

CHAPTER 5

ANALYSIS OF DATA

5.1 Introduction

The analysis presented in this chapter is organised around six headings: (1) observation of communication in court, (2) major problems in the courts, (3) perceptions on the role and duties of interpreters, (4) perceptions on interpreter training, (5) views on interpreter remuneration, and (6) views on national language policy in court and the issue of linguistic rights.

At the outset, a note on the survey respondents, and representative individuals whose views are quoted, is provided to give a range of perspectives. The number of respondents to the questionnaire was 152 and represented different parts of the country. This represents 52% of the total research population (Chapter 4.4.1 and Appendix A provide more details on respondents).

Table 5.1 below shows 47% are administrators (i.e. deputy, senior assistant and lower court registrars) and 53% judges and magistrates. However, as stated earlier (section 1.7.2), the roles are interchangeable as registrars frequently function as magistrates and district judges; and magistrates sometimes take on the role of registrars, and both act as the immediate superior to the interpreter. For this reason, they are taken as one group and represent one of the views or perceptions of the overall role players in the system.

The informants whose views are quoted in this chapter comprised senior (defined as 20 years and above in service) judges, registrars, police officers, prosecutors, lawyers and senior interpreters serving the judiciary in the central zone of Selangor and the Federal Territory of Kuala Lumpur. Extracts are quoted verbatim from recorded interviews (a sample interview is given in Appendix D).

Table 5.1
Respondents in the Survey

	Age Group				Total
	25 and below	26-35	36-45	46-55	
Registrars	1 (.7%)	27 (17.8%)	30 (19.7%)	13 (8.6%)	71 (46.7%)
Magistrates		66 (43.4%)	9 (5.9%)	6 (3.9%)	81 (53.3%)
Total	1 (.7%)	93 (61.2%)	39 (25.7%)	19 (12.5%)	152 (100.0%)

5.2 Communication in Court

Communication takes place between all parties in the court and is multidirectional; between and among officers of the court (i.e. the Bench, the court interpreters and the clerks, the prosecution, defence lawyers) and the parties involved in the case (i. e. witnesses, defendants and litigants).

Although criminal and civil trials are conducted in an essentially similar manner, there are clear distinctions between them: each has different procedures and a different set of requirements which an interpreter must be aware of if the case is to be properly heard and judged. For example, all criminal cases (with the exception of those involving juveniles or matters of national security) are held in open court and conducted mainly through the process of spoken debate and

questions-answers. In civil cases, however, many hearings are held in chambers, and much greater emphasis is placed on written documents.

Nevertheless, from observations and confirmation of the practice from participants, civil or criminal, three stages of communication can be identified in a court trial between the interpreter and others: before the court is in session (pre-session), during the session (in open court), and after (post-session). These are summarised in the table below:

Table 5.2
Three Stages of Communication in Court

1. Pre-Session	Before the Court is in Session	In the courtroom; in Judge's chamber; or in the court's general office
2. During Session	In Open Court	In courtroom
3. Post Session	After the Session	In courtroom; in Judge's chamber; or in the court's general office

5.2.1 Pre-session

Before a case is brought before the Bench, the interpreter is involved in preparatory work. The day before the opening of the trial, the court diary has to be checked to see which cases are to be tried on the day; the case files are handed over to the Bench for the judge to study. On the day of the trial, there is communication between the interpreter and the police, to register cases reported for the day, with the prosecutors and lawyers (among others) to ensure that they are ready to proceed and to confirm presence of witnesses and accused for the

day. In the civil courts, or for civil cases, the interpreter again deals with lawyers in order to fix dates for mention and to ensure that documents such as Writ of Summons, Affidavit of Service, Memos of Appearance, Statement of Defence, Bundle of Documents – Agreed and Non-Agreed - and Notification of Trial are ready for the Court.

Almost always, the atmosphere in a magistrate's, and at a reduced level, the session's court, is extremely busy with litigants, witnesses, prosecutors, lawyers, reporters from the press and members of the public mingling, talking and milling around. The prosecuting officers in a magistrate's court are usually police inspectors, whereas those in sessions and high courts are deputy public prosecutors. In terms of age, the magistrates are usually quite young i.e. between late twenties and mid- thirties. In a high court, the picture is markedly different. The courtroom is more spacious, the atmosphere subdued and very formal even during pre-session. The officers of the court are clearly more senior and immaculately dressed in formal black robes. The interpreters too are formally dressed in black jackets. The solemn atmosphere also extends to the members of the public.

5.2.2 In Open Court

As soon as the Magistrate or Judge walks in, the courtroom falls into silence and an atmosphere of expectation prevails. Attention is fixed on the Bench and the interpreter who sits at a lower level in front of him. Communication is in the national language (Malay) between the interpreter, the accused or defendant

(the litigants in a civil case), the Prosecutor, defence counsel, witnesses and the Bench. The trial then commences and proceeds through a series of stages and steps which are frequently realised by standard formulaic discourse.

In the matter of language, the magistrate's courts typically operate in Malay but in most high courts (whether civil or criminal) which were observed, communication is often in a mixture of English and Malay and, at times, in English only. The lawyers seemed to expect that the judges would conduct the case in English and so it was not necessary to ask permission of the court to use English rather than Malay. In one murder case, the accused could only speak Malay, so the prosecutor and lawyer spoke to her in that language. However, communication between the officers and with the judge was in English. The Malay interpreter who was present was not asked to do any interpreting. The researcher later interviewed this judge who confirmed that he understands Malay but does not operate in it in court.

All stages, however, potentially require interpreting, when one of the witnesses is not competent in the language of the court and the magistrate or judge does not speak or understand the speaker's language or dialect. The stages in the process are shown below.

In criminal cases, the three initial stages, up to and including the making of the plea, are the same. These are (1) the interpreter calls out the case, verifies the identity, occupation and address of the accused and confirms this to the Court, (2) reads out the charge to the accused and (3) records a plea of guilty or not guilty.

If a plea of guilty is entered, the interpreter, on the instruction of the Bench, (4) explains the consequences of the plea to the accused and (5) asks if (s)he still wishes to plead guilty. (6) If the accused maintains the plea of guilty, the Prosecutor gives the court the brief facts of the case, detailing the offence the accused is charged with. (7) The interpreter asks if the accused agrees with the facts of the case and, if the facts are agreed, prosecution tenders exhibits and the interpreter asks if the accused has anything to say in mitigation. (8) whether mitigation is offered or not, judgement is then pronounced.

Table 5.3
Stages in Guilty Plea Procedures

1.	Interpreter calls out the case, verifies identity, occupation, and address of accused;
2.	Interpreter reads out the charge;
3.	Interpreter explains consequence of plea, and ask the second time
4.	Interpreter records plea and conveys it to the Bench;
5.	If accused maintains guilty plea, the P.O. details offence (facts of the case)
6.	Interpreter asks if accused agrees with the facts
7.	If accused agrees with the facts, exhibits are tendered and interpreter proceeds with mitigation
8.	The Bench notes mitigation and proceeds with sentence

These eight stages represent the straight-forward process resulting from the guilty plea but, if the accused pleads *not guilty*, *refuses to plead*, *claims trial* or *disagrees with the facts of the case*, the procedure, between stages 3 and 7, becomes more complex:

(4) A trial is ordered by the Court, (5) the Prosecution calls his witnesses, (6) Interpreter swears them in, (7) Prosecution's witness(es) testify, interpreter marks exhibits, (8) The accused cross examines the prosecution witness(es), (9) If the Court finds there is no case to answer, (9a) the accused is acquitted. If the Court finds there is a *prima facie* case, (9b) the accused is called to make his/her defence. If (s)he is represented by a lawyer, the trial will proceed by (10a) examination-in-chief by the Defence of his own witness(es) (11) cross-examination of the defence witness(es) by the prosecution (12) re-examination (13) submission (14) Court's decision.

Table 5.4
Stages after a Not Guilty Plea

1-3	As above
4.	Court orders trial
5.	P.O. begins by calling his witness(es)
6.	Interpreter swears in witness(es)
7.	P.O. examines his own witness(es)
8.	Accused cross-examines P.O.'s witness(es)
9.	Court decides : either (a) acquittal (b) accused to call his defence
10.	Examination-in-Chief by the Defence
11.	Cross-examination by Prosecution
12.	Re-examination by the Defence
13.	Submission
14.	Court's decision

If the accused is not represented, (10b) (s)he makes her/his own defence, (11b) cross examining Prosecution witness (here the interpreter may play a role in helping the accused frame the questions in discourse acceptable to the Court). (12)

The Bench allows re-examination if it is appropriate. The remaining stages are identical to those given above for the trial based on a 'guilty' plea. Throughout a trial, the interpreter will receive exhibits from the prosecutor, mark them as P1, P2 (in the case of Prosecution Witness) and D1, D2 (in the case of Defense witness) etc as well as any documentary evidence to be shown and handed to the judge.

Civil trials differ from criminal trials in that they are concerned with seeking a solution to a dispute between two parties i.e. the litigants, rather than finding the truth of an accusation of criminal behaviour and punishing wrongdoing. A plaintiff seeks redress for some wrong (s)he believes to be the responsibility of the defendant. Although the two types of trial are different, the interpreter's role, though reduced, is essentially the same - calling the cases, swearing in witnesses, interpreting for litigants who claim not to understand Malay - but otherwise, the exchanges are mainly between the parties involved and the Bench.

The points at which an interpreter explains the consequences of the plea, offers advice on the wording during cross examination, assists in formulating a plea in mitigation, are all potential areas of miscommunication between the parties – interpreter, defendant, counsel and prosecution – which can and do lead to arguments in court. However, in the Malaysian court, it seems to be the practice that the Bench allows the interpreter to assist the unrepresented accused to form questions, which will then be recorded by the presiding judge or magistrate.

5.2.3 Post-session

After judgement is given and the Bench has left the Court, communication is again between the interpreter, the prosecution, and the lawyers. Mainly, notes and files are collected together, to be handed over to the court's clerk to be typed. These may include bail bonds, or a warrant of commitment if the accused is not able to pay the fine(s) imposed. The interpreter may also have to assist an accused who has been brought by the court orderly to the General Office to sign bail bonds or in a civil case, explain the judgement (the sum demanded by the plaintiff) to the respondent and recommend taking legal advice, if (s)he disputes it. The interpreter's job on any particular case is only considered ended when the case is over, notes of proceedings are typed and documented and the file is closed and sent to the Registry for safe keeping.

The most significant aspect of the interpreter's job, in the observation of the researcher, is that (s)he carries out (her)his duties without any supervision and without any kind of written guide or operations manual for all the different cases with their different procedures, regulations and practices. The interpreter deals with all who are involved: members of the public, accused and witnesses, legal professionals and fellow public servants. During the pre-session period, the contacts are mostly with the lawyers. In Open Court, they are with the accused and witnesses and the officers of the court and, when the trial is over, (her)his role changes again and (s)he deals with the general office clerks handling the paper work related to the case. Interpreters in the High Courts, however, are spared the clerical work, since they tend to carry a heavier interpreting load.

As discussed in Chapter 2, these duties certainly go beyond the straightforward responsibility of interpreting by having to assist the Bench and, most significantly, being expected to provide advice and counselling. The interpreter frequently has to depart from strict interpreting in order to rephrase and explain to the witness what is required by the Court¹⁶. The researcher observed an instance of this in a case involving two interpreters, one Tamil and the other Hokkien both of whom engaged in lengthy conversation with the witness (asking questions, listening to responses) but informed the Bench with one word answers. It was striking that this was accepted by the Bench without any query (Field Notes 2000-2001).

It is also the interpreter who asks witnesses or accused whether they understand Malay and whether they need assistance. At least this was what occurred in the courts observed by the researcher. Often, though, as in a crowded magistrates' court in Kuala Lumpur, there is a long line of those arrested and accused of petty crimes such as stealing a motorcycle, or shop-lifting or illegal overstay in the country, and the interpreter becomes too busy with administrative tasks to ask if anyone does not understand Malay, even though many of those brought in by the police were obviously not Malay. The usual justification of this, given by interpreters and magistrates alike, is that those who are brought into court already know their own wrongdoing and realise that the only solution is to plead guilty and mitigate for leniency without delaying the court's procedure by insisting on an interpreter. However, as the researcher discovered, although some locals can be said to have the knowledge of their offence as well as language of the court, there are others (especially foreigners) who not only do not know what

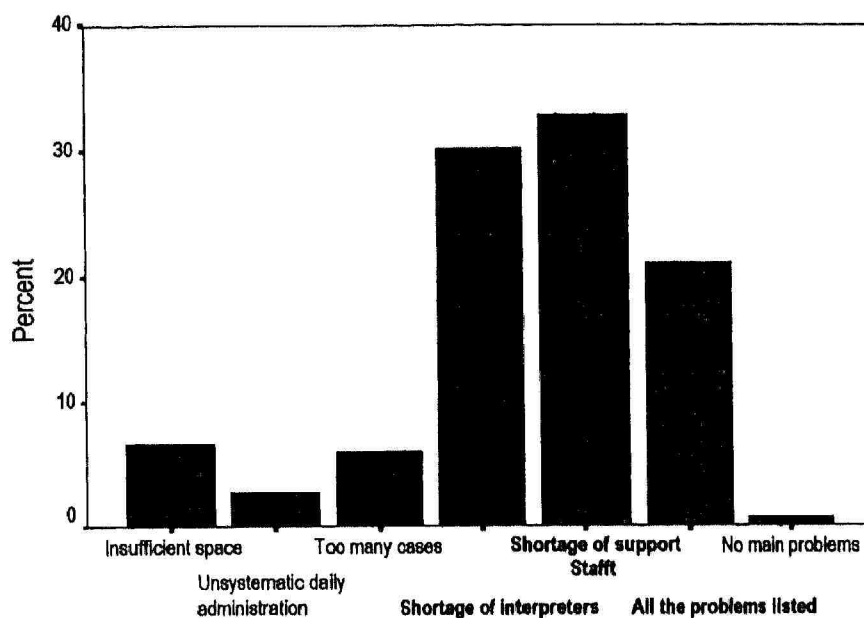
they are charged with after they have been arrested and do not understand the language of the court but also cannot find the interpreter they need among the resident interpreters, since the language involved is not a local non-Malay language or dialect. The court has to find a suitable interpreter for languages such as Urdu, Thai, Kampuchean, Bangla, and any of the many African, European or East European languages and this is a difficult, uncertain and time consuming process which inevitably leads to delay and frequently to further periods of remand for the accused (Tables 5.3 – 5.5).

5.3 Concerns in the Malaysian Court

The researcher and the respondents all agree that there are major problems in present day Malaysian courts¹⁷. The registrars and judges alike express almost universal concern over the shortage of human resources to deal with court work (84% of respondents, that is, 128 of 152), inadequate physical facilities (insufficient space), excessive case loads and unsystematic daily administration (Figure 5.1).

On the issue of unavailable staff, 30% single out the extreme shortage of interpreters and 33% of support staff (i.e. clerical), a further 21% reports all the problems listed, which again include the shortage of interpreters. The next section focuses on this particular concern.

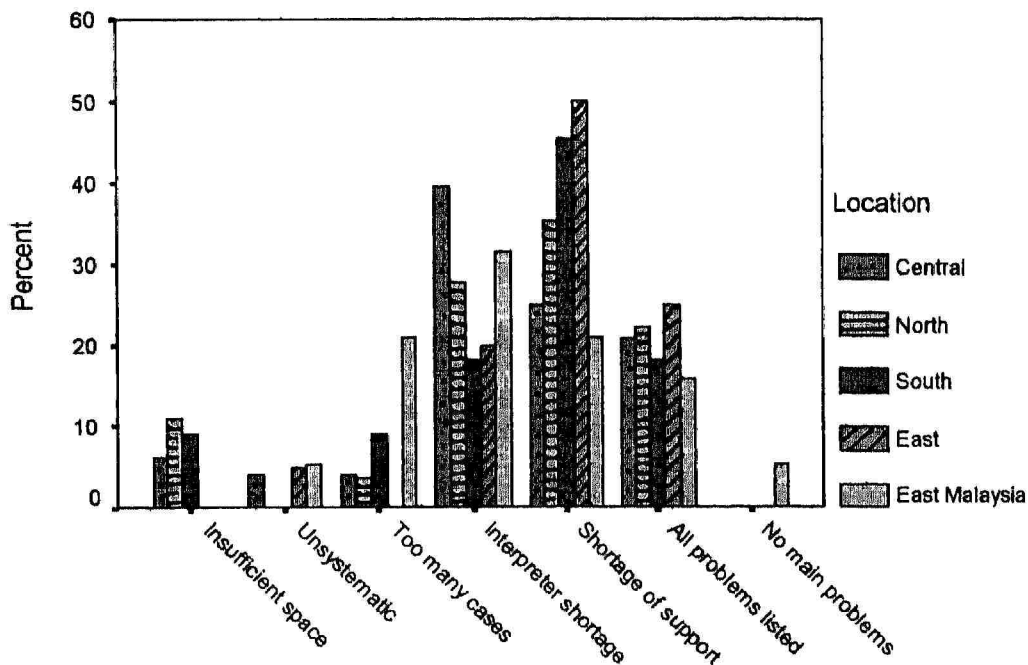
Fig. 5.1
Main Concerns in Court (N=152)



5.3.1 The Shortage of Interpreters

The figure above shows clearly that the overall problem in court is shortage of human resources, especially interpreters. The problems, however, differ in extent between locations, as illustrated in the figure below. Interpreter shortage is highest in the Central zone (the Federal Territory, Selangor and Negeri Sembilan), the Northern zone (Perak, Penang, Kedah and Perlis) and in East Malaysia (Sabah and Sarawak) whereas shortage of support staff is mostly observed in the Eastern (Kelantan, Terengganu and Pahang), Southern (Malacca and Johore) and Central zones. The Central zone also indicates insufficient courtroom space and unsystematic daily administration as their problems.

Fig. 5.2
Main Concerns in Court by Location (N=152)



However, all zones reported that they experienced all the problems listed. The difference between them is one of degree with the densely populated zones (i.e. central and northern) generating larger numbers of cases and more work entailed in dealing with each of them.

In principle, each court is assigned three interpreters, one each for Malay, Chinese and the Indian languages. In open court, one of these interpreters would be involved in interpreting and the other two would be assigned the clerical support roles of handling documentation, exhibits, bail bonds etc. It is this feature that distinguishes the resident court interpreters from the freelancers and bilingual individuals from other institutions who are requested to interpret in the courts from time to time.

The shortage of interpreters has been widely acknowledged (Chapter 1) and is clear that the problem has been a persistent one which has now reached a critical stage, as demonstrated in the latest official figures (Appendix H: Federal Court; April 2002). The figures show that the current establishment for interpreters is 895, of which 100 are senior interpreters. However, the number of posts actually filled is 612, 78 of which are senior interpreters. There is, therefore, a shortfall of 283 i.e. over 30%. Given the fact that it is the interpreter who is expected to do most of the clerical and administrative work in court (Appendix I), such a shortage has serious implications for the administration of justice and, in particular, for human resource management within the system (Chapter 6 extends this discussion).

Individuals interviewed confirm the overall shortage, i.e. in the past, there used to be three interpreters to a court, and that this is no longer the case at present.

(1)

... you've got to have three interpreters there, Indian, Chinese, Malay. There may not be a Punjabi in the main town for Selangor, let's say Klang, a Punjabi interpreter may be sent there if and when he is required. But the basic three interpreters must be there because there is not a single case without a Chinese, Malay or Indian every day.

Retired Senior Assistant Registrar
Kuala Lumpur (2001)

(2)

...each court has its own team or own set of interpreters, usually a Chinese interpreter, a Malay interpreter and either Indian or a Punjabi interpreter... because of the way the court system works they would be in charge of the clerical stuff... when the police

come in early in the morning with a stack of summonses and a stack of arrest cases to be registered, there they are busy registering them and then making sure that everything is ready and then, when the Court sits, then their work really starts and that is when the charge is read they're interpreting to the accused person (sic). That's for the criminal cases and for the civil cases as well. You can see that they hardly do any interpreting in court, because they are spending all their time minuting files, stacks of files and minuting everything that goes on and calling out the cases. That's about all they do, so I would say that the numbers are far short right now. The numbers of interpreters are very, very short...

Bar Council President and former Magistrate
Kuala Lumpur (2001)

In the second opinion above, the Bar Council President seems to relate the shortage of interpreters to the way the system works, i.e. to the fact that interpreters are expected to do clerical duties in the court, in addition to interpreting. This has the implication that the delay in the court's work may be due more to the volume of paper work generated by the trial process than the unavailability of interpreting services.

The current situation shows clearly (Table 5.5) that the majority of courts operate with less than the stipulated three interpreters and that more than a quarter have only one. Only 40% of respondents still have the stipulated three interpreters. 54% reported that their courts operate with less than three, 28% have two and 26% have only one.

The figures imply that in more than half of the courts in which the respondents serve, existing staff interpreters have to carry the extra load of interpreting and clerical work and assisting the Court during and after trials. The shortage however, is not spread evenly across the country. The central zone,

where the population is highest and the need for interpreters is greatest, is the worst provided. 12% of central zone courts reported having only one interpreter; a situation twice as bad as that of the North and the East (Kelantan, Terengganu and Pahang) and four times worse than that of East Malaysia (Sabah and Sarawak). This situation has come about because there are more courts in the city compared to the smaller towns. For example in Kuala Lumpur in the Jalan Raja complex alone, there are no less than 15 courts (criminal and civil) in the building. As the population of the city is about 2 million, comparatively more criminal and civil cases are tried every day, and thus a greater burden on the courts is felt in this area.

Table 5.5
Distribution of Interpreters in Respondents' Courts (N=152)

Number of Interpreters	Language	Frequency	Percent	Cumulative Percent
1	Malay only	22	14.5	14.5
1	Chinese only	3	2.0	16.4
1	Indian only	11	7.2	23.7
1	Another Language	3	2.0	25.7
3	One each of Malay, Indian and Chinese	45	29.6	55.3
2	One each of Malay and	28	18.4	73.7
2	Indian	14	9.2	82.9
4	One each of Malay and Chinese	15	9.9	92.8
0	One each of Malay, Chinese, Indian and other Information not given	11	7.2	100.0
Total		152	100.0	

Overall, courts consistently report a shortage of Chinese interpreters, 42% claiming that they have none, in spite of the fact that Chinese dialects are cited as the most frequently requested (85%) and, yet again, the central and eastern zones

are the worst affected with many courts lacking Chinese interpreters entirely (81% and 65% respectively). This is mainly due to the many dialects spoken by the Chinese community (at least ten in addition to standard Mandarin) and the available Chinese interpreters do not usually speak more than three, including their own. The shortage is further confirmed by the assessment of one of the judges below:

(3)
... of all these three types of interpreters, the most critical one, in critical need of recruitment, is the Chinese interpreters...

Senior High Court Judge
Shah Alam (2001)

There is also clear evidence of a substantial demand for interpreters working with non-Malaysian languages. A sizeable number of informants (66%) record a need for these languages, though 33% record the frequency as 'seldom'. (Table 5.6). The need is not surprising given the fact that a large number of immigrant and expatriate workers came into the country for employment during the first half of the 1990s and many of them have remained. Further, Malaysia is an attractive holiday destination which attracts visitors from all parts of the world.

Table 5.6
Requirement for Non-Malaysian Language Interpreting (N=152)

	Frequency	Percent	Cumulative Percent
Very often	8	5.3	5.3
Often	27	17.8	23.0
Sometimes	51	33.6	56.6
Seldom	50	32.9	89.5
Never	16	10.5	100.0
Total	152	100.0	

The Federal Court Register shows that demand for interpreting between non-Malaysian languages and Malay/English involves a world-wide range of languages (from Arabic to Vietnamese) and has been running at an average 853 instances annually in the last four years. The three most frequently required are Bangla, Thai and the languages of Myanmar (Table 5.7 below). This comes as no surprise, since citizens of Bangladesh, Thailand and Myanmar, together with the Indonesians, dominate the immigrant labour market.

Others in demand are Chinese and Indonesian dialects, Indian languages, Korean, Japanese, Vietnamese, Lao, Cambodian, Sinhalese, Farsi, Arabic, Uzbek, Russian, African languages (mostly West African), European (French, German, Italian etc), and in addition, *orang asli* (aborigine), and sign languages.

According to the data, more than half of the survey respondents report that there is or has been a need for non-Malaysian language interpreting in their courts. Further analysis shows the bulk of the demand is concentrated, yet again, in the central (50%) and northern zones (75%).

These findings are interesting in that they run counter to the views which some individuals, (registrars, judges/magistrates and the police alike) expressed during interviews, that foreign language interpreters are rarely required. Presumably, what these individuals are expressing is what they have seen in their own environment and this differs from opinion gathered nation wide which reveals a different kind of experience in other parts of the country. Cross tabulated between the need for foreign language interpreting and zones in the country, the

figures revealed a high frequency in East Malaysia (which shares a land boundary with Indonesia and a sea boundary with the Philippines) and the North (which borders Thailand and is relatively close to Myanmar and Bangladesh). Given the preponderance of immigrant workers in the country (close to 2 million) who mostly come from these neighbouring countries, the need for interpreters between these languages and Malay is therefore obvious. The following are some of the views stating that foreign language interpreting does not occur often in court.

(4) We can term it as seldom...the requirement of foreign interpreters...

Lower Court Registrar
Kuala Lumpur (2001)

(5) ... we have no problem...of course, no problem that we cannot manage, we manage somehow...

Deputy Director of Police CID
Kuala Lumpur (2001)

(6) I think in terms of requirement, it has generally become less compared to previous occasions. Previously, almost every witness especially Chinese, can't speak Malay, but now many of them can [speak Malay]...

Sessions Court Judge
Kuala Lumpur (2001)

Table 5.7
Non-Malaysian Languages which Require Interpreting

Languages	1997	1998	1999	2000
Aborigine	3	-	-	9
African languages (Ghanaian, Nigerian)	4	22	15	20
Arabic	3	2	4	32
Bangla	425	480	327	299
Cambodian	2	-	-	10
Chinese dialects	40	24	22	17
English	18	4	7	6
Farsi	13	6	11	16
European (French, German, Spanish)	3	10	1	-
Indian languages (Gujerati, Oriya, Punjabi, Pushtu, Tamil, Urdu/Hindi)	79	82	60	62
Indigenous (East Malaysia)	-	1	8	5
Indonesian dialects	24	14	24	24
Japanese	10	14	23	19
Korean	2	1	7	2
Lao	-	-	1	1
Myanmar languages	78	139	170	213
Nepalese	7	12	4	7
Pilipino/Tagalog	17	9	6	10
Russian	-	2	8	4
Sign Language	23	19	10	10
Sinhalese	1	2	-	1
Thai	41	68	74	108
Uzbek	-	2	-	16
Vietnamese	5	8	8	12
TOTAL	798	921	790	903

Source: Federal Court Freelance Interpreter Register 2001

As shown, the need for foreign interpreters may not be substantial in one area, but taken as a whole in the country, and in certain particular zones of the country, the need is urgent and cannot be ignored.

5.3.1.1 Reasons for the Shortage

The reasons for the shortage have been raised over the years and discussed widely in the press, among lawyers and judges, interpreters and laymen alike (Appendix N, *Mingguan Malaysia* op cit; *the Sun* 2000). The following is what a retired Assistant Senior Registrar has to say:

(7) By the end of the year, there'll be resignations, death, retirements, promotions, these four categories can contribute to vacancies....the JPA should be able to know by now the average number of vacancies created every year caused by death, promotion, resignation, there are four categories from my experience and knowledge, easily 30 to 40 [per year].

Kuala Lumpur 2000

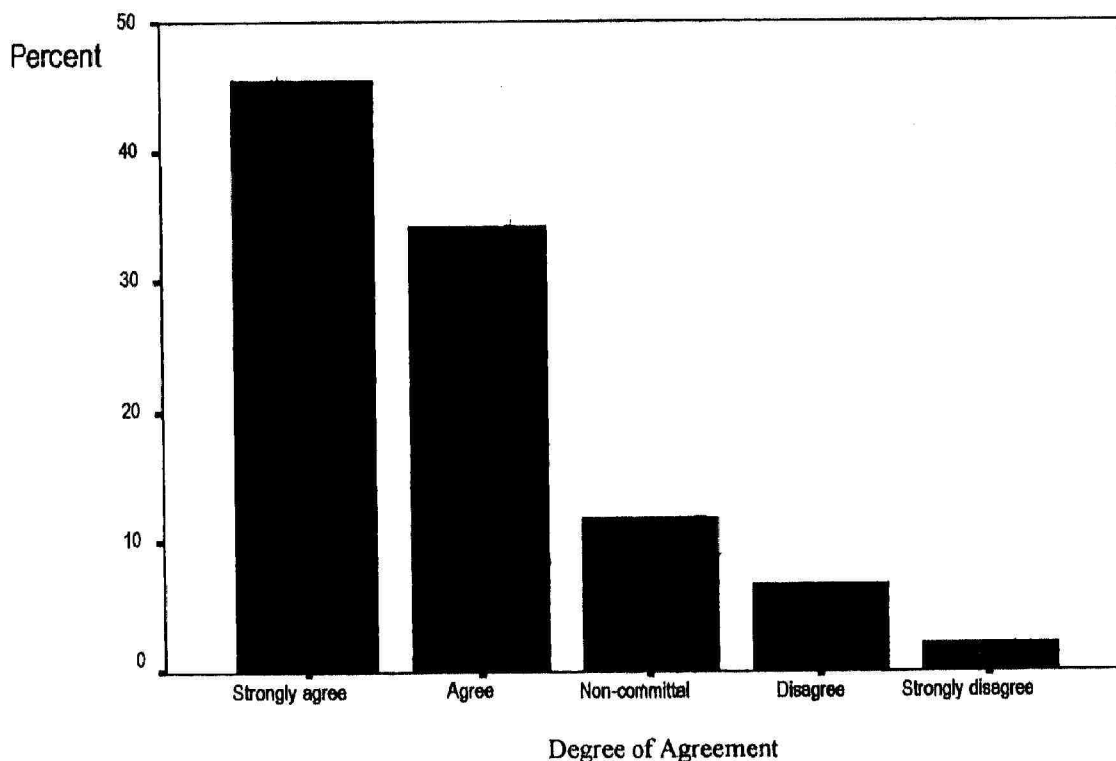
The shortage continues, as the efforts to recruit more interpreters have not been successful. The reason for this failure appears to be the terms and conditions of the service itself, i.e. the remuneration that the authorities are willing to offer and the range of duties the Court requires the interpreters to fulfil. Previous research in 1998 indicates that many interpreters like their job but are forced to make the decision to leave, as they are not able to cope with what is required of them. The same Registrar further said:

(8) Now you see, in the papers, publicity, courts are terrible, they are in dire needs, only last week I went to Jalan Raja, 3 more interpreters, Chinese interpreters have resigned. One resigned because she passed her law another one because he wants to [go for] further study and the other one resigned because can't stand being sent around to so many courts in one day, pressure.

Kuala Lumpur 2000

Throughout the investigation, the views conveyed by almost all the interpreters interviewed, indicated that they have no hope for their future nor the future of the service. This was reflected clearly as an overwhelming majority (close to 80%) expressed that they would leave the service if they had the opportunity with only 12% uncommitted and 8% disagreeing. Even in the established, experienced 40-45 years age group, half indicated strongly that they would leave if they could. Figure 5.3 reflects the interpreters' pessimistic view of the future prospects for themselves as well as the profession. The following figure is extracted from the research on interpreters conducted in 1998-1999¹⁸.

Fig 5.3
Interpreters Would Leave If There Was A Better Offer (N=471)



The shortage is compounded by the fact that most of the overworked interpreters are the Chinese, since over the years many senior Chinese interpreters retired and no replacement could be found. Many of the existing ones resigned to opt for freelance interpreting (as the Press quoted the Chief Justice in 2000 and reported in *Mingguan Malaysia* op cit). Freelance interpreting releases them from the clerical duties, and at the same time, the reality of supply and demand means a much higher rate of payment outside the Public Service.

. The critical situation described in Chapter 1, in which the backlog of cases in the courts made the news in 2000, indicated that many of the interpreters have indeed left the service since 1998. Official figures of the number of serving interpreters in 2002 shows clearly that the service is more than 30% under establishment (Appendix H).

The Judicial Officers' perceptions on interpreters' duties and remuneration are discussed in detail in section 5.4 to 5.6 of this Chapter. It shows that in the former, it is in direct contrast with the interpreters', and in the latter, identical.

5.3.1.2 Overcoming the Shortage

The need for an appropriate interpreter tends to arise at the beginning of a trial when the Bench acknowledges the communication problem between the parties. If the official court interpreter is not able to mediate, a request for a suitable individual is made to the office of the Registrar of the Federal Court. The

Registrar is empowered to take on additional *ad hoc* staff to deal with languages other than those provided by the official court interpreters.

Bilingual language services are offered either by official, full-time interpreters (recruited by the PSD) or freelancers. However, while full-time staff are exclusively recruited by the PSD, the responsibility for the employment of the second – (a) other public servants, (b) members of diplomatic missions or c) self-employed interpreters - differs from group to group.

The Registrar's Office of the Federal Court takes on freelancers by means of their resumé files, through word-of-mouth contacts, through links with diplomatic representations and with language centres in local universities. Lawyers, too, use similar personal contacts to engage freelancers (normally on a case-by-case basis) for their clients, since there is no generally available register of interpreters to which they can refer.

However, the pay and conditions of service for freelancers differs enormously depending on whether they are a) other public servants (especially, academic staff from university language centres), b) diplomatic staff or c) self-employed. The first group, by virtue of being public servants are subject to the regulation of the PSD, in contrast with the second and third who are free to negotiate with their clients.

The PSD has the responsibility of recruiting staff (including interpreters) but the deployment of interpreters to various courts in the country and overall

administrative matters including examinations and promotion exercises are the responsibility of the office of the Registrar.

The Registrars are, therefore, involved only in tactical decisions: deployment. The strategic decisions, whom to employ, how many, which languages etc., are all in the hands of the PSD and directly influenced (since they are the implementation arm of the legislature) by government policy.

In coping with the shortage, a number of methods have been employed by the courts (Figure 5.4). According to the table, 45% of the courts borrow interpreters from each other and at least 30% of respondents reported that they obtain interpreters from the Chief Registrar's office in the Federal Court. This policy has the advantage of not involving any additional expense, as interpreters are simply instructed by the Registrar to cover various courts, and this is considered part of their everyday work. However, it does have some serious consequences. The burden on the interpreters is increased, since no one covers for them when they are in another court; the burden is likely to fall most heavily on the Chinese interpreters, since the demand for them is greatest; the absence of an interpreter causes postponement and delay, in some instances, according to the magistrates interviewed, involving a wait of several months.

The Registrar's preferred methods of deployment are ranked as follows:

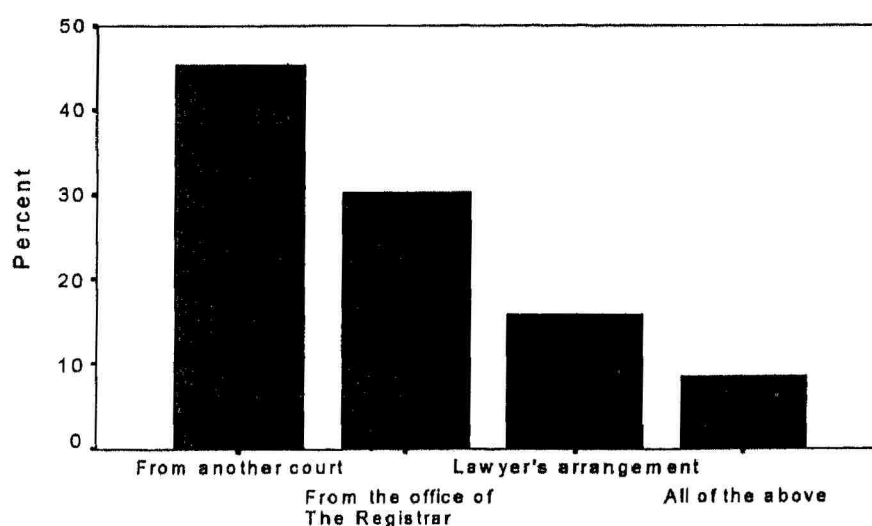
- to request interpreters from another town or district;
- to request interpreters from an Embassy or High Commission;

- to request interpreters from another government department or agency including language centres in local universities;
- to turn to individuals who are registered with the Federal Court interpreter service division.

Although, as has been demonstrated earlier, non-Malaysian languages have been in demand almost every day at least since 1997 (Table 5.4), the PSD does not, according to the Office of the Court Registrar, undertake to provide for the interpreters needed and the courts have to somehow manage on their own.

As a general point, the court is obliged to provide interpreters for those who need the service, but the provision is only for criminal cases. For civil cases, lawyers make their own arrangements to obtain interpreters for their clients.

Fig. 5.4
Method of Obtaining Interpreters (N=152)



Information obtained from the Registrar's Office revealed that several embassies are frequently contacted in order to find bilingual persons to assist the court, particularly the Indonesian, Philippine and Japanese embassies.

A Senior Assistant Registrar however, considers that the embassies have been asked too often and may now be becoming less willing to oblige. He certainly makes a moot point, as the reliance on embassies is an *ad hoc* measure and may not be reliable, not only in terms of availability of qualified bilingual persons but also the quality of interpreting provided.

(9) So many times we have to contact embassies. Embassy, once or twice they obliged, but every week [if] we start ringing up - I need one in Kuala Lumpur, the whole country rings up the same embassy - they [will] have to employ people to work in our courts, because Indonesians are all over the country. When they are involved in some litigation every court needs interpreters for that particular language. What do we do?

Senior Assistant Registrar
Kuala Lumpur (2000)

(10) From KL, embassies, I think, but normally we will write to *Ketua Pendaftar* [the Chief Registrar], he'll send somebody over.

Deputy Registrar in High Court
Kota Kinabalu (2001)

Although several factors can lead to a case being postponed, for example witnesses fail to turn up on the day, lawyers frequently request postponement when they are not ready or they have other cases simultaneously in other courts, the shortage of interpreters has been cited as the most significant reason. The majority of respondents (84%) reported that there are currently postponements in

their court due to this, and 41% said there are between 5 to 15 cases pending at present in their court (Figure 5.8 below).

Table 5.8
Number of Cases Postponed (N=152)

	Frequency	Percent	Cumulative Percent
None	23	15.1	15.1
less than 5	55	36.2	51.3
6-15	63	41.4	92.8
16-25	1	0.7	93.4
More than 25	2	1.3	94.7
Information not available	8	5.3	100.0
Total	152	100.0	

5.3.2 Other Concerns in Malaysian Courts

Interviews with a number of judges and remand prisoners revealed other problems concerned with discipline in court, too many cases, insufficient space for court work and ignorance among prisoners awaiting trial.

5.3.2.1 Insufficient Number of Court Houses

Many courts have problems with insufficient space. The civil High Court in Kuala Lumpur has been housed for years in extremely expensive rented commercial premises in the centre of the city. Before they were finally moved (at the urgent insistence of the late Supreme Ruler: the Yang Di Pertuan Agong) to their own building in Shah Alam (the state capital), the Selangor criminal and civil were housed in commercial premises which they shared with the Holiday Inn. Hotel guests found the sight of handcuffed prisoners being taken to court through

the hotel a shocking experience about which many complained to the management.

5.3.2.2 Discipline in Court

From the researcher's observation in court, the atmosphere is extraordinarily lax and informal before the Judge walks in: Prosecuting officers, police officers, interpreters talk and joke freely with each other and even with the witnesses. This informality can extend to attempts to influence the outcome of a trial.

In one case which the researcher observed, in which a man was accused of raping his step-daughter, the DNA evidence which had been provided appeared to prove his guilt beyond doubt. Before the court was in session, the P.O and the interpreter began to engage in 'plea bargaining', advising him to just plead guilty as the case appeared to be overwhelmingly against him. The accused maintained a stubborn stance and refused to 'give in' at which point a reporter joined in order to get the 'real' story for his newspaper. The accused however changed his 'not guilty' plea to 'guilty' when the court reconvened after lunch.

Lack of decorum can even spread to the court in session. The researcher observed in one sessions court that, while proceedings were underway, the loud conversation of the court orderlies (members of the *police prosecution unit*) outside the court became so disturbing that the Judge had to send the interpreter to

caution them. The interpreter had to be asked to do it because the court orderly who should have been on duty in the court was absent.

A number of judges reported that there are discipline problems all round in court. Lawyers do not turn up on time, they ask for ten minutes "stand down" but disappear for half an hour and take on more than one case simultaneously which results in non-appearance in one court because they have to be in another court at the same time. What appears to be happening is that the problem is self-perpetuating. According to the lawyers, they take on more than one case in different courts at the same time because postponement occurs very often and this means that they may have nothing to do until their next case is called. Until this cycle is broken, it is obvious that cases will continue to be postponed because lawyers are unavailable and lawyers will continue to be unavailable because of the fear that their cases might be postponed.

Freelance interpreters who are engaged by lawyers for their clients complained that the staff court interpreters do not usually read and explain the charge loud enough, that they are inaudible and they seem always to be in a hurry. Freelancers are sometimes made to wait all day for the case in which they are interpreting to be called, only to have it postponed when a witness does not turn up. If these freelance interpreters are from another government institution (for example a university) they are not paid at all for being in court for, sometimes, the whole day. The university teachers who were among those interviewed reported that they were reluctant to assist the court for this reason and would usually come up with some polite excuses to avoid it.

5.3.2.3 Remand Prisoners

Interviews with remand prisoners awaiting trial in a Kuala Lumpur police lock-up revealed that crucial information such as the nature of the charge or the date of trial is not passed on with the result that many prisoners who are arrested by the police and brought to court have little idea of what is happening to them or why.

Nine of the ten remand prisoners interviewed were from other countries: the Republic of China, Nigeria, Thailand, the Philippines and Indonesia. Four of them did not understand either Malay or English (the Indonesian spoke a dialect that even the researcher has not heard of). The police in charge revealed that most foreign prisoners are not provided with interpreters at the police station but have to wait until they are formally charged in court and only then would it be discovered and confirmed that they were unable to speak or understand the language of the court. They are then taken back to prison until an appropriate interpreter is found by the Court.

The Nigerian remand prisoner vehemently complained that he had not understood the proceedings, that he had thought he had just been fined but had discovered that the sentence was actually a fine and a six months prison term, and that although a friend had paid the fine for him, he was going to be taken back to jail by the police.

Although two of the prisoners (one a Chinese local and one a Thai) did know that they were charged with possession of drugs; and three prisoners for working without a permit, five (all foreigners) did not know why they were arrested. The others could not speak either English or Malay, one of whom simply appeared confused.

The right to an interpreter, although stipulated in the Criminal Procedure Code, is in reality taken rather lightly. In an interview, a senior member of the police force illustrates this by denying the prevalence of the problem:

(11) ...*masalah tu timbul* [the problem arises] from time to time. You know, when we have cases reported to us. We manage it somehow or rather we managed it... as I said the, I mean the assistance is there, you know, either we get it from our people who can speak that language, or the worst [sic] we will go to the various embassies...

Deputy Director of Police CID
Kuala Lumpur (2001)

What the senior police officer referred to in the interview was that the police force does have members who are bilingual (specifically Chinese or Indian members of staff) who can be called upon to interpret. In fact this has been the practice when the police carry out investigations or record statements from accused persons or those in custody. However, the number of bilingual staff is very small, there is no special division for providing foreign language interpreting and no training in interpreting is provided for those who supply the service. The result is that the only recorded instances of prosecutions collapsing in court because of faulty interpreting can be traced to inadequate police interpreting at the

investigation or charge stage. An example of a judgement on this is given in Appendix J.

5.4 Perception of Role and Duties of Interpreters

One of the most problematic aspects of court interpreting in Malaysia and about which the interpreters are extremely dissatisfied, is their vaguely defined role and the wide range of duties they are expected to carry out (Chapter 2.4 and Appendix I: List of Interpreter Duties from different courts).

The point has been made before but bears repeating here: the lawyers and the Bench on the one hand and the interpreters on the other have very different conceptions of the role the interpreter should play. The questionnaire contains several items aimed at discovering the perceptions on this issue.

Respondents report almost 100% agreement on the most expected role of an interpreter i.e. that they facilitate interlingual communication by being bilingual intermediaries. Further, 90% agree that they are expected to translate; a similar percentage agree that they are also expected to assist the Bench. However, a good majority, 65%, see interpreters as playing a dual role i.e. also performing clerical duties (Table 5.9 below).

Table 5.9
Respondents' Perception of Interpreters' Role (N=152)

	Frequency	Percent
Bilingual intermediaries	149	98%
Assistants to the judge	143	90%
Translators	136	89%
Clerks	98	65%

Some of the judges who were interviewed nevertheless expressed a strong opinion that interpreters should not be made to do clerical work, as this interferes with their other duties, which in actual fact, have mainly to do *with assisting the judges* in open court.

This explains their response to a question on whether interpreters should specialise and only interpret or translate: 57% disagree with the proposition. More than half of this number are judges, one magistrate even expressed shock in the questionnaire at the idea that interpreters should only interpret ('What! and not keep exhibits!'). Nevertheless, a good number (40%) agree that they should only do interpreting and translation. The overall reaction indicates that, while interpreters should not be burdened with clerical duties, they should remain in open court not only to interpret when the need arises but more frequently to assist in the trial process.

In relation to this, it is pertinent to note that over fifty years ago, the General Secretary of the Malayan Interpreters' Union (12) described the role and duties of the interpreter in terms which are still familiar today :

(12) In the Courts, we act as Assistant Registrars, Clerks of Courts, ushers, bailiffs, typists, cashiers and clerks in charge of correspondence, finance, civil and criminal processes and numerous other duties, for which knowledge of law and court procedures is required. It is stipulated in our conditions of service that we should perform clerical and other duties when not engaged in interpreting...

Interpreters' Annual 1949: 6

and a contemporary view which reaffirms the situation:

(13) ...it seems they need to record the cases, record exhibits tendered, record witnesses (sic) I don't know, I'm not questioning them but just observing what they do, they have to write up all TPs - Order to Produce, Summons, whatever *lah*, because they are short-handed, our police officer tends to help them as well, like writing up the subpoenas...

Deputy Superintendent of Police
Kuala Lumpur (2001)

Such multiple roles seem to be an accepted feature of the interpreter's job till today, agreed upon by those working with them but not by the interpreters themselves. The interpreters, in contrast, continue to protest at having to deal with the numerous clerical duties in addition to interpreting and assisting the Bench. The dissatisfaction was expressed in no uncertain terms by an overwhelming majority, evident in the 1998 research finding.

Although 50% of the interpreters indicate that *they like their job*, 82% agreed to the assertion that most of them are very *dissatisfied with the terms of service*. Figure 5.5 indicates that 26 % interpreters were non-committal, and 23% dislike their job. Respectively, figure 5.6 indicates the number of those who were

dissatisfied with their terms of service was overwhelming at 82%. Conversely, a meagre 6% indicated that they were not dissatisfied with the service.

Fig. 5. 5
Interpreters Like Their Job (N=471)

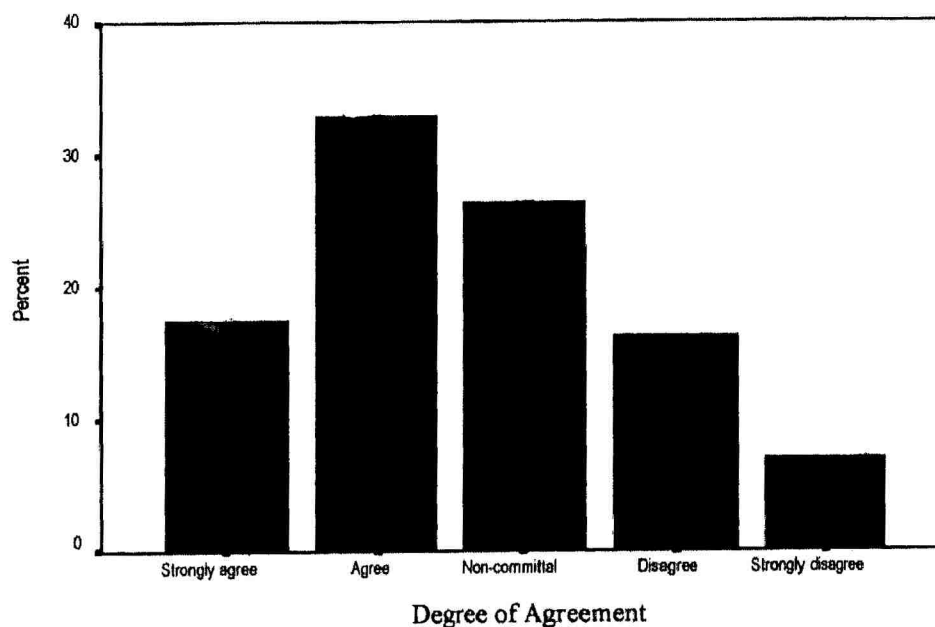
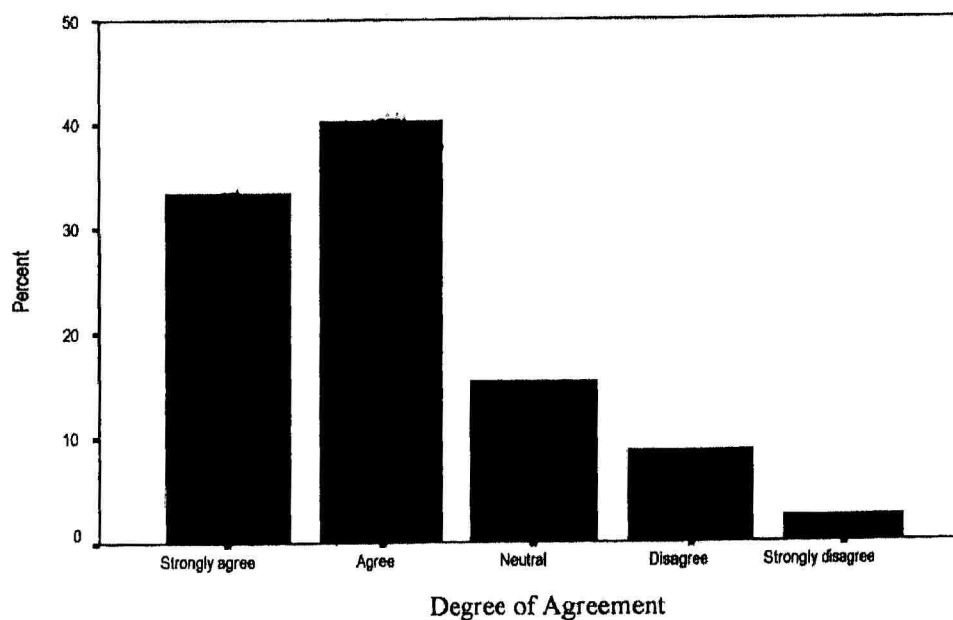


Fig. 5. 6
Interpreters are Dissatisfied with Their Terms of Service (N=471)



The table below indicates that, in spite of almost 100% agreement that interpreters carry heavier duties than clerks, and over 70% agreement that trials cannot proceed without the interpreter (close to 70% rejecting the idea that anyone can interpret in court), 57% of registrars and magistrates still insist that interpreters must also perform the clerical duties.

Table 5.10
Perceptions of Interpreters' Job (N=152)

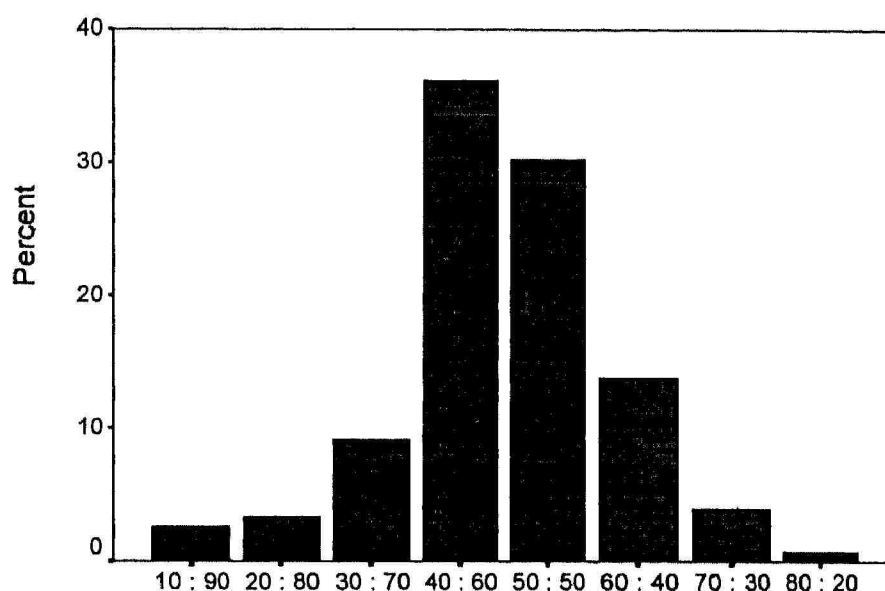
Propositions	Agree (%)	Disagree (%)	No opinion (%)	Total (%)
Interpreters carry heavier responsibility than clerks	90	7	3	100
Trials cannot proceed without the interpreter	72	23	5	100
Interpreters only interpret and translate	40	57	3	100
Anyone can interpret in court	25	66	9	100

This apparently strange response may well relate to the general perception of the interpreter's job as involving less interpreting than clerical work and more of assisting the Bench in such duties as arranging dates for hearings, explaining the plea to the accused, organising filing for the cases and so forth.

When asked about the ratio of the interpreting function compared to clerical work that the interpreters actually do in court, more than 50% say that court interpreters do more clerical work than interpreting, 26% say they do an

equal amount, and 20% say they do more interpreting than clerical work (Figure 5.7).

Fig. 5.7
Ratio of Interpreting to Clerical Work (N=152)



Further analysis indicates that the interpreting: clerical ratio of the interpreter is recognised as 50:50 (or 40:60) in the majority of courts in the country. There are exceptions to this, however. In some High Courts in the central zones and most courts in East Malaysia interpreting is seen as dominating the clerical function with a ratio of more than 70 to 30.

The location of this higher ratio links with the information reported earlier about interpreting in various foreign languages being needed more in zones bordering neighbouring countries and Chinese dialects being more frequent in densely populated urban zones.

The interpreter has been described as playing a dual role (interpreter and clerk) and information has been provided about the distribution of the two activities but, as many informants indicate, the division is not two-way but three-way. Interviews with several different individuals reveal that the details and the extent of some of the work performed by the interpreters fall into an area (that of the Clerk of the Court in many other jurisdictions) for which legal qualifications seem essential.

However, as the comment below (14) suggests, interpreters become very knowledgeable, after years of serving in the court, in particular aspects of the law and are able to assist the Bench (especially young and inexperienced Magistrates) without having any actual, formal legal qualifications:

(14) I've got some very fond memories of some old time interpreters... they were very helpful, especially when you are a rookie magistrate, brand new, you do not know what the CPC says, you do not know what the Penal Code says, and these cases are coming up, and you are making decisions there, in full view of everybody, you have to decide and you can't say; 'I'll come back later', and these guys are there and they give very helpful hints...

Former magistrate, currently a senior lawyer

(15) This is an area that we, the government servants are caught in the situation (sic). You have your *senarai tugas* [list of duties] but always, there is the last one '*apa-apa tugas lain*' [any other duty] so *dia agak luas tu* [that's very wide]. *Itu mengganggu sebenarnya* [that is very disturbing actually]. Assuming the magistrate says, 'Interpreter, *you buat ini*' [you do this] *yang mana walaupun itu bukan tugas dia, dia tak berani nak ingkar kerana ia termasuk dalam the last item tu* [and even though that is not his duty, he dare not refuse, because this is now part of the last item in the list of duties].

Senior interpreter
Kuala Lumpur (2001)

(16) I have about 30 years experience [on the Bench]. I don't see any disadvantage in any way. Quite a bit of the clerical work that they do is related to the court work, so they are better equipped to do it. And if they are going to do solely interpretation, half the time they have no work, they are quite free. Like in the afternoon, no work, no case, they are quite free. We have to write judgements and all that. They have nothing to do, so I don't see any harm, why they cannot do it [clerical work].

Senior High Court Judge
Kuala Lumpur (2001)

In the last two comments above, those from the interpreter (15) and the judge (16) summarise the difference of opinion on the issue. Whereas the interpreter implies that they may be exploited by the wording of the clause in their job specifications and that they may be required to do anything to assist the Bench, the judge on the other hand does not see why they should not be doing clerical work, since after a trial is over, the interpreters 'have nothing to do'.

One of the strongest findings in the present research, reinforced by the interpreter survey in May 1998, is that the perception of the interpreters regarding the duties required of them in court is in direct contrast with those of the judicial officers.

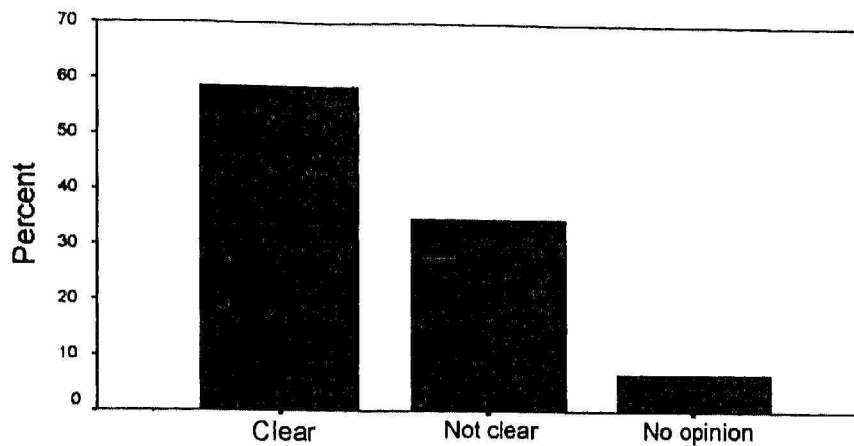
5.4.1 Interpreters' Job Specifications

The job specifications of the interpreter, as alluded to in comment no. 13 above, are remarkably wide. The researcher has inquired on many occasions what the specific duties of the interpreter actually and the responses to the question have been very variable. Close to 60% of respondents perceive the specification of

duties to be clear, 7% have no opinion, and 35% say it is not clear. There is every likelihood that those in the 60% who perceived it as 'clear' see it as being partly interpreting and partly clerical. However, to what extent they are expected to be clerks is not clear, as in some courts they are clerks 80% of the time and are still designated court interpreter. There is no clear indication of what the relationship should be between the roles of Interpreter, Clerk of the Court and court clerk. There is no written specification nor are many judges (or indeed the interpreters themselves) clear about what the role(s) should be.

The wide range of duties is further confirmed in the list of duties from different Courts (Appendix I), where it can be seen that Malaysian interpreters are expected not only to be a bilingual intermediary (i.e. to interpret proceedings), but also, to be the Clerk of the Court (reading and explaining charges and the consequences of a plea, explaining the three alternatives to an accused, preparing draft orders) and to be a clerical officer (marking and keeping exhibits, update court's diary as well as the Judge's diary, fixing dates for hearing, registering cases, preparing bail bonds, writing orders for committal, attending to correspondence), to be a translator (translating documents), and to be Commissioner for Oaths (attesting the legality of documents for members of the public).

Fig 5.8
Job Specification of the Interpreters (N=152)



The roles and duties of the interpreters vary not only from court to court but also from judge to judge, and from junior interpreters to senior ones, in an unpredictable and rather arbitrary way. Although all interpreters are called upon to record and explain the plea to the accused, the more senior ones are sometimes expected to assist the unrepresented accused in the wording of his responses to suit the discourse of the court (Chapter 2.4.1 and comment (17) in this chapter). In addition, while interpreters in magistrates and sessions courts are expected to perform all the functions stated earlier, those in the High Courts are not required to do so, because of their already onerous interpreting duties involving more serious cases.

5.4.2 The Interpreter as a Conduit

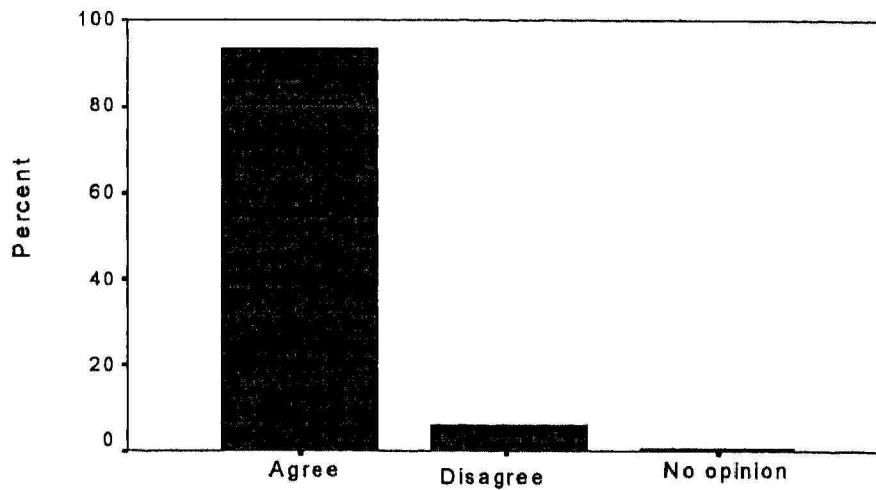
In Chapter 2 (section 4.1), it was noted that there are two recurring contentious issues concerning the role of the interpreter and that both of these relate to the admissibility of evidence: (1) is an interpreter required to convey the

bald meaning or the whole message of what a witness says? and (2) should (s)he orally translate, verbatim every word the witness utters?

An overwhelming 93% of informants agree to the proposition that the interpreter is strictly a conduit, 6% disagree and one respondent does not volunteer an opinion (Figure 5.9). Further analysis shows that the 6% who disagree are all Registrars who were themselves formerly interpreters and who have now been promoted to an administrative position. The disagreement is not surprising as interpreters in the Malaysian court over the years see themselves not as interpreters who translate literally but who have to use their own discretion and take into consideration the factor of contextual and cultural clues in order to be accurate. Interpreters feel that some judges fail to understand what is involved when an interpreter interprets, particularly when they have taken on the role of an adviser attempting to ensure that lack of language competence does not lead to a misunderstanding of the facts.

In addition to interpreting meaning in context, interpreters have also been expected by the Bench him/herself to assist the court by putting the answers given by witness in a language acceptable to the court. This relates to the established practice of Magistrates and Judges in Malaysia taking down, verbatim, court proceedings in their own hand-writing. This does not mean that the judge makes a complete transcript of what is said with every word, repetition, hesitation recorded in full. What it does mean is that the judge records speech in what (s)he considers to be an appropriate, edited, written form: the language of the trial and that of the record do not fit 100%.

Fig 5.9 The Interpreter is Strictly a Conduit (N=152)



Some judges feel that interpreters also engage in editing and ‘filter’ the information the Bench needs to know by being a spokesman for witnesses and accused/defendant. The Bench will support this feeling by pointing to the way interpreters engage in long conversations with witnesses and then provide single word responses. The Bench sees the interpreter sliding into the role of an advocate or being an interested party when (s)he should be neutral. In short, there is an issue of the quantity and the quality of the information the Bench receives and the validity of the evidence it can deduce from that information.

The following views are taken from four different people, a retired Senior Assistant Registrar who was an interpreter for 20 years, a serving interpreter, a Judge, and a senior lawyer representing the opposing sides of the debate on this issue:

The Registrar /former Interpreter

(17)

(a) The magistrate must be told, this is the duty of an interpreter in an unrepresented case. The interpreter should be able to frame questions for him. Don't stop him, don't scold him, saying "Why are you having a conversation with him? This is not a market, this is a courtroom, don't have a conversation with him."

(b) ...you must, you must, it is very important [that the interpreter knows the court procedures]. There are three or four stages in any court proceeding. You know, mention stage, hearing stage. Some cases which do not fall under mention or hearing, they are called out and you must know what to do. A criminal case is different from a civil case. As soon as the case is called, the accused will go into the box, the P.O. [the prosecuting officer] will just handle the charge sheet. The interpreter must know what to do. He takes the charge sheet, he verifies the name of the accused with the charge sheet, he goes near the accused, confirms again - are you so and so, residing in such and such a place, is this your IC [identity card], identity card number yes, now you are charged, in respect of a criminal case this is the charge, and now I'm going to read the charge, then he reads the charge.

(c) After reading the charge, 'do you understand the charge?', 'Yes', 'Is there any problem in understanding me? Right, now what is your plea?' The accused blinks, 'What do you mean what is my plea?' 'It means, you have heard the charge, now do you admit that you committed that offence or you do not admit...?' 'No, no, no, you see, before I say anything, I want to tell you what actually happened'. 'No, you cannot give any qualification, you either plead guilty or you plead not guilty. I'm not forcing you to plead guilty and you don't have to'. It's the interpreter who's the lawyer, who's the defence council.

(d) A: He's the adviser, he's the interpreter, he's the defence counsel.

Q: So the role of the interpreter in the Malaysian court, is very, very different from one in a court say in the UK.

A: Yes, it's very and many (sic) this concept must be understood both by the Bench and the Bar, the lawyers and the interpreter himself. I've known some interpreters [who didn't] 'Hey, why

didn't you tell him?', 'I'm not his defence council, I'm only an interpreter. I'm paid as an interpreter only,' so the poor innocent fellow will go in [to jail].

Q: So the magistrate should be made aware that this is the interpreters' job?

A: Particularly the new magistrates, they must understand the duties of an interpreter. The duty of the interpreter is not merely to interpret. Many years ago one judge said an interpreter is like a pipe - what is put at one end must come out the other end - so the interpreter was interpreting in a case and you know the Chinese and Indians, I do not know about the Malays but [the] Chinese and Indians, they both have something in common, particularly the half-baked, uneducated ones. They start off only with dirty language. ...they simply use some funny dirty language to start off. We are so used to it that we don't really bother, so when we interpret we don't interpret those words, so here was a lawyer, he got up and said 'Your Honour, my client is saying so much, the interpreter is saying so little'. So the judge said, 'Interpreter! You are like a pipe, what is put in, the same must come out'. So the interpreter got angry, he said all right you are asking for it I'll give it to you. When the next question was put, 'I put it to you my client did not borrow the money at all' this fellow told him in Tamil something, and that fellow replied in Tamil. There. Now he's going to interpret, he's a pipe now right, you already identified him as a pipe. Whatever is put in must come out. You know what he said? [obscenities]. The judge got the shock of his life. 'What! What's happening?'. 'The pipe is giving out whatever was put in, Your Honour!' ...

(e) They [the Bench] must know what is the duty of an interpreter, by experience, case laws and practice over the years. There are times when the accused or defendants are not represented by lawyers. The tradition is the interpreter must assist the accused in asking questions of the witness in the form of cross-examination. He must help the accused because very often these illiterate accused persons or defendants do not know how to cross-examine...

The Senior Interpreter:

(18)

(a) We are masters in our own field. I do not object for the purpose of objecting. This is the matter of choice of words, where I can agree to it, I've no problem with it. But if I sense that is not what I mean to say, and I don't believe that is the word, because they

[lawyers] have got their own words for their own purpose, then I would put that on record, and I would say that that is not my interpretation. Otherwise, the record would not show that it was suggested, if you do not highlight it at that very moment....

(b) ...the lawyer has no right to *perbetulkan* [correct] you, to question, they can put formal objection as to the wrong interpretation... *Dia boleh bangun dan buat bantahan secara rasmi kita akan tertakluk kepada itu.* [they can stand up and object, and we acknowledge that]... But the minute they got stuck with any words, whatever, be it [a word] in *bahasa* [Malay] or a jargon, I am the one *yang sepatutnya tahu* [who is supposed to know].

(c) He [the judge] complained that I was disturbing him when I did simultaneous interpretation to the accused, so, I excused myself and let another interpreter do the job... he doesn't like my style.

The Registrar who was also a former interpreter for more than 20 years seems to be adamant that interpreters in court are also advocates, as this was the way he has been asked to do his job for a long time that when a new judge objects to it, he was surprised. Similarly, the senior interpreter took exception to some lawyers' attempt to correct the words he uses, and yet for some other words or phrases his opinion is sought after.

The researcher's own observation confirms this. In one case in a Magistrate's Court in Kuala Lumpur, in which a witness was giving testimony in Tamil, the language was uttered in fragments rather than complete sentences, the interpreter provided a version in Malay which consisted of complete sentences. The Bench was aware of this, knew that this is the way the interpreters have always done it, and considered the practice acceptable. In a second case, conducted entirely in Malay, the witness gave the testimony in fragments which the Bench turned into complete sentences which he read aloud as he wrote

'verbatim' notes, getting confirmation from the parties as he did so. This practice, too, is well established and accepted.

Disagreement in this area between the senior interpreter and the Bench nevertheless does arise and has arisen in the past. For example, an interpreter conversing at length with unrepresented accused (as in the case commented on above) is assisting the defendant to present the testimony and responses (including formulating leading questions) in a discourse acceptable to the Court, and to leave out what is not relevant. The translation of this for the Bench is likely to be much shorter than the dialogue the court has heard (and not understood) and the Bench may object and demand a fuller version of what was said. The Bench may well argue that it is not the interpreter's duty to decide whether an utterance is relevant or not to the question asked. Most senior judges that have been interviewed are very concerned that interpreters should not 'interpret' but 'translate' (i.e. render literally) whatever the witness says.

The Judge:

(19)

(a) Quite often, we get, in fact, ...especially Chinese, which we don't understand, questions will be posed, the interpreter will converse with the witness for a long time, we don't know what's happening, suddenly he said 'His answer's "No."' So I ask why are you talking to him all this while. He said 'No, I was explaining the question to him'. That's not the role of my interpreter. If the witness does not understand the question, he just has to say 'I don't understand the question'. It is not for the interpreter to explain the question to him. That happens quite often, very regular.

(b) But it does happen, I've had experience before me, especially when the lawyer is Chinese, the witness is Chinese, the interpreter is Chinese. Other languages we know like Malay or Tamil, in my case, but Chinese, I would not know head or tail of what's

happening. It does happen a number of times where the lawyer will stand up and say 'That's not the correct interpretation'. But in all instances, the interpreter always insisted that their interpretation was correct.

(c) That's what they do which is wrong. They should not, I always tell them you just interpret what they say, whether it's right or wrong, to the point or not to the point, that is not their [the interpreter's] problem.

(d) Indian witnesses, they tend to talk a lot, you ask them one question, they'll want to go into the history of that question, far beyond, and Indian interpreters, they understand the mentality of these Indian witnesses. So they cut them short. They tell them that's not what was asked. That again, to me was not their role. They have to interpret and let the lawyer cut them [the witnesses] short. That I think is a major problem with the interpreters.

The senior judge above clearly has a point in that he needs to know not just what is said but the way it is said by the witness. This is not achieved if the interpreter 'interprets' the answers, and not 'translates' (i.e. render it literally) it. On the other hand, the interpreter listens and then conveys the message *in context* and to do this in the target language may require him to choose a different structural form, which may be longer than the original, especially from English to Tamil or Malay.

The Lawyer:

(20) (a) Sometimes we get overzealous interpreters and they think they run the show and then they keep interrupting, so we remind them you are an interpreter, not an interrupter.

(b) ...interpreters give lengthy explanation to the witness; we have no idea what they say, since we don't understand the language...

The views expressed indicate a number of anomalies. On the one hand the interpreters are and have been required to do more than just interpreting and, as

we saw earlier, this is acceptable to many judges. While a good number of judges agree that interpreters should not be made to do clerical work, they do expect the interpreters to assist in many ways to ensure the smooth running of a trial and it is for this reason that many senior interpreters who have learned many aspects of the law as practised in court are able to carry out functions which are, elsewhere, the duty of the Bench. And yet, the Bench, having given the interpreters duties, which go way beyond interpreting, insists that in other aspects the interpreter must remain a strictly neutral conduit. The practice of having the interpreter assist the Bench is now so entrenched that some judges who were interviewed were not aware that some of the functions belong to the Bench and in other systems are carried out by a legally qualified court officer such as the Justice's Clerk in the UK.

There is a further anomaly in the practice in the Malaysian system which confirms the above. The examination for promotion from L6 to L5 (Chapter 2.8), which takes the interpreter out of the courtroom into an administrative role, is entirely focused on legal matters (see Appendix K for details). Typical questions in this examination are given below (translated from Malay by the researcher):

- Describe the current procedures in the Juvenile Court;
- Describe the enforcement of a Court Order according to the existing Court Procedures both in the Subordinate and the High Courts;
- Describe how a law is passed as an Act;
- Explain what is meant by 'a trial within a trial';

- List the conditions which enable a creditor to initiate a bankruptcy petition against a debtor; etc

The assumption clearly is that promotion requires legal knowledge and that this knowledge has not been acquired by training, nor by attending specified courses but during their work as interpreters and, therefore, interpreters – qualified or not in the law – do carry out legal functions in the course of their work.

5.5 Training and Education of Interpreters

Malaysian interpreters enter the service straight from school and begin work without any prior training. Table 5.11 shows that almost 100% of Judges and Registrars indicate agreement on the necessity for training. However, to other questions on the mode of training - on the job, one-week workshop, full-time or part-time, they are divided – and there is no consensus on the definition of training or the manner in which it should be provided.

Table 5.11
Training is Essential to be an Efficient Interpreter (N=152)

	Frequency	Percent	Cumulative Percent
Strongly agree	122	80.3	80.3
Agree	28	18.4	98.7
No opinion	2	1.3	100.0
Total	152	100.0	

Registrars, members of the Bar, Judges, trainers and interpreters all express similar concerns about the lack of training:

(21) They never had any form or medium for training, these interpreters. Many years ago, about 20 years ago, Chinese interpreters upon being appointed, were sent to the language institute for one year to study additional dialects and once a week they were sent to the lower court in Kuala Lumpur to observe and study court procedure. But not anymore...

Senior Assistant Registrar
Kuala Lumpur (2000)

(22) I don't think ... Their knowledge in (sic) Bahasa [Malay] and English may not be that good and they don't have this special training as an interpreter, that compounds the problems and then as you know, they are thrown into courts and they hit the ground running and they just do what they can, sometimes you learn the hard way and sometimes not at all.

Bar Council President
Kuala Lumpur (2001)

(23) ...training programme is to be recommended, but now we have done away with it, because there is such a great shortage. Today he's appointed on day one as interpreter, tomorrow he works in the court. It's very frightening, so many of them may not be able to overcome, what I will call the psychological barrier. If they go and teach they only face the young students, students who are less knowledgeable than them, students who are to receive knowledge from them. [But] when they work in the court, the position is reversed. They are speaking to other people who are more knowledgeable, more qualified [than them] and the atmosphere is rarefied, where fear, pressure, psychological barriers and all these things may come into play. So this may be a deterrent to the would be interpreters.

Senior High Court Judge
Shah Alam (2001)

(24) ...I think, sometimes it can be very daunting, in the case of a very big..., like, say, you have Harun, Datuk Harun, *Menteri Besar dulu* [the former Chief Minister] you just imagine, the poor interpreter would be trembling, you know, *takut* [scared]. Even if I were the magistrate, I would be very frightened, if you have a very big accused there, you know...

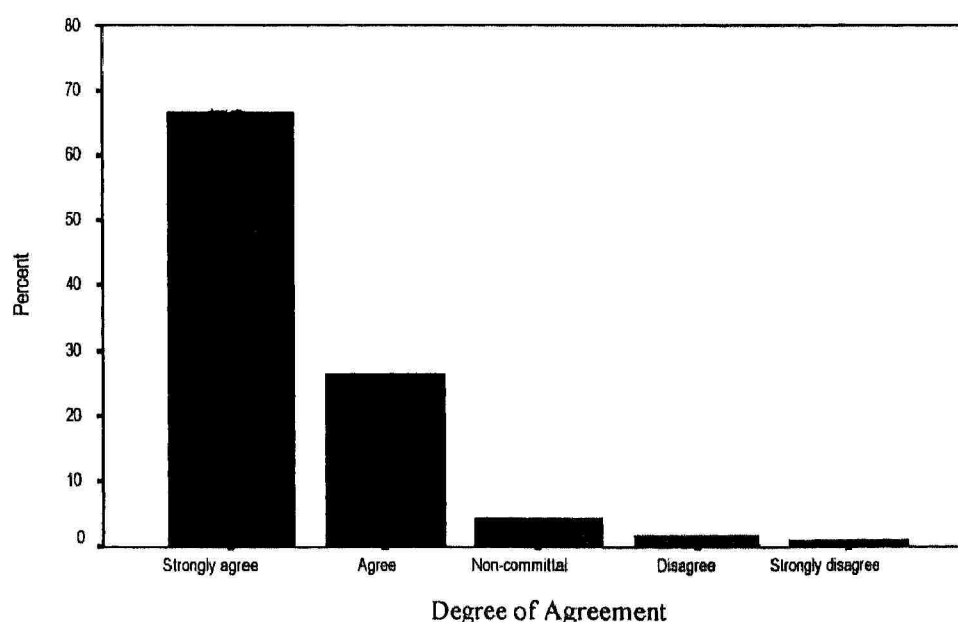
Senior Training Officer
ILKAP (2000)

(23) ... training should be designed after identifying the requirements and the actual role and function of the interpreter.... recognition has to be given for the expertise *dan juga kemahiran luarbiasa* [and also for unusual skill]. The term is *luarbiasa* [unusual] because to me the interpreter is *orang yang special* [a special person].

Senior Interpreter
Kuala Lumpur (2001)

All the above comments recognise how crucial training is for the interpreters in terms of mastery of languages as well as the special skills necessary to be interpreters. The interpreter (25) has expressed the issue succinctly. However, as commented in (21), the crucial language training for Chinese interpreters was stopped 20 years ago and nothing has been put in its place. The effect is felt most strongly now when senior Chinese interpreters retire or resign and, as commented in (22,23), the present new interpreters enter the court totally unprepared in either language or interpreting skills.

Fig 5. 10
Interpreters View of Their Need for Proper Training (N=471)



In comparison, the figure above shows the *interpreters'* own perception of their need for training, which significantly concurs with the perception of judicial officers in the findings of the present research. The figure above indicates that close to 90% of the interpreters voiced the view that they need training.

On the details of what should be included in a training course, there is overwhelming consensus from respondents in the survey. There is close to 100% agreement on all propositions regarding language expertise including culture and conventions, communication and interpreting skills and court procedures. This arises from either or of both the following: (a) the quality of interpreting work observed by judges and lawyers is substandard; (b) the crucial need to ensure that there is no miscarriage of justice due to incompetent interpreting.

Interpreters have typically been expected to learn on the job by observing more experienced colleagues. However, since most courts now operate with only one interpreter, this option has ceased to be a practical possibility.

Although almost 100% agreed that the interpreters need training (Table 5.11), the Judges and Registrars are not sure how training should be organised, how long it should last or who should provide it and, very surprisingly, more than a quarter of Judges and Registrars (aggregated) express no opinion on who should provide it.

Furthermore, neither the certificate nor the diploma courses offered by the University of Malaya are promoted or recognised by the PSD as a vehicle for training Court Interpreters. Some of the reasons for this appear to be:

- The courts cannot afford to allow the interpreters leave to attend, since there would then be no one to take over their duties, as there is the shortage of staff and this would increase the backlog of cases;
- The courses are not relevant to the courts as (1) they do not provide what they need most (presumably training for Clerks of the Court) and, (2) some have suggested that they over emphasise linguistic accuracy;
- The diploma or certificate qualification does not entitle the interpreters to promotional prospects or salary increment anyway, as the qualifications are not 'recognised' by the PSD.

The above is what the Bench and Court Registrars believe, in principle, about interpreter training. In practice, it is not easy for an interpreter to get any training in language or interpreting, even if it is actually available.

Although training has been proposed by all quarters in the courts, in truth, this has yet to be planned, prepared, and organised i.e. turned into commitment and action.

Table 5.13
Opinion on Length of Full Time Training (N=152)

	Frequency	Percent	Cumulative Percent
6 months	42	27.6	27.6
3 months x 2	42	27.6	55.3
Other	33	21.7	77.0
No opinion	35	23.0	100.0
Total	152	100.0	

Furthermore, it might also be that the majority of the respondents themselves have less than 5 years experience on the job and have not sufficient experience to form an opinion on the matter.

Table 5.14
Opinion on who should Conduct Court Interpreter Training (N=152)

	Frequency	Percent	Cumulative Percent
University	21	13.8	13.8
ILKAP	31	20.4	34.2
Combination of both	49	32.2	66.4
No opinion	51	33.6	100.0
Total	152	100.0	

However, even if magistrates and judges are not sure about training details, the majority of the interpreters are unambiguous in their rejection of the idea of part-time training and of one week training at ILKAP; the current provision. According to the interpreters who were interviewed, they are too exhausted at the end of the week to cope with a course, and what ILKAP offers is too short and too general. They regard the requirement to complete the one-week workshop at ILKAP, more as a break from their daily routine than as genuine training.

5.5.2 Criteria for Defining Interpreter Competence

Respondents were given a set of propositions on the criteria for Interpreter competence. There is consensus close to 100% on almost all criteria, except on 'culture and conventions', 'specialist terminology' and 'general knowledge including the Malaysian legal system' (Table 5.15).

Table 5.15
Criteria a Competent Interpreter Must Have (N=152)

Criteria	Percentage of agreement %
Language proficiency	98
Communications skills	99
Interpreting skills	98
Professional conduct	98
Court procedure - criminal and civil	98
Culture and conventions	86
Specialist terminology	87
Wide general knowledge (including Malaysian legal system)	86

As opportunities for full-time training are extremely scarce, a question was asked on the practice of Training on the Job. The majority of respondents (70%) say there is none, and of the 30% who say there is, 21% say it is not satisfactory (Figure 5.11 and Table 5.16).

Fig.5.11
Does On the Job Training exist in Your Court? (N=152)

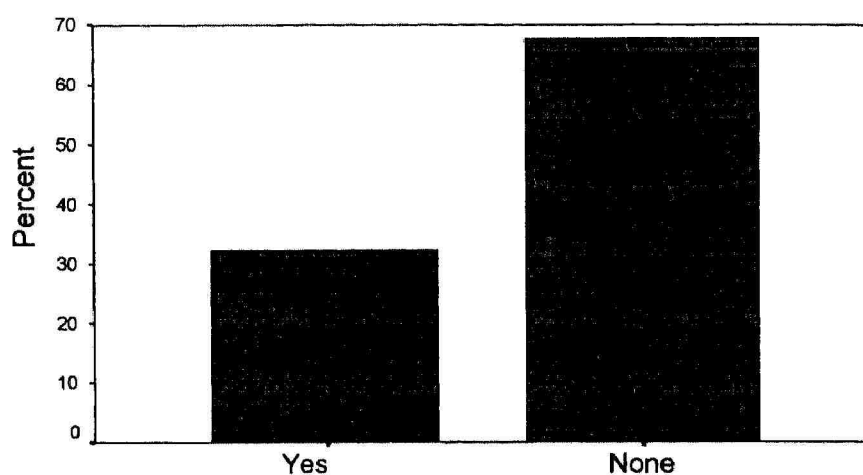


Table 5.16
Assessment of On-the-Job Training (N=152)

	Frequency	Percent	Cumulative Percent
Satisfactory	17	11.1	11.1
Unsatisfactory	21	13.8	24.9
Very unsatisfactory	11	7.3	32.2
Not relevant	103	67.8	100.0
Total	152	100.0	

The interpreters who were interviewed informed the researcher that not only are there no systematic arrangements for on the job training but some of their senior colleagues argue, ‘Just as I have learned through trial and error, so must you’. The researcher’s own observations confirm that there is no on the job training. There are no arrangements for interpreting or translation practice and interpreters have no time between trials to read or discuss with colleagues.

This raises again the issue of the quality of information communicated through the untrained interpreter and the implications such 'evidence' has for justice (see the extracts from interviews 26 and 27 below).

(26) ...interpreters, from what I know, are not given any training as such. They just sit and watch, sort of on-the-job training... On-the-job training... they teach them the wrong things...

Senior High Court Judge
Kuala Lumpur (2001)

(27) I don't think they even have dictionaries in front of them when they translate, at least a legal dictionary, say English-Malay, or Tamil-Malay, I hardly see any of them with any guidebook to translate [sic].

Training Officer
ILKAP (1999)

5.5.3 The Quality of Interpreters

The issue of training is closely related to quality. Lack of training results in faulty interpreting and the lack of access to principles of good practice or ethics compounds the situation. Concern is often expressed about the quality of the interpreters during interviews but, to an item in the questionnaire on the quality of interpreting in the courts, an impressive 95% considered the interpreters to be efficient and reliable.

It is difficult to assess the value of this apparently overwhelming endorsement of the proficiency of interpreters by those who employ and work with them. The question has to be asked 'What are the interpreters being judged positively as 'efficient' and 'reliable' in? There are no quality assurance systems

in place which permit an objective judgement to be made and, in any case, the respondents are reacting to notions of reliability and efficiency which are extremely difficult to relate to their roles as bilingual intermediaries. It may well be, given the multiple roles played by the interpreter, that what is being judged and approved here is not interpreting at all but the administrative and clerical functions performed by the interpreter. The passing of departmental examinations in translation seems to be regarded as adequate quality assurance.

Table 5.17
Respondents' Assessment of Interpreters' Performance (N=152)

	Frequency	Percent	Cumulative Percent
Efficient & reliable	145	95.4	95.4
No opinion	7	4.6	100.0
Total	152	100.0	

Freelance interpreters are also employed on the basis of paper qualifications or by virtue of being a member of a foreign Embassy or University Department. According to the Registrar, there is no form of assessment carried out before they are employed, other than a short conversation with the witness or accused before the formal session begins to check mutual comprehension of the language spoken, and no form of monitoring to ensure that they are providing the service they claim to be providing.

However, although 19% reported having witnessed lack of impartiality, it is for the most part, just assumed that staff and freelance interpreters are impartial. There is no policy so far and no checks are carried out to discover if an interpreter

has an interest in the case e.g. if (s)he is related to the accused/witness or stands to gain from the outcome of the trial. The issue is central to any Code of Ethics for interpreters and the fact that no attempt is made to discover potential conflicts of interest is certainly a matter of concern.

Asked about the incidence of retrial caused by faulty interpreting, although 70% reported that they had never experienced such an instance, 5% do report retrials. However, 25% provide no information at all on this issue. The figures for appeals resulting from faulty interpreting are essentially the same: 72% report none, 1% know of appeals, 27% provide no information (Table 5.18).

It would appear, then, that if there was faulty interpreting on the part of court interpreters, this tends not to be grounds for retrial or for appeal. Reports in the Malayan Law Journal and the Singapore Law Journal bear this out. What has been questioned and found acceptable as justifiable grounds for appeal was the quality of interpreting performed by police personnel, when giving the caution statement, and during investigation by inspectors (Appendix J provides an example).

Table 5.18
Occurrence of Inaccurate Interpreting (N=152)

Questions	None (%)	Yes (%)	No information given (%)	Total (%)
Has there been faulty interpreting leading to retrial?	105(69)	7(5)	40(26)	152(100)
Has there been faulty interpreting leading to appeal?	109(72)	2(1)	41(27)	152(100)

In spite of the responses, which seem to demonstrate a satisfactory level of interpreter competence, a number of interviewees do express concern:

(28) ...here during their training, you can see the problems, you get scared really, because in a few instances when they were translating (sic) suddenly Mr Rama [one of the trainers] says, "Oh, now, if this is the way you're going to do it in the courts, you are translating, they are translating, the wrong thing altogether," [because] at the time they were translating from Tamil into Malay. He's the only one who can understand it and then, we realise, how dangerous things can be...

Director General of ILKAP
Kuala Lumpur (2000)

A former senior interpreter has the following to say about the lack of language proficiency and makes very clear why it is so difficult to acquire and sustain:

(29) It can be a torture sometimes, lawyers can accuse you of so many things. Never mind that, but we have bosses who sit on the Bench, who embarrass the interpreters. Take them to task for some little errors in English. Come on, English is not my mother tongue. I studied it for 12 years, I use that language to earn my daily bread for 36 years, still even today, I'm sure I'm making a lot of mistakes.

Former senior interpreter
Kuala Lumpur (2000)

The interpreters themselves however, are very self-critical on the issue of quality. The figure (5.12) below shows that over 60% admit that they fall short of doing an adequate job as interpreters. Even those who have been in the service between 16 to 20 years feel the same way. There is however, a sizeable minority who does not agree (25%), and 12% are noncommittal.

5.5.4 Professional Status for Interpreters

Judges and Registrars were asked their opinions on professionalisation of court interpreting. Nearly 80% expressed agreement that interpreters should be professionals, with 10% disagreeing and another 10% having no opinion.

A set of criteria was given for the definition of professionalisation (Table 5.19). Again there is a high degree of consensus as to what professionalisation entails. Respondents feel that interpreters should have higher entry qualifications than the current school leaving certificate; that they must have professional training; and that there must be an appropriate salary scheme and recognition and encouragement for expertise in languages.

Table 5.19
Views on Terms of Professionalisation (N=152)

Propositions	Strongly agree (%)	Agree (%)	No opinion (%)	Disagree (%)	Strongly disagree (%)	Total (%)
Increased entry qualifications	51 (34)	62(41)	25(16)	11(7)	3(2)	152(100)
Professional training	78(51)	64(42)	19(7)	-	-	152(100)
Better salary scheme	71(47)	64(42)	11(7)	6(4)	-	152(100)
Allowances for each language proficiency	73(48)	69(45)	9(6)	-	1(1)	152(100)

As evident from the responses, there is overwhelming agreement on what is required for the professionalisation of interpreting and there is a smaller number than usual who have no opinion on the matter.

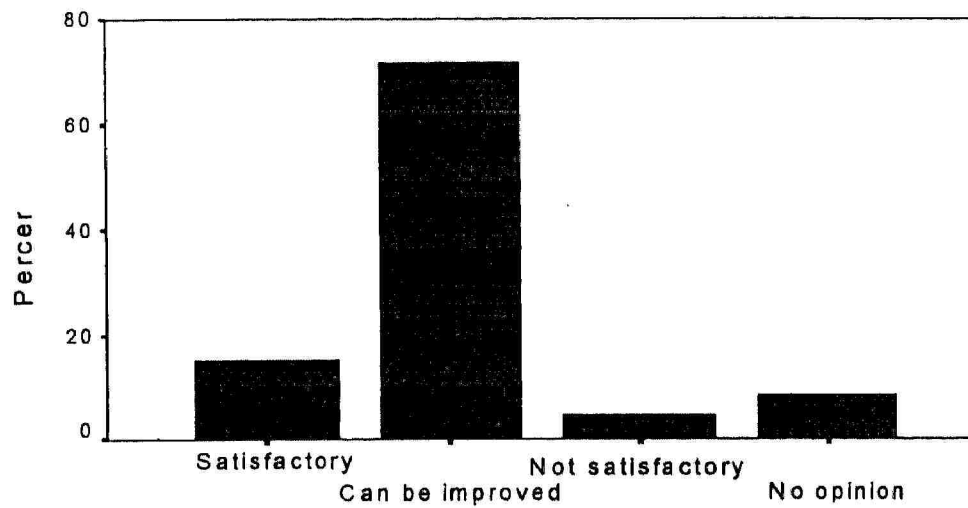
5.6 Interpreters' Remuneration

Higher level skills, education and training entails higher level terms of rewards, just as lawyers and doctors would expect in their own profession. An appropriate pay schedule is therefore imperative to match higher skills and qualification. This is however, not the reality in the system.

5.6.1 Salary Scheme

Apart from the matter of role and duties of interpreters, the system of remuneration provided in respect of the duties they have to perform has been a continuing grievance. The PSD, being a civil service department, is merely following a prescribed formula for the salary scheme in accordance with the entry qualifications of the interpreter. The post has been pitched at a level which requires no more than a school certificate and no additional qualification is deemed necessary for the job. As a result, what is prescribed is similar across the board for interpreters and clerks alike, irrespective of the duties and the role expected of the job.

Fig 5.13
Views on Present Interpreter Scheme (N=152)



On this issue, 90% respondents are of the view that interpreters deserve a better salary scheme. Of these, 50% expressed their agreement strongly. To another question on their opinion of the present scheme, although more than 70% stated that it can be improved but 18% appear to be unaware of the problems, despite the widespread dissatisfaction articulated by the interpreters, and stated that it is satisfactory as it is. Interviews with lawyers and judges yielded the following views:

(30) ...that's all got to do with *gaji*, salary, you don't pay well enough, people will leave. You can only do so much in terms of national service, and for king and country, but they have to look after themselves too. They don't get a good deal, actually, and that's why people are leaving. You can't attract new interpreters.

Senior lawyer
Kuala Lumpur (2001)

(31) Tension, work pressure, work load, low salary, every interpreter is doing a full time clerk's job and interpreter's job. Whereas the clerk is also doing a full time clerical job, paid the same salary, whereas the interpreter is doing a dual job, that as a full time clerk as well as interpreter.

Retired Senior Assistant Registrar
Kuala Lumpur (1999)

(32) It is not commensurate with the nature of their duties and the standard expected of them in the performance of their duties ... if they increase the pay of the interpreters then there might be an impact. The implications are far and widespread but then they must give priority to the interpreter service...

Senior High Court Judge
Shah Alam (2001)

On the question of whether the scheme should be a separate one from the others under the PSD for the same qualifications, respondents are divided, with half agreeing, 20% not sure and 20% disagreeing. However, on the question of whether the scheme should encourage the interpreters to remain in their job, agreement is almost 100% that it should. This response is indicative of the contradictory nature of the problem and the lack of thought on the part of the majority of the interpreters' superiors that has led to the present situation.

Table 5.20
Opinion on Separate Scheme of Service for Interpreters (N=152)

	Frequency	Percent	Cumulative Percent
Strongly agree	42	27.6	27.6
Agree	47	30.9	58.6
No opinion	30	19.7	78.3
Disagree	30	19.7	98.0
Strongly disagree	3	2.0	100.0
Total	152	100.0	

If the scheme remains as it is, interpreters will continue to receive the same unsatisfactory remuneration, and will, inevitably, leave the service. On the other hand if the interpreter scheme is taken out of its present setting and a new scheme devised for the interpreters, there will be a knock-on effect throughout the whole remuneration system which will require a total reorganisation by the PSD. It remains to be seen whether the PSD is prepared for such radical change.

On the issue of encouraging interpreters to remain in the service, there is also a consensus among Judges, Registrars and Interpreters. The views expressed through the questionnaire (Figure 5.21) as well as during interviews indicate agreement that interpreters in Malaysian courts should receive higher remuneration for the work that they do. Several feel that the scheme of service should be one that allows professional career development.

Table 5.21
Scheme Must Encourage Interpreters to Remain (N=152)

	Frequency	Percent	Cumulative Percent
Strongly agree	78	51.3	51.3
Agree	61	40.1	91.4
No opinion	9	5.9	97.4
Disagree	4	2.6	100.0
Total	152	100.0	

The interpreters concur with the judicial officers that interpreters should be encouraged to remain in the service. As Table 5.22 shows, almost 100% interpreters expressed agreement that their salary scheme must be improved

indicating widespread dissatisfaction over the way they are rewarded in the service.

Table 5.22
Interpreters' Salary Scheme Must be Improved (N=471)

	Frequency	Percent	Cumulative Percent
Strongly agree	318	67.5	67.5
Agree	127	27.0	94.5
Non-committal	24	5.1	99.6
Disagree	2	.4	100.0
Total	471	100.0	

Document review on the interpreter salary scheme shows that a number of revisions have been made in the past but that a satisfactory answer is yet to be discovered by the PSD. What is certain is that, in order for the scheme to encourage court interpreters to remain in the job, there must be progressive upward mobility involving greater professional development in the interpreting field. Otherwise, the service will continue losing good and talented interpreters as they are promoted out of the interpreter scheme or resign to be freelance legal interpreters or take up more lucrative posts in the media and advertising, as revealed by many who were interviewed, to be subtitlers and translators instead.

In short, interpreters have been petitioning their employers for decades but no improvements to their service have been made. When the Chief Judge of Malaya opened the Interpreters Union AGM in September 2001 (to which the researcher was invited to), he promised that he would personally look into the grievances of the interpreters. In the question and answer session that followed, interpreters from all over the country described (often very emotionally) the kind

of treatment they receive from their respective heads of department, the amount of work they do, the inadequacy of the allowances and salary they receive, the lack of training and the inefficiency of administration in terms of employment and deployment of staff. What will ensue from this meeting has yet to be seen.

5.6.2 Payment of Service in Other Courts

Full-time interpreters are frequently directed by the Registrar's Office to perform in other courts and this is considered part of their normal duties. It is only if they are sent away from their own district and are required to stay over night that they are paid a travelling and subsistence allowance. Although the table below indicates payment is made for work outside their own courts, respondents who say 'yes' clarified that the payment is for travelling and lodging only. As stated earlier, it is the Chinese interpreters who opted to remain in the service who would be sent to cover courts without Chinese interpreters.

Table 5.23
Payment of Interpreters from Other Courts (N=152)

	Frequency	Percent	Cumulative Percent
Yes	66	43.4	43.4
No	86	56.6	100.0
Total	152	100.0	

5.6.3 Payment of Freelance Interpreters

Freelance interpreters from other government departments (including language departments in local universities) requested by the Registrar's Office to

interpret in courts are paid a fixed amount of RM25.00 *per diem* (equivalent to \$US8.00) plus a travelling allowance. Part-time university teaching is paid at the rate of RM100.00 to RM200.00 *per hour*. There is no agreed standard payment for interpreters obtained from Embassies, so the judiciary has to comply with the charges demanded. In general, the fees quoted are in the range of RM300.00 to RM 500.00 *per diem*.

As for the lawyers who engage freelance interpreters for their clients (in civil cases), the fees vary between RM150.00 to RM500.00 *per diem*. For this reason, several interpreters, especially Chinese, have quit their job with the civil service and become freelancers.

(33) ...if I've got a case where I need the services of a Chinese interpreter the first thing I've got to find out from the court is whether they have got somebody for that day. If they haven't, I have to look for my own interpreter. Civil cases ... and they are not cheap. They are charging RM300.00 to 500.00 a day...

Senior lawyer
Kuala Lumpur (2001)

(34) No agreed rate...in fact the closest we've got was to get a list of these interpreters who are freelancing. Give us the names and details, so that we can put them on our websites, and tell our members to look and read, that this interpreter, so and so, is available. That's about the closest, we have no say in their rates. I suppose there's supply and demand and some interpreters are known to be better, in the sense they know the court procedures better, they'd really get on with it straight away, some are not that conversant...

Bar Council President,
Kuala Lumpur

In view of what members of the Bar Council are willing to pay, judged from the above, it is no surprise that many interpreters resigned to do freelance work rather than be part of the civil service.

5.7 Assessment of Interpreters

The annual assessment, which is the basis for salary increment, and promotion to the next level in the service, is carried out by the Deputy Registrars. A question was asked if the respondents think this is appropriate. The majority feel that judges should do the assessment and 70% of judges agree that they should be involved in the assessment exercise. In an open-ended question, the judges wrote that they should assess interpreter performance as they work directly with them most of the time. There is a further argument in support of such a suggestion; Judges are not only assisted daily by the interpreters but are also profoundly sensitive to language. Registrars, in contrast, are in less frequent contact and are more concerned with administration than communication.

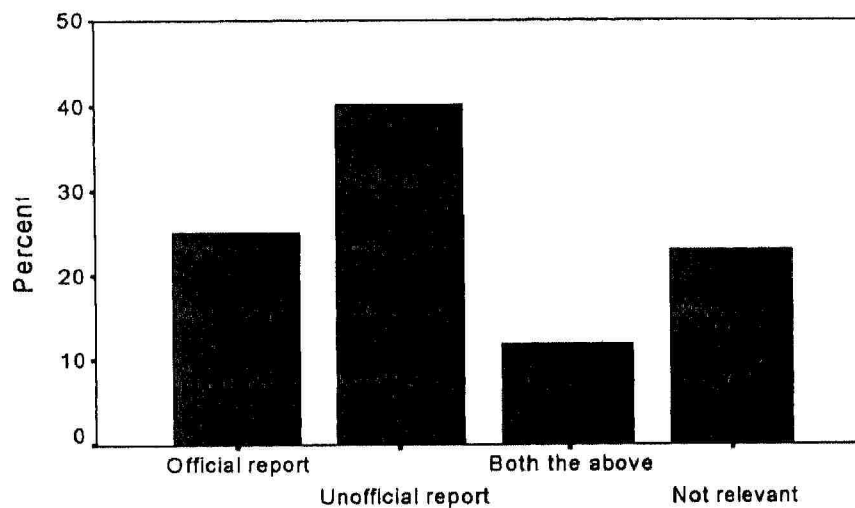
Table 5.24
The Responsibility of Assessing Interpreters' Performance (N=152)

	Frequency	Percentage	Cumulative Percent
Registrar	32	21.1	21.1
Judge	111	73.0	94.1
Both	9	5.9	100.0
Total	152	100.0	

The objectivity of the assessment is also in question. Although 76% say they do obtain feedback on interpreter performance only 25% say that this comes

from official sources, 40% say it is unofficial and 12% report that their sources are both formal and informal (Figure 5.14). There is a danger that assessment is being based on insufficient and potentially unreliable information.

Fig. 5.14 Method of Obtaining Feedback (N=152)



As indicated in the review (Chapter 2.8), interpreters are expected to sit for examinations for promotion (from L7 to L6), and language proficiency allowances. However, interpreters reported that no syllabuses are provided and the examinations contain no interpreting component. Linguistic competence and translation are tested, and spoken language is assessed in a one-to-one oral interview. Furthermore, the examination papers which qualify them for further promotion from L6 to L5 contain questions which require an intimate knowledge of law pertaining to court practice (a sample examination paper can be found in Appendix K). The interpreters stated that they have no information on what is the level required in this examination. Many senior interpreters felt that they have

done well in the exam but were later informed that they did not make the grade and thus have to remain in the existing level for years. The unavailability of a syllabus and the lack of a procedure for vetting papers before they are taken or of any system of external moderation or verification make reliable and objective quality assurance impossible. Clearly this is one area in the interpreting service that needs looking into seriously.

On the question of improving the service in future, the interpreters were mostly in agreement on how the authorities could arrest the deterioration of situation and improve the service:

Table 5.25
Opinions on How the Service could be Improved (N=471)

Changes Recommended	Strongly Agree (%)	Agree (%)	Non-Committal (%)	Disagree (%)	Strongly Disagree (%)
Training	314 (67)	125 (26)	20 (4)	8 (2)	4 (0.8)
Increase Salary	318 (67.5)	127 (27)	24 (5.1)	2 (0.4)	0 (0)
Increase Qualification	248 (53)	152 (31)	46 (10)	17 (4)	8 (2)

There was a very enthusiastic response for training, with more than 90% expressing agreement, very few disagreeing or uncommitted (4.3%). On interpreters' salaries: there was, not unexpectedly, overwhelming support (nearly 95%), with hardly any disagreeing or remaining uncommitted (4.3%). A requirement that interpreters have a recognised qualification for entry to the service, received strong support (85%) with a small number uncommitted or expressing dissent (4.3%).

5.8 National Language Policy in Courts

The final item on the questionnaire was on the use of the national language in court. All the observations made in court indicate that the national language is widely used. This can certainly be attributed to the status and corpus planning efforts by the various agents of language change in the country. However, a point needs to be mentioned that courts in East Malaysia still largely operate in English due to a different provision in the Constitution as Sabah and Sarawak became part of Malaysia only in 1963.

In three high courts and one sessions court in Peninsular and East Malaysia respectively, English was used exclusively. Senior lawyers, especially of Indian origin, are very eloquent in English and conduct their cases (almost all civil ones) in English. Judges seem very lenient on code-switching, which is evident among non-Malay lawyers who are attempting to speak in Malay. Some judges themselves code-switch extensively. The most striking aspect of the use of the national language in court is that many witnesses and accused do not speak the standard Malay but speak Bazaar Malay. Judges seem to tolerate this and record statements in standard Malay. The data obtained in the survey on the question of national language in courts suggest that Judges and Registrars do not think that it is realistic to expect all Malaysians to be proficient in the national language or for the use of the national language to be required, without reservation, of all who come into contact with the legal system. There is close to 100% agreement on all of the following propositions:

- The reality is that not all Malaysians are proficient in Malay and can be expected to participate in court in Malay.
- Visitors, including immigrants, are not expected to be proficient in Malay and participate in court in Malay.
- A court of justice in a multilingual and multiethnic society will always have a need for interpreters.
- Court interpreters must be given systematic professional training, even if the frequency of interpreting becomes less due to increasing use of the national language.

Observations in court, suggest that there are four categories of Malay speakers:

1. fluent speakers – these include the prosecutors, defence counsel, witnesses and judges, who speak in Malay throughout a trial;
2. code-switching speakers – these are mainly judges and witnesses, who regularly switch between Malay and English in the course of their communication with each other;
3. non-Malay speakers – this group includes senior lawyers, judges and foreigners who, although understanding Malay, would rather not speak it, because they are unsure that they can handle the legal arguments convincingly in the language;
4. Bazaar Malay speakers – these are, almost exclusively, the working class, Malaysian and immigrant, or Malaysians educated mainly in vernacular languages i.e. the older generation who had their education prior to 1970¹⁹.

The first two categories present no particular problems in court: Malay is the official language of trial and record and switching between Malay and English is a common occurrence in Malaysian communication. The last two, however, may potentially face problems or be the cause of them.

Judges seem to be at liberty to choose to speak in either English or Malay or to code-switch between the two but prosecutors, by virtue of being state employees, are required to speak in the national language, whether they are confident or effective or not. Defence counsel wishing to use English must seek the Court's permission to do so but, following the stern directive on the use of the national language (1990), increasingly refrain from asking.

Witnesses and accused are expected to inform the interpreter in charge of the particular court if they are not proficient in the language. In practice, in almost all cases involving non-Malay speakers, the interpreter asks whether they can at least understand Malay rather than if they need an interpreter. In the four months of observation, the researcher came across only four accused who stated that they would like an interpreter. Two of them were illegal immigrants from the Philippines, (who were provided with interpreter fluent in their Suluk dialect) and two were Chinese Malaysians who were told that if they could understand a little, their trial should go on, and it did.

The views of a number of individuals are given below as a comparison and reinforcement of the questionnaire responses:

(34) ...we're not very particular that you must speak good Malay, *macam kita punya* [like our] investigation, as long as you speak... *katakan*, [let's say] a Chinese, if he can speak *Bahasa Malaysia* [Malay] we will record the statement in *Bahasa Malaysia*, because [sic] he understands, the most important thing is he understands.

Deputy Superintendent of Police
Magistrate's Court, Kuala Lumpur (2001)

(35) Well, the *Bahasa Malaysia*, national language, has been the language of the courts now for many years and the usage of the language is really only a problem with regard to witnesses, and to the more senior lawyers. Why I say this, under our system, the rule, allows the witnesses to speak in any language he chooses, so if you have a Chinese guy coming along, although he is conversant in BM, always converse in English. He said I want to speak in Cantonese because I feel best [sic]. And this is a fact, you know, you can't deprive him of his right, otherwise...

Senior Lawyer
Kuala Lumpur (2001)

(36) There are cases in which the court insisted witnesses who are not conversant in BM to speak in BM. I think that's wrong because we are now talking about evidence, we are talking about justice, and it cannot be compromised simply because you want to give full force to the national policy of using BM because this guy might have said something [but by] which he meant something else, it might not be the truth or the truth might be a little diluted there, you know.

Bar Council President
Kuala Lumpur (2001)

(37) While I can manage, say a case in cross examination, or examination, asking, one question one answer, one question one answer, I can manage that, no difficulties, but if you ask me to make a full submission in Bahasa, linking all the facts together, put the law, I would have difficulties. I have to really pause and think and choose my words. I would not be fluent enough but in the High Courts and the Courts of Appeal and in the Federal Court, usually if you are really stuck as a lawyer, if you ask the judge, especially if you've got grey hair or no hair, you ask for permission and chances are you'll be allowed, no problems there, especially if the judge himself is not so conversant...

Senior lawyer,
Kuala Lumpur (2001)

(38) ...that is a bit of a problem, you see; the proceeding's in Malay, in the sense witnesses give evidence in Malay, but the legal arguments quite often are in English. That I find, even Malay lawyers, they prefer to argue in English, because legal arguments, sometimes, the meaning of a word, is an issue quite difficult *lah* [sic]. I think, I know even Malay judges, they write their judgement in English, the older judges, so it is very hard. No, language is an art, like, writing a judgement is like writing a book. I think, you must be an expert in language. I'm fully English trained, sometimes [even] to put things in English, I've got to think for a long time, for the flow, how best to explain it [sic].

Senior High Court Judge
Kuala Lumpur (2001)

The views above indicate that although the national language policy is recognised, accepted and used in most cases, whenever the interest of justice is involved, English is still used. Thus, among the legal and judicial official, a certain degree of flexibility exists.

The table in the following page shows their perceptions on the strict requirement of the national language in court.

Table 5.26
Opinion on National Language Policy (N=152)

Propositions	Strongly Agree (%)	Agree (%)	No Opinion (%)	Disagree (%)	Strongly Disagree (%)	Total (%)
Not all Malaysians are proficient in the national language	58(38)	88(57.9)	1(0.7)	4(2.6)	1(0.7)	152 (100)
Visitor/immigrant to this country does not necessarily speak or understand the national language	65(42.8)	78(51.3)	4(2.6)	5(3.3)	-	152 (100)
Court interpreter is a must in a multilingual multi-ethnic society	90(59.1)	59(39)	2(1.3)	1(0.7)	-	152 (100)
Court interpreter training is essential despite increasing use of national language	70(46)	75(49.3)	4(2.6)	3(2.1)	-	152 (100)
Right to justice is synonymous with right to a competent interpreter	70(46)	70(46)	7(4.6)	4(2.6)	1(0.7)	152 (100)

(39) A: Except that the people who come here to give evidence, or the accused persons, they use *bahasa pasar lah*, [Bazaar Malay] you know broken *pasar* [market] Malay, so when standard Malay is used, they cannot understand.

Q: So what do you do in that case, in the courts, if they use *bahasa pasar* [market language or bazaar Malay].

A: I'd try to tell the magistrate, whoever the interpreter is there, she has to use the *pasar* [Bazaar] Malay *lah*, which, maybe, they are not familiar with...

Prosecuting Office
Magistrate's Court Kuala Lumpur (2001)

5.9 Feedback from Role Players

The findings and analysis of all data above and including researchers account of courtroom practice from the observation were summarised and presented in an interim report to the Federal Court.

In keeping with the SSM requirement to ‘give the process away to people in the situation’ (Checkland op cit. A9), the researcher met and discussed the findings with (a) the Director General of ILKAP, (b) the interpreters; represented by the committee of the Interpreters Union, (c) a judge who is in charge of interpreters affairs in Kuala Lumpur, (d) representative of the Chief Judge, (e) the Registrar of the High Court of Malaya and (f) the Special Assistant to the Director (Organisational Development) in the Public Services Department.

All the key individuals above are in agreement with the findings, i.e. on the role of interpreters expected in the courtroom, on the confusion in the practice of interpreting, on the reasons for the shortage of interpreters, the backlog of cases, training and remuneration, on the use of national language in courts and the need for interpreters in a multicultural and multilingual society.

There are positive signs that, it is hoped, will materialise into positive action. All are concerned with steps to improve the service including improving the scheme of remuneration of the interpreters and both the Chief Judge and the Registrar of the High Court of Malaya have expressed an intention to pursue the

discussion on the findings of the research, in order to find a solution to the situation.

However, the Registrar of the High Court of Malaya (the chief administrator for West Malaysia) was still of the opinion that interpreters need to perform clerical duties because they 'do not do much interpreting'. On the question of separating the interpreting and clerical functions into two distinct posts, the Registrar was unwilling to commit himself, on the grounds that this was a policy matter on which he was not authorised to comment, since such policy matters have implications for remuneration, training and restructuring.

The Assistant Director (Organisational Development) in the PSD, in contrast, was willing to discuss policy but made the significant point that the impetus for change should come not from the PSD whose responsibility is the implementation of policy but from the interested department i.e. the Judicial Department. He expressed the view that his department is willing to consider and open to discussions on any proposal for change, but has yet to receive a comprehensive proposal to work on.

5.10 Conclusion

The key issues which emerge from the analysis of the data presented in this chapter range from the practical concerns in the Malaysian court (the shortage of interpreters and the reasons for it) to the perceptual issues related to the role and duties of the interpreters, their training and remuneration and more

fundamental conceptions of the nature of interpreting and the place of the interpreter in the judicial process and the reality of actual language use in Malaysian courts.

It is significant that the judicial officers and interpreters are agreed, in general terms, on the need for training, a change in the scheme of service and remuneration, the professionalisation of interpreting and express willingness to explore further how such changes may be brought about.

It is equally significant that there is no consensus on how this might be done and disagreement (sometimes extreme) between the two groups on the nature of interpreting and training and how it might be provided, how the scheme of service and remuneration might be changed without disrupting the whole PSD system and how professionalisation might be achieved. Disagreement is strongest over the fundamental issues of the role of the interpreter and the nature of interpreting itself.