CHAPTER 6
DISCUSSION

6.1 Introduction

Although this research is focused on the provision of court interpreting services in Malaysia, it became clear during the investigation of the problems facing the Malaysian system that almost all of the attitudes, values, issues and difficulties found in this country are paralleled elsewhere and, more often than not, are found in the courts world wide (see Miguelez 1999; Moeketsi 1999; Mikkelson 1999; Morris 1994 inter alia). Again and again, the same issues arise: the specification of the role of the interpreter (active or passive; impartial servant of the court or committed advocate for one party); the content of interpreting (whole or partial; context-free semantic sense or context-sensitive pragmatic, communicative value); the manner of interpreting (free or literal; consecutive or simultaneous); the extent to which training is required and provided; professionalisation and accreditation; pay and conditions of service; and the impact of national language policy on the assurance of linguistic rights. However, the Malaysian system differs from those in other countries (even Commonwealth nations with a shared Common Law origin) in several respects which have emerged in the course of the research. This chapter discusses these features and the extent to which the national language policy has impacted on the court interpreting service in the country.

6.2 Unique Features of the Malaysian System

The Malaysian system is unique in two very striking respects. Firstly, the Bench takes down verbatim notes of proceedings; secondly, apart from interpreting, which in most other countries is all that is required of interpreters, Malaysian interpreters perform two further and mutually incompatible sets of duties: (1) what is considered, in the British system, to be those of the Clerk of the Court (i.e. a neutral servant of the court) and (2) adviser to the unrepresented accused (i.e. an advocacy role performed on behalf of the defence). In other countries, for an individual who lacked formal, professional legal qualifications to attempt to play either role (let alone both during the same trial) would be totally unacceptable both to the legal profession itself and to the interpreters who would see such a practice as breaching their code of ethics.

6.2.1 Note Taking by the Bench

For the purpose of the court's record, all utterances in a trial have to be in verbatim notes. These notes have to be in complete sentences and fragments are unacceptable. In other countries, there is usually a court stenographer or clerk who would be recording the proceedings using a mechanical device. In the Malaysian system, magistrates and judges themselves take down the verbatim notes. This practice exists, according to a senior assistant registrar, in order to ensure accuracy. Notes taken by secretaries have been known to be unreliable and, although a mechanical solution to the problem has been attempted, it was quickly

abandoned as unusable because staff did not know how to use it, were not trained to use it, and in any case training in its use was not available (Chapter 1.7.2).

The practice has two effects, one, it does indeed ensure accuracy especially when interpreting is involved, and here lies the strength of the system. The Bench has to pay particular attention to everything said by both parties as well as to the version given by the interpreter. He has been observed to confirm the information by asking the parties concerned to repeat what was said. He is alert to responses which may be incongruous, and also alert to witnesses who may be being evasive. In this sense, the Malaysian system provides some assurance of accuracy through the judge's experience and care cancelling out mistakes made by the untrained interpreter.

The other implication is that court proceedings become very protracted, with lawyers, prosecutors and witnesses having to slow down or break their statements up in order to give time for the judge to write everything down. Given such a scenario, interpreting further slows down the proceedings. This tends to weaken the impact of examination and cross-examination by counsel and prosecutors and, at times, make the Bench impatient with lengthy stretches of conversation between witnesses or defendants and interpreters.

6.2.2 The Interpreter's Role as Clerk of the Court

The following question was put by the researcher to both judges and interpreters: (a) whose duty is it to read and explain the charge and its

consequences and, when a *prima facie* case has been made, (b) whose duty is it to present the accused with the three alternatives?

Judges, lawyers, registrars and interpreters all provide the same answer: It is normally the responsibility of the magistrate to explain the nature and consequences of a plea and, where language problems exist, this is done *through* an interpreter. However, due to the large number of cases involved, this duty has been transferred to the interpreter. Although new interpreters may not be asked to do this or, if they are, will be assisted by the magistrate, experienced interpreters have been carrying this responsibility for years and it has now become an accepted part of the job.

We have seen that this practice has evolved, over the years, from an *ad hoc* measure to deal with the increasing number of cases, into an accepted and permanent feature of the system. A typical response comes from a sessions court judge interviewed in Kota Kinabalu who admitted she was not aware that the interpreter is not supposed to carry out this function and that she had always expected the interpreter to do so and would assist if there was a problem. A senior interpreter who has had experience in both civil and criminal high courts in Kuala Lumpur, in fact defends the practice which he considers to be acceptable and in no way problematic, comparing the interpreter to a paramedic in a hospital who has seen countless times how a certain function is carried out by the doctor and, as a result, is skilful at it himself.

It has to be said that neither position justifies the practice. The paramedical analogy breaks down, since the paramedic is a qualified individual who carries out work *delegated* by the doctor. The untrained hospital attendant who attempted to provide medical treatment would not only put the patient's health (perhaps even life) at risk but also leave himself, the doctor and the hospital facing potential charges of malpractice and litigation and claims for compensation. The interpreter, acting as Clerk of the Court is, like the hospital attendant, untrained.

Further, the judge and the interpreter both ignore the fact that the Malaysian interpreter enters the service as a school leaver and is not required to have any legal qualification to execute functions which can directly influence the outcome of the trial. The explanation of the nature and consequences of the charge can drastically affect the understanding of the accused and the way (s)he pleads to it and this, in turn, has implications for the way a defence is prepared.

Ironically, in Malaysia, although passing the promotion examination (5.6.3 and Appendix K) makes the interpreter legally qualified, it also takes him/her out of the service into the post of an assistant registrar who oversees the administration of the lower courts.

This is one of the crucial findings of this research. The boundary line between interpreter and legal adviser is so unclear and the fusion of the two functions is so entrenched that no one sees that there is any anomaly involved. Nor is it easy for anyone to question the validity of the practice, since the interpreter is a court officer and therefore protected by the court.

If the nature and consequences of the charge are inadequately explained in a language or dialect that the Bench does not understand, and the uninstructed or incorrectly instructed accused pleads guilty and does so without full understanding, and the plea is accepted and recorded, (s)he has waived the right to trial and, potentially, to justice.

6.2.3 The Interpreter's Advocacy Role

When the defendant is unrepresented, the normal practice (according to senior interpreters) is that the interpreter assists him/her to reformulate answers in ways that are acceptable to the court (Chapter 2 and data analysis in Chapter 5). However, while these practices may help the smooth running of the trial, they can lead to problems when the Bench and interpreter disagree on acceptable practice.

The degree to which the Bench accepts these practices varies from individual to individual. Some magistrates, especially junior ones who depend on senior and knowledgeable interpreters, see the interpreter using his discretion in this way as helping the court to be more efficient and to save time. Hence, if interpreters are not allowed to use their discretion during interpreting, they may load the court with unnecessary information which will not only be time-consuming but also tax the patience of the Bench.

Others, especially the more senior judges, may see this use of discretion as an example of usurping the role of the judge. Some magistrates object and insist that the interpreter play the conduit role, repeating everything the witness says

without adding, omitting, summarising, editing or changing anything. In the eyes of the Bench, 'interpretation' is the prerogative of the Judiciary and the interpreter's role cannot and must not involve this.

6.3 A Clash of Perceptions

There is a genuine clash of perceptions involved here. The interpreter processes meaning in context, since words and phrases in one language never perfectly match those in another language. Furthermore, the interpreter shares the same culture with the witness, and understands better than anyone else in the court what the witness actually meant. The Bench wants to know verbatim what is said through the interpreter, as this is the only way (s)he can gauge the credibility, socio-economic, educational and cultural background of the witness, on which to base his judgement. The CPC requires that the transcript which represents the record of the proceedings be made verbatim, and in cases where the interpreter is the mediator, what is rendered by the interpreter is the record. This is the reason why the Bench insists that interpreter must not 'interpret', but 'translate'. Yet, at the same time, judges do get annoyed if the witness presents a long version of events that do not directly address the question put. Contrary to the general believe that long accounts are given by the less educated members of the public, from personal observation, professionals too do the same. In most cases, these are those who are ignorant of courtroom language, the way the court works and the way records are made by the Bench.

The actual position of the Malaysian interpreter remains a most difficult one to establish, since in one aspect, (s)he is given the leeway to act as adviser and advocate and, in doing so, may allow sentiments of sympathy to bias their judgement. Interpreters can even become involved (as several intimated to the researcher) in pacifying and counselling witnesses who have become emotional in court. At the same time, (s)he is required to be absolutely impartial and convey to the court literally what is said, even though (s)he realises that this was not what the witness intended to mean. No wonder in a situation of such stress and conflict interpreters themselves (as reported personally to the researcher) can become emotionally disturbed and seek counselling and advice from their superiors.

In short, the Court's expressed ideal interpreter is one who is neutral and restricts his role to 'translating' the context free semantic meaning of utterances, ideally word for word. At the same time, the Bench also requires that everything be *relevant* (which implies reference to context in order to render context sensitive pragmatic meaning) in addition to being *literal* (which implies rendering context-free semantic meaning) and that the interpreter should, at certain stages in the trial, take on an advocacy role when (s)he is required to be a cultural expert.

The interpreter's concept of the role of the interpreter, in sharp contrast, rejects the passive mechanistic images used by the legal profession and replaces them with ones which are more active and human: a language mediator, a professional service provider, an expert witness, a bicultural, bilingual professional or, even, an advocate. The strong views presented by senior

interpreters and former senior interpreters documented in Chapter 5 are evidence of this perspective.

The interpreter's ideal interpreter would be one who is free to select, from the range of available translations for an utterance, the one that is most appropriate. This requires the recognition of context and the need to expand and contract utterances as necessary. In the advocacy role, the interpreter would be free to consult and advise and would be under no obligation to interpret all that was said (for example, profanity), only the agreed utterances produced by the defendant.

6.4 Explaining the Disparity in Perceptions

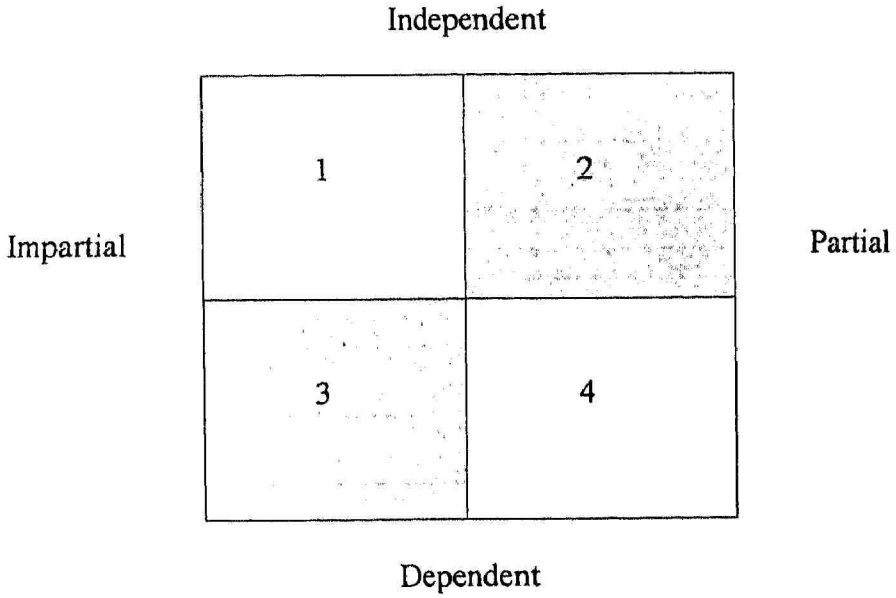
The disparity in the perceptions of the role of the interpreter when interpreting can be explained in terms of two parameters: (1) autonomy and neutrality, and (2) meaning and context. The way in which these interrelate with the rules of evidence influences the expectations of the way an interpreter will 'translate' between the languages involved. For both pairs of parameters, the relationships can be shown in the form of a 2 x 2 matrix. The two matrices will, between them, generate eight sets of combinations, several of which will be logically impossible in their extreme form and, therefore, will not actually occur.

6.4.1 Autonomy and Neutrality

Interpreters possess a degree of autonomy in their work as bilingual intermediaries and vary in the extent to which they are neutral in their relationship with the utterances they are interpreting and with the original producer of those utterances. Naturally, the terms are used to mark the extremes and the actual interpreter's autonomy and neutrality varies from system to system and from court to court.

On the autonomy parameter, at one extreme they are totally independent, free and unconstrained in the way they interpret, at the other, totally dependent on external regulation. On the neutrality parameter, at one extreme they are completely impartial, neither privileging nor discriminating between parties, at the other, completely partial, totally committed to supporting one party rather than another. Each of the four combinations (shown below as 1-4) typifies a particular perception of the interpreter's role.

Figure 6.1
Autonomy and Neutrality



Source: Developed for the thesis from soft research data

(1) Independent and Impartial

The interpreter is a professional communication facilitator who provides what (s)he considers to be the most appropriate translation of each utterance, taking into account the speaker's intention, the ongoing development of the discourse and the relationship between the knowledge and expectations of the speaker and the hearers. This will entail omissions and expansions of linguistic elements, since there is no possibility of accurate one-for-one translation, and (where necessary) linguistic compensation for extralinguistic cues (gestures, intonation) whose omission would otherwise alter the value of the intended meaning. For example, emphatic denial in English is often marked by the

intonation. The translation may have to mark this syntactically or lexically where the receiving language does not use intonation in this way.

The interpreter will be fully aware of his/her role as a servant of the court and will be scrupulously careful to avoid bias through the interpreting of utterances. The interpreter is not assisting any one party but sees his/her prime role as ensuring that communication is accurate and efficient and that what (s)he does serves the interests of justice.

(2) Independent and Partial

The interpreter is a professional communication facilitator who, like (1), provides what (s)he considers to be the most appropriate translation of each utterance. The contrast between this interpreter and the one typified in (1) is that (s)he acts as an advocate for one side or the other and manipulates the translation in ways which are to that party's advantage.

(3) Dependent and Impartial

The interpreter is a mechanical device whose role is to retransmit, without change, everything said by the original speaker. Such a device will, necessarily, be impartial, since it possesses no autonomy and makes no judgements between alternative translations.

(4) Dependent and Partial

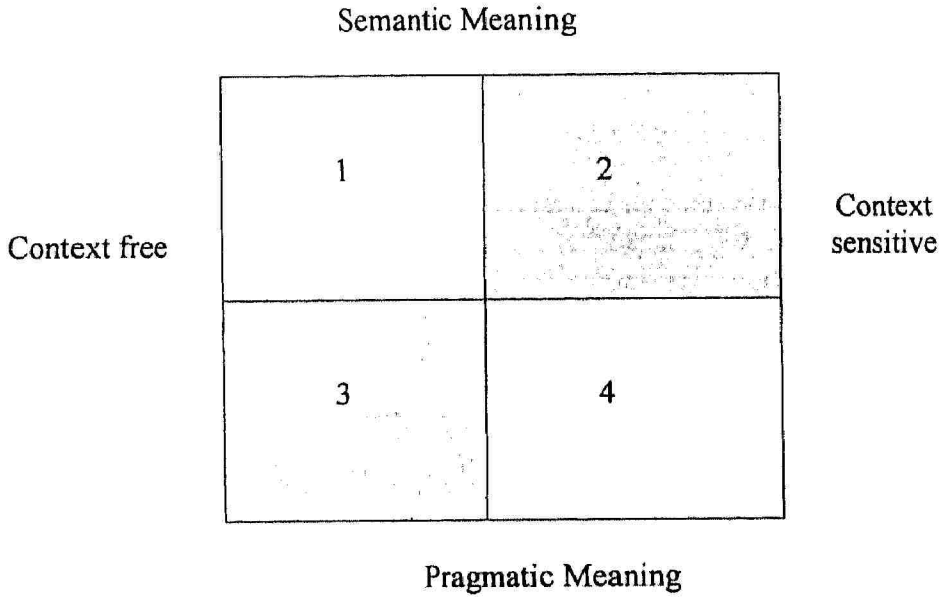
The interpreter is a mechanical device which takes no part in the process other than to retransmit everything said by the original speaker but, in contrast with the interpreter above (no 3), the lack of neutrality places this interpreter in an impossible dilemma. The aim of privileging one party rather than another requires judgement of what is to be added or omitted and that implies autonomy.

6.4.2 Meaning and Context

The second pair of parameters concerns the relationship between meaning and context which profoundly influences the style of interpreting adopted or required. In terms of meaning, the interpreter can focus on and attempt to convey semantic meaning (semantic sense) at one extreme, and at the other, pragmatic meaning (communicative value). In terms of context, the extremes are to process utterances and transmit information in a manner which includes or excludes the context.

An understanding of the underlying principles between these parameters can greatly assist an interpreter to arrive at the most appropriate approach in interpreting, and a mismatch can lead to confusion and costly mistakes (which may sometimes be hilarious and cause him or her to be ridiculed by the lawyers).

Figure 6.2
Meaning and Context



Source: Developed for the thesis from soft research data

(1) Context Free Semantic Meaning

This combination reflects the typical requirement of translating the *words* and ignoring the context in which they occur. This is the type of approach the Court favours but one which cannot occur in a natural setting. The meaning of a word depends on its context, even if language users – and even dictionary writers – believe that meaning can be context free. Even numbers or a person's name or address, which can be translated word for word or item for item, is actually context sensitive, since they are interpreted within an assumed context. The insistence on limiting interpreting to the context free semantic sense of utterances not only produces meaninglessness and irrelevance but runs counter to the process

of trial which seeks to arrive at the 'truth' by a meticulous examination of the situation in which the evidence is set.

(2) Context Sensitive Semantic Meaning

An interpreter would be faced by a dilemma if (s)he attempted to use this approach, since the combination is, in an absolute sense, impossible. Semantic meaning, by definition, is context *free* and what is typically required by the Bench in the instructions to be 'literal' and to 'translate' not 'interpret'. The attempt to adhere strictly to this combination (which, naturally, includes idioms) produces meaningless and/or irrelevant utterances.

(3) Context Free Pragmatic Meaning

An interpreter would face the same kind of dilemma as the second, since this combination, too, is impossible. Pragmatic meaning is, by definition, context *sensitive*. Context free pragmatic meaning is not pragmatic; it is semantic. Such an interpreter must resolve the conflict either by involving the context or by falling back on attempting to express semantic meaning only.

(4) Context Sensitive Pragmatic Meaning

This would be the natural connection between pragmatic meaning or communicative value and the context in which the utterance is set. Here the interpreter (like any other communicator) has to be involved in the 'interpretation'

of the utterance, recognising it as a speech act with a particular value and relevance, and producing a form in the second language which is communicatively but not formally equivalent. This practice runs counter to the normal expectations of the Bench but is obviously necessary if meanings rather than mere words are to be conveyed.

6.4.3 Summary

It is clear from the above that the normal requirements of the Bench are, in reality, not feasible. Interpreters are being given an impossible task: to interpret accurately but at the same time be dependent and impartial (to be regulated by the conventions of the court and to be scrupulously neutral) and to focus solely on context free semantic meaning (i.e. 'translating' all of what is said without addition or omission). Communication between cultures requires the intermediary to possess a degree of autonomy which allows for judgement of what is contextually appropriate. Successful intercultural communication cannot be achieved without substantial independence and a sensitivity to context which allows the sharing of pragmatic meaning to the fullest extent.

It is thus extraordinary that, given the linguistic sophistication of legal professionals, there should be such a deep rooted and profound lack of understanding of the process of interpreting and the role of the interpreter; that such a group continues to accept the notion that interlingual communication is simple and mechanical; that word-for-word, verbatim, literal translation is adequate; that there is a single accurate translation for any utterance; that the

interpreter can provide appropriate transfer of concepts from one language to another without reference to the context and, in principle, without participating in the discourse of the court.

6.5 Training and Upward Mobility

Although training has been proposed by all quarters in the courts (the interpreters, judges and magistrates and registrars alike), in truth, this has yet to be planned, prepared, and organised i.e. turned into commitment and action. A positive step would be to bring together experts in the field of applied linguistics and the law to assess the problems involved. The different skills and knowledge required will need to be defined, plans and preparation will have to be made to ensure that interpreters are released from their court and clerical duties and cover is found for them and, most importantly, the authorities must be willing to provide the resources to make training possible.

Most judges are critical of junior interpreters, ignoring or not being aware of the fact that these new recruits have neither the training nor the qualifications to function either as interpreters or as clerk of the court. Judges and lawyers also comment on the interpreters' poor command of English, demonstrating that although the national language is the undisputed language of the Court, English cannot be done away with, and thus a proficiency in English is equally a requirement of the interpreter's function in court.

This expectation is equally unrealistic given the much-criticised level of English in the country, the teaching and learning, the policy and practice of the language in schools. Although it is not within the scope of this research to discuss this, it is perhaps pertinent to mention that another effect of the way in which the language policy has been implemented is the drastic reduction of overall proficiency in English (Ng 1999; Zubaidah 2001).

Neither the certificate nor the diploma course offered by the University of Malaya is promoted or recognised by the PSD as a vehicle for training Court Interpreters. As the situation stands at present, interpreter training and remuneration remain something that no one in the judiciary seems willing to discuss.

There is good reason for the PSD or judiciary to take advantage both of the available professional training methods based on sound theories of the interpreting process (for example the Gile and Xia Da models discussed in Chapter 2 section 2.3), and at the same time, of the great amount of information and knowledge on language, law and the discourse in court (for example the work of Gibbons 1994, 1999). Although it is true that Gile's concepts and methods are primarily suited to professional conference interpreting, the skills that any interpreter (including court interpreter) must have are essentially the same.

6.6 Implications of the National Language Policy in Court

At Independence in 1957, the agreed national language policy was incorporated in the Constitution and it was assumed that the switch from English to Malay would take ten years. However, the time scale has been shown to be over optimistic. In spite of constant urging from politicians and some academics (Asmah 1979), the implementation, first in the education system and the public services and only in mid-1980s in the legal system, has taken almost 50 years and, even now, native-like competence in the language is still not universal.

The national language policy aims to make Malay not only the *national* language of the country but also the *official* language (the terms are distinguished in Chapter 3) and this, naturally, has implications for the whole of Malaysian society. The following are the pertinent aspects of the effect of the national language policy as far as court interpreting is concerned: (a) the language(s) used in court; (b) the interpreters; (c) linguistic rights.

6.6.1 Language Use in Court

Another crucial finding of the research concerns language use in court. One of the most far reaching effects of the national language policy, as far as the courts are concerned, has been the implementation of the decision to make Malay the language of trial and record in all courts in the country (exceptions to this regulation are discussed in Chapter 3). The legal system was specifically exempted from the Language Act of 1957 on the understanding that Malay would

gradually and progressively take over the role of English. The Act was revised in 1967 where it was stated that all proceedings were to be in Malay or partly in Malay and English. However, even if there had been thorough *planning* involving all parties concerned, efforts towards making such a fundamental change were sluggish. Table 3.4 in Chapter 3 shows that the first survey to discover the extent of the use of Malay in the legal sector and the problems involved in its implementation was only carried out in 1989, and the first seminar on language in court was held in 1992.

The legal system continued to use English and remained virtually unaffected by changes brought about by the language policy until the Chief Registrar issued a directive in 1981 (Appendix G) after which the changeover slowly began to come into effect. By 1990, Malay was the norm in the lower courts but English was still the preferred language of trial in many high courts and it was only after the Lord President sent out a further stern directive insisting on the use of the national language in *all* courts that they too began to change.

There seems to be little genuine understanding of the difficulties of implementing such a complex policy. As early as 1982, hardly 12 months after the directive, members of the Senate were already asking why Malay was not being used fully in court. As the *New Straits Times* reports it:

> Several Senators have urged the government to fully implement the use of Bahasa Malaysia...and [abolish] the use of the English language in courts...because most of the people in the country were more proficient in Bahasa Malaysia [and] there were already many legal officers who were proficient in the use of the language. The question of terminology used in the court should not arise at all as the *Dewan Bahasa dan Pustaka* had already prepared the necessary legal terminology.
>
> New Straits Times 14th January 1982

At present, all the proceedings in the lower courts involving the stages listed earlier (3.8.1) have been observed by the researcher to take place in Malay. However, in the High Courts, there is still a mixture of Malay and English during examination, cross examination and re-examination but grounds of judgement are always either in one language or the other and, certainly, the more senior judges of non-Malay origin tend to write their judgements in English.

Underlying the policy and its implementation were two commonly accepted beliefs: (1) that most Malaysians are now proficient in Malay and able to participate in court proceedings in the national language and (2) that speakers of languages other than Malay have the right to the services of an interpreter.

However, the concepts of being 'proficient in Malay' and 'able to participate in court proceedings' both refer to different *kinds* and different *levels* of proficiency. It is probably true that, while most Malaysians over the age of 30 can now use the language for recurring day to day interactions and many will have a similar facility in several languages, the question arises 'what kind of Malay are they using?' Non-Malays, especially older Chinese and Indian Malaysians, tend to operate in a variety of Malay whose norms are far from those of the standard i.e.

Bazaar Malay: an institutionalised pidgin *lingua franca* of long standing (see esp. Collins 1987). Most people who cannot cope in standard Malay can do so in Bazaar Malay and competent users of the standard Malay can understand it.

It is this variety of Malay that, as interviews with lawyers, the police and judges revealed, a large number of accused and witnesses who are not proficient in standard Malay actually speak in court. However, a point needs to be emphasised here that bazaar Malay is often spoken in the subordinate courts, as the majority of those charged in the magistrate's court are of the working class and are usually unrepresented. In the higher courts, those accused with serious crimes are usually represented and if they cannot afford a defense lawyer, the service of the Legal Aid Bureau is available to them.

The language spoken and used in court nevertheless leads to a second question 'How adequate is Bazaar Malay as a vehicle of communication in court?' and, following that, to a third; 'How acceptable do the Courts find the use of Bazaar Malay?' These questions are highly relevant to the whole issue of linguistic rights and language policy in the court in Malaysia, since competence in language is the assumption on which trial and justice depends. The Courts appear to be very relaxed about the use of Bazaar Malay. It may be sufficient for the court to understand what is being said but this does not mean that it is a sufficient vehicle for the expression of what the individual speaking Bazaar Malay wishes to say i.e. to provide admissible evidence.

It seems implausible that an individual can actually express sophisticated ideas and personal feelings in a pidginised variety of a foreign language as well as (s)he can in the mother tongue or that Bazaar Malay is an adequate means of communication for making a convincing defence in a case more serious than house-breaking or the theft of a motorcycle. It is, in other words, hard to imagine that an accused (particularly an unrepresented accused) faced, for example, with a charge of unlawful killing would be able to distinguish between manslaughter and murder - as happened in the case of Iqbal Begum in the UK (Iqbal Begum 1991) - or have the ability to prove (her)his innocence in a drug case (which carries a mandatory death sentence in Malaysia), if (s)he spoke only Bazaar Malay.

What seems more than likely is that such individuals are at a linguistic disadvantage which is compounded by the lack of an interpreter. It is yet another of the many paradoxes of Malaysian court interpreting that the right to an interpreter is recognised in the case of speakers of regional dialects of Malay, such as Kelantanese (see the report of an appeal in a 1994 drug smuggling case on the grounds of the lack of a Kelantanese interpreter: 1 SLR 663) but not in the case of speakers of Bazaar Malay whose mother tongue is another language. It is hard to see how such individuals are not even more disadvantaged and in greater danger of suffering injustice.

In any case, the acceptance of Bazaar Malay as adequate in court in effect defines it as the language of trial, i.e. 'Malay' and this is perhaps why most people believe that the majority of the population can speak Malay, and that the national language policy has been successful. This is also the reason why those

interviewed, including the Registrar of the High Court of Malaya, stated that not much interpreting is needed in court.

The statements of these individuals contradict the overall response in the survey (Chapter 5.16). Almost 100% respondents *do not think* that all Malaysians are proficient in Malay and can be expected to participate in court in Malay; neither are visitors, including immigrants, proficient in Malay and can be expected to participate in court in Malay. They also *do not think* that a court of justice in a multilingual and multiethnic society can function without interpreters; and, conversely, that court interpreters *should* go through a systematic process of training to function professionally, even if the frequency of interpreting reduces over time due to the increasing use of the national language.

6.6.2 The Impact on the Interpreters and Interpreter's Scheme of Service

The effect of the implementation of the language policy on witnesses and accused has not been studied but it is presumably not to the detriment of those who are Malay speaking or those who understand Malay better than English.

However, a group most severely affected by the assumptions and implementation of the language policy in the judicial and legal system is the court interpreters who, in spite of the enormous changes which have taken place in the last century, continue with interpreting practices which go back to colonial times. The static nature of the provision is confirmed by a range of research sources (Teo op cit; Mead op cit; Zubaidah 1999).

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In spite of evidence to the contrary, those who control the work of the interpreters have assumed all along that the Malay language would quickly come to dominate the life of the country and that the need for interpreters would rapidly diminish. This is the official position stated in the Suffian report and the assumption on which the subsequent organisation of the service has been based. (see Section 5.9 on this). It is this position that dominates the perception of the judiciary.

The two major changes which occurred (in 1967 and 1981) and which have had a significant impact on the delivery of the service and on the status of the interpreters received no response from the Department responsible for employing the interpreters.

In 1967, following the amendments to the Language Act (see Section 5.8) and anticipating the switch to Malay, the interpreters' scheme of service, the 1950 Benham Scheme (outlined in Chapter 2.8) was revised. The status of the interpreters was prematurely reduced (and this was indicated in their new salary scheme) to reflect the assumption that their services were no longer crucial. Paradoxically, the reverse has been the case. The retention of English by the legal professions, as the preferred language of trial by some judges and, more significantly because of the emergence of more and more languages, in addition to Malay and English in court due to immigration and globalisation, have all made interpreting services even more essential to the process of justice.

Nonetheless, the perception that interpreters and translators will soon not be needed by the country stubbornly persists, 35 years later, even though the reality points in the opposite direction.

In 1981, when the switch to Malay was decreed, most of the interpreters then employed had entered the service in the 1960s and 1970s and were experienced in interpreting between English (the then language of trial and record) and another language, such as Chinese or Tamil and as a result many were not experienced in language pairs which included Malay. The 1981 decision meant that they were now expected to interpret proceedings from English and the other languages into standard Malay (the new language of trial and record). The question of whether they were competent to do this was never raised and no attempt was made to improve their communicative competence in the language. It was simply assumed that they already were. The effect of the change of language was to make the most experienced interpreters the least competent in the newly required language pairs and this, not surprisingly, caused a great deal of nervousness among the interpreters to the extent that some (38 of them between 1988 and 1992: Interpreters' Union Memo 1992) felt that the only course of action open to them was to resign.

New recruits were, increasingly, Malay-educated and, therefore, not at such a disadvantage. Nevertheless, they entered a system which, though officially Malay, was still to a great extent operating in English. The result is that many junior interpreters (especially Malays) are not even bilingual and are nervous about interpreting from English into Malay (personal communication from the

secretary of the Interpreters' Union). Only a few English proficient interpreters are left in the country. In the 1999 trial of Anwar Ibrahim, the ex-Deputy Prime Minister was conducted in English and interpreted into Malay by a talented and professional Malay-English interpreter (who, soon after the case, was promoted out of the service to L5 as an assistant registrar). Presumably, if this had not been a high profile trial monitored by an international audience, the fact that all those involved were Malays or competent users of the language (with the exception of the judge who was a non-Malay and not proficient in the language) would have led to the usual policy of using Malay as the language of trial.

Change in the interpreter service has certainly taken place but not in terms of crude total numbers. What has not been realised is that the requirements for the interpreter have changed in nature. Even if there had not been the large influx of non-Malay speaking migrant workers in the 1980s and 1990s, the multiple responsibilities of the interpreter would still remain. What has changed is the amount of time the 'interpreter' actually spends providing a *language* service. Today many 'interpreters' spend the bulk of their time performing non-interpreting duties described in section 6.6, including clerical duties. This suggests that there is a need to distinguish those who provide services to the court as advisers to the Bench and as clerical and administrative officers from those who provide language services and properly retain the title 'interpreter'. These genuine interpreters would be potential full professionals.

6.7 Linguistic Rights

The issue of linguistic rights is very pertinent in the discussion of court interpreting in any system. Not only does it refer to the rights of a linguistic minority to express themselves by speaking in their own tongue in any court hearing but also to the right to a competent interpreter who will interpret what is said accurately. Whether another language is allowed to be used in an official capacity in a court is necessarily related to the language policy of the court, and this in turn depends on the language policy of the state. Whether a witness or a defendant who does not speak the language of the court is given due process in this regard, depends on the attitude of the Court towards the use of interpreters for the purpose and the availability of the service provision.

Theoretically the right to an interpreter remains but the following 1992 appeal judgement demonstrates the erosion of this right and its replacement by a privilege, which it is now up to the defendant to justify. The judgement is recorded in full, since it is a highly significant decision, which will act as a precedent for any similar case in future (writer's emphasis in italics):

> The applicants in all five of the applications were seeking an order of *habeas corpus*, all of them being subject to detention orders issued under the Dangerous Drugs (Special Preventive Measures) Act 1985. Only one point common to all five applications was raised, namely that r 3(3) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 was not complied with. Rule 3(3) provides that when a detained person is brought to a place of detention, the officer in charge should, as soon as practicable, remind the detainee of his right to make representations. *The court's attention was drawn to the fact that all the applicants were non-Malay and each had said in his affidavit*

that he had no knowledge of Bahasa Malaysia and did not understand the same; and whilst it was conceded that the information each was entitled to under r 3(1)(a) was properly conveyed through interpreters, the reminder under r 3(3) was uttered in Bahasa Malaysia and consequently not understood.

Holdings
Held, dismissing three of the applications:

(1) the court agreed with the dictum of James Foong JC in Kok Wee Siong v Timbalan Menteri Dalam Negeri, Malaysia at p 683 that 'save until the day when all Malaysians can generally be said to be proficient in Bahasa Malaysia, there is a necessity to translate information in a language that is understood by the recipient'. However, it is axiomatic that each case has to be decided on its own facts;

(2) the third respondent rightly carried out the steps in r 3(1)(a) by ensuring that the information was conveyed through appropriate interpreters. The same procedure should have been adopted in respect of the duty to remind under r 3(3) and the services of an interpreter obtained where needed;

(3) *the medium of instruction since 1970 has been by law Bahasa Malaysia. Accordingly, in regard to the younger of the five applicants, it would have been expected that Bahasa Malaysia was a language known to them, having been of school age from and after 1970. In regard to these three applicants, there was therefore a need for them to go further to explain why in the circumstances they did not understand Bahasa Malaysia than merely to deny knowledge of the same;*

(4) *as to the other two applications, the applicants were born in 1945 and 1950 respectively. It cannot be implied then that they would ordinarily have had an understanding of Bahasa Malaysia. They were not obliged therefore to give an explanation for their claim.*

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In this kind of situation, the defendant now no longer has the *right* to speak and (in this case) be informed in his own language but has to justify why (s)he is

not able to understand the national language and will, therefore, be at a disadvantage without an interpreter. As stated, those who had had their education since 1970 must now explain why they do not understand the national language before the provision of interpreter services will be considered.

As this judgement shows, ensuring a *linguistic right* and rigorously implementing a national language planning and policy can prove incompatible goals. The question of language policy linguistic rights is also of universal concern. There is a constant need, world wide, to remind the courts of justice that if individuals wish to speak in their own language, they are exercising a *right* previously agreed and guaranteed by the law and not seeking some kind of *privilege*. That the need for such reminders is highly relevant in present day Malaysia is illustrated by 1992 appeal decision referred to above.

As far as the judiciary is concerned, for that right to have any meaning beyond its mere expression in words, it is necessary for there to be competent interpreters available in court. The responsibility for providing the service falls on the party whose legislation assures the right in the first place, i.e. the government.

6.8 Conclusion

This chapter has raised the major issues which the researcher sees as unique to the Malaysian situation. These relate to the role of the Clerk of the Court for which the Malaysian interpreter is not legally qualified; the advocacy role which breaches the interpreter's professional code of ethics, and the reality in

court with regard to the use of the national language. It is surprising that in all the years the system has existed, they have never been addressed.