implications for justice if they are not followed scrupulously:

In this case the appellant, who is a Hainanese, was tried in the Sessions Court. In the absence of a Court interpreter able to speak Hainanese, the chief clerk of the High Court assisted the Sessions Court as interpreter. He is not a sworn interpreter, and was not sworn in as a special interpreter for the purpose of the case. He spoke in Hokkien, in which he is fluent, and he said, on affirmation before me, that the appellant also spoke, and is fluent, in Hokkien. He added that he did not himself speak Hainanese and that he did not know why a Hainanese interpreter was not obtained. He was cross-examined by the appellant, and admitted that the appellant's Hokkien was "poor". In answer to the Court, he also said that he had not told the Court below that the appellant had spoken first in Hainanese and then in Hokkien.

The difficulties of the Subordinate Courts as regards interpretation in the more unusual languages are serious, and I should be reluctant to do anything to increase them. There are, however, certain rules which must be observed. I am not aware of any exception to the general rule that an accused person is entitled to have proceedings interpreted to him in any language which he desires to use. I think it doubtful whether he can be obliged to use even the language which is his native language, if he does not want to. It is the duty of the Court to find an interpreter for the language required, and the Court must be satisfied that the interpreter is competent to do his work efficiently. If the interpreter is an official interpreter of a Court, or a certified interpreter in the employment of any Government in the Federation, and if he is "engaged in the performance of his duties", then by virtue of s 4(2) of the Oaths and Affirmations Ordinance, 1949, it is not necessary to swear the interpreter. In any other case, however, it is a statutory requirement that he should be sworn (see s 4(I)(b) of the Ordinance)... It is a general rule of practice that, unless the interpreter is officially qualified in the language, the Court should ascertain that he can understand, and be understood by the accused with sufficient ease to enable the proceedings to be properly conducted. The most convenient method is to allow him to talk for a few moments with the accused and to enquire whether they can so understand one another. When the Court is satisfied of

this, it should be incorporated in the record before the evidence is recorded... As the interpreter in this case was not an official Court interpreter, or a certified interpreter in the employment of Government, the omission to swear him was an incurable defect, and it was on this ground that I was obliged to allow the appeal and set aside the conviction and sentence. If the interpreter had sworn to his ability to understand and be understood by the appellant, and had been duly sworn as Interpreter, the appellant would have found it very difficult to persuade me that he was not adequately interpreted.

Fong Sium v. P.P. [1950]
MLJ 293

Nonetheless, in spite of such a clear statement of the universal requirement for an interpreter in such cases and the nullifying effect of the lack of interpreting facilities on the legality of a trial, 30 years later, in the United Kingdom, faulty interpreting led to the conviction for murder of an illiterate Indian woman (Iqbal Begum) and a mandatory sentence of life imprisonment. During the trial, the defendant, who spoke no English and had no formal education, adamantly insisted, through an interpreter provided by the defence, on pleading guilty to murder rather than manslaughter. The interpreter assured the Judge that the defendant fully understood the difference between the two and implications of pleading as she had. After four years, it was discovered that the 'interpreter' was, in fact, an accountant and that he did not speak the same Indian language as the defendant; he was a Gujarati, she a Punjabi. An appeal against conviction and sentence was immediately made.

Allowing the appeal the Judge stated that:

...very great care must be taken when a person is facing a criminal charge to ensure that he or she fully comprehends not only the nature of the charge, but also the nature of the proceedings which will ensue and of the possible defences which are available having regard to the facts of the case...[since]...unless a person fully

comprehends the charge which that person faces, the full implications of it and the ways in which a defence may be raised to it, and further is able to give full instructions to solicitor and counsel so that the court can be sure that that person has pleaded with a free and understanding mind, a proper plea has not been tendered to the court.

Iqbal Begum (1991) 93 CrAppR 96

Similarly, in an appeal case in Malaya (*K. Nallah v. R* [1948] MLJ 185) the appellant, who was Tamil speaking, had been convicted of an offence under Section 323 of the Penal Code. At the original hearing there was no Tamil interpreter present, so the evidence was translated into Malay and the appellant gave the evidence which was apparently also in Malay. Justice Murray-Ainsley decided that this was obviously wrong and subsequently ordered a new trial.

In another appeal case (*Kunnath* 1993), the Privy Council sitting as the highest court of appeal for Mauritius (where the original trial had taken place) Lord Goff of Chieveley, Lord Jauncey of Tulichettle, Lord Lowry, Lord Slynn of Hadley, Gault J allowed an appeal against a death sentence on the grounds that the proceedings in which the appellant was convicted had not been interpreted to him. In allowing the appeal, the Court stated that:

... by virtue of the Judge's duty to ensure that an accused has a fair trial, the judge is duty bound to ensure that effective use is made of the interpreter. (...) the correct approach in cases where an accused does not understand the language of the court is to ensure that the evidence is interpreted to the accused except when he or his counsel on his behalf expresses a wish to dispense with the translation and the judge thinks fit to permit the omission.

R. Kunnath v. The State
[1993 4 All ER 30]

The linguistic rights of the individual are clearly spelled out in judgements of this kind and would appear to be permanently established.

In the present practice of the court in Malaysia, an interpreter for civil cases may be engaged by the litigants via their counsel and this practice is on the increase. The freelance interpreter is usually an experienced former court interpreter who has resigned in order to earn a great deal more than the salary paid by the government. However, for criminal cases, interpreters are provided by the court.

1.9 Thesis Outline

The following two chapters will build up the theoretical foundation upon which the research is based. The review covers relevant literature in court interpreting followed by language planning, in order to identify the research issues. Chapter 4 details the methodology and procedures taken by the researcher to obtain the data, which will be used to answer the research questions. Chapter 5 presents patterns of results and analyses them for relevance to the research questions. Here several references will be made to chapters 2 and 3. The last two chapters will discuss and explain the findings within the context of chapter 5 and previous research in chapter 2. Implications for a line of action and further research will be offered in the concluding section.

1.10 Significance of the Study

This study is the first in Malaysia to attempt a broad-based description of the official interpreting service in its legal setting and as such bears significance in a number of areas especially in the following:

1.10.1 Informed Basis for Positive Actions for the Role Participants

In Malaysia, the significance is primarily for those who are involved in the system and have been subjects of the research: the interpreters, the Bench and the court administrators.

For the first time, the interpreters now have on record solid information, data, perceptions and views, and details of their position in the system to confirm their perceptions and dissatisfactions and to back their demands for change.

Similarly, the research provides the relevant authorities and the decision makers with data, information and arguments which can be used to consider seriously changes regarding a number of important issues in the provision of the interpreter service. One of these is the recognition that government employed interpreters need to have the assurance of a professional scheme of service with appropriate remuneration, training and prospects of upward movement in a carefully designed career structure. The absence of such a scheme only perpetuates the *ad hoc* short-term measures of dealing with a situation that will persistently recur.

1.10.2 Interpreter Training

The study also has significance for overall interpreter training, especially for court interpreting. This type of interpreting is the most significant to many people's lives and is probably the most demanding and yet is the least recognised and rewarded. A court interpreter does not work in the anonymous security of the booth as the conference interpreter does nor in the intimacy of the private setting as the Public Service interpreter often does. The court interpreter is in full view of all those present in court and is required to give total concentration to the linguistic exchanges between parties in the court, since mistakes can be costly, time consuming and potentially destructive to the judicial process itself. The interpreter's psychological strength, confidence and integrity are constantly tested. The argument for structured and systematic training is therefore not in question.

A comprehensive training programme, incorporating skills, knowledge, (language, legal procedures and interpreting), and code of ethics that are crucial to equip and empower interpreters to function in court is needed in Malaysia. Universities traditionally offer only academic programs (the University of Malaya for example, has ceased offering the diploma and certificate courses for translation and interpreting in favour of a more academic bachelor degree program), and have specific entry qualifications which limit enrolment. In such a case, it seems imperative that other institutions be entrusted to carry out the necessary and appropriate training. This study is significant for such a purpose as a background research input and rationale for a strategic planning of interpreter training.

1.10.3 Applied Linguistics

In the area of applied linguistic research, interpreting as a branch of translation deserves greater focus and clarity. For example, there is a constant terminological confusion in the literature over the term to be used for the field, that is, interpreting, interpretation, translation. In North America, the process is referred to as *interpretation*. In the Commonwealth, as *interpreting*. The issue is not insignificant. Not only is it important for a discipline (especially a new one) to be agreed about its technical terminology and the definition of its field of study, the use of the term 'interpretation' can be seen as a major contribution to the persistent misconceptions in the minds of legal professionals about the nature of the process and the place of the interpreter.

For the lawyer or the critic, 'interpretation' is taken to mean a commentary on a legal text or an aesthetic evaluation of a work of art. For the linguist, 'interpretation' is an integral part of 'making sense' of an utterance or text.

Lawyers become defensive when they perceive linguists and interpreters trespassing, as they see it, into their own professional field and insist that the court interpreter's role is only to 'translate' and never to engage in 'interpretation'. This leads to the demand that the interpreter be no more than a mechanical device which provides the literal translation of words, ideally on a one-to-one basis. It would be helpful if the term 'interpreting' was universally used by linguists to refer to the process of spoken or signed translation.

1.10.4 Linguistic Rights

Perhaps the most significant aspect of this research is the contribution it can make to the assertion of interpreting (and translation) as an inalienable human right, particularly in the court of justice (Chapter 5.7 discusses the issue of linguistic rights). If this right is to be a genuine defence for the linguistically handicapped, (a) interpreters must be provided, (b) interpreting must be provided by a competent interpreter or translator. This is a further argument in favour of the promotion of efforts aimed at appropriate training, accreditation and professionalisation.

1.11 Limitations of the Study

As pointed out earlier under Justification for Research, this study essentially concerns the macro aspects of an interpreting system and service provision. It does not address the details of techniques and process of interpreting, nor does it examine courtroom discourse between the linguistic intermediary and trial participants. Such studies require a completely different approach and methodology. As the Malaysian court system does not allow a tape-recording of its proceedings, courtroom discourse research is greatly hindered, unless the research is carried out by a team and shorthand is used. This is the first limitation of the study.

The second limitation concerns the *survey* respondents. The survey results represent the views of two groups of participants, that is, the judges and registrars

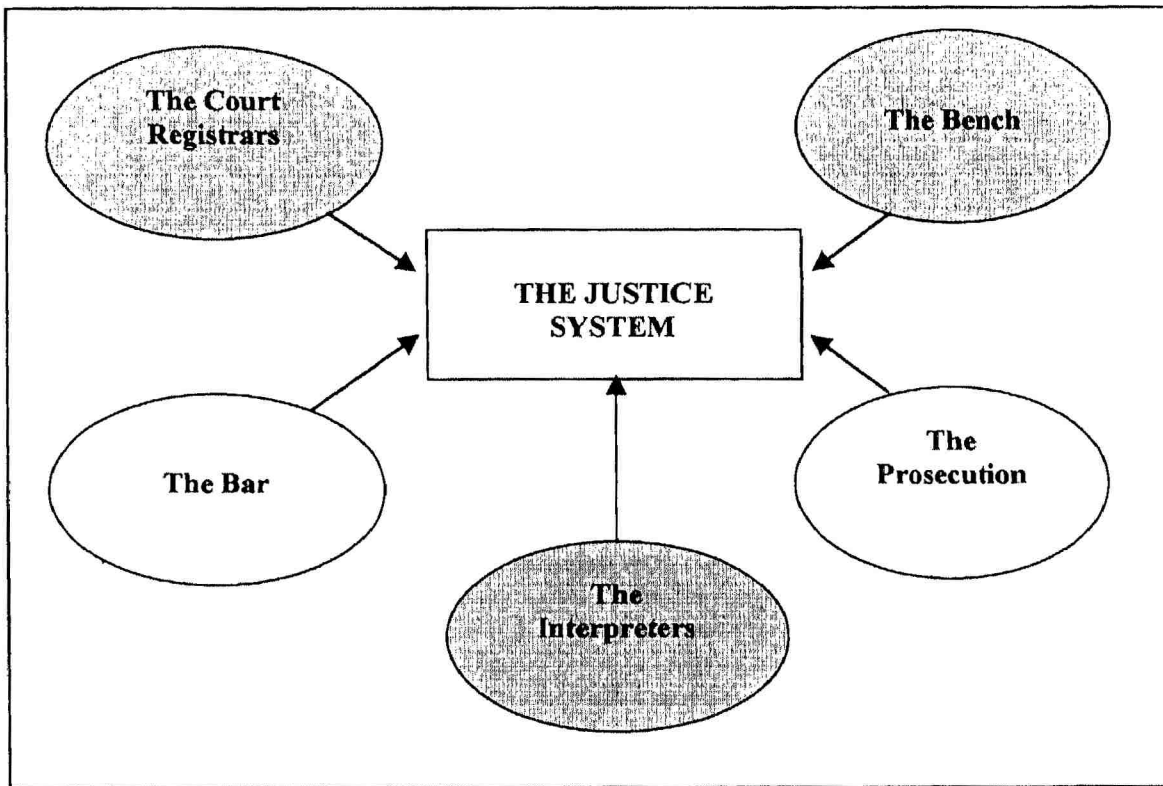
compared with those of the interpreters, and not of the other groups in the system that is, defence lawyers, prosecutors and the police, instead views of lawyers and the police are recorded in interviews.

Thirdly, in terms of observations and interviews, the geographical location is limited to the Federal Territory (containing the national capital: Kuala Lumpur), and neighbouring towns in Selangor (a populous and wealthy state surrounding the national capital): Shah Alam, the capital of the state, and Kajang which represents a district court. In addition, data was also collected in Kota Kinabalu, the capital of Sabah, which serves as representative of an area in East Malaysia.

It must also be added that the interpreters whose views are recorded are from the magistrates and the high courts, excluding those from other courts like the industrial and juvenile courts.

The scope of the study can be depicted in the following diagram:

Figure 1.4
Scope of the Study



1.12 Conclusion

This chapter has laid the foundation and set the scene for this thesis. First, the research problem and research questions have been introduced, the focus and type of research justified and the approach and methodology briefly described and justified. The thesis has been mapped out and the significance and limitations of the research have been presented. The thesis will now move to a detailed description of the research.