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## Interpreter Training in Malaysia: Possibilities for the Next Millennium

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### Introduction

In any society, the interface between the citizen and the agencies of the State is a problematic one in which the legitimate rights of the individual and those of the State find themselves in potential conflict; unconstrained individual behaviour tends towards anarchy and the collapse of society, while lack of constraint on the activities of the State tends towards tyranny. Finding an appropriate balance is a continuing challenge.

In a multilingual and multicultural society such as Malaysia (and, in reality, most of the world's societies) and particularly, in one which still carries the burden of a colonial past, this challenge is necessarily far greater

Of all the institutions of the State which impact on the citizen, the Legal System stands out as the most visible and potentially threatening to the

individual and, within the legal system, the process of law in a trial in Court has the highest profile and potential for life-changing decisions.

It is a universally accepted assumption of law that, without a full understanding of the charge and the procedures of trial, no legitimate plea can be made and, in the absence of a plea, no legal process can take place; without a plea, there is no trial. It follows then that the defendant (or witness) whose linguistic abilities in the language used in the Court are insufficient to allow such comprehension either cannot participate at all or must do so through the medium of an interpreter and that the competence of the interpreter must be of the highest level if justice is to be done.

The interpreter in a court of law carries, in addition to the normal duties of interpreting, the responsibility for ensuring that the legal process runs smoothly and is not hampered by communication problems caused by language. In order to discharge this responsibility, the interpreter is expected to be impartial and act as a neutral intermediary between the individuals involved and the process of the law. The interpreter is, therefore, required to serve the interests of the process rather than the individuals involved in it and must stand apart from persons and personalities in order to help the system to operate efficiently and effectively (Bell-Ibrahim 1997)

The Malaysian interpreter, in strong contrast with legal interpreters in other countries, is required to carry out additional tasks that are over and above those which would normally be expected of an impartial bilingual communicator

This paper sets the scene for some preliminary research into the state of the legal interpreting service and the perceptions of court interpreters in Malaysia at the close of the 20th century

While the main focus of this paper is not on the definition of terms (see Bell 1998a in this volume for a more comprehensive discussion of this issue) but on the description and evaluation of the court interpreting service in Malaysia, there is a need for a working definition of two key concepts: interpreting and interpreter

'Interpretation' is often confused with and indiscriminately used for 'interpreting'. This ambiguity should be avoided, particularly since it obscures the crucial role of interpretation in all human communication: to 'understand' another's speech or actions is to 'make sense' of them in one's

own terms i.e. to interpret them for oneself. Interpreting is a method by which an interpreter orally conveys a message in one language to another, and the interpreter is a bilingual person whose role is to act as a facilitator for monolingual individuals and communities who wish to be in contact with each other but lack a common means of communication.

Interpreting is by no means a unitary enterprise but varies along two dimensions: 1) *mode* i.e. different ways of interpreting to suit particular purposes and participants and 2) *type* i.e. different conventions to suit particular settings.

Both will be outlined as a preliminary to the discussion of the central issue of this paper: legal, or more specifically, court interpreting in Malaysia.

### Interpreting: modes

The essential distinction between modes of interpreting is between simultaneous and consecutive.

- *Simultaneous*: the speaker continues to speak as the interpreter re-expresses his ideas with a time lag of a few seconds (of which the audience are unaware). Most simultaneous interpreting is provided, through audio equipment, to large numbers of listeners but a very small audience, even a single individual, can be accommodated by 'whispered simultaneous interpreting' which requires no equipment just that the interpreter and the clients sit close together. A second variant is 'sight translation' where the interpreter reads a text silently in one language and speaks the translation at the same time.
- *Consecutive*: the speaker presents in a series of 'chunks' during which the interpreter takes notes. The speaker pauses and the interpreter re-expresses the ideas by referring to the notes in as full a manner as possible. 'Long consecutive' refers to 'chunks' ranging from ten to fifteen minutes and 'short consecutive' to 'chunks' of two or three sentences in length.

The choice of mode depends, to a large extent, on the type of interpreting service required by the client.

## Interpreting: types

Interpreting covers a very wide range of activities which can be distinguished in terms of the settings in which interpreting services are required. Roberts (1994: 1732) identifies four general settings, namely:

- **conference settings:** 'conference interpreting'; meetings of all types
- **community settings:** 'community or public service interpreting', doctors' surgeries, hospitals and clinics, educational and social service providers, immigration procedures
- **legal settings:** 'legal interpreting': police stations, lawyers' offices, the courtroom, probation and prison service...
- **tourist settings:** sometimes referred to as 'escort interpreting'; a range of locales - hotels, restaurants, tourist attractions, museums ...

The settings determine to a great extent the mode of interpreting carried out since each has different aims.

In the conference setting, for example, the primary aim is the transfer of cognitive content as accurately and speedily as possible from speaker to audience. Hence, simultaneous rather than consecutive is preferred and the use of high fidelity audio equipment (efficient microphones and headphones) is essential.

In the community setting, more than cognitive content is required; the patient, for example, will need reassurance and support in what is likely to be traumatic situation. For this reason, community interpreters tend to move between simultaneous and short consecutive as appropriate.

In the tourist setting, the nature of the interaction is likely to determine the mode. A receptionist at a hotel is likely to present information and ask questions in short 'chunks' (ideal for short consecutive), while the guide may deliver a long unstoppable monologue in which case only simultaneous will do.

In a legal setting, judgements of credibility are made not only on the basis of the cognitive content of what is said but also on the paralinguistic features which accompany what is said: hesitation, eye-contact, facial expres-



sion, display of emotions are all taken into account. A judge needs to understand what is said and how it is said. Hence, in most countries court interpreting tends to be consecutive rather than simultaneous.

### Court Interpreting

Interpreters may be generalists or specialists. The court interpreter is, necessarily, a specialist. As with other interpreters, the highest level of competence is required in both languages and full command of all appropriate interpreting techniques. In addition, the court interpreter must be fully conversant with court procedure and terminology and be well informed on the law itself. He is not only a bilingual but also bi-cultural, he must be alert and depend on his eyes and ears, and feel at ease in the courtroom.

In the context of growing need and the requirement of such high standards, it is surprising that legal interpreting only began to emerge as a profession in the late 1970s with the introduction of planned training courses in Canada: unlike conference interpreting which began to develop rapidly after the second world war; since the mid 1940s (see Altman 1994: 1746).

In most countries, legal interpreting had to wait another ten or twenty years before adequate formal training was introduced (early 1990s in the UK, for example): many, including Malaysia, are still waiting.

The actual practice of court interpreting and the role court interpreters play differs substantially from country to country. The differences are partly explained by the diverse legal traditions within which they work (i.e. Civil Law, Common Law, Socialist-based Law, Islamic Law), the range of languages in which they are required to operate and, to a great extent, the status of the interpreter within the system.

For example, in the 'Continental European' Civil Law system (France, Italy, Latin America, South Africa and, to a degree, Scotland), greater use of written procedures is made than in the 'Commonwealth' Common Law system (American, England, Canadian, Malaysia), with its rather more oral Anglo-Saxon tradition.

In most countries, although there is enormous variation, some provision is made for interpreting as part of the trial process. In many instances this is patchy and ad hoc. In others the provision is institutionalised to the extent of appearing in the Constitution (as in South Africa) or as a directive from

a senior law officer (as in the UK) The Court of Justice of the European Communities functions in the nine official languages of the European Union, Courts in South Africa operate in all eleven official languages (but only since 1996)

The relationship of the interpreter to the court (and, hence, the status of the interpreter) also differs from country to country In Malaysia, legal interpreters are civil servants; in the UK they are all freelance; in the European Court of Justice there are full-time staff interpreters who are joined by free-lancers as and when necessary; in Australia, legal interpreting is provided by both the State-administered Legal Interpreting Service and ad-hoc arrangements with individual interpreters or private agencies (Laster and Taylor 1994)

However, neither tradition, range of languages nor the status of the interpreter appears sufficient to explain all variations in practice, especially the extent to which simultaneous or consecutive interpreting is authorised and practiced. Canadian courts, for example, make considerable use of the simultaneous mode, whereas in France or the United States simultaneous is not authorised except for off-the-record exchanges (see Altman *op cit.* 1746 and de Jongh 1992: 45)

### Court Interpreting in the Malaysian context

In Malaysia the dominant Malay language is spoken alongside the languages of long-settled communities of Indians and Chinese. Apart from the various regional dialects of Malay, there are further languages of the Indian community namely Tamil, Telugu, Malayalam, Punjabi and the main Chinese dialects of Cantonese, Hokkien, Hakka, Teow Chiew to which should be added the indigenous languages of East Malaysia, Iban, Kadazan, Bidayuh, etc. (see Ibrahim and Bell *op cit.* for a more comprehensive list) and recently, those of an estimated 1 million migrant workers (Ministry of Home Affairs 1997) not only from other states in South East Asia but from as far as West Africa, Bosnia, the Middle East and Bangladesh. Recent estimates suggest that this influx has doubled the number of languages currently in use in the country In official contexts, however, only Malay is used as the means of inter-lingual communication.

The need for interpreting between individuals and the institutions of the State - particularly the legal system - arises directly, therefore, from the dichotomy between the language of the Courts and the language of many of

those brought into contact with the legal system. Following a directive from the Lord President in 1990, Malay (the national language) has been used as the language of trial and record in most Malaysian courts. However, if it is judged to be in the interest of justice, the Bench may allow the use of English in court proceedings; this is especially common in the High Courts.

### Defining the Problem

Malaysia in the 1990s has seen rapid economic growth and expansion leading to the arrival of large numbers of non-Malay speakers followed by an economic down-turn which has led to the repatriation of many of them. Throughout the decade, increasing pressure has been put on translators and interpreters, whether acting in the public or the private domain.

A question arises which cannot be ignored: Has our system been able to respond adequately to the challenge? The evidence suggests that it has not.

The reality, as has been vocalised by many quarters in the press, in the general public as well as specialist circles, is that there is an extremely inadequate supply of legal interpreters and (according to Teo 1984) has been since the early 80s, and those who are in service often leave even after a few months.

Why should it be that nearly fifteen years on, there is still an acute and a growing lack of interpreters in the Malaysian courts? The reasons for this state of affairs suggested by individuals involved in the profession seem clear:

- The *age profile* of the profession: many have retired or are nearing retiring age
- More *lucrative* work available outside government service: freelance work and posts in broadcasting can pay up to four or five times as much.
- *Low pay* and *inadequate recompense* for responsibilities do not attract new recruits: in UK the registered public service interpreter is contracted to receive the same hourly rate as the part-time University teacher; less than that is not a living wage.
- *Lack of appropriate criteria for entry*: which prevents the introduction of a better salary scheme; only Malaysian School Certificate and a



credit in the Malay language and in a second language is required; this is clearly not the basis for the creation of a graduate-level profession.

- *Lack of training:* once selected, trainees are given no specific training but learn by observation and trial and error in preparation for government examinations.

### The Multiple Roles of the Interpreter in Malaysia

The multiple and confused roles of the interpreter is a special and perhaps unique feature of the Malaysian court system which deserves closer examination. This is a fundamental factor which, when added to inadequate recompense, reduces the attractiveness of a career in legal interpreting. The Malaysian court interpreter is called upon to carry out more than a dozen activities which, in other systems, would be clearly distinguished and be the responsibility of five or six different individuals.

Teo (op cit.) provides the following list (which is far from complete), of what the Malaysian interpreter is expected to do:

1. Interpreting the proceedings
2. Reading the charges
3. Explaining the charges
4. Interpreting the brief facts of a case
5. Explaining the nature and consequences of a plea to the accused
6. Explaining the three alternatives and their significance: make a statement on oath, speak from the dock or remain silent
7. Assisting an unrepresented accused
8. Assisting an accused to make a plea in mitigation
9. Acting as principal assistant to the Bench
10. Deciding the first business of the day
11. Fixing dates for hearings
12. Maintaining discipline and order in the open court
13. Marking and keeping Exhibits
14. Translating key documents
15. Paper work - e.g. preparing warrants for commitment, bail bonds, and writing up daily, weekly and monthly reports of cases dealt with in the court

Of these 15 functions, only four (1, 2, 4, 14) are clearly the legitimate domain of the interpreter 9, 10, 11 (and, possibly, 3, 5, 6 as well, though



these might be properly seen as advocacy), are that of the Clerk of the Court (who in the UK would have legal qualifications) Functions 7 and 8 are unquestionably the concern of the Advocate (who will have high-level legal qualifications), while 11 and 13 might well be delegated by the Clerk of the Court to a Clerical Assistant and 12 is the primary responsibility of the police.

Surely, no one can carry out such a range of functions competently nor should anyone be expected to. For the interpreter to play his role adequately, not only must he possess bilingual competence in both languages, substantial knowledge of the law and the process of law, the system must also ensure that he has an unambiguous job specification which focuses on the essential skills and knowledge and does not fritter the interpreter's time and energy away on other tasks.

It is not uncommon that interpreters face challenges to their linguistic skills from witnesses, lawyers and the Bench and these are what an Expert Witness - which is what the interpreter can be considered to be - should expect. However, accusations of corruption and impartiality derive almost entirely from the ambiguity and multiplicity of the role the interpreter is currently called upon to play

The present situation, in short, is one in which interpreters have:

- no precise job-description - their duties are, as we saw above, arbitrarily entangled with those of others
- inadequate recompense for the responsibilities they bear, and
- inadequate training and recognition.

Malaysia has indeed been fortunate that this state of affairs has not yet led to cases as appalling as those of Iqbal Begum (1991) or Smith and Sams (1996) in the UK where major injustice was done as a direct result of incompetent interpreting (references in Bell and Ibrahim 1997)

Is it necessary for Malaysians to wait for disaster before the process of change which will avert disaster is started?

### **Court Interpreter Training in Malaysia**

Preparation for entry to a profession (e.g. medicine, the law) is, universally, preceded by a long, intellectually challenging, and compulsory period of formal training and continued recognition in a profession typically requires continuing professional development, often in the form of in-service programmes of courses and/or research. None of this applies to the Court Interpreter. At best, some in-house training is provided and the majority of interpreters are expected to 'learn on the job' and sit for departmental examinations in order to be considered for promotion.

Since 1989, the Faculty of Languages and Linguistics, University of Malaya, has been running a one-semester training course leading to a certificate in court interpreting. But the course has suffered poor enrolment since interpreters who hold the certificate receive no recognition for it either in the form of a salary increment or in consideration for promotion (since the system is based entirely on seniority) and the Public Services Department does not stipulate prior training as an entry requirement for interpreters. Indeed, all the reward the interpreter receives as a result of gaining the certificate is more work without extra pay: hardly a strong motivation to enrol for the course!

Since 1995, ILKAP (Institut Latihan Kehakiman dan Perundangan: the Legal and Judiciary Training Institute; part of the Prime Minister's Department) has been running one-week programmes three times a year for court interpreters which include courses on Techniques of Interpreting and on Legal Language. Although this is a manifest improvement, it is clearly not enough to prepare professional level interpreters and, because of the system of seniority referred to above, it is far from unusual for those who are called to attend to include interpreters who already have fifteen or more years of experience or are even about to retire.

### **The Court Interpreter Training Programme in the University of Malaya**

The Certificate in Court Interpreting is a one-semester, full-time programme designed to help meet the growing need for interpreters in the legal system and seeks to provide students with the knowledge and skills required to act as competent servants of the court and of the administration of justice.

The syllabus therefore aims to strike a balance between the intellectual and the practical. Intellectual content is derived from 1) *linguistics* (as applied to the processes of translation and interpreting, and text analysis) and 2) *legal studies* (the Malaysian Judicial System). Practical knowledge is enhanced by familiarisation with court procedures and by consideration of the implicit code of ethics and assumptions of good practice which apply to the profession. Practical skills, which are central to the syllabus, include those of public speaking, translation - unprepared sight and gist translation of documents - and interpreting: consecutive and simultaneous.

The programme recruits individuals with a recognised competence in two or more languages who are seeking some training in legal interpreting. It is expected that these students do not require general language training to raise their competence to the appropriate level but rather the specific communication skills in the appropriate languages necessary for legal interpreting: mainly Malay, English, Tamil and Chinese (Cantonese/Mandarin).

### Programme rationale

The right of an accused person to the services of an interpreter is enshrined in the Malaysian Constitution (clause 152) as part of the right to individual liberty and spelled out in the Criminal Procedure Code clause 270 (1):

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

*Criminal Procedure Code 1997 page 85*

The right is, however, far from easy to satisfy. Many courts are understaffed - all courts are required to have three interpreters available but it is far from unusual for there to be only one - and while the provision in Malay and in English is by no means completely satisfactory, the demand for Chinese interpreters, in particular, far outstrips the supply (*New Straits Times* 4th June 1998)

Trials have had to be delayed for the lack of suitable interpreters. Often this leads to the inevitable human cost of further remand in custody and the cost to the public purse of wasted professional time. As the demand increases, the temptation to adopt short-term compromises such as depending on the untrained staff of foreign diplomatic missions or language teachers in



order to avoid delay is likely to become even more common than it is at present.

There is a strong argument for raising the certificate level of the program to a diploma level with strict entry requirements. In many parts of the world, legal interpreting is recognised as a graduate profession which requires additional postgraduate qualifications (at least at the equivalent of MA level). It is difficult to see why Malaysia should be satisfied with a profession which has no specific entry requirements and which is apparently happy to accept applicants with merely school certificates.

A programme such as this can be justified in both educational terms i.e. giving students the opportunity to develop their own skills and increase their knowledge, and in terms of service to the community - ensuring the implementation of a fundamental human right and facilitating the operation of one of the major institutions of society

### Creating a long-term strategy

A first step must be taken in the form of a strategic decision:

Are the providers of the service to

- 1 continue to be state-employees (i.e. court interpreters remain civil servants),
2. become freelancers employed on a sessional basis, or
- 3 become employees of a privatised agency?

Whichever decision is made, the following requirements seem to be essential:

- A satisfactory system of remuneration must be devised; this would entail clear specifications of the required entry qualifications for the service and precise agreement on the content of letters of appointment, the statutory relationship of the interpreter to the legal system, etc.
- A precise job description must be drawn up which limits the interpreter's responsibilities to interpreting and does not add confusing additional responsibilities which properly should be discharged by others.
- Adequate training systems must be put in place; training has to be made relevant, sufficient, intellectually credible, sound and compulsory

### Who should be trained?

The groups of people who would require training are all of those involved in the legal process, even if they do not come into direct contact with the courts but at some point participate in activities which require the services of an interpreter:

- Members of the police force
- Immigration officers
- Social welfare workers
- Probation and Prison Officers
- Existing untrained interpreters
- New recruits to the service
- Interested educated individuals/professionals already working with language (e.g. teachers who wish to change profession etc) and
- Young people with A-levels in related subjects (English and Malay and other Malaysian languages, especially Chinese) who intend to make interpreting their career

### Implementing the strategy - selection, training and quality assurance

Malaysia could take advantage of the recent experience of several overseas countries, particularly Australia, South Africa and the UK (see Laster and Taylor *op cit.*, Bell 1998b and Corsellis 1995 respectively) and set up a properly researched Public Service Interpreting Project which could investigate needs and propose a national strategy to train and put in place qualified interpreters for Malaysia's courts, hospitals, local authority and immigration services in time for the realisation of Vision 2020.

A start has been made (see Ibrahim and Bell *op cit.*) in the form of the first national survey on court interpreting (supported by the Judicial Department and by the Malaysian Court Interpreters' Association) which will provide some of the essential evidence for the next stage of the investigation, i.e. how to create:

- an agreed and explicit set of criteria for selection of students for training and the provision of an access course for those who fail to reach the appropriate standard

- an examination - set at university *certificate* level (cf. the U.K. Bilingual Skills Certificate) - to assess competence and suitability to undertake professional training
- a common structured training programme to 1) develop interpreting-specific skills and 2) to work in specialised fields - health, legal and local government services (e.g. housing, environmental health, social services, education welfare)
- an examination set at university *diploma* level (cf. the U.K. Diploma in Public Service Interpreting) - in the specialised options.
- a code of ethics and a guide to good practice
- structures for 1) the training of trainers to deliver courses and programmes (including a *postgraduate* qualification cf. the UK Diploma in Public Service Interpreter Training Techniques) and 2) continuing professional development
- transparent and respected mechanisms for ensuring the quality of training, accreditation and service in the profession

The model evolved must, necessarily, be specific to the needs of those who live in or visit Malaysia; no one would suggest for a moment that it was universally applicable in all its aspects. Each society has its own individual needs, which have grown over time and its own particular ways of dealing with problems.

However, it seems plausible that there are general standards of good practice and equivalences of standards which can be discovered and applied worldwide: agreed standards which cross national boundaries on matters of immigration, drug control, family and commercial law. The basis of economic growth is, after all, a viable, dynamic and cohesive social structure and this cannot be achieved except in the context of mutual tolerance and understanding of the language and culture of others.

Those who speak different languages and belong to different cultures can only be brought together through personal bilingualism or the services of the skilled translator/interpreter but such professionalism has to be nurtured and developed. Our world is one in which communication becomes increasingly more difficult and increasingly more essential as each day passes; a small



investment now will, in the longer term, be the immeasurable benefit of all.

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