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NOBS AND YOBS—THE PROVISION OF INTERPRETERS FOR LEGAL PROCEEDINGS INVOLVING HIGH-STATUS FOREIGNERS AND OTHERS

A study of case reports of legal proceedings involving interpreters for non-English-speakers reveals that the authorities are generally prepared to make greater efforts to provide high-quality interpreting arrangements for trials involving politically or otherwise significant individuals or issues. Conversely, where unimportant people are involved in what the system conceives of as minor cases, interpretation is either not provided or of very low quality. Material taken from trials in earlier times and on various continents illustrates these arguments.

INTRODUCTION

If, as the saying goes, a translator is a traitor--*traduttore traditore*--nobody should rest easy where a message must be conveyed through translation. Logically, the same applies to the use of interpreters, further constrained by the need to think and act on the run. Legal comment on the use of interpreters in judicial proceedings tends to reflect much suspicion of the quality of their performance; and yet almost without exception, all judicial systems treat all interpreters' words as a faithful echo of the original speakers' utterances.

Looking at the situation from the other angle, *good* interpreters--like *good* translators--do frequently come close to achieving the impossible.[1] A survey of practice and judicial comment in trials over three hundred years shows that interpreting arrangements--and with them, the chances of justice being done--tend to be better if the principal in the case is of high birth, or of political significance, or if the authorities consider the case to be politically "important".

POLITICAL TRIALS

Borosky

Material illustrative of differential treatment (whether related to the class of offender or the class of offence) in terms of interpreting arrangements can be found in the 1682 English political murder trial of *Borosky*, where the accused were a Polish labourer,[2]

two foreign "gentlemen", and a Swedish Count.[3] Between them they appeared to speak French, "High Dutch",[4] Dutch and English with varying degrees of facility. As was allowed at the time, the jury was a "mixed" one: half English, half "outlandishmen".[5] The following passage graphically illustrates the discriminatory treatment in terms of language rights and interpreting arrangements between the defendants of different class.

> Lord Chief Justice. Ask the other, the captain, the same thing.
> Sir Nathanael Johnson. He desires a French Interpreter, for he speaks French.
> Lord Chief Justice. Surely here are enough people that understand French, but ask him if he does not understand English.
> Sir Nathanael Johnson. He can understand some, he says.
> Lord Chief Justice. Then ask him, whether he be Guilty or Not.
> Sir Nathanael Johnson. He says he is Not Guilty, my Lord.
> Lord Chief Justice. Now ask Mr. Stern, but first ask the captain how he will be tried.
> Sir Nathanael Johnson. He says he will be tried by God, and half his own country and half English.
> Lord Chief Justice. He shall have his request.
> Sir Nathanael Johnson. He desires one thing further.
> Lord Chief Justice. Look you, sir N. Johnson, you must tell him this; he shall be tried by half foreigners and half English; that is it, I suppose he desires.
> Sir Nathanael Johnson. My Lord, he desires that there may be none of the jury that are any thing a kindred or relation to Mr. Thomas Thynn, nor any particular friend of his, and he is satisfied.
> Lord Chief Justice. No, there shall not, we will take care of that. Now ask Mr. Stern then the like question.
> Sir Nathanael Johnson. My Lord, he says he is Not Guilty.
> Lord Chief Justice. Ask him too, how he will be tried; whether by a jury?
> Sir Nathanael Johnson. He says, he is content to be tried as the others are, by half-strangers and half English.
> Lord Chief Justice. Now then ask my lord Coningsmark what he says.
> Sir Nathanael Johnson. He speaks English, my Lord.

Lord Chief Justice. But not well enough, may be, to understand the whole.

Lord Chief Justice North. Sir Nathanael, what does he say?

Sir Nathanael Johnson. My Lord, *he says it is a concern of his life, and therefore he desires he may have not only one Interpreter, but others: he desires he may have* ***two or three, that they may make no mistake***.

Lord Chief Justice. Very well.

Sir Nathanael Johnson. He says that I understand the Dutch language; but his *life and honour are concerned,* and ***therefore he would have three or four***.

Lord Chief Justice. Who would he have?

Sir Nathanael Johnson. Sir Thomas Thynn[6] said they had one that was brought by them.

Mr. Thynn [sic] That is Vandore, who is sworn already.

Lord Chief Justice. Look, you sir Nathanael, tell my Lord if he pleases, he shall have a French Interpreter; for I know he speaks that language very well.

Sir Nathanael Johnson. My Lord, he says, that High-Dutch is his natural language, and he can express himself best in that.

[Then one Vanbaring was called for by the Count, but did not appear.]

L. Ch. Bar (Wm. Montague, esq.) Sir N. Johnson, you must ask the Count whether he be Guilty of the Indictment, as accessory before the fact.

Sir Nathanael Johnson. I have asked, my lord, and Not Guilty he answers.

Clerk of Court. How will you be tried?

Sir Nathanael Johnson. He says he will be tried by God and half his own country, or half foreigners and half English; and he desires they may be *persons of some quality*, as they use to treat *persons of his quality*, and strangers.

Lord Chief Justice. There shall be such strangers, tell him. You have merchants of good account, I suppose, upon this pannel?

Under Sheriff. Yes, my Lord, they are all such.[7]

The contrast between the status and perceived language rights of the lowly Captain Vratz and the noble Count Coningsmark could not be more marked. When

the captain requests a French interpreter he is asked if he does not understand English; he replies that "he can understand some". The message is clear: he should be able to manage without an interpreter. In contrast, when the Count indicates that he speaks English, the Lord Chief Justice is concerned whether he speaks well enough "to understand the whole". Thus encouraged by the court's concern for his linguistic wellbeing, Coningsmark proceeds to ask not just for one interpreter, but for several--two or three, "that they make no mistake". He also asks for a "High Dutch" interpreter, i.e. for his "natural language", in which he can best express himself, even though the Lord Chief Justice offers a French interpreter, since the Count is "known" to speak French very well. Those of noble birth may therefore ask for and (in theory at least) be granted the right of having proceedings interpreted into a language of their choice; the lowly born are begrudged such luxuries. Moreover, for the high-born the principle of providing several interpreters, who can check on each other's performance and relieve each other regularly, is recognized as enhancing the likelihood of accurate renderings, thereby improving the quality of justice. In *Borosky's* case, there was a further check: the linguistic versatility of some of the participants (characteristic of certain educated English circles at the time) led to the identification of unprofessional behaviour by an interpreter who tended to provide testimony and act as advocate rather than interpreting the witness's words.[8] Clearly the limits of an interpreter's duties were well understood in 1682, even if a multilingual trial of foreigners with interpreters was considered a rarity.

Queen Caroline

The same principle of having "counter interpreters" to check on the accuracy of renderings applied also in the 1820 trial for adultery of Queen Caroline of England.[9] The interpreter offered by the House of Lords, where the trial took place, was one Marchese di Spineto, who turned out to have been engaged by representatives of the Foreign Office and Treasury.[10] A second interpreter was accordingly sworn on behalf of the Queen. This had two results: it enabled the defendant to have a version of testimony provided by an interpreter whom she knew not to be biased against her, and at the same time permitted the accuracy of the "official" interpreter's renderings to be checked upon. Such monitoring cannot but be conducive to accuracy, and therefore favours justice, although some interpreters find it difficult to accept the possibility that they themselves might make mistakes and require correction. In this case, the two interpreters quite willingly split the work between them. Thus two interpreters engaged by the two opposing parties to legal proceedings cooperated in checking on

each other's understanding and relieved each other when the strain began to tell on their accuracy. The trial is replete with specific examples of queries about renderings and agreed solutions.[11] It is also particularly interesting in showing how the interpreter acts as a cultural informant when it is considered necessary to clarify material,[12] including points on which no misunderstandings might be thought likely, such as times of day.

> Q. As nearly as you can recollect, what hour was it you passed through the garden of the Villa d'Este with Domenico Brusa?
> A. About one or half-past one.
> *Interpreter*.--The Italian and the English time is reckoned by a different manner.
> Q. Do you reckon by the Italian or the French hour?
> A. The Italian hour.
> *Interpreter*.--We reckon the hour, not from twelve to twelve, but from one to twenty-four; the Sun, according to the Italian mode of calculation, always sets at half an hour past the three and twenty, the remaining half hour is generally allowed for twilight, and that completes the twenty-four hours.
> *Mr. Solicitor-General to the Marchese*.--Will you translate into English time the time?
> *Interpreter*.--Then I must know the time of year, taking it at Bartholomew's day, it would be about half-past nine at night, according to the English mode of calculating.
> The Solicitor-General stated, that there was some doubt whether in Lombardy they calculated by the Italian method, and that it was very desirable to know, whether the hour to which the witness referred was half past nine or half past one; he therefore requested permission to put a question upon that point.
> Q. When you say it was about one or half-past one that you saw Pergami and the princess sitting in the manner you have described, according to the best of your recollection, how long was it after sun-set?
> A. The sun had been setting for an hour and a half.
> Mr. *Cohen*.--My lords, I was born in Lombardy myself, and I know this is the mode of reckoning.[13]

Issues and principles

These two examples illustrate some of the issues and principles that arise (or should be considered) in court-interpreting settings: entitlement to an interpreter in the language in which the language-handicapped participant feels most at home; prior clarification of languages needed, and firm arrangements for interpreters to appear at the time required; insistence on an unbiased interpreter; identification of interpreters' unprofessional behaviour; quality control arrangements; several interpreters taking turns; interpreters discussing and explaining specific and alternative renderings; participants querying renderings; requests for original-language material to be repeated as the authentic and therefore authoritative text; interpreter as cultural informant.

WAR CRIMES TRIALS

A second set of illustrative cases is provided by the category of war crimes trials in which defendants speaking one language are tried by a court speaking another language (or, in some cases, other languages[14]). What is striking about these cases, with their high public profile, is the way in which the authorities try, at least, to make superior interpreting arrangements. At times they may find this aim defeated by practical difficulties in finding suitable interpreters for particular language combinations, but on the whole, there appears to be growing awareness and greater closeness to the standards (and sometimes the techniques) of international conference interpreting. Thus in the Barbie trial (France:1987), the Demjanjuk trial (Israel:1987-88), the Eichmann trial (Israel:1961) and the 13 Nuremberg trials (Germany:1946-1949) the simultaneous interpreting technique was used extensively, although not exclusively, and on the whole to great effect. Indeed, it was as a result of the way in which the simultaneous technique allowed the Nuremberg cases to be heard at all that the United Nations was prepared to consider using it. True, the result was far from perfect: critics such as Norman Birkett[15] and Rebecca West[16] identified certain general problems as well as specific incidents which detracted from the proceedings, related to both the imperfections of specific interpreting performances (as well as the commentator's personal prejudices) and the kind of socio-legal and cultural problems that not even the best interpretation can overcome.

"ORDINARY" PEOPLE IN AMERICAN, ENGLISH AND HONGKONG COURTS

What all these major trials--the historical and the war crimes--have in common is the authorities' general awareness and acceptance of the defendants' and/or witnesses' need and right to competent interpretation services. This is in sharp contrast with the unsatisfactory contemporary British situation hinted at in the following extract from a Parliamentary debate, which acknowledges that the linguistic needs and rights of the "small fry"--the "yobs", as opposed to the "nobs"--tend to be ignored by the system.

> At the Crown Courts, the Old Bailey and the major courts where trials take place, interpretation services are provided in the serious cases. It is at the lower end of the ladder that frequently they are not provided. It is there, unless we are very careful, that defendants tend to fall through the net. Many courts now routinely supply interpretation, but the coverage is patchy. If the courts had a statutory duty to obtain and provide appropriate interpreter services, then the possibility of misunderstandings and even miscarriages of justice would be minimised. This is not a minor issue for the ethnic minorities in this country. It is a matter that the Government should take on board.[17]

The following ministerial reply makes the British government's complacent, paternalistic (and contradictory) stance extremely clear:

> It is within the knowledge and experience of many Members of the Committee that the courts never hesitate to try to find an interpreter when an interpreter is needed. There is already ample power to do so. In the course of time the courts have taken upon themselves the duty to try to find an interpreter. Very often the interpreter is a friend from within the immigrant's own community. There could be no better person, because the court will understand what the accused is trying to get at, what he needs to know and so on. In a perfect world one would wish to find the services of qualified interpreters available all the way down the scale.[18]

Case reports abound with similar comments, including references to "modest interpretation"--a euphemism for services provided by interpreters who "are able to give answers" which are "in some parts understandable and in other parts not".[19] The naive researcher may be somewhat taken aback to find that the "evil" of incompetent interpreters decried by an 1889 American case[20] is only now--a century later--being "discovered" by the British authorities. Thus in *Rajnowski* the court notes:

> We have seen so many instances in the records before us of testimony which appeared of questionable accuracy that, while it is beyond our power to correct the evil, we deem it proper to advert to the occasion for having it corrected, if possible. It is not for us to do more than call attention to it.[21]

Nearly one hundred years later, on the other side of the Atlantic, in addition to the Court of Appeal's eloquent comments in the *Iqbal Begum* appeal,[22] the chairman of the Ethnic Minorities Advisory Committee of Britain's Judicial Studies Board acknowledges that the current situation is far from satisfactory in the magistrates' courts:

> There are also huge contemporary problems over the availability of competent interpreters in every court, and justice cannot be done if the interpreter is not up to the job. Magistrates on the local bench from ethnic minorities should be invited to advise their fellow magistrate on language and communication problems with which they are familiar from their own experience.[23]

In fact, one English lawyer has even gone so far as to advise prospective jurors that if they are "dissatisfied by the standard of interpretation and no one is prepared to do anything about it, the wisest thing might be to take no decision adverse to the defendant based on that evidence." The writer's lack of faith in the competence of interpreters leads him to make the following suggestion: "In any event, you might feel that in any case with translated evidence it is dangerous to act on one answer."[24]

If this is the current situation, one may ask whether the court interpreting situation for ordinary people in Britain has been worse in the past. In the area of entitlement, it has been accepted since 1916 that "the safer, and therefore the wiser, course, when the foreigner accused is defended by counsel, is that the evidence should be interpreted to him".[25] Yet if evidence is "interpreted" in a "modest" fashion, what value can be attached to the result?[26] It is indubitably progress if courts no longer consider it noteworthy--as was the case in 1852--that a prisoner (defended by counsel) had the whole of the evidence interpreted to him, "merely because he was an Italian who did not understand the English language."[27] Surely today the following exceptional arrangement for eight foreign seamen, considered enlightened in 1864, would be considered abnormal:

> The prisoners being all represented by Counsel, the evidence was not interpreted, but upon the application of Mr. Atkinson, the interpreter to the Spanish Consul

was permitted to sit near them, in order to communicate with them as the trial proceeded.[28]

One wonders about the degree to which even the most accomplished interpreter was able to maintain consistently audible, accurate interpretation under those circumstances.

How many individuals, in the past as well as today, have suffered from the plight sympathized with by the *Negron* appeal court in the United States?

> To Negron, most of the trial must have been a babble of voices... Negron's incapacity to respond to specific testimony would inevitably hamper the capacity of his counsel to conduct effective cross-examination. Not only for the sake of effective cross-examination, however, but as a matter of simple humaneness, Negron deserved more than to sit in total incomprehension as the trial proceeded.[29]

It would be comforting to think that the American court's passionate plea, reminiscent of the sentiment expressed in Britain's *Iqbal Begum*, would be acted upon:

> Particularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its criminal processes chooses to put in jeopardy...The least we can require is that a court, put on notice of a defendant's severe language difficulty, make unmistakably clear to him that he has a right to have a competent translator assist him, at state expense if need be, throughout his trial. [30]

The relevant "fundamental principle" is that a defendant who does not speak the language of the court cannot be said to be present unless he can understand the proceedings, something that is impossible without competent interpretation.[31]

And yet, despite the passing in 1978 of the United States Court Interpreters Act,[32] some ten years later America's Executive Office for Immigration Review (EOIR) could still argue and appeal courts accept that in deportation hearings interpretation was to be provided for the benefit of the court only, not of the witness or the plaintiff. A senior EOIR official stated in 1989[33] that in immigration review proceedings there was no interpretation (into Spanish) of a witness's English testimony; nor of counsel's argument; nor of counsel's objections; nor--even--of the judge's decision. The only function performed by interpreters in the EOIR system was

to provide for the official record of the proceeding for review in English by the immigration judge who had to make the decision and for any later review.

CONCLUSION

In jurisdictions that see themselves as predominantly monolingual, legal circles seem traditionally to consider that they are doing their best merely by arranging for some form of interpretation for those who do not speak the language of judicial proceedings.[34] At the same time the judicial authorities tend to disown responsibility for the quality of such interpreting services. At times witnesses and defendants are told to "manage" without an interpreter, and at times the standard of interpretation is such that justice might be better served if they did. At times it is argued that providing an interpreter is "inconvenient in some cases, and may cause some further expenditure of time".[35] Such arguments can be countered by pointing out, as did England's *Lee Kun* appeal court in 1916, that providing an interpreter "is more in consonance with that scrupulous care of the accused's interests which has distinguished the administration of justice in our criminal courts, and therefore it is better" to do so.[36]

Clearly, however, despite lofty judicial sentiments and fine words, significant sectors of the justice system do not consider the "yobs" of this world--the ordinary, "unimportant" individuals--to be entitled to quality interpretation services.[37] If they did, they would surely invest more effort and resources in obtaining them. Reports do indicate, however, that when a politically significant trial is involved, the authorities tend to make more of an effort to arrange for the services of competent interpreters. At the time of writing, moves are afoot in Britain to improve the court interpreting situation.[38] The Court Interpreting Committee of AIIC, the international conference interpreters' association, strives to improve awareness among legal and other circles of the relevant issues and solutions. Only time will tell if these efforts will prove successful.

EPILOGUE

A May 1993 newspaper report[39] that in his trial on charges of rebellion, East Timorese resistance leader Xanana Gusmao was required to read his defence statement in Indonesian and not Portuguese, his own language, demonstrates the major political importance that the authorities may attribute to the use of a particular language or languages in legal proceedings. The report notes that this situation violates "United Nations rights".[40] For the sake of natural justice, the right to *competent* interpretation should be recognized for *all* who want and need it. Ideally,

all countries' judicial authorities should be capable of making appropriate arrangements for all languages, although clearly certain language combinations are more difficult to cover than others.

This article urges the authorities in all countries in which individuals who do not speak the language of the proceedings have dealings with the judicial system to scrutinize their linguistic arrangements in the light not only of policy but also of the implementation of any stated principles of fairness and equality. To paraphrase an American court, serious evils are inevitable under any system of chance and temporary appointments, and legal figures frequently find themselves powerless to prevent mischief, intended or unintended.[41] The original comment was made over a hundred years ago; surely at the end of the twentieth century we should be able to do better?

In the meanwhile, pending any significant improvement, the moral of this paper would seem to be: if you become involved with the law and you or your witnesses need an interpreter, be an important person--a "nob", and not a "yob".

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Notes

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[1] Translators, interpreters, their clients and critics should all read Douglas Robinson (1991) *The Translator's Turn*.

[2] Also variously dubbed the 'Polander' or Polonian.

[3] *The Trial of George Borosky alias Boratzi, Christopher Vratz, John Stern, and Charles John Count Coningsmark* at the Old Bailey, for the Murder of Thomas Thynn, esq. 34 Charles II A.D. 1682, 9 Howell's State Trials 1.

[4] Presumably German.

[5] *Borosky* at 12. This institution--a jury *de medietate linguae*--was introduced in 1355 to encourage foreign merchants to trade in certain English markets and was abolished in 1870.

[6] 'So in the former edition.' Sir Thomas Thynn, a friend of the Duke of Monmouthshire, was the murder victim.

[7] *Borosky* at 7-10.

[8] *Borosky* at 64: 'Sir Francis Winn. We observe what a sort of interpreter sir N. Johnson is: he speaks more like an advocate than an interpreter; he mingles interpreter, and witness, and advocate together, I don't know what to make of him.' At 66: 'Sir Francis Winn. You may observe, my lord, how sir Nathaniel Johnson who is interpreter in the case, is a witness, and argues for the prisoner too. Sir Francis Winn. But, my lord, we desire to take notice of sir Nathaniel's forwardness; for it may be a precedent in other cases. Lord Chief Justice. What do you talk of a precedent? When did you see a precedent of a like trial of strangers, that could speak not a word of English; but you would fain have the Court thought hard of, for doing things that are extraordinary in this case.'

[9] *Bill of Pains and Penalties against Her Majesty, Queen Caroline*: Parliamentary Debates, New Series, Vol. 3, House of Lords, August-September, 1820.

[10] *Bill of Pains and Penalties*, col. 804: "Nicholas Dorier Marchese di Spineto was sworn as interpreter in support of the bill. Mr. *Brougham* asked, whether he appeared by any order of the House, or at the instance of the party promoting the present bill? He wished to ascertain this point, because upon the answer which he received would depend his right to introduce an interpreter on the part of her majesty. The *Lord Chancellor* thought there could be no objection to inquiring of the interpreter himself by whom he had been engaged to offer himself to the House in that capacity. Mr. *Brougham* then addressed the marchese Spineto, and asked, in whose employment he appeared there as an interpreter?--I received my instructions from Mr. Planta and Mr. Maule. Mr. *Brougham*.--Do you mean Mr. Planta of the foreign office, and Mr. Maule, solicitor to the Treasury?--I do. Mr. *Brougham*.--That, then, is quite a sufficient reason for my desiring to have a second interpreter sworn. Though it may not, strictly speaking, be necessary at this moment, it may be more convenient to swear him immediately. Binetto Cohen was accordingly sworn as interpreter, on the Old Testament, on behalf of the Queen."

[11] The following are some examples from the *Bill of Pains and Penalties* of queries about a particular rendering). At col. 873: Q. While you remained at Milan did any body give you money? A. I remember not: I remember that nobody did: I do not know. Q. What is the answer you mean to give? I remember to have received no money when I arrived at Milan; I remember I did not; "*non so*;" I do not know; "*piu no*;" more no than yes: "*non mi ricordo*;" I do not remember. Mr. *Cohen* being directed by their lordships to state whether he agreed in the interpretation given by the marchese di Spineto, stated that he did. The Earl of *Rosebery* said, that it was most essential that the House should understand what the meaning of *non mi ricordo* was; whether it was that the witness did not remember a certain event, or that he remembered that no such thing occurred. Lord *Longford* begged that the last answer given by the witness should be repeated to him by the interpreter, from the short-hand writer's notes. At col. 845: Q. Did you ever see more than one English lady in the household of her royal highness at the same time? A. I do not know; I do not remember. Mr. *Brougham* desired, that the expression might be translated "I do not remember." The Interpreter stated, that there were different meanings to the expression "non mi ricordo", and submitted, that if he was wrong, the interpreter for her majesty might be the person to correct him, and he requested might correct him in any thing in which he might err. Then Benetto Cohen, the interpreter on behalf of her Majesty, was asked--How do you translate the Italian words, "*non mi ricordo*?" "I do not remember." What is the Italian for "I do not know?" *"Non so*." The interpreter submitted, that he might be at liberty to ask the witness "what he meant by those words when he used them?" which being permitted by their lordships, the question was so put by him to the witness.--That, I do not recollect to have seen that.

At col. 1339. Earl *Grey*.--How could you keep that account, when, as you have stated, you can neither read nor write? A. The book of the post teaches all, shows all expenses. Q. You are understood to state, that you can neither read nor write? A. I know only to write my name very ill, and hardly that. Q. That is all you know? A. I am not fit either to write letters, or to keep accounts. The following Extract was read from the Printed Minutes, page 141. "How long were you in England at that period, when you lived with Mr. Hyatt at Gloucester? This I cannot remember, because I have not the book in which I have marked the time. About how long were you in Mr. Hyatt's service? This is the same answer, because I have not the book in which I put down how long I was there." Q. How do you explain that? A. Non in cui ho marcato, but, di marcare. Interpreter.--

It appears to her majesty's interpreter, as well as to myself, that he means, that he has not the book in which he used to mark. Q. Do you mean to say, that you have not the book in which you put this down, or that you kept no book in which you entered such things? A. I said I had no book of any sort to mark upon, for I do not know how to read or write. The interpreter was asked, what he conceived to be the literal meaning of the words "quanti mi recordo" which had been frequently used? to which he answered, "according to the best of my recollection." The interpreter was asked, whether "I came in a sack, and went away in a trunk," was not an Italian proverb? to which he answered that it was.

[12] *Bill of Pains and Penalties*, col. 881: One of their lordships intimated, that the word servants had been translated 'Le Corte,' and the interpreter was asked whether that would include the personal attendants on her royal highness. Marchese *di Spineto*.--It would include the whole of the establishment of a person of the rank of her royal highness.--This was acquiesced in by Mr. Cohen.

Col. 936: Q. The question is not whether an offer was ever made to you, but whether you have said that an offer was made to you? A. I lay my life if I have ever said so. The Marchese di Spineto was desired to state the answer in Italian. *Interpreter*.--"Io metto la mia testa che se io non ho fatto questo discorso di giuramento." I lay my head, which means my life, here, if ever I have made this discourse about an oath; he repeats now, I never made this discourse with any body concerning an oath here in London.

Col. 1263: The question being asked of the marchese di Spineto what polenta was, he stated that it was like porridge made of maize, and a favourite dish in Italy.

[13] *Bill of Pains and Penalties*, col. 1094-95.

[14] At the International Nuremberg Tribunal, the judges communicated with each other through interpreters. All official documents had to be produced and all court proceedings conducted in English, French and Russian, as well as in the defendant's language. (Charter of the International Military Tribunal, Article 25.)

[15] Montgomery H. Hyde (1964:517) gives an extract from Norman Birkett's Nuremberg diary: "When a perfectly futile cross-examination is combined with a translation which murders the English language, then the misery of the Bench is almost insupportable". And again (1964:521): "Dubost is at the microphone again, making his final speech. He is robust and vigorous; but such is the irony of fate that he is being translated by a stout, tenor-voiced man with the 'refayned' and precious accents of a decaying pontiff. It recalls irresistibly a late comer making an apology at the Vicarage Garden Party in the village, rather than the grim and stern prosecution of the major war criminals. But translators are a race apart--touchy, vain, unaccountable, full of vagaries, puffed up with self-importance of the most explosive kind, inexpressibly egotistical, and, as a rule, violent opponents of soap and sunlight."

[16] Rebecca West (1984:261): "It is written that when the Lord saw men building the Tower of Babel, He said, 'Now nothing will be restrained from them which they have imagined to do. Go to, let us go down and there confound their language, that they may not understand one another's speech.' But the confusion which circumscribes us goes deeper than language. All of us had our earphones, there was not a person in court who did not understand the literal meaning of every word that was said. Yet there was this welter of misunderstanding, this frustration, this incapacity to demonstrate the Rule of Law anything like so clearly as had been hoped."

[17] Criminal Justice Bill Debate, *Hansard*, House of Lords, 26.3.1991, col. 1008. Lord Richard: "I was thinking of an instance in which a defendant appeared in court. There was no interpreter readily available and the police were advised to contact the local race relations board. They did so. It was claimed that the interpreter was able to speak the language which the defendant spoke. It became clear during the course of the case that he did not. Fortunately it became clear sufficiently early. To rely on such a casual approach in order to provide an interpretation service in court has dangers. Sometimes those dangers result in people being convicted when they should not be convicted. They are sent to prison. The Home Office should ensure that the interpretation services provided in our courts are sensible and work properly."

[18] Lord Renton, *ibid*.

[19] *Per* Popplewell J. in *R. v. Mayor and Burgesses of the London Borough of Tower Hamlets ex parte Jalika Begum*, on the court's assessment of the English-language competence of Mr. Jalil, an "interpreter" whose prior performance had been contested: "He has, it is fair to say, been able to give answers which were in some parts understandable and in other parts not. No doubt pursuing questions sufficiently where the answers were not understandable would enable the interviewer to find out after some difficulty exactly what it was that Mr. Jalil was trying to say."

[20] For a historical survey of malpractice in the United States justice system, see Claghorn (1923 reprinted 1969).

[21] *Rajnowski v. Detroit, B. C. & A. R. Co.* (1889) 41 N.W. 849 at 850. The court made the following extremely perceptive comments, reflecting the abysmal quality prevailing at the time in respect of intralingual interpreters: "In numerous contested cases, testimony has been taken by means of interpreters. In very many instances the conflict of testimony is such as to indicate either more perjury than seems possible, or more likely incorrect renderings of testimony... it (is) necessary to employ the help of those who are supposed to understand both languages, and to be capable of transmitting correctly from each to the other all that is said by either person dealing with another... It is necessary, for the due course of examination, that the interpreter shall give to the witness the precise form and tenor of each question propounded, and no more or less, and that he shall in like manner translate the precise expressions of the witness... It often happens that the chance interpreter who is picked up is ignorant, or otherwise not the right person, and that he takes liberties with both questions and answers. All who have had experience in trials have found serious evils inevitable under our present system of chance and temporary appointments, and have found themselves powerless to prevent mischief, intended or unintended. If stenographers could take down what is said by interpreters and witnesses in other languages, it might furnish some help, by giving means of resorting to other translators to test their accuracy; but this is also impracticable, and the stenographer's minutes contain the questions in English, and the interpreter's English rendering of the answers, with no means of judging the correct report of either, as between interpreter and witness..." For further examples of contemporary practices in the American legal system, see Claghorn.

[22] *Iqbal Begum* (1991) 93 Cr.App.R. 96: "Here, as is evident from what has been said already, there had been over a protracted period of time a failure to obtain even rudimentary instructions from this appellant about what had taken place in order to bring her to the desperate frame of mind in which she committed the frightful assault upon her husband. It is beyond the understanding of the court that it did not occur to someone from the time she was taken into custody until she stood

arraigned that the reason for her silence, in the face of many questions over a number of interviews upon the day of the hearing and upon many days previously at various times, was simply because she was not being spoken to in a language which she understood. We have been driven to the conclusion that that must have been the situation... It must be appreciated that the court is very much in the hands of solicitors and counsel when a plea is being tendered to an indictment. The court is entitled to feel confident that before that plea has been tendered solicitors and counsel have satisfied themselves that the person arraigned fully understands what is going on, and that that person has before that time given full and intelligible instructions so that counsel has in the end been able to satisfy himself that the person is able to make a proper plea. If it be that the plea is guilty, that it is a plea which is tendered after proper reflection and is one which comes from a mind made completely aware of the implications of it. The failure here both by solicitor and counsel was to realise that the reason for the apparent lack of communication lay in the inadequacy of interpretation. Yet not once does it appear to have occurred to either of them to question the interpreter so as to understand whether or not he was understanding what the appellant was saying to him and whether he, the interpreter, had the impression that she was not comprehending the language he was talking to her."

[23] Brooke 1992/1993.

[24] Jones 1990:66-67.

[25] *R. v. Lee Kun* (1916).

[26] See Morris 1990.

[27] *R. v. Kalabergo* (1852).

[28] *R. v. Lyons* (1864).

[29] *United States of America ex rel. Negron v. the State of New York* (1970) at 388.

[30] *United States of America ex rel. Negron v. the State of New York* (1970) at 390-391.

[31] *Per* Piggott in *R. v. Kwok Leung and Others* (1909) at 166: "At a trial for felony the prisoner must be present. Why? in order that he may hear what is going on. Hear, must assuredly mean 'hear and understand': for, if he cannot understand, his hearing is not much use to him, and he might just as well not be present. Therefore, as I think, interpretation of the evidence is a legal necessity flowing from the legal necessity that the prisoner should be present."

[32] The *Negron* case is considered to have been central to the passing of the Act by focusing attention on the injustice of holding such proceedings without interpretation.

[33] *El Rescate Legal Services v. Executive Office for Immigration Review* (1989). The district court's ruling was later reversed by the appeal court and an order issued for the civil class action to be reheard by the district court.

[34] Davis (1985:357) refers to a study carried out in the United States by Dr. Carlos Astiz in 1983, with the finding that the judicial administrators interviewed were concerned to provide a minimum level of service only. Davis queries whether this is because the administrators recognize that there is little, if any, danger that the non-English speaking individuals concerned will protest.

[35] The use of either the whispered or the simultaneous technique of interpretation significantly reduces the extra time required for interpretation. Use of infrared transmission equipment for simultaneous interpretation has become routine practice in California courts.

[36] *R. v. Lee Kun* (1916) at 302. An earlier Hongkong appeal (*R. v. Kwok Leung* (1909)) involved exactly the same issue of evidence that had not been translated to the accused. In that case the court

ruled (at 161) "that the conviction must be quashed, and that it made no difference that the prisoners were defended by Counsel and that Counsel had not asked for the evidence to be translated." Although impressed by the reasoning in *Kwok Leung*, the *Lee Kun* court was not convinced by it, in part for technical reasons, and noted (at 303) that "the question whether there was an irregularity in the proceedings by reason of the omission to translate when the accused is defended by counsel is not a matter of law, but of practice, in our courts, and that practice is not settled."

[37] *El Rescate Legal Services v. EOIR* (1989) at 563-564: "Second, where aliens are not represented by counsel, the defendants assure the court that the current policy is to interpret the entire proceeding. Although this may be the policy of the BIA, this court is not convinced it has filtered down to the immigration judges. According to the testimony of those judges and the immigration court interpreters, the full proceedings are rarely interpreted, even when the alien is without representation. The defendants claim that if the entire proceedings were interpreted, additional immigration judges and support staff would be needed at a substantial increase in expenditures. Yet, it is not apparent to this court, nor do the defendants disclose, why administrative costs should increase simply because an interpreter, who is already present at the proceeding for the immigration judge's purposes, interprets the full hearing. There should be no increase in cost or delay if the translation is done simultaneously as is the practice in most federal and criminal cases. See, e.g., Court Interpreters Act, 28 U.S.C. @ 1827(k) (Supp. 1989). This court is appalled by the apparent lack of concern which EOIR and the immigration judges have demonstrated for the rights of the alien respondent. Fundamental fairness and procedural due process appear to have taken a back seat to administrative convenience and bureaucratic guidelines. Given the present position and practice of EOIR and the immigration judges, this court cannot conclude that the due process rights of the plaintiffs should be a matter of discretion. Only when the entire hearing is translated will those rights be secure."

[38] The reference is to the Nuffield Interpreter Project. See, for example, Ames (1991), Corsellis and Polack (1991), McLeod (1993) and Moerman (1993).

[39] 'UN concern at East Timor trial', *The Guardian*, 11 May 1993.

[40] The reference is to Article 14 (3)(f) of the UN Covenant of Civil and Political Rights, which states that in the determination of any criminal charge against him, everyone is entitled to have "the free assistance of an interpreter if he cannot understand or speak the language used in court". The report indicates that Mr Gusmao has "little knowledge" of Indonesian, and had used Portuguese throughout the trial--presumably with the assistance of an interpreter.

[41] *Rajnowski*: see Note 21 above.

(Source : C. Picken (ed.), *Proceedings, 13th FIT World Congress of FIT* (Brighton, August 1993), Institute of Translation and Interpreting, p. 356-366.)