CHAPTER 2
COURT INTERPRETING ISSUES

2.1 Introduction

This chapter focuses on two main topics: (a) some theoretical aspects of interpreting, and (b) related literature and research in Malaysia and in other countries, highlighting the practical concerns of court interpreting which is the basis of research questions 1 to 3: the role, training and remuneration of the interpreter, and the requirements for the provision of an adequate court interpreting service.

2.2 The Nature of Interpreting

Interpreting, like translating, can be defined as the action of 're-expressing in one language what has been expressed in another' (Gile 1995b:2). Both interpreter and translator essentially perform the function of linguistic intermediaries, eliminating barriers to communication across cultures and languages. Although common features exist in both, that is, they build upon fluency in the two languages involved; there are significant differences which strictly characterise and set them apart. Seleskovitch[7] (1978) puts it as follows:

> Translation converts a written text into another written text, while interpretation converts an oral message into another oral message. This difference is crucial. In translation, the thought which is studied, analysed and subsequently rendered in the other language is contained in a permanent setting: the written text. Good or bad, this text is static, immutable in its form and fixed in time. And the

> translation, equally circumscribed within a written text, is intended, as was the original, for a public the translator does not know. (...) interpreting represents something entirely different. The (...) interpreter is there with both speaker and listener, dealing with messages whose fleeting words are important, not because of their form, but almost entirely because of their meaning. He participates in a dialogue, his words are aimed at a listener whom he addresses directly and in whom he seeks to elicit a reaction, and he does this at a speed which is about 30 times greater than that of the translator.
>
> op cit :1089-1090

The interpreter clearly needs to be more than bilingual and certainly bilingualism alone is insufficient as a criterion for the recruitment of interpreters. Dobosz (Bowen & Dobosz 1990) describes the results of employing individuals who were top class bilinguals as interpreters at the Panmunjom negotiations at the end of the Korean War in 1956, as follows:

> ...their English and Russian were perfect and yet they couldn't ...[interpret]. They mumbled, they got confused and lost the thread, they never finished their sentences, they sweated and stammered. It was painful to look at them...They were linguists by profession. They knew everything about phonemes, comparative grammar, medieval punctuation, and the like. But they were slow, they lacked the lightning reflex, they didn't have the knack for guessing what the speaker wants to say even if he expresses it clumsily. They couldn't enter the other person's mind, if I may put it in that way.
>
> Dobosz 1990. 31

Interpreting involves not only keenly developed linguistic skills, but also special knowledge and it certainly is not performed on the basis of word-for-word equivalence. Further, just as there are distinctions within translating between text types and genres (for example literary translation, legal translation etc), there are distinctions within interpreting which arise from the setting in which it is provided

and the mode which is used; for example, conference interpreting versus public service interpreting, and simultaneous versus consecutive.

2.2.1 Interpreting and Communicating

Interpreting and translation are examples of bilingual communication, in the sense that listening and speaking, reading and writing are equally essential components in 'normal' communication. The competent interpreter, like any other competent communicator, decodes and encodes messages, is aware of cultural differences which can be potential obstacles to communication, is able to engage in discourse, giving and taking turns to speak and listen, can understand the context free semantic meaning and context sensitive pragmatic value of utterances, infer what is intended by the speaker, produce utterances which are themselves correct in terms of the grammatical rules of the languages involved and appropriate in terms of the sociolinguistic conventions which constrain the choice of words and their combinations, and correctly interpret and produce the non-linguistic cues (gesture, timing, intonation etc) which accompany speech.

Competence as a communicator depends not only on linguistic knowledge but also on encyclopaedic, contextual knowledge. Without this, the communicator cannot make sense of what is heard (or read). Context free words may have no meaning in themselves, although most dictionaries seem to suggest that they have. For example, context-free, the word 'plant' cannot be disambiguated. In the context of discourse on botany it refers to a phenomenon which is very different

from the phenomenon referred to by the word in an industrial context (de Jongh 1992).

The lack of such encyclopaedic, contextual, cultural knowledge limits understanding (and interpreting) to the literal, which can lead to loss or change in the intended message. Individual words or phrases (especially technical terminology from any field) present a large potential for such limited interpretation. For example, when President Bush declared that his administration would 'stay at the plate' until the Panamanian leader Nortiega had been ousted (de Jongh op cit. 27), only knowledge of the rules and terminology of baseball (apparently a favourite analogy of US politicians) would save the interpreter from rendering this in a way which conveyed a ludicrous image.

The difference between monolingual communication and interpreting is this: the monolingual communicator, unlike the bilingual, rarely has to pay close attention to what is being said. Speaking and listening, face to face or by telephone, is typically relaxed, chunks can be missed or misheard, hearers can ask for clarification, speakers can check that their message has been received and understood. For the interpreter, in contrast, the situation is far more tense and lacks such feedback mechanisms. While the monolingual communicator can listen selectively (listening with little mental effort), the interpreter's listening has to be *concentrated* rather than *selective* and this involves substantial mental effort in attempting to follow the speaker's thought processes and understand the whole of the message. This is because the monolingual listener is attending to the parts of the message *(s)he* is interested in and filtering out what is not of interest, but the

interpreter, who 'takes the place' of the speaker for whom (s)he is interpreting, cannot be selective but must attempt to be comprehensive and produce a message which carries the information the *original speaker* considered important .

In short, the translator/interpreter has to be able to do everything the monolingual communicator does, and in addition, listen more attentively and less selectively in order to switch languages.

2.2.2 Interpreting: Settings and Goals

The settings in which interpreting services are offered not only vary physically (that is, in terms of location) but also in terms of goal and approach. Four major settings are commonly distinguished (Roberts 1994: 1732): Conference, Community, Legal and Tourist. However, the essential distinction is between Conference and Public Service, with Tourist falling between the two:

- Conference: formal meetings; academic, diplomatic, commercial;
- Tourist: hotels, restaurants, museums;
- Public Service: social service encounters; medical, legal, educational, media, immigration.

The goals of interpreting in these contexts differ considerably. Public Service Interpreting aims at providing a means of communication between two individuals, whereas Conference Interpreting aims at facilitating communication between groups of individuals. Tourist Interpreting[8] can have either goal. At the hotel reception desk or in the restaurant, the clerk or waiter will be dealing with

individuals or very small groups. In the museum or at a monument, the guide will probably be addressing a larger group.

The consequence of this is that while the first attempts to provide both affective and cognitive information, the second is more focused on the cognitive content of the message. The Public Service Interpreter may, therefore, seek to reproduce such features as hesitation, incomplete utterances, redundancy, while Conference and Tourist Interpreters will filter out such features and limit themselves to the smooth reproduction of the cognitive content in the receiving language. This distinction of goals has a direct influence on the techniques selected to realise them.

2.2.3 Interpreting: Modes and Processes

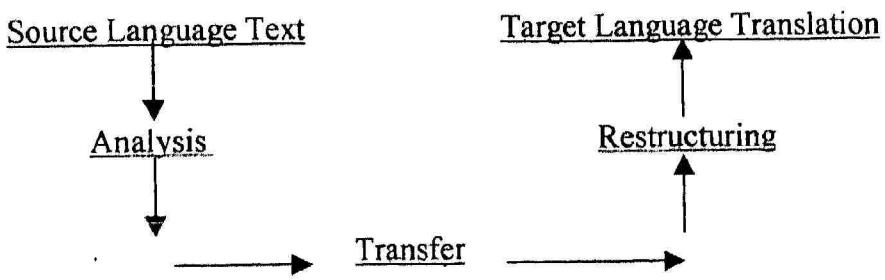
Interpreting modes are distinguished in two ways, in terms of *time* and *medium*. Time characterises (1) *simultaneous* (including whispered), where the interpreter attempts to reword a message in the receiving language within some five seconds of hearing it, without pausing as new messages are received, from (2) *consecutive* (long and short), where the incoming message is either not interpreted until it is complete (this entails careful note taking) or is broken into shorter chunks (often single sentences) before it is reproduced in the second language. Medium distinguishes simultaneous and consecutive from (3) *sight translation*, where the input is written rather than spoken. There is, naturally, the reverse process, spoken input with written output, which is *written interpreting*.

While all three modes are used in all three settings, Conference and Tourist interpreting more typically use simultaneous. In the judicial context, an important criterion in the selection of mode is the fact that interpreting must be performed *verbatim* as the interpreter's words form part of the permanent record of the court. It is thus imperative that court interpreting meet strict standards of precision, accuracy and completeness. For the purpose of court record, the consecutive mode is generally selected.

The skills and knowledge demanded of the interpreter are reflected in the process of translation and interpreting which consists of far more than providing semantic equivalence (Nida & Taber, 1974). More important is the equivalence of *meaning* and *style*. The process is depicted below using an illustration from Nida.

In transferring source language text into the target language in a way which makes sense, the translator has to mediate between the precision of the original text (including all semantic and syntactic elements) and the communication of all linguistic and contextual clues into the target language.

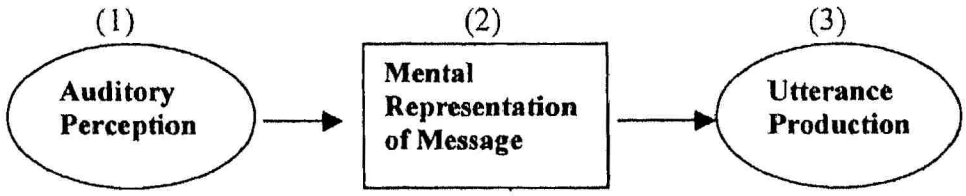
Fig. 2.1
The Process of Translation



Source: Nida & Taber op cit: 33

Seleskovitch divides the process of interpreting into three stages:

Fig. 2.2
The Process of Interpreting



Adapted from: Seleskovitch op cit: 9

(1) Auditory perception of a linguistic utterance which carries meaning. Apprehension of the language and comprehension of the message through a process of analysis and exegesis; (2) Immediate and deliberate discarding of the wording and retention of the mental representation of the message (for examples concepts, ideas); (3) Production of a new utterance in the target language which must meet a dual requirement: it must express the original message in its entirety, and it must be geared to the recipient.

The interpreter therefore does not strive to remember the source language words but rather the meaning which is then rendered in the target language.

More recently Gile (1995) provides a more sophisticated view of the process. Gile sees interpreting as the interaction between *comprehension* (C), *linguistic knowledge* (KL), extralinguistic knowledge (EKL), and *analysis* (A).

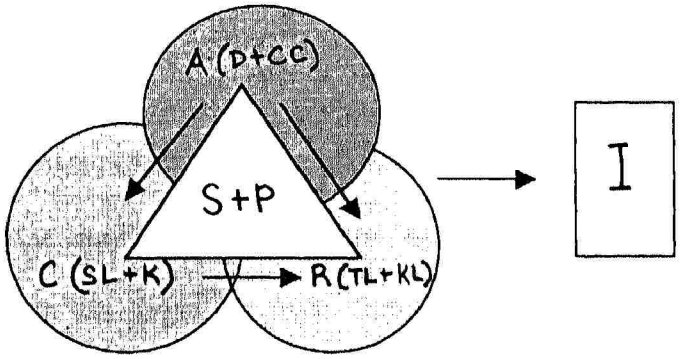
This model is extended and modified as the Xia Da model by Lin Yu Ru; Jack Lonergan; Lei Tien Fang; Chen Ching; Xiao Siao Yen; Zhuang Hon San and Zhang YuBing (quoted in Lin Yu Ru et al 1999: xxi-xxvii) who added further parameters: (1) *skills* (S), which distinguish what the interpreter can do which is in addition to mere bilingualism, (2) *language knowledge* (L), both knowledge and enhancement, (3) extralinguistic and encyclopaedic knowledge (K) and (4) *analysis* and *reflection* that the interpreter brings to communication and discourse: all of which, together, provide the basis for *comprehension* (C).

The model is further enhanced by the addition of (P), *professional ethics* and *standards* which, together with what has gone before, define the professional interpreter (I), the distinction between the *source* and *target languages* (SL and TL respectively), the) and the setting of the communication within a cultural and discourse context which requires the recognition of the need for *cross cultural understanding* (CC) rather than just *comprehension* (C) and *discourse analysis* (D).Finally, the crucial nature of the process itself is recognised and labelled: *reconstruction* (R).

This provides a formula for the *non-linear* process of interpreting. Note: the numbers are there for ease of reference only. They do *not* imply a linear progression from (i) to (v) :

(i) A (D + CC) ➞ (ii) C (SL + K) ➞ (iii) R (TL + K) ➞ (iv) S + P ➞ (v) I

Fig. 2.3
XiaDa Model of Interpreter Training



The formula reads:

i) The interpreter analyses the message in order to both comprehend and reconstruct it by drawing on discourse and cross cultural understanding. The overlapping circles are intended to show that this process affects both source and target languages.

ii) The interpreter's comprehension of the source language is made possible by extralinguistic, encyclopaedic knowledge

iii) Reconstruction in the target language is also assisted by extralinguistic, encyclopaedic knowledge

iv) The interpreter's professional skills and techniques relate to professional standards which apply at each stage of the process.

v) The goal – interpreting (I) – is reached.

The revised model is particularly valuable not only because it emphasises the multiple knowledge and skills required of the interpreter (in addition to the obvious ability to speak two or more languages) but also because it forms the theoretical base for a current series of large scale interpreter training programmes being conducted in the Peoples Republic of China: programmes from which other

interpreter trainers, particularly in South East Asia might profitably learn.

2.2.4 Interpreting in Court

Many legal professionals see translation (both translating and interpreting) as a simple one-to-one transfer of lexical items; word x in the source language is replaced by word y in the target language. Such a view necessarily ignores the crucial elements of cultural and linguistic norms of the target language and consequently the result might be incomprehensible. Interpreting is viewed as a mechanical process which requires little intellectual involvement on the part of the translator, that is, there is no decision-making involved other than the straightforward matching of lexical items. This seems congruent with the requirement that interpreting in court must be verbatim, though at the same time, it is also imperative that it be accurate and complete.

The reality is very different, court interpreting is one of the most demanding mental activities and rife with potential problems. In addition to all the qualities expected of other interpreters (that is, mastery of interpreting techniques and a high level of command of the working languages, and the culture and conventions of those interpreted for), the court interpreter must have an understanding of the peculiarities and formality of legal language, and a good knowledge of the legal system in the country in which they work. There is also variation introduced by the legal system itself. The procedures of the Common Law in criminal trials depend almost entirely on spoken depositions and examination which have to be interpreted as they occur. Civil Law, in contrast (and

much non-criminal Common Law litigation) makes far greater use of documents, which need to be translated and circulated before the trial begins. This requires the interpreter to deal with spoken dispute relating to the meaning of sections in the documents rather than the cut and thrust of cross examination which typifies the criminal trial (Gonzalez et al 1991; Teo op cit).

2.3 Norms and Roles in the Courtroom

A trial is enacted by individuals each of whom possesses a different status. A status is an institutionalised place in a hierarchy and to this a different degree of prestige is attached. Prestige carries influence which gives a certain weighting to the opinions expressed by the status holder (Bell 1976:102).

Courtroom interaction (as all human interaction) is regulated by norms of behaviour and differs from everyday interaction to the extent that the norms do not merely control or regulate the process but define it. In effect, without the predetermined ritual of court procedure, there would be no trial.

Legal proceedings are the most strictly regulated activity in human society (Niska 1995:294). Throughout the process – from arrest, to charge, to trial and, finally, verdict – every step is meticulously carried through in accordance with pre-determined structures and standard procedures. Any deviation from this procedure may be detrimental to a case.

Each participant plays a formally defined role which is constrained by a set of norms of behaviour. However, although every participant – prosecutor, lawyer, judge, accused, witness – has a clearly defined role and, in the case of the professionals, specification of duties, this does not apply to the interpreter. Niska cites the European Convention on Human Rights which is very clear on the right of those charged with a criminal offence to have adequate and prompt access to information and to the assistance of an interpreter (article 6.3) but provides very little on the interpreter (him)herself. For example, nothing is stated about what qualifications the interpreter must have, what (s)he must do in various situations and what his/her legal status is in the court. What there is on the rules of conduct is stated in very broad terms. The interpreter 'must perform the work conscientiously and to the best of his/her ability' (op cit:295)

In terms of the linguistic code, many of the lexical and structural features in normal usage have very different application in the courtroom. The following code features which are well known enough to the general public to constitute a stereotype of 'legal language' are given as examples (Sambo 1997):

- common words with uncommon meaning: *Bar; Bench; motion; prayer; party*
- Latin words and phrases: *alibi; quorum; quid pro quo; bona fide*
- distinctions of meaning made by the selection of a native English or a French word: *manslaughter* vs. *murder*
- 'terms of art' (a technical word or phrase with specific legal meaning): *contributory negligence; hostile witness; negotiable instrument*
- formal words and expressions: *approach the Bench; as the Honourable Court pleases*
- words and expressions with flexible meaning: *adequate cause; bind over; habitual criminal; reasonable doubt; on or about*

- words and expressions seeking extreme precision or broadness of meaning: *discharge not amounting to acquittal; including but not limited to.*

Mellinkoff (1963) provides a similar list and goes further, saying:

> The language of the law is often unclear – plain 'muddy'
>
> op cit 1963.25

In addition, courtroom discourse is highly structured and standardised, in order to adhere to the rules of evidence. Danet (1980: 521) refers to a typology of question forms used in courtrooms in terms of degree of coerciveness and constraints. The most coercive are declaratives (for example *You did it.*), followed by interrogative yes/no (for example *Did you do it?*), open-ended wh- questions (for example *What did you do that night?*), and 'requestions' that is, those which seem to inquire about willingness or ability, but actually requesting information (for example *Can you tell us what happened next?*).

Not only does each stage in the trial employ its own ritualised terminology and structures but there are definite constraints, which derive from the principles of the adversarial process, placed on the form of utterances which may be used (Danet op cit.). For example, leading questions are not allowed during a lawyer's examination of his own witnesses (examination in chief) but are allowed and encouraged during the cross-examination of witnesses of the other party.

A witness, on the other hand, is likely to be ignorant of the court's conventions, may not be able to deal with leading questions, and may seek only to

present his own version of reality in his own way which does not conform to the discourse of the courtroom (Hale and Gibbons 1999). For a witness or defendant, part of the process of participating in a trial consists of learning and complying with these legal structural constraints, such as answering with a simple *Yes* or *No* and not being permitted to qualify his/her answer.

Thus effectiveness of communication in the process of trial depends on an understanding of the roles that each participant plays, the norms under which they operate and the differential status and prestige each possesses, since these, in turn, determine the norms, the rights and the responsibilities of the participants.

2.4. The Role of the Court Interpreter

The interpreter, by virtue of being the bilingual individual between two parties who do not speak the same language, is the only medium of communication between the parties. His role is thus vital in the administration and preservation of justice. In turn, the Court has the duty of ensuring that justice is done to the parties concerned in accordance with the ritualised regulations for what has been likened to a battle of words in which language is the weapon. In such a battle, the individual who is best able to manipulate the highly formalised discourse of the Court is most likely to win and, equally, an individual who cannot speak or understand the language of the courtroom is effectively disarmed and helpless (Hale 1997. 201).

The judgement depends on the quality of the information available to the Court and that, in turn, depends on the quality of communication between all parties that is, between the Court, the lawyers, the prosecutors, the witnesses, the accused or the defendants (Fenton 1995). Communication is almost entirely in language, so the quality of communication (and, hence, the quality of justice itself) is even more significant if the proceedings involve parties who do not speak the same language. This is where the bilingual interpreter becomes indispensable to the Court. In addition, as language is inextricably related to culture, translators and interpreters have to be equipped to serve as cultural and linguistic bridges (Mikkelson 1999) to enable effective communication to take place.

In a court of law, the over-riding concern is establishing the facts of the case. There are differing views both on what constitutes a relevant fact and, therefore, on what should and should not be interpreted and on how far cultural differences, which can cause misunderstanding of the facts, should be taken into account. Since the interpreter is often the only one who speaks and understands the language of the defendant or witness, (s)he holds the key to the truth. The issue thus arises of the extent to which the interpreter influences or should be allowed to influence the outcome of the trial. (Teo op cit; Niska op cit; Altano 1990; de Jongh 1990; Morris 1995; Hale op cit; Dunnigan and Downing 1995; Bucholtz 1995; Mikkelson 1998; Corsellis 1995a, 1995b; Kelly 2000; Kadric 2000 inter alia).

Typically the court interpreter is expected :

> to transfer all of the meaning he or she hears from the source language into the target language, not editing, summarising, adding meaning, or omitting. The court interpreter is required to transfer the message into the other language exactly, as originally spoken.
>
> Gonzalez et al 1991.155)

This requirement has led to a range of metaphors for the interpreter: a mechanical instrument which functions as a translation machine, a transmission device, an echo machine, a transformer, even a modem or, less technically, a conduit pipe.

There are many examples in which the Bench compares the interpreter to something less than human. The following is from pre-independence Malaya 1948:

> An interpreter is merely a "conduit-pipe". In the course of his interpretation he should not invent anything to the detriment of the accused nor should he be open to temptation to improve or embellish the case. His one and only task is to interpret the question as put to the witness in his language and to interpret the answer back in the language of the Court however irrelevant the answer may seem to be. He should not take on the role of counsel or Court. An interpreter must understand that he is, in effect, a human machine for turning one language into another. He must translate long answers as he goes and must not be concerned with whether a witness appreciates the purpose, as distinct from language of the question, or that the answer is responsive.
>
> Spencer Wilkinson J. in
> Cheong See Leong v. P.P. [MLJ Supp. 1948-49. 56]

Forty years later the same expectations are being stated:

> It cannot be over-emphasised that an interpreter should interpret every single word that the witness utters, exactly as it is said, whether it makes sense or whether the witness has plainly not heard or whether, if he has heard, he has not understood. The interpreter should look upon himself rather as an electric transformer; whatever is fed into him is to be fed out again, duly transformed.
>
> Wells 1988: 152-153

A more recent and more sophisticated UK perspective expresses clearly the clash between the need for the interpreter to be a '*mouthpiece*' for the client and the danger of slipping into an advisory or advocacy role and recognises that, in the end, interpreters have to be permitted a degree of discretion in balancing the two:

> An interpreter who is unbiased, impartial and professional never 'speaks for' the person whose words are being put into the other language. An interpreter acts as the linguistic mouthpiece of that person. Interpreters echo the people who need their services as faithfully as they can, given the limits of language; they do not replace them. They certainly do not act as advocates, nor do they give legal advice.
>
> This does not mean, however, that interpreters function as nothing but a sophisticated 'echo machine'. Interpreters must always be on the alert for possible misunderstandings. These may occur because neither party is aware that aspects of the other's cultural background have not been understood correctly. Similarly, listeners may not have grasped the implications of what has been said in the other language, although these would have been clear to a person who speaks that language and comes from the same country or group. There are no clear-cut rules for interpreters about how to act under these circumstances. They have to deal with the communication issues and any resulting dilemmas as they see fit.
>
> Colin and Morris 1996. 22-23

According to Gonzalez et al (1991:155), the interpreter is a language mediator, whose duties include conserving language level, style and tone, and the *intent of the speaker* in order for the defendant to be linguistically and cognitively present in the courtroom. The fundamental role of the interpreter is to place an individual who does not speak and/or understand the language of the court, as closely as is linguistically possible, in the same situation as one who does in a legal setting. Without an interpreter, the defendant who is not competent in the language is not legally 'present', is unable to plead to the charge, cannot properly utilise a

lawyer to prepare his or her defence and any 'trial' which takes place in such circumstances is not, in fact, a trial.

Still others (Kelly op cit) expand the concept of the role of the interpreter by stating that (s)he is a 'reflection of society' that is, a bicultural, bilingual professional. In this sense, the interpreter is an expert witness, since (s)he knows the language and culture of those (s)he interprets for better than anyone else in the court, and therefore should (Kelly argues) be given the leeway to resolve misunderstandings caused by cultural differences.

In Australia (Laster & Taylor op cit), the interpreter is considered to be an expert witness and is, therefore, like other expert witnesses, sworn in on every occasion. However, being a sworn witness provides no guarantee of quality or responsibility although, once sworn, the interpreter is criminally liable and can be charged with perjury for misinterpreting, whether accidental or deliberate.

In instances where interpreters are asked to give expert opinion about some aspects of the home country or culture of the foreign defendant or witness, (s)he is no longer speaking as a neutral intermediary in the case but as an expert witness whose opinions can influence the results of the proceedings.

Although judges and prosecutors, surveyed in Massachusetts (Kelly op cit.) did not believe that the interpreter should enter the realm of the expert witness, their role as 'bicultural expert' was accepted. This raises the intriguing question of what the difference is between an 'expert witness' and a 'bicultural expert'.

According to Falck 1987 (in a Norwegian study quoted in Niska 1995), the reason that the interpreter is often given the role of expert witness is probably not because of any particular expertise or competence on his/her part but because of the other parties' lack of competence.

Once it is recognised that part of the role of the interpreter is that of a cultural adviser to the Court, the issue of advocacy appears. Most interpreters accept that they should seek to be neutral in their dealings with parties from other cultures and that their role is to ensure that cultural differences do not cause miscommunication within the trial by obscuring or misrepresenting the facts. In order to do this, cultural intervention has to be limited to explaining identifiable differences between the host and defendant's culture which may have a bearing on the outcome of the case. How the cultural information is to be used is not the responsibility of the interpreter but of the judge and the attorneys.

However, the interpreter constantly faces the temptation to allow sympathy with the defendant or belief in his innocence or guilt to turn interpreting into advocacy and some (Kadric op cit in Austria in 2000, for example) would suggest that this can be justified. It can be argued that facilitating communication by eliminating language barriers involves ensuring that the accused is able to speak, understand and be understood. This, in turn, may mean that the interpreter has to do far more than just suggest the words the accused might say, and propose wordings which put the defendant in the best light (as a defence counsel does during examination in chief). It could further be argued that the non-native accused, especially the unrepresented accused, is already at a serious disadvantage

compared with natives and that the only person in court who can help, should do so.

The foreign accused certainly believes that this is part of the interpreter's job. In the Norwegian study (Falck op cit.) 75% of the interpreters surveyed felt that immigrants wanted the interpreter to be on their side and 33% felt that the defence also expected this. The interpreter faces enormous role conflict here. Almost half of Falck's interpreters (43%) saw themselves as being on the side of foreigners and only 30% as neutral. When asked if they felt a conflict of loyalty, those who said 'yes' were precisely the 43% who saw themselves as advocates.

Neutrality is hard to achieve when the immigrant is totally dependent on the interpreter for all the information relating to the trial (even the date) and comes to see the interpreter as an ally rather than a neutral intermediary. This dependency can also manifest itself in negative attitudes to the interpreter. Defendants can become suspicious and accuse the interpreter of being on the side of authority, not interpreting everything they say, even adopting the interrogatory tone of hostile counsel.

2.4.1 The Malaysian Interpreter

In Malaysia, the issue of the role of the interpreter takes on a further dimension, since (s)he is also expected to *assist* the Bench in the open court by performing a range of duties other than interpreting (Teo op cit and Appendix I). Significant among these duties are (a) reading the charge to the accused and

explaining the nature and consequences of the plea, and (b) assisting an accused who represents himself.

(a) On the recording of the plea, it is a statutory requirement that when a person is charged with an offence, the charge must be read and explained to him in full, so that (s)he understands what (s)he is faced with. Only after (s)he has fully understood, is (s)he asked to plead to it. (CPC F.M.S. Cap 6, section 173 (a)). If the accused pleads not guilty and claims trial, nothing further needs to be explained. However, if the accused pleads guilty, the charge must be fully and carefully explained in order to ensure that the guilty plea is made properly. In the Malaysian court, it is part of the regular duties of the interpreter to do this, *even* where the accused is a speaker of Malay. Where the accused does not speak Malay, the interpreter has first to determine the language or the dialect spoken by the accused and whether (s)he (the interpreter) is competent in it. If the interpreter is not competent in the language of the accused, another interpreter will be called in.
The significance of the guilty plea is clearly established in the following opinion of 1952 (emphasis added):

> It is to my mind essential to the validity of a plea of guilty that the accused should fully understand what he is pleading to and it is impossible to be sure that he has understood, *unless the charge has been read to him in a language with which he is entirely conversant.* 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 witness.
>
> Spencer Wilkinson J. in Huang Chin Siu v Rex
> [MLJ 7 1952:18]

A plea of guilty, according to Wilkinson, is a waiver by the accused of his right to have the case proved beyond reasonable doubt. The CPC provides that if an accused pleads guilty to a charge it will be recorded and he may be convicted. For this reason, the plea recorded must be correct and truly reflects the guilt of the accused.

Another opinion from 1952 shows that the practice was already well-established fifty years ago (emphasis added):

> In a case where the charge contains more ingredients or questions and where the accused is not represented by counsel it is desirable that each ingredient and each question involved should be explained by the Magistrate *through the interpreter* to the accused and that the accused's reply should be recorded.
>
> Brown J in Koh Mui Keow v Rex
> [MLJ 214 1952]

However, Teo's experience in the Malaysian courts shows that the interpreter is expected to read the charge, explain its nature and consequences (op cit 29-37) and inform the Bench what the plea is.

(b) In a trial, a witness goes through examination in chief after which (s)he is subjected to cross-examination. During this session, the person conducting the cross-examination may ask any question, including leading ones, with the intention of throwing doubt on the integrity of the witness. A lawyer may ask the following type of leading questions: "Is it not true that on (...date) you were at (...place) with (...name of a person) and you did (...commit an act) with him?"

Such multiple questions may confuse the unrepresented accused. A judge would normally interrupt and disallow the question and remind the questioner that

only one question at a time should be asked. Yet, Teo states that the interpreter often assist the witness by breaking up such questions into shorter versions to enable the witness to cope with it (op cit 38-46). He further states that the practice is long established in the Malaysian court.

2.4.2 The Passive Conduit View

From the legal point of view, judges (and juries) need to hear all evidence presented by parties in court. To enable them to do this, the interpreter must provide a complete and accurate rendition, and literalism is thus seen as essential to ensure this level of 'completeness' and 'accuracy'. Any departure from this approach is viewed suspiciously, criticised and challenged (Hale op cit).

However, language professionals know that effective communication in any language depends on shared cultural assumptions, and it is this that enables listeners to understand the meaning and significance of verbal (and non-verbal) communication. In the simplest terms:

> ...interpreters do not simply translate 'words', rather, they translate concepts and ideas from one cultural context into another.
>
> Laster & Taylor op cit: 118

How did the mechanistic view of the interpreter as a passive channel through which information flows or an instrument for transforming messages from one language to another come about? Laster and Taylor (op cit) and Teo (op cit) suggest that the metaphor derives from the legal concept embodied in the Common Law Rules of Evidence which maintain that only evidence given by eyewitnesses is acceptable. Any information heard from a second party can be considered

'hearsay' and thus unreliable and inadmissible when establishing the truth of a statement. A problem arises when parties in a trial do not speak a common language and are obliged to communicate through an interpreter. Information provided by an interpreter who is acting as a linguistic intermediary is not eyewitness evidence but, necessarily, hearsay and therefore inadmissible.

To resolve the dilemma, the situation of parties not speaking a common language is categorised as a technical problem. Being a technical problem, it can be solved by using a translating machine: a conduit pipe, a mouthpiece, a transformer, a modem (several metaphors of this kind have been used).

Since no such mechanical device exists, a fiction is created in which the interpreter is redefined as the 'mouthpiece' or a 'mere cipher' who is expected (unlike every other communicator) not to take 'an intelligent interest' in the proceedings:

> Let it be supposed that there were a machine that itself translated from one language to another so that one party to a conversation both spoke and heard in his own language; if such were the case the element that is here relied upon as hearsay would be absent and, upon proof of the accuracy of the machine, one party's account of the conversation would be unobjectionable. In my opinion, Arthur (the interpreter) like such a machine, was merely a translator...
>
> Rex v Attard (1958) 43 Cr. App Rep 90
> (quoted in Laster & Taylor op cit.112)

It is this issue which lies at the root of the consistent demand by the legal professionals that interpreters do not engage in 'interpretation' but limit themselves to the 100% transfer of meaning.

2.5. The Practical Problems in Court related to Interpreting

As a bilingual linguistic intermediary, the interpreter has the duty of interpreting for a witness who gives evidence in a language different from the language of the court. Interpreting, as a merely linguistic activity, is far from simple but interpreting in court is made more difficult by the complexity of the interactions in which the interpreter is involved.

In open court, the interpreter faces problems which derive from the activities of the witness, the Bench, Counsel (Prosecution and Defence) and from his or her own level of competence and experience. Some of these setbacks, frustrations and even antagonism between the parties with whom interpreters interact are described below.

2.5.1 The Witness

Witnesses who are called to court to give evidence vary greatly in terms of educational and professional background, linguistic ability and willingness to co-operate with the Court. They can be professionals or skilled tradesmen, unskilled workers, unemployed men or women, housewives, or retired people; but they all have two things in common, (1) they come to court to tell their version of the story and (2) they are most probably, educated or not, ignorant about court procedures and how to give evidence and, to varying degrees, intimidated by their surroundings: the judge in black robe on the Bench, the counsel in black suits at the Bar and members of the public watching them.

Teo illustrates this by giving the following accounts of different types of witnesses:

(a) those who come to court for the first time. They are not familiar with the conventions of the Court, and how to answer counsel's questions in a manner acceptable to the court. For example, a witness in a murder trial may be asked the following:

> Q: Did you see X hit Y?
>
> A: My neighbour said X hit Y with a hammer because Y was having an affair with X's wife (Instead of saying 'No, I did not')

(b) the uneducated:

> Q: Where do you live?
> W: I live at 8th milestone[9].
> Q: 8th milestone? Where?
> W: You know, the place where there were a few shop-houses previously!"
> Q: Do you know the name of the Road?
> W: Name of the road? I don't know, but I've been living there for many years!"
>
> Teo op cit: 57

(c) educated but evasive; such a witness tries the interpreter's patience, particularly when (as Teo suggests) this evasiveness is blamed on the interpreter. He provides the following illustration:

> Q: What time was it when the accident took place?
> A: I don't remember!
> Q: Was it in the morning or evening?
> A: I don't remember!
> Q: Can you tell us whether the day was bright or dark when the accident took place?
> A: I don't remember!
> Q: Could you see anything ahead of you?
> A: I don't remember!
>
> Teo op. cit. 61

2.5.2 The Bench

There are many problems faced by the interpreter in this regard. These entail consideration and co-operation (or lack of it) between the interpreter and the Bench, the understanding of the concepts of interpreting and translating (or lack of it), the nature and complexity of transfer of meaning in the course of interpreting, and the question of rules of evidence.

When interpreting involves languages or dialects that the Magistrate or Judge does not understand, (s)he is understandably concerned whether the interpreting is correct. However, when the Bench interferes in interpreting or expresses annoyance or allows emotional outbursts directed at the interpreter, it is embarrassing to the interpreter and does not further the interests of justice. According to Teo, remarks like 'Interpreter, you'd better be careful or I will put you in the dock instead of the accused!' have been uttered by the Malaysian Bench and interpreters being ordered out of the courtroom have occurred, (op cit. p 68).

Almost invariably and universally, court interpreters will have to face the impatient judge. This causes a great deal of anxiety especially to the novice interpreter. To make matters worse, in Malaysia, novice interpreters are usually assigned to subordinate courts, and these courts are almost always overburdened with cases, causing the interpreters to be overworked and under pressure. The Bench is often impatient when an interpreter takes time to consider the right word to use in a difficult exchange. For this, some interpreters (on the model of 'Justice delayed is justice denied') claim 'Justice hurried is justice buried'.

In the transfer of meaning and message, interpreters often find that it is not possible to interpret literally all the time. There are good arguments against literalism:

(1) the language of the court is often technical and utterances translated word for word or literally will not make sense or express any meaning;

(2) a language is embedded in the culture of its speakers, which means that an idiomatic expression or reference to time and space, beliefs, values, and even material objects makes use of different terms in that language which cannot be translated literally, and,

(3) there are obvious cases when what the witness says is irrelevant to the case being tried, and the interpreter is compelled to use his discretion to save the court's time.

The following illustrates what happens when an interpreter rendered a technical expression literally and at the same time misheard a word, resulting in misinterpreting and misunderstanding :

> In a case where the magistrate found the accused guilty and convicted him, he told the accused through a junior Chinese interpreter:
>
> I have found you guilty and I will bind you over to keep the peace for six months.
>
> Interpreter to accused:
> *Tai Yan Pun Nei Yau Chui Oi Pong Chi Nei Lok Koh Yi Mm Tak Oh Liu*
> On hearing that, the accused exclaimed: *Kom Tim Tak Kah? Seh Toh Sei Lah !!*
>
> Interpreter to the Bench: It is impossible! Even a snake will have also died!!
>
> Teo op cit:110

Apparently what the interpreter said to the accused was: 'The Magistrate has found you guilty and will tie you up, and you cannot piss for six months'.

Two illustrations of the second (idiomatic usage) are provided, one from South Africa, the other from Malaysia. Ramaite, the South African Deputy Attorney General, tells the following anecdote:

> A difficult point in the case had been reached and turning to the interpreter, the judge said 'Tell the witness, the court is on the horns of a dilemma'. Rising to the occasion, the interpreter addressed the witness as follows: 'The judge says he is now on the horns of an animal, which I myself have never heard of...'
>
> Ramaite (1977:11)

And from Malaysia:

> Judge: What is the distance from the goldsmith's shop to the police station, as the crow flies?
> After some time, the response came back from the Malay interpreter: My Lord, from the goldsmith's shop to the police station, I did not see any crow flying!

The third argument against literal translation is that of relevance (Grice 1975; Sperber and Wilson 1986), amply illustrated by Ramaite's account below of exchanges in a South African courtroom:

> There are some instances where the interpreter will be well within the bounds of his duties if he does not interpret what the accused or witness is saying. Some accused person or witnesses are notorious for constantly bringing up or raising issues which are not relevant at all to the matter at hand. Those who have attended a criminal trial in the Supreme Court, now called the High Court, will know that the judge presides dressed in a somewhat amusing red robe. In one such trial the interpreter read out the charge to the accused and then proceeded to ask him to plead to the charge. There followed a long discussion between accused and interpreter. Becoming impatient when no interpretation came forth, the judge asked: "What does he say, Mr. Interpreter?"

> Trying to be as polite as best he could, the interpreter replied: 'What he says, My Lord, is not relevant, and I am telling him so,"
> This reply irritated the Judge.
> "It is for me to say, Mr. Interpreter, what is relevant and what is not. What does he say?"
> "He wants to know My Lord, what Your Lordship paid for the red blanket you are wearing."
>
> Northern Province Language Council (1997: 11)

Albeit these are amusing examples but they do make the point very clearly that literal translation can lead easily to impracticality and absurdity and to unnecessary complication in courtroom exchanges.

2.5.3 Counsel

Interpreters face difficulties interpreting Counsel when he does not speak clearly and loudly enough, uses legal jargon and long sentences, or is long winded. Some counsel are in the habit of challenging the interpreter's interpretation when usually the interpreter is more knowledgeable about a dialect or a language than the counsel, and it is not uncommon that counsel accuse interpreters of putting words in the witness's mouth (Teo op cit.). Counsel may also be unaware that when an interpreter seems to be taking a long time to come forth with interpretation, (s)he may well be struggling to put equal emphasis on forms of sentence construction of two different languages. As Mead puts it:

> when the interpreter appeared to be entering into a prolonged negotiation in order to clarify a point, he [that is, counsel] might exploit the opportunity to make a show of self-righteous impatience.
>
> op cit 1988: 66

According to Altano (1990), lawyers can even be outright antagonistic towards interpreters and have even been known to demand that the interpreter be removed from a case for 'fraternising' with witnesses (1990:97).

2.5.4 The Interpreter

Some of the problems faced by interpreters can only be described as self-inflicted that is, caused by the interpreters' own personal and professional limitations. These appear to have two common sources (a) lack of training and/or (b) carelessness:

> Where a language switcher[10] is careless, generally incompetent, unable to determine the correct L2 meaning of ambiguous L1 materials, or labouring under a handicap (for example bad acoustics) and unable (or unwilling) to request clarification, substantive including factual differences will probably exist between the L1 and L2 version of the testimony. The upshot is that the language switcher may be providing inaccurate L2 version of testimony given in L1.
>
> Morris 1994, quoted in Niska 1995. 296

Carelessness, according to Teo, is the cause of the bulk of misinterpreting. For example, making a subtle change of focus in the question interpreted; changing a statement to an opinion and vice versa; introducing ambiguity and simply giving a totally different version such as "Where were you when the fight started?" instead of "Were you present when the fight started?" Or "Was weapon A used in the fight?" instead of "Can you tell us which weapon was used in the fight, A or B?"

Hale and Gibbons (op cit) found that Spanish-English interpreters in Sydney consistently make changes in their interpreted versions of a witness's

testimonial evidence. References to the court, tenor and question forms (referred to by the researchers as representing primary courtroom reality), are deleted or changed by the interpreters. For example "How long did the incident take?" instead of "How long *do you say* this incident took?" Such omissions may have significant influence on the evidence presented by the witness in response to the interpreter's version and may even influence the outcome of a case[11].

Mead (op cit) makes the point that the Malaysian interpreter receives virtually no training and it is therefore not surprising that, as his data suggests, careless paraphrasing and auditory misperception are common. He relates the following as an example:

> One advocate told me he was prosecuting a very elegant Malay woman accused of murdering her English lover, when he noticed that the nails of her right hand were cut unusually short, His question in English "I notice that you keep good care of your appearance" lost its force when translated as equivalent to "I notice that you keep good care of Europeans".
>
> Mead op cit. 65

Hale and Gibbons (op cit) too alluded to the 'demands and constraints' placed on the court interpreter but interpreters' mistakes nevertheless may have dire consequences.

In short, there is certainly a mismatch between what is expected of the interpreter and the roles (s)he plays in different discourse situations in the court (Niska op cit). The problem is compounded if parties in a trial have very limited knowledge of the nature of the interpreting process and thus no understanding of how to work with interpreters and is made even worse if the interpreter

him(her)self is incompetent and inexperienced either in the languages concerned or in the norms governing court procedures and courtroom discourse.

2.6 Training of Court Interpreters

In an analysis of the knowledge and technical skills which ought to be included in an interpreter training programme, Gile (1995b:4-5) argued that interpreters and translators must:

(a) have good passive knowledge of their passive working languages;

(b) have good command of their active working knowledge;

(c) have enough knowledge of the subjects of the texts or speeches they process;

(d) know how to translate (referring to conceptual knowledge and technical skills);

(e) meet some intellectual criteria (mental aptitudes though not yet scientifically determined).

More specifically, training of court interpreters aims to produce skilled individuals who not only possess a high level of proficiency in the languages required but also (a) understand the characteristics, the peculiarity and the formality of legal language; (b) are able to distinguish the different nuances involved in culture and conventions of the target and source language; (c) have high level communication skills both in perceiving auditory signals and in uttering translated messages; (d) are knowledgeable about current issues; (e) have knowledge of the court procedures and legal system of the country; (f) are versatile and alert; and (g) observe court decorum and code of ethics.

Dunnigan and Downing (op cit) studied the arguments put up in an appellate decision of a court case involving a member of a cultural minority in Minnesota (State v New Chue Her). Issues about interpreting were raised and according to them:

> We believe that the answers reveal some serious confusions about language and oral translation that are likely to occur in the absence of a technically sound and well-managed programme of courtroom interpreting
>
> op cit. 93

They went further to say that 'everyone who has studied the problem of ensuring quality interpreting in the courtroom stresses the need for rigorous certification programs' (op cit. 109). They also highlighted the fact that although there are several long-established training programmes for conference interpreting (for example Georgetown University and the Monterey Institute of International Studies in the USA, and ESIT in France), there is nothing comparable for court or legal interpreting: a lack which has been commented on by scholars in the field (Driesen, C. 1988; Colin and Morris op cit; Nicholson and Martinsen, 1997). In the UK, Morris (2000) reported widespread incompetence in interpreting, made worse by the discouraging attitude of the legal circle towards the interpreters.

Whether the interpreting is carried out simultaneously (the preference in conference interpreting) or consecutively, there is no question that the court interpreter needs to have some understanding of the legal concepts contained in the statements to be interpreted. Moreover, the interpreter must fully understand the ethical obligation to remain impartial. Without specialised training, most bilingual individuals who attempt to interpret in court are unable to understand the complex legal language of the law and are not aware of the crucial need to be impartial and professional.

There is a great difference between simultaneous interpreting of the proceedings and consecutive summary interpreting[12] of selected parts of the proceedings. Simultaneous interpreting which makes use of electronic equipment enables the accused to participate actively in his defence by listening to all evidence as it comes in and conferring with counsel when necessary. Whereas, if consecutive summary interpreting is employed, the accused can only play a passive role watching the events and not understanding what is being said until counsel explains later. However, in courts where simultaneous interpreting is expected, interpreters in some language combinations are incapable of performing the task, due to a lack of training (Driesen op cit).

Training for interpreters, according to Roberts and Taylor (1990) is often outside the academic setting. There are very limited programmes for interpreting leading to a university degree. Nonetheless, the US Federal government and a number of states have developed testing procedures (Gonzalez et al 1991; de Jongh op cit) and it is true to say that the United States has been at the forefront for ensuring that legal interpreters are properly qualified and certified to perform their duties.

In 1978, Congress passed the Court Interpreters Act (Public Law 95-529), which is highly significant in that it acknowledges that court interpreting is a highly specialised profession and not just a function that can be performed by any person who speaks two languages. Following the passing of the Act, the Administrative Office of the United States Courts and a team of experts drew up rigorous standards and certification procedures (written and oral) and these have

provided the framework for appointing certified interpreters to work in American courts. In Canada, legal interpreter training is subsumed under community (or Public Service) interpreting. Interpreters usually undergo some pre-service training and, in addition, on-the-job training. The 'core-training' proposed to government-sponsored cultural interpreting services in Ontario, for example, covers three key areas: basic skills of cultural interpreting, cross-cultural communication skills, and personal and interpersonal skills. Since Canada is officially bilingual, court proceedings may take place either in English or in French. There have also been efforts in the Northwest Territories, where large numbers of indigenous peoples live, in which language rights legislation has been passed in recent years. The languages of the indigenous peoples of these Territories present particular training needs for interpreters since the local languages, being non-Indo-European, are structurally and conceptually very different from English and French and European legal concepts are alien to the native cultures.

In the United Kingdom in the early 1980's two linguistic problems emerged, one falling standards in ability to use foreign languages and two, the lack of competent interpreters in the public services: legal, medical and social. This led to (1) the specification of national language standards, including those for translators and interpreters (Languages Lead Body 1993: 1995), (2) the linking of these standards with the NVQ (National Vocational Qualification) system, including national standards for languages, translating and interpreting (Languages NTO 1998a: 1998b: 1998c) and (3) the creation of the National Register of Public Service Interpreters (Institute of Linguists 1990). Since January

2001, all Police Stations and Courts in the United Kingdom have been required to use interpreters on the Register wherever possible.

In addition to legal interpreter training, there are also serious efforts to instruct the key players in the judiciary (the Bench, the Bar, the Police and courtroom personnel) on how to work with interpreters to ensure that they are aware of the proper function of the court interpreter and how best to communicate effectively with non-English speakers through interpreters (Corsellis 1995a).

Similarly, Australia requires that interpreters be certified and accredited by passing an examination. The National Accreditation Authority for Translators and Interpreters (NAATI) is the organisation responsible for setting standards for the interpreting profession in Australia (Laster & Taylor op cit). It has four different levels of competence for interpreters: Para-professional Interpreter, Interpreter, Conference Interpreter, and Conference Interpreter Senior. The minimum standard expected of judiciary interpreters is at least the level of Interpreter; and for the more complex court proceedings, their competence should be comparable to Conference Interpreter. All professional interpreters however, are expected to be members of the Australian Institute for Interpreters and Translators (AUSIT) and are bound by its code of conduct. The code, similar to other interpreter codes, requires that interpreters be impartial, avoid conflicts of interest, maintain confidentiality, and strive to ensure a high standard of competence.

2.6.1 Training in Malaysia

Training of court interpreters in Malaysia is still in its infancy. Although interpreting in court has existed as part of the civil service since the 1930s, the education and training of interpreters has never been seen as a high priority area for official action. Nevertheless, three public institutions in the country have been involved in providing some form of training to court interpreters and more generally, to translators, namely the University of Malaya, the Judicial and Legal Training Institute (ILKAP: Institut Latihan Kehakiman dan Perundangan) and the Malaysian National Institute of Translation (ITNM: Institut Terjemahan Negara Malaysia).

2.6.1.1 University of Malaya

University of Malaya offered two courses relevant to translation and interpreting: the Diploma in Translation since 1974, and the Certificate in Court Interpreting since 1989.

The diploma in translation is awarded after the successful completion of an intensive one-year course with theoretical and practical elements, including assessment of a 20,000-word translation project and a one-month attachment for a work related experience. It is a 12 hour a week programme in two semesters of 14 weeks each. A typical course outline is as follows:

Table 2.1
Diploma in Translation

Semester	Subjects	Contact Hours per week
1	Translation Theory 1	2
	Meaning and Interpretation	2
	Genre Studies	2
	Discourse	2
	Translation of General Texts	4
2	Translation Theory 2	2
	Editing and Revising	2
	Translation of Technical Texts	4
	Translation Project	4

The certificate in court interpreting (Table 2.2) is awarded after the successful completion of a programme of three-months intensive instruction plus a one month training attachment to a magistrates or sessions court in Kuala Lumpur for work related experience.

Table 2.2
Certificate in Court Interpreting

Subjects	Contact Hours per week
Introduction to Interpreting	2
Legal Language/Discourse	2
Malaysian Judicial System	2
Practical (Lab work and Role Play)	14
Total	20

Both these courses aim to give professional training to those who demonstrate a high level of language proficiency through appropriate entrance tests. At present however, they are temporarily shelved as greater attention and resources are prioritised for the more academic bachelor degree program[13].

2.6.1.2 The Judicial and Legal Training Institute (ILKAP)

ILKAP was established as a training agency under the Prime Minister's Department in 1993 with the aim of providing training to officers in the public service, statutory boards and local authorities who are engaged in legal, judicial and enforcement work. This includes lawyers, prosecutors, magistrates and interpreters. For the interpreters, ILKAP has been running a one-week bi-annual training workshop since 1995 and covering mainly subjects on court procedures. A typical programme (2001) is given below:

Table 2.3
ILKAP Interpreter Training Course

Subjects	Time allocated
Duties and Role of Interpreters	2 hours
Civil Procedures	4 hours
Introduction to Legal System	1 hour
Code of Ethics and Conduct	1 hour
Criminal Procedures	4 hours
Interpreting Techniques	3 hours
Translation Techniques	3 hours
Procedures for Interpreting in Court	5 hours
Legal Register	2 hours

The training is considered insufficient by most interpreters but good enough as a preview to what the job entails. It however needs refining and further planning, as at present the workshop makes no distinction between interpreters with 2 months experience and the senior ones with 20 years behind them.

2.6.1.3 The Malaysian Institute of Translation (ITNM)

ITNM was set up in 1992 as a limited company and wholly owned by the Malaysian government under the Ministry of Finance, and in terms of administration, supervised by the Ministry of Education. It aspires to spearhead the translation industry in the country and has ambitious plans to co-ordinate, promote and develop translation and interpreting expertise as well as undertake profitable translation projects. However, despite having been set up almost 10 years ago, it has not made much headway in terms of interpreter training and interpreter expertise, though it does offer some short-term translation courses and translator training.

2.7. Professionalisation

The term 'professionalisation' means 'becoming a profession' but what is a profession and how does it differ from a trade? Black's Law Dictionary (Black 1990) defines a profession as:

> A vocation or occupation requiring special, usually advanced, education and skill; for example law or medical professions. The labour and skill involved in a profession is predominantly mental or intellectual, rather than physical or manual. The term originally contemplated only theology, law, and medicine, but as applications of science and learning are extended to other departments of affairs, other vocations also receive the name, which implies professed attainments in special knowledge as distinguished from mere skill.
> (op cit. 1089)

Bell (2000) discussing what kind of professional a translator or interpreter is defines a profession as:

> ...a self-regulating (autonomous) community of practitioners who control access to and continued membership of the community and provide a service to a recognised standard of quality (adequacy) for which they hold themselves individually and collectively accountable.
>
> Bell op cit. 147

Defined in these terms neither translation nor interpreting are yet professions, in an absolute sense, but may possess some of the criteria listed above and be defined as a particular type of profession (see Corsellis 1998 for a similar definition and related discussion). Bell (op cit) distinguishes three types:

- a *pseudo-profession*, which claims to be but is not actually a profession (as in 'pseudo-science') or which resembles or imitates a profession (as in 'pseudo-language' which possesses some of the characteristics of genuine language but is not language).
- a *para-profession*, which is in a subsidiary, support relationship to a 'true' profession (as the 'paramedic' first-aider is to the medics).
- a *proto-profession*, which is at an early, primitive, stage of development (like the protozoa: animal organisms with a simple/primitive form of organisation).

He concludes that translation and interpreting appear to possess some characteristics of all three types (pseudo-, para- and proto-). Translators and interpreters are *pseudo-professionals* in two senses (1) that claims to professional status are being made (what is at issue is whether these claims are legitimate) and (2) that comparisons are being made with other established professions and models are being adopted and adapted derived from them.

They are *para-professionals* in the sense of being individuals who have skills but lack professional training to whom a particular aspect of a professional task is delegated. They are *proto-professionals* in the sense that they are organising themselves and stressing the need for codes of ethics and for rigorous training; all key indicators of evolution into a true profession.

In order to be admitted to the legal profession a candidate is usually required to (a) have been awarded a Bachelor of Laws degree or equivalent; (b) possess a suitable character; (c) have passed a Bar examination; (d) agree to abide by the Disciplinary Rules of the Code of Professional Responsibility. Lawyers have 'protection of title' which means that anyone who lacks these qualifications but calls himself/herself a lawyer or offers legal services is committing a criminal act.

If similar criteria are applied to interpreters, the most 'professional' are the 5000 members of the International Association of Conference Interpreters (AIIC). Other categories of interpreter fall somewhere along the scale from non-professional to professional that is, no specific criteria equivalent to the above apply.

The term 'Professional' also relates to the *quality of the service* and not to the way the service provider is employed. A professional may be employed on a monthly basis with a contract which not only spells out his/her rights and duties, pay and allowances but also includes the expectation that the employment will continue for some time and binds him/her to the code of conduct of the organisation. The part-timer is taken on by the organisation on a project by

project/case by case/daily/weekly/monthly basis and is bound by the code of conduct of the organisation for that period of time only.

Inherent in a profession is the commitment to maintain a high standard of professional conduct, to maintain and upgrade professional knowledge, observe confidentiality, impartiality and decorum at all times.

Further, the professional has a 'Duty of Care', in addition to the normal duties of providing a service (which could be a product) and failure to act with an adequate level of care constitutes *negligence*. Black (1990:213) makes the point very clearly:

> In the law of negligence, the amount of care demanded by the standard of reasonable conduct must be in proportion to the apparent risk. As the danger becomes greater, the actor is required to exercise caution commensurate with it.
>
> op cit.

Black distinguishes three degrees of care - slight, ordinary and reasonable care (and their opposites in degrees of negligence) - from 'great care' commenting that :

> A high degree of care is not the legal equivalent of reasonable care. It is that degree of care which a very cautious, careful, and prudent person would exercise under the same or similar circumstances; a degree of care commensurate with the risk of danger... [seen in] the usage and practice of very careful, skillful, and diligent persons engaged in the same business by similar means or agencies.
>
> op cit.

Professionalism, thus, is concerned to ensure 'great care' which is *over and above* that imposed by the client/employer and reflected in the professional's explicit commitment to a code of ethics and good conduct.

For the court interpreter, the requirement to be 'professional' and exercise the highest degree of care cannot be over-emphasised, not only because negligence can leave the interpreter open to criminal charges but also because the inherent 'danger' of faulty interpreting is very grave: miscarriage of justice and the condemnation of innocent accused persons.

2.8 Interpreters' Remuneration

World wide there is great disparity in court interpreter remuneration. Gonzalez et al (1991), for example, reporting on the situation in the United States demonstrate a range from as little as US$25.00 a day in some local courts to over US$200.00 a day in some district courts. They suggest that some of the reasons for this are lack of recognition of the interpreting profession; the confusion as to the distinction between bilingualism and interpreting skills, and, indeed, bias against anything 'foreign'.

Within the profession, the difference in remuneration lies in the different kinds of interpreter. Gile (2000) sets six types of interpreter - (1) Conference, (2) Broadcasting, (3) Court, (4) Liaison, (5) Public Service and (6) Sign - against seven key parameters: (i) linguistic skills, (ii) cognitive skills, (iii) extralinguistic knowledge, (iv) role knowledge, (v) prestige, (vi) remuneration and (vii)

importance. This highlights the paradox of the negative correlation between prestige and remuneration as opposed to skills requirement and usefulness. The table below shows this (+ represents 'degree of...' – represents 'less...'):

Table 2.4
Relative Importance of Different Categories of Interpreter

Type	Linguistic Skills	Cognitive Skills	Extra-linguistic skills	Role Knowledge	Prestige	Remu-neration	Importance
1	+++	+++	++	-	+++	+++	-
2	++	+++	+	+++	+	+	-
3	+	+	++	+++	-	-	+++
4	-	-	+	+	-	-	++
5	-	-	-	+++	-	-	+++
6	+++	+++	+	+++	-	-	+++

Source: Gile op cit:2

Court, Public Service and Sign Interpreters bear enormous responsibility (the implications of faulty information transmission can be disastrous) and yet have the lowest prestige and remuneration. In contrast, conference and broadcasting interpreters have high prestige and are well paid but provide what is, arguably, a far less socially significant service.

The full-time interpreter in Malaysia is appointed to the service at grade L7 with a starting salary of RM 532 a month (about US$150). The vast majority of full-time interpreters in Malaysia (over 80%) are at grade L7. They have had less than five years of service and 75% of them are women. However, even after 16-25 years of service, 25% of the interpreters are still at this lower grade (Zubaidah 1999).

The promotion prospects for the interpreter are extremely limited: from grade L7 to L6. To reach this higher grade (with a maximum salary of RM 2289; approx. US$ 645.00), the interpreter must pass a series of government examinations (which test translation but not interpreting skills) and receive a favourable report from the Head of Department. An interpreter who wishes to go beyond L6 has to sit for another examination and, upon passing this, will have to move out of the interpreting service into an administrative post (L5), as a Lower Court Registrar.

Before independence, the salary of interpreters varied from state to state and department to department. A standardised scheme of service, the Benham Scheme (Benham Report 1950), which provided good options for career advancement, was later devised and implemented in 1957.

Under the terms of the scheme, interpreters started as Division III officers that is, Student Interpreters with a starting salary of $152.50 (Malayan Dollars). After having attained Certification, they moved to Division II, as Senior Interpreters with a starting salary of $556.00 and ending as a Superscale 'A' Interpreter with a salary of $810.00.

Table 2.5
The Benham Scheme 1950

Position and Grade	Salary Scales
Interpreters Superscale 'A' (Div 11)	$ 810
Interpreters Superscale 'B' (Div 11)	$ 737
Senior Interpreters (Div 11)	$ 556 x 18 – 664
Certificated Interpreters (Div 111)	$224 x 14 – 336/ Examination Bar/ 366x14-422/ Efficiency Bar/ 448x 14-504
Chinese student interpreters (Div 111)	$167.50 (Examination)
Malay and Indian Student Interpreters (Div 111)	$152.50 x 7.50 – 167.50 (Examination)

Source: Report of the Special Committee on Salaries 1950

In Singapore, this scheme was, in fact, retained and improved by the Judiciary. For example, a higher qualification – a university degree – was required for senior interpreters, whereas the Malaysian scheme still demands (and recognises) no more than the school-leaving certificate, which had been the level of entry in the British administration period. The table below gives the Singapore scheme as of 1998.

Table 2.6
Interpreters' Scheme of Service in Singapore 1998

Position and Grade	Qualifications	Salary Scales
Chief Interpreter (Div 1)	Promotional merit	Sg$3300 x 150 – 4350
Senior Interpreter (Div 11)	Promotional merit	Sg$2400 x 120 – 3600
Higher Interpreter (Div 11)	Promotional merit	Sg$1950 x 100 – 3150
Interpreter (Div 11)	An Honours or Pass Degree in Translation or Languages; pass a pre-selection test; proficient in an additional language or dialect	Sg$1020x70 - 1300/1400x100 –2800
Student Interpreter (Div 11)	GCE 'A' level	Sg$ 920 x 55 – 1140
Student Interpreter (Div 111)	5 GCE 'O' level passes	Sg$ 820 x 45 - 1045

Source: The Registry, Supreme Court Singapore 1998

However, in Malaysia, ten years after the implementation of the Benham Scheme, the interpreters' remuneration scheme was revised but, in contrast with Singapore, to one that relegated the interpreters to an even lower status commensurate with that of the clerks.

> These scales are similar to those recommended for the corresponding grades in the clerical services. Translators and Interpreters (including Court Interpreters) should be required to do clerical work in addition to their normal duties...
>
> Report of the Royal Commission on the Revision of Salaries and Conditions of Service in the Public Services under the Chairmanship of Mr Justice Suffian, 1967:180

The justification for the policy can be found in the recommendations of the Royal Commission on the Revision of Salaries and Conditions of Service in the Public Services chaired by the one time Lord President, Justice Suffian Hashim (hence the popular name for the Royal Commission: the Suffian Report). With regard to interpreters, the report stated the following:

> It is to be expected, therefore, that with the growing use of the national language, the need for Malay Translators and Interpreters should soon diminish. Similarly, as the national language becomes more and more the *lingua franca* of the country the need for Chinese and Indian translators will also diminish.
>
> (op cit.: 179-180)

In other words, the interpreters' salary scheme was revised downwards to reflect their diminishing role and they were themselves redefined as clerks to reflect (a) the increasing use of the Malay language in the country and (b) the expected decrease of interpreting and increase in clerical work. As a result of the

Suffian Report, a salary revision was recommended and the previous schedule was abolished.

Table 2.7
Salary Revision in the Suffian Report 1967

Grade	Salary Scales
Grade III	$220 x 15-250/275 x 25-500
Grade II	$400 x 25 – 700
Grade I	$600 x 25 – 800

These proposed salary revisions were widely criticised by public servants (including the interpreters) and, as a result, were not implemented. A new Public Service salary scheme was drawn up in 1974 but the interpreters were omitted from it. After nation-wide protests from interpreters (Union Memorandum 1992), the Public Service Department (the PSD) made a small gesture by granting language allowances but, overall, the salary and terms of service of the interpreters remained unchanged at the 1957 levels. The Suffian Report, it would seem, has a far-reaching effect on the interpreters' scheme of service in Malaysia.

The present scheme (the New Remuneration System: *Sistem Saraan Baru*), implemented in 1992, reflects very clearly the perception of the PSD of the interpreters, that is, a non-specialist and non-expertise post. Given below is the later (1994) version of the scheme, which only has two levels for the interpreter post: ordinary (L7) and senior (L6).

Table 2.8
The SSB Salary Scales for Court Interpreters

Grade	Salary Scales		
L7	P1T1 RM 532-1368	P2T1 RM 566-1446	P3T1 RM 601– 1527
L6	P1T1 RM 1256-1801	P2T1 RM 1302-1894	P3T1 RM1350– 1991 (RM 2289)

Note: P = *Peringkat* (Stage); T = *Tahap* (Level). Hence, for example, P1T1 = Stage 1 Level 1.

The scale reflects the cost of living in 1975 and, with the exception of the top of the L6 scale (increased from January 2000 to RM 2289; approximately US$ 645.00) has not been revised since then.

2.9 Court Interpreting Research in Malaysia

The first ever study of court interpreting in Malaysia was conducted by Teo (op cit; see also a summary of Teo's work in Wong 1990), a former court interpreter (now Head of the Prosecution Unit in the Judicial Department in Johore), as part of an undergraduate research project in law studies at the University of Malaya. The data for the study was derived from interviews with two judges, two magistrates, a senior assistant registrar, six retired senior interpreters and twenty serving interpreters in Kuala Lumpur and Johore Bahru. His findings confirm his own experience as an interpreter: that the Malaysian court interpreter is far more than an interpreter: (s)he is, among other things, bilingual intermediary, clerk of the court, and advocate to unrepresented accused; receives very little training; is not paid appropriately.

Although his research provides a useful description of the situation in the early 1980s, he gives no explanation of the possible reasons that had led to the structure of the interpreter service at the time. He also states specifically that the greatest difficulty he had in his research was the total lack of authoritative texts on the interpreter service in Malaysia. There was no documentation on what the service actually provides, the knowledge and skills required to be a member of such a service and the role that the court interpreters are expected to play.

Another study was conducted by Mead (op cit) between 1981 and 1983 on the reaction to and the effect of the 1981 directive issued by the then Lord President of Malaysia to use the national language (Bahasa Malaysia) in courts. The method for data collection was mainly observation and document review (mostly from current newspapers at the time) and although the main concern in the study was a critical evaluation of the implementation of national language policy and how it affects language use in the courts, some observations included the role and place of court interpreters in the system. His conclusions reflect an outlook which is more socio-political than linguistic or applied linguistic; that government policies showed 'a hopeless disregard for realities' and a heavy bias towards the Malays; that the legal system would become 'steadily more local in character' (that is, more Malay than English); and, finally, that, the impression that he received was that the signs did not point to a development of a secure society, united and confident of its identity. With regard to the court interpreting service, he reported that 'the lack of professional training... goes some way to explaining the deterioration in the court system' (op cit:65)

Mead's work is markedly different in tone from Teo's. While Teo (a Malaysian and an ex-interpreter) came from inside the system and worked with the perceptions of his fellow interpreters to whom he was highly sympathetic, Mead came as an observer from another system (he is British and was, at the time, a consultant with the University of Malaya Spoken English Project), and worked with informants who were mainly lawyers whose assumptions, values and perceptions he reflected.

The two studies present the orientations of two distinct groups involved in the provision and use of interpreting: those of the interpreters themselves (the providers of the service) and those of the lawyers (the users of the service provided by the interpreter) and, combined together, form the basis of an initial triangulation approach to the description and partial explanation of the situation in the 1980s.

Paul (undated but probably 1990), who is now a senior High Court judge, in an unpublished paper for the High Court in Malacca, provides a description of the role of the interpreter which is based almost entirely on documentary evidence: mainly pre-Independence judgements (reported in the Malayan Law Journal: MLJ) and copies of circulars from colonial times. There is little discussion or explanation but the work does provide a collection of data which demonstrates how little the role of the interpreter and the structure of the service has changed in half a century.

Zubaidah and Bell (Zubaidah 1999; 2001; 2002) conducted a nation-wide survey in 1998, to obtain statistical demographic evidence and measures of the perceptions and problems of the interpreters. A triangulation approach was adopted

using a number of research methods. In the first stage (qualitative) a number of short informal interviews were conducted with twenty key individuals: Court Registrars, Deputy Public Prosecutors, Interpreters, Magistrates and Judges, officers of the Court Interpreters Union, and legal officers in the Police Force.

In the next stage, a 54-item questionnaire in Malay and English was devised, based on the concerns voiced in the interviews. The questionnaire was piloted among student interpreters at the University of Malaya, selected court interpreters and individuals who were previously senior assistant registrars of courts and, after some modification, was distributed by the administrative office of the Chief Registrar in June 1998 to the 566 serving court interpreters. The return rate was over 80%. The responses were coded and analysed, and at the third stage, the preliminary findings were produced. One of the steps taken was to present these to the interpreters' representatives (the committee members of the Interpreters' Union) for further discussion and clarification. The final report was produced in Malay and submitted to the Chief Registrar of the Federal Court in January 1999.

The findings showed profound dissatisfaction and disaffection among the interpreters, especially since (a) they are poorly paid in comparison with the kind of work they are expected to do (b) they are not trained for the kind of work they are asked to do (c) their voices and pleadings have been consistently ignored, and (d) their employer continues to side-step them in all salary revision exercises.

In short, the local literature on the specific topic of this research is very limited indeed. Outside Malaysia, a great deal of research exists on court interpreting, However, academic research has tended to focus on micro-level courtroom discourse, while work at the macro-level of policy-making and training has generally taken the form of initiatives from inside the judicial system itself.

2.10 Macro-level Research

Two examples of work of this kind, which is most relevant to the current research are cited here, one from the United States and the other from the United Kingdom; (1) the New Jersey Task Force (1982-85), and (2) the Nuffield Interpreter Project (1983-90 and 1990-93).

In the United States, during the 1980s, several task forces were set up by the Supreme Courts of individual States to investigate the situation of interpreting within the legal system and to make recommendations for improvements of the provision. One of the earliest and most comprehensive was the Task Force created by the Chief Justice of New Jersey in 1982.

The main focus of the Task Force's work was the issue of equal access for linguistic minorities to due process in the State's courts: the guiding principle being that 'the courts should be equally accessible to all persons regardless of the degree of their ability to communicate effectively in English' (New Jersey Task Force Final Report vii). This entailed the addressing of several critical issues which are summarised below:

(1) communication between languages and cultures,

(2) constitutional rights,

(3) the provision of uniform administration of justice,

(4) enhancing public confidence in the judiciary, and

(5) promoting professional responsibility.

The Task Force, whose members were all experienced representatives of their professions (judges, prosecution and defence attorneys, academics, court administrators, professional translators and interpreters and court liaison officers) presented their report in 1985.

The findings include the recognition of (1) the low standard of skills, knowledge and training amongst interpreters (Alterman 1985: 82), (2) the unequal quality and accessibility of the translated procedural forms and documents used by the courts (op cit. 97), (3) the inadequacy of bilingual/multicultural court support services (op cit. 104), (4) the lack of adequate procedures for establishing the qualifications of interpreters (except in the case of sign interpreters), bilingual court support personnel and translators (op cit. 120), (5) the limited opportunities available for court interpreting for deaf and hearing impaired individuals but not for other linguistic minorities (op cit 161), and (6) insensitivity to cultural differences amongst those providing legal services to linguistic minorities (op cit. 165).

There have been a number of positive outcomes from the work of the Task Force including the establishment of the Office of Court Interpretation, Legal

Translation and Bilingual Services and of several comprehensive academic programmes for professional legal interpreter education at tertiary level and further education institutions in New Jersey. Another important outcome was the reversal of the onus of proof on the need for an interpreter. A person now has the right to an interpreter unless it can be proven that (s)he does not need one.

The Nuffield Interpreter Project had many of the characteristics in common with the New Jersey study, particularly the concern for equal access to justice, the raising of standards and the provision of adequate training and accreditation procedures and, in terms of outcomes, a greatly improved service with better qualified and organised service providers. Since this is the case and there is so much shared experience, the information on the Nuffield Project will be in a more summary form with detailed discussion only of significant differences.

In contrast with the New Jersey Project, which came out of an initiative on the part of the Judiciary and was funded by the State, the Nuffield Interpreter Project had its origins in two charities; the Institute of Linguists Educational Trust (which proposed the research) and the Nuffield Foundation (which was its principal fund provider).

The project developed through two phases. The initial phase (1983-1990) was concerned with the creation of 'a model for the provision of public services (legal, health and local government services) across language and culture and to pilot the elements concerned with the training, assessment and good practice of interpreters in those contexts' (Corsellis 1995a. vi). The second phase (1990-93)

focused on promoting the wider use of qualified interpreters in the public service and the design and implementation of training courses for public service interpreters.

Like the New Jersey Task Force, the team members of the Nuffield Interpreter Project were drawn from the relevant professions (the judiciary, the law, the police and probation services, translation and interpreting and applied linguistics) and produced a final report and recommendations, many of which were quickly implemented.

The chief outcomes of the Project were (1) the creation of two awards for bilingual individuals (the Bilingual Skills Certificate and the Certificate/Diploma in Community, later renamed 'Public' Service Interpreting) in 1990 and (2) the setting up of the National Register of Public Service Interpreters in 1994 (Chapter 5.8.1).

2.11 Conclusion

Court interpreting seems to be typified by essentially the same concerns world wide with differences only of degree from society to society. The following, which also apply to Malaysia, stand out as particularly significant and typical.

There is a recognition of the right to a fair trial, which implies being both physically and mentally present, which further implies being able to fully participate in the process of trial. However, in a multilingual society or one in

which individuals who do not understand the language of trial, appear before the courts, a fair trial cannot be achieved without the services of a competent bilingual intermediary (that is, an interpreter).

Ensuring the presence of an interpreter with the appropriate language combinations (at the right time and in the right place and in the right numbers) is difficult (particularly in the context of increasing world-wide travel). Even more problematic is ensuring the quality of the interpreting offered, since this requires active processes of *accreditation* and *monitoring* which are frequently not in place.

Creating and developing a system of employment and deployment which is attractive to interpreters, and which requires appropriate recognition in terms of pay and conditions (including a carefully articulated process of career enhancement) otherwise interpreters will not seek employment or will resign if dissatisfied with them. At the same time, assurance of justice demands a system of quality assurance which makes interpreters accountable to a publicly available code of ethics, in addition to any conditions imposed by oath at a trial.

Quality assumes the existence of an academically and professionally respectable and feasible system of training leading to accreditation and the provision of continuing personal intellectual development. Quality in action in the courts implies training programmes which involve court officers – the Bench, Counsel and Interpreters – in jointly learning how to work together. Such programmes will focus on interaction in the court and on clarifying the nature and

role of each participant, so that unrealistic expectations can be avoided and, in their place, examples of good practice can be developed.

The next chapter will present the theoretical aspects of language planning and policy, which relates ideology to the practice in court involving the provision of interpreting in a multilingual country.