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EICHMANN VS. DEMJANJUK

or

Plus c'est la même chose, plus ça change...

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THE EICHMANN AND DEMJANJUK TRIALS: A COMPARISON

INTRODUCTION

Back in the 1980s when I began writing about court interpreting, there was little material on which to draw. The high-profile criminal cases were few and far between: the seminal Nuremberg tribunals, which are widely said to have heralded the birth of simultaneous interpretation; a few cases in Germany and France, and the 1961 war crimes trial in Israel of Adolf Eichmann, the man accused of being the architect of the Holocaust. The "Tokyo Tribunals" were somewhat obscure, and while it was known that translation issues had been a major problem there, details were scanty, to put it mildly. "War crimes" referred to what had happened during World War II. Susan Berk-Seligson's seminal work on the "bilingual courtroom" had yet to be published. A number of US law journals had published articles discussing the judicial issues involved in providing interlingual interpretation in legal settings. In the United States, the Court Interpreters Act, was not signed into law until 1978. All in all, court interpreting generally was an emerging field, and war crimes trials appeared to be a thing of the past.

My interest became focused on the interface between my professional background of conference interpreting and a newly discovered fascination with issues of language and the law. This interest was triggered in part by an English miscarriage of justice (the case of a Birmingham woman called Iqbal Begum) which involved issues of court interpreting and was reported in the English newspapers in the mid-1980s. When I finally came to tackle my thesis for a master's degree in communication as the Hebrew University of Jerusalem, I found the collection of material in this field a tricky business. Although in these pre-Internet days I diligently scoured the archives of the Israeli English-language newspaper, the *Jerusalem Post*, I found that with a few notable exceptions (primarily the Eichmann trial reports), language issues in the legal process were not considered worthy of journalistic coverage. Perhaps it went deeper than this: even when language-related problems were definitely present (such as with the provision of Japanese-Hebrew interpretation at the trial of a Japanese terrorist who had committed an attack at Israel's international airport), the legal system itself appeared to be either unaware of these difficulties or, faute de mieux, chose to ignore them. This dearth of case-based research material changed drastically when in the middle of 1986, another trial of an individual accused of crimes committed against the Jews during World War II opened in Jerusalem. Of great interest to the Israeli public, the Demjanjuk proceedings were broadcast live on radio and the country's experimental second TV channel. International media attention was also intense. To the extent that my professional commitments allowed, I followed much of the proceedings, both on the spot and remotely. I also interpreted into English during the lengthy testimony of two German expert witnesses, and occasionally replaced one of the two interpreters in the English booth.

My involvement in the Eichmann trial held a quarter of a century earlier was, of necessity, less direct. However, several years before the Demjanjuk trial offered me a wealth of material, I was approached by Israel's State Archives who were handling the production of an official English translation of the entire proceedings (see Footnote 2 below). I translated most of the sessions involving the German-speaking accused, as well as a number of sessions with Hebrew-speaking witnesses. The upshot was a seminar paper on discourse-analysis issues involving bilingual material in the courtroom. Ultimately, my fascination with the field led to a doctoral dissertation in which I delved into how the law perceives the court interpreter, drawing heavily on case reports spanning nearly four centuries and most of those parts of the world in which English has been the language of the courts at one time or another.

This opportune access to the material of the Eichmann and Demjanjuk trials provided me with a fascinating opportunity to "compare and contrast" both practice and attitudes of two related but contrasting trials. The legal issues in the Eichmann case were very different from those in the later Demjanjuk proceedings. Adolf Eichmann's identity and involvement were never in doubt. Rather, the issue was whether he was morally responsible (and hence guilty) in respect of the heinous crimes with which he was charged, or had "merely" been following orders. In contrast, Ivan (John) Demjanjuk always maintained steadfastly that he was not "Ivan the Terrible" - an individual who by all accounts perpetrated unspeakable atrocities at the Treblinka death camp. Hence much of the proceedings against him involved survivor testimony and forensic evidence.

PARALLELS AND DIFFERENCES

LAWYERS

Clearly, a number of parallels can be drawn between the Eichmann and Demjanjuk trials. Both were proceedings brought by the State of Israel against individuals charged with being war criminals, the charges dating to the World War II period. In each case, the accused was represented by lawyers who were specially admitted to the Israeli Bar for the limited purpose of defending that particular client. Similarly, not only the defendants but also all the non-Israeli legal participants (lawyers and witnesses) had to rely on an interpreted version in order to follow and participate in the proceedings.

However, there are also certain striking differences between these two trials. Eichmann and his German counsel, Dr. Servatius, shared the same mother tongue (German), which was also the mother tongue of the three-man Israeli bench, as well as being understood if not necessarily spoken fluently by all the Israeli prosecution team. In contrast, Ivan Demjanjuk, despite his long residence in the United States, had insufficient command of English to follow proceedings in that language, and sometimes even had difficulties communicating with his English-speaking American lawyers. Thus interpretation from Hebrew and other languages throughout the Demjanjuk trial had to be provided into both English and Ukrainian for the primary "language-handicapped" (i.e. non-Hebrew-speaking) participants.

INTERPRETATION MODES

At both trials the Hebrew version of foreign-language material was provided using the consecutive mode. For the Demjanjuk proceedings, the English version was provided in the full simultaneous mode, given from a permanent booth installed on the first floor overlooking the stage where the proceedings took place (in both cases the trials were held in an auditorium). In the Eichmann trial, German, French and English versions were similarly provided simultaneously. In the Demjanjuk trial, Ukrainian was provided by a modified "whispering" technique or chuchotage, using headphones and microphone, but in the earlier stages of the proceedings delivered from a position immediately next to the defendant. Towards the end of the trial the Ukrainian interpreters moved to a position separate from and behind the accused. Interpretation into Yiddish and German was given in the whispered mode when witnesses testified in these languages.

INTERPRETERS' BACKGROUND AND PAY

Despite the normal marked gap in Israel (as elsewhere) between the financial situation and status of conference interpreters and court interpreters, the daily rate of remuneration for interpretation at the Demjanjuk trial was the same as for conference interpreting in Israel. Similarly, in the Eichmann trial interpreters were paid the going rate for conference interpreting at the time. In both trials most of the interpreters had prior experience in conference interpreting.

Without the opposition of Demjanjuk's American defence counsel, it is highly likely that interpretation into and probably also from Ukrainian would have been provided by a police officer who had been involved in the pre-trial investigation. In contrast, at the Eichmann trial, a police officer interpreted from German into Hebrew during part of the trial, arousing no objections from the defence.

RECRUITMENT

In the early 1960s the interpreting profession world-wide, including in Israel, was far less developed and accepted than is the case today. In an interview before the trial began, one of the Eichmann interpreting team indicated the difficulties encountered in obtaining competent interpreters for the trial. (Jerusalem Post, 26.4.61, interview with Adam Richter). In the case of the Demjanjuk trial, the problem was basically the common one of finding interpreters for what in a particular country are considered "exotic" languages. In the United States, difficulties were apparently also encountered in providing competent Ukrainian and Hebrew interpreters to work at related proceedings. However, an additional problem which was said to have existed in the Demjanjuk trial was the refusal of a number of linguistically qualified individuals to be associated with either the case or the defendant by agreeing to provide interpretation into Ukrainian.

MONITORING

The two trials in question also differ significantly with regard to the issue of monitoring of interpretation quality. In the Eichmann trial, the three-man panel of German mother-tongue judges was

eminently qualified to monitor and correct the Hebrew version of testimony given in German. Although they consistently attempted to ensure the utmost accuracy of the Hebrew-language record, they were aware that they were not always successful in so doing: at one point in the judges' examination of the accused, the record shows that the bench explicitly indicated that in case of doubt about the accuracy of the interpreted version, it would rely on the German-language (i.e. original) version of Eichmann's testimony (Eichmann proceedings, cross-examination of the accused, Session 103, July 1961). Importantly, examination of the accused was carried out wholly or partly in German by both the bench as well as the Attorney General.

In contrast, the judges in the Demjanjuk trial had no command of Ukrainian, and were therefore forced to rely completely on the Hebrew interpretation. No formalized monitoring arrangements were established for checking the completeness or accuracy of the version provided. Moreover, the English version of the Ukrainian provided for the English-speaking defence lawyer was itself an interpreted version of the Hebrew rendering. Defence challenges to the interpretation by Demjanjuk's son and, later, the Canadian Ukrainian-speaking defence lawyer [1] were therefore based on the re-interpreted English version. The prosecution used as its unofficial monitor the Ukrainian-speaking Israeli policeman who had originally been attached to the Israeli police investigating team.

META TALK ABOUT INTERPRETATION ISSUES

Right from the earliest stages of the proceedings against Demjanjuk, language issues occupied a prominent position. Counsel for the defence complained about failure to provide him with or finance the commissioning of documents in English, inadequate interpretation at a pre-trial hearing before a judge, as well as the use as an interpreter of a police officer involved in Demjanjuk's pre-trial interrogation.

In the pre-trial phase, Eichmann was questioned by a native German-speaking Israeli policeman in German; Demjanjuk mainly in English, a language which was neither his nor his interrogators' mother tongue. A complete transcript of Eichmann's original interrogation in German was carefully checked against the tape-recording by both Eichmann and the police officer who had questioned him. In contrast, no verbatim record was even made of Demjanjuk's police interrogation. Evidence about it was given in Hebrew, from notes kept almost exclusively in Hebrew, despite the fact that the original was mainly English and occasionally Ukrainian.

The considerable amount of meta talk about interpretation at the Demjanjuk trial may be broken down into the following ten main categories of comments:

- technical aspects (equipment)

[1] The original lead defence counsel, American Mark O'Connor, was dismissed by his client before the defence presented its case. Canadian Paul Chumak joined the defence team after the defendant had taken the stand in his own defence. However, Demjanjuk was re-cross-examined in December 1987 about a new photograph which had been submitted since Demjanjuk's original testimony.

- delivery conducive to proper interpretation
- insertion of version by interpreter
- lateness of interpretation
- absence of interpretation
- inadequate (inaccurate or incomplete) interpretation
- equivalents chosen in interpreted version
- person providing the interpretation
- blaming the interpretation where the interpreter was not at fault (the “scapegoat” syndrome)
- relative to documentation and the interpreter.

Only four of these categories were found in interpretation-related comments in the Eichmann trial: technical aspects, inadequate interpretation, equivalents chosen in interpreted version, and documentation and the interpreter. Concomitantly, the Demjanjuk defence team generated a considerable volume of meta talk about interpretation, in striking contrast to the relatively sparse body of observations about interpreting issues by its Eichmann counterpart.

There were various reasons for this marked imbalance between the two trials. One of the major causes lies in the difference in defence counsels’ attitudes to the proceedings. The adversarial system of direct and cross-examination of witnesses is based on a presentation of and then an attempt to break down testimony. However, in the Eichmann trial counsel for the defense almost entirely refrained from exercising his right of cross-examination. Several possible explanations may be advanced for this: his German legal background, based on a different (inquisitorial) system; the sensitive nature of survivor testimony; or the fact that practically none of the surviving eyewitnesses testified on matters directly relevant to the charges brought against Eichmann (Hausner 1977: 303).

In contrast, right from the outset the Demjanjuk defence team adopted a pugnacious, highly adversarial attitude, never accepting at face value any statement made by a prosecution witness. The fact that all English-language utterances had to be rendered consecutively into Hebrew considerably extended the duration of such exchanges, and thus of the trial. In order to palliate this state of affairs, initially the court interpreter, following instructions from the Presiding Judge, gave a summary Hebrew version of the defence lawyer’s perorations, but after complaints from the defence about the resulting incomplete record this practice was discontinued.

The use of the simultaneous technique for the provision of an English version avoided this lengthening effect, but created other problems. Late interpretation handicapped lawyers in presenting objections. Despite the less intrusive nature of the simultaneous mode (used for all language versions other than Hebrew), its “invisible” nature rendered impossible any proper monitoring of the interpretation.

The best illustration of the language-issue differences between the two trials derives from their respective approaches to the interpretation of German-language testimony. At the Demjanjuk trial, in contrast to the unavoidable relay-based solution applied in order to cope with testimony in Ukrainian, German was interpreted directly into English in the simultaneous mode, as well as directly into Hebrew in consecutive. Thus the English-speaking defence lawyers actually heard an English version of the German before the court interpreter delivered a Hebrew consecutive rendering. Although prosecution challenges to this Hebrew consecutive version were, strictly speaking, relevant only to the Hebrew interpretation, they were of course also interpreted into English. However, they frequently gave rise to heated incidents, when the lead counsel for the defence claimed that the prosecution was trying to put words into the witness' mouth.

That this was a pure trial tactic can be seen from the fact that the prosecution's proposed amendment to (i.e. correction of) the Hebrew interpretation almost always coincided with the English interpreted version already heard by the defence. Thus real or feigned defence mistrust of prosecution challenges to the Hebrew version of German-language testimony was responsible for generating a cumbersome procedure for dealing with all subsequent challenges to the Hebrew interpretation. This involved subsequently referring back to the electronic recording of the original and hence postponing any correction of errors to at least the following session.

At the Eichmann trial, on the other hand, the prosecution, the defence and the bench were able to follow in the German original the testimony of the only witness for the defence to appear in court in Jerusalem - Adolf Eichmann. In addition, all the judges chose to question the accused in German.

IMPACT OF INTERPRETATION ON THE CONDUCT OF THE TWO TRIALS

In the case of questioning by two of the judges, a Hebrew version was provided at suitable intervals by the court interpreter; the Presiding Judge, in contrast, asked his question first in Hebrew and then gave a German version himself. At one point in the cross-examination the Attorney-General also switched to German, considerably enhancing the forcefulness and effectiveness of the cross-examination. The practical impact of German-Hebrew interpretation on the immediate conduct of the Eichmann trial proceedings was therefore minimal. Monitoring of the interpreted version was a straightforward process performed by the bench, unencumbered by challenges or objections by the participants.

In addition, there is no doubt that due to the relative nature of "simultaneous" interpretation, a lawyer relying on such interpretation is handicapped when several participants speak at the same time, as well as in presenting objections in good time. On the other hand, the use of the consecutive mode may have certain negative effects on cross-examination (such as reducing the impact of questioning, giving the witness who understands some or all of the original question more time to prepare an answer, limiting the cross-examining lawyer's ability to badger a witness), as well as certain positive ones (such as allowing the cross-examining lawyer more time to prepare his questions). The use of the simultaneous

mode in cross-examination may also be exploited by a witness, who in order to gain extra time may claim that there is a lag in the interpretation when in fact such is not the case.

As stated above, the Demjanjuk proceedings were characterized by a wealth of interpretation-related comments and incidents. It is not that the Eichmann trial was free of such material: but rather, the Eichmann court was (possibly uniquely) constituted such that it was able to keep a tight rein on quality assurance issues on an ongoing basis, at least as far as the provision of the Hebrew version of German material was concerned. Furthermore, in the Demjanjuk trial it is likely that the initial inexperience of the Ukrainian interpreters did in fact adversely affect the defendant's ability to follow the proceedings, possibly depriving him to some extent of his right of confrontation and effective counsel. Interestingly, this point was not raised by the defence in its appeal against the District Court's guilty verdict, nor did it constitute grounds for the overturning of Demjanjuk's conviction.

It must be stressed here that the Demjanjuk trial court did, by its own lights, endeavour to provide adequate interpretation services for all language-handicapped participants. However, in the absence of "across-the-board" competent linguistic personnel and watertight quality-assurance arrangements, it is impossible to provide completely satisfactory interpretation services, however adequate the arrangements may appear to the unaware observer.

RECORD-KEEPING

The Demjanjuk trial record is replete with references to interpretation and language issues. Even at the beginning of the final session in which sentence was passed on Demjanjuk, the defence started its submission with a complaint about not having received an adequate translation of the verdict. The bench, however, reminded the defence that they had received "the full record of the simultaneous translation plus a translation of the sections not read out in court".

This is an excellent example of the misleading impression which may be gained by relying solely on the Hebrew record. At the time, less than half of the Demjanjuk verdict had been made available to the defence in a written English version. The Demjanjuk interpreters were merely provided with a cursory opportunity to see the verdict in advance in chambers, and had no chance whatsoever to prepare themselves for their impossible task. In contrast, the entire Eichmann judgment was translated in advance (under the supervision of one of the judges) and provided to the defence prior to sentencing. This is the only feasible method of providing equal treatment for language-handicapped participants. It is certainly not reasonable to expect the defence to make do with the "record of the simultaneous translation". In simultaneous interpretation, it is extremely difficult, if not impossible, to provide more than at best a competent oral version of what is a closely reasoned and carefully worded legal document being read out in court. This point is illustrated by unfavorable contemporary reactions to the "running translation" of the Eichmann proceedings generally, as compared with the "fluent and smooth" pre-translated versions of the Attorney General's opening speech.

The Demjanjuk defence team was in fact far more handicapped in coping with documents generally than was its Eichmann counterpart. In the Eichmann case, the overwhelming majority of documents were in German, and in fact the bench agreed to waive translations into Hebrew of all but the relevant passages of documents submitted in evidence. The Eichmann bench, prosecution and defence in effect shared a common language with the defendant. In contrast, almost all documents in the Demjanjuk trial had to be translated into English and/or Hebrew before the linguistically mixed defence team could begin to cope with them. In the Eichmann proceedings, the State engaged translators direct, while for the Demjanjuk trial it provided the defence team with $30,000 for financing translations. The defence, having opted to use a translation agency, rather than itself engaging translators, found the amount allocated inadequate for the volume of work concerned.

The Eichmann non-Hebrew transcripts bear a note on the cover page to the effect that they contain an unrevised transcript of the simultaneous interpretation and are not to be considered authentic or authoritative. From the absence of any such comment on the Hebrew transcript it might be deduced erroneously that in contrast, the version contained therein is authentic. In theory, this should be the case. However, in practice, as indicated above, the Eichmann judges were well aware of the true state of affairs as to the "authenticity" or accuracy of even the consecutive Hebrew version, and relied on the original wording rather than any interpreted version thereof.

The numerous interpretation-related problems arising in the Demjanjuk trial point to the vital need to keep an accurate record of all utterances made in a trial *in the original language*. Relevant considerations include both immediately pertinent and subsequent legal and historical considerations.[2] Apart from the issue of judicial review and appeals procedures, the record of proceedings may be cited in later cases and become part of the record thereof. There is therefore a danger that undetected and uncorrected errors may be perpetuated, potentially calling evidence into doubt. Ludmila Stern's study of Australia's Polykhovich WWII trial graphically illustrates the legal pitfalls which can occur in such circumstances.

This issue of the existence and language of the record of trial related proceedings is a central one in any comparison of the Eichmann and Demjanjuk trials. Despite his long residence in the United States, Demjanjuk's command of English was inadequate for the purposes of participating properly in legal proceedings. When confronted in Jerusalem with excerpts from the English-language record of previous proceedings against him in the United States, Demjanjuk's invariable reaction was to ask

[2] The Jerusalem Post legal editor, Doris Lankin, made the point at the outset of the trial that it was to be hoped that the arguments and the proceedings in general would be "officially and properly translated before being distributed to the appropriate legal institutions". Jerusalem Post, 17.4.61. An authoritative English-language version of the proceedings was finally published in 1992, more than 30 years after the trial began. This accurate edited translation was prepared from the original-language transcripts, themselves already revised by comparison with the original recordings. The editor was the original Presiding Judge, Moshe Landau.

whether those proceedings had been with an interpreter. He maintained that he suffered from the classical dilemma of the language-handicapped defendant: an inability to follow and participate in proceedings without a interpreter, and the failure of the legal authorities to provide a competent interpreter to guarantee a fair trial. Such claims may well have been justified.

The defendant was not the only person in the Demjanjuk trial to suffer from the problem of inadequate interpretation which may subsequently, as an integral part of the trial record, be quoted against them. Quotations from the record of testimony by Israeli witnesses in the Fort Lauderdale proceedings against a former Treblinka guard, Feodor Federenko, were cited by the defence to discredit the same prosecution witnesses in Jerusalem. These witnesses insisted they had never made such statements, and pointed out that the Hebrew-English interpretation in Florida was far from accurate. The Fort Lauderdale circumstances constitute an example of a certified U.S. federal court interpreter who was engaged to provide interpretation from and into a language in which she was not proficient (the person concerned was certified for Spanish-English: there is to this day no certification for Hebrew-English in the federal courts of the USA). Nevertheless, in the absence of any challenges or corrections at the time of testimony, the only extant record of what these witnesses were purported to have said was the English-language version as given by the interpreter and subsequently transcribed as the official record. No reference was made by the prosecution team in Israel to the existence of an electronic recording of the original testimony, so that even if any such recording is preserved, it would not appear to possess any status as an “authentic” version.

A similar problem might arise in the future in connection with all witnesses in Jerusalem who gave testimony in any language other than Hebrew or English. Most importantly, no written transcript was produced of the Ukrainian testimony of the accused, Ivan Demjanjuk. Certain challenges to the interpretation were made, but there was no systematic monitoring of the Hebrew and English versions. In addition, the English version of the defendant’s testimony was at times taken “on relay” from the Hebrew, thereby providing further room for discrepancies between versions. Sometimes, depending on the interpreter on duty, the English-to-Ukrainian version was also provided by relay from the Hebrew. The defence at one stage did propose asking one of the original interpreters to review the written Hebrew version against the tape recording of the original Ukrainian, but this suggestion was not implemented.

It should also be noted that in particular the English transcript of the Demjanjuk proceedings is not free of typing errors and auditory misperceptions. An example of this was the original transcription of the words “pits and mass graves” which were transcribed as “pigs and masquerades” (February 1987).

DISCUSSION

In the decision of the Israel High Court which heard the defence request that the judges of the Jerusalem District Court trying Demjanjuk disqualify themselves on the grounds of bias, several

references were made to the defence team's language handicap. The decision points out that the English-speaking defence lawyers had to rely on interpretation in examining most witnesses, a state of affairs which is likely to prolong the proceedings or lead to misunderstandings, even in the case of "faithful and devoted translation, as applies in the court of first instance" (Israel Law Reports, Volume 41, Part II, 1987, Page 148, letter (f)). The High Court also makes a further comment on interpretation pertinent to this discussion: "... the very fact that it is necessary to have recourse to interpretation is likely to render the proceedings more cumbersome, but this is unavoidable; and as the District Court rightly pointed out more than once during the proceedings, the submission of clear, relatively brief and straightforward questions should avoid the need for intervention by the Court" (Israel Law Reports, Volume 41, Part II, 1987, Page 148, letter (e), Paragraph 10). From such gallant comments, it is unclear whether or not the interpretation at the District Court hearings was in fact satisfactory.

From the research point of view, it must be stressed that a review of only the Hebrew ("authentic", i.e. authoritative) written record of the trial proceedings cannot adequately indicate whether interpretation-related problems were properly dealt with at the Demjanjuk trial. From a study of the record based on references to such issues by the Presiding Judge, it might be assumed that no participant in the proceedings could possibly have suffered from interpretation-related problems, or that if such problems nevertheless existed, they were never brought to the attention of the bench. This is illustrated by the following comment by the Presiding Judge in the Demjanjuk case (29.12.87, 9:46):

> "Very well, Mr. Gill, I would just like to point out about the simultaneous interpretation that we have always given you the possibility - to the interpreters - the possibility of translating what is said, so that you can get the full interpretation, throughout the entire proceedings. If you run into difficulties it is up to you to draw the court's attention to this state of affairs, after all the court cannot know whether you are receiving the translation in a complete and proper fashion or not. I have drawn your attention to this on more than one occasion. Similarly as far as the Ukrainian translation is concerned, if there was some problem with the running interpretation of the proceedings, it was your responsibility to draw our attention to this, and then we would have remedied the situation. The more cooperative you are with the court, the better."

Live monitoring of the Demjanjuk proceedings over fourteen months, however, indicates the need to draw a somewhat different conclusion.

None of these interpretation-related comments by the bench referred explicitly to conditions imposed by the particular mode of interpretation in use. Nor was there any discussion in open court at the Demjanjuk trial of the possibility of flexibility in choosing a particular mode of interpretation for a particular stage in the proceedings. An example would be a decision in the English-English examination of a witness to use the simultaneous technique for the Hebrew version, in order to avoid interrupting the examination. A proposal from the chief court interpreter that a simultaneous Hebrew version be provided under such circumstances was rejected by the bench on the grounds that it was unacceptable for no Hebrew to be spoken in court. In contrast, in the course of the Eichmann trial, as has been indicated, the bench adopted a more flexible approach, in order to avoid the negative impact

of consecutive interpretation on the dynamics of the judges' examination of the accused.[3] That such flexibility was justified is borne out by the present author's case study of the impact of interpretation on the role performance of participants in legal proceedings (Morris 1989). The findings of this study indicate that the mode of interpretation is not a neutral factor. Different modes may have positive and/or negative effects on different stages in the proceedings.

CONCLUSION

In the mid-1980s, when my interest was sparked by what had happened in Birmingham, England, to a woman who was tried for murder when she basically did not understand the interpreter provided for her, the case was a matter of some interest to the general press but, notwithstanding the trenchant and scathing comments of the appeal judges (*Iqbal Begum* (1991) 93 Cr.App.R. 96), of little interest to the legal profession since the legal point of providing an interpreter had been "settled" in English law as early as 1916 with the case of *R.* v. *Lee Kun*. Indeed, although the appeal was heard in 1985, it was not until 1991 that the case was reported in the English law annals. Moreover, at the time that I began to investigate the Demjanjuk case, war crimes trials referred exclusively to World War II, and Nuremberg with its remarkably sophisticated systems of quality assurance for interpreting and highly primitive working conditions and technology had faded into a dim and distant memory.

As the 2001 AIIC Forum on Interpreting at International Courts and Tribunals showed very clearly, at the beginning of the third millennium war crimes have, sadly, moved on, covering a geographically and linguistically broad contemporary area. Proceedings may be as linguistically and legally complex as the unique Lockerbie trial, held in the Netherlands according to Scottish law with Scottish judges; or as technically sophisticated as the Hague-based International Criminal Tribunal for the Former Yugoslavia (ICTY), once a somewhat obscure forum on which, since the June 2001 appearance of the former Yugoslav dictator Slobodan Milosovic, international attention has been focused, interpretation and all; or as under-resourced as its Cinderella counterpart, the International Tribunal for Rwanda, based in Arousha, Tanzania.

Irrespective of the degree of media and other attention focused on these international tribunals at any one time, what characterizes them all is the complexity of the challenges facing those who provide interpreting services in these special settings and their dedication to their duties, as well as the need for across-the-board teamwork in order to achieve the high-calibre interpreting performance needed in all judicial settings. The same requirements apply in international legal proceedings, whether involving

[3] This same point was made in the Report of the Comptroller General of the United States, Use of Interpreters for Language-Disabled Persons Involved in Federal, State, and Local Judicial Proceedings, September 16, 1977, p.23: "Basic considerations of fairness, inherent in our system of justice, require that language-disabled defendants be given the assistance necessary to assure their meaningful participation in judicial proceedings affecting their interests. In some instances this may require that courts permit interpreters to have flexibility in translation techniques, perhaps varying with the phase of the trial itself. In other instances this may require appointment of an interpreter for the defendant even when he/she has a bilingual attorney."

war crimes or other issues, as on a local basis: the recruitment of skilled, trained and experienced interpreters; preparation by individual interpreters; good working conditions, including such basics as acoustics and ventilation; and terminological support. In the area of war crimes, desirable additional support systems include debriefing and counseling services to help interpreters cope with the distressing material they are forced to deal with on a daily basis.

As exemplified by the ICTY, drawing on the standards and approaches developed at Nuremberg (see Gaiba, 1998), the attitude of other judicial participants in the proceedings may be crucial. At the most basic level, lawyers may well resent or actively dislike interpreters. For example at Lockerbie, on what became known as "Black Friday" (14 July 2000), the interpreters were accused by the defence of "interpreting", not "translating" (Black 2000). In many of my own writings I highlight and attempt to put to rest this very misconception, so commonly held by lawyers in the English-language system, that the "interpretation" of written or oral utterances is the exclusive province of legal personnel, a prerogative not to be usurped by the lowly interpreter (Colin and Morris 1996: 17). Such anti-interpreter attitudes may even take the extreme form of Norman Birkett's anti-interpreter diatribe at Nuremberg: "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..." (Hyde 1964:521).

Over the years since Nuremberg, much has remained similar: but equally, much has changed. In the field of war crimes trials, as well as research about interpreting in such settings, arguably the changes outweigh the similarities. In this field, however, as elsewhere, advance is unsteady. The linguistic sophistication evinced in the conduct of the 1961 Eichmann trial might be thought to represent encouraging progress: but a quarter of a century later, the Demjanjuk court's failure, inter alia, to deal appropriately with issues of monitoring and quality assurance in the Ukrainian/Hebrew and German/Hebrew interpretation showed that "backsliding" within one and the same legal system is perfectly possible. Ultimately, standards depend on individuals in positions of responsibility. It is incumbent upon them to thoroughly inform themselves of the issues at stake and take steps to meet the exacting standards required for the proper administration of justice, including the provision of high-calibre interpretation. As a profession. we should strive to make our own contribution, not only through providing quality services but also through "outreach" activities. The latter involve assuming roles which are likely to sit uncomfortably with the tradition of the "faceless voice", but it is something which must by done by someone - and who better, perhaps, than interpreters concerned "that all men may understand" (Morris 1999b: 350).

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APPENDIX

SIMILARITIES

- Crimes against the Jews during WWII
- Both cases heard in Jerusalem
- Language of proceedings: Hebrew
- Prosecution's bilingual ability (Eichmann: Hebrew, German; Demjanjuk: Hebrew, English)
- Local media coverage
- International media attention
- Interpreting techniques: consecutive, simultaneous, chuchotage
- Daily production of transcript in a number of languages
- Entire proceedings videotaped in both trials
- Personnel engaged directly by court/prosecution (?) (transcribing, translations)

DIFFERENCES

- No doubt / many doubts about identity of defendant (Eichmann / Ivan the Terrible of Treblinka)
- Administrative involvement / personal involvement
- Archival evidence/documents / forensic evidence
- Judges' linguistic ability
- Quality control of interpreting
- Quality control of transcript
- Court's control of interpretation (Eichmann: direct; Demjanjuk: delegated)
- Recruitment procedures for interpreters, transcribers
- Eichmann: transcript produced in four languages, Demjanjuk: two
- Eichmann: Tape-recording of simultaneous interpretation into German for defendant; Demjanjuk: No tape-recording of whispered interpretation into Ukrainian for defendant
- Demjanjuk: Use of agency personnel for transcribing and translations (additional cost, no quality control): Eichmann: court/Ministry of Justice engaged personnel
- Demjanjuk: great amount of cross-examination of witnesses; Eichmann: practically no cross-examination of witnesses
- Eichmann: opening statement of prosecution pre-translated: Demjanjuk - not
- Eichmann: verdict pre-translated: Demjanjuk - not

THE LESSONS OF NUREMBERG

- Simultaneous interpretation is possible
- Good technology properly set up and maintained is important (trailing wires not desirable!)
- Simultaneous interpretation as a medium for legal proceedings is feasible
- Some people are naturals; others will never cope with simultaneous interpretation
- Harrowing material may be an intolerable strain on some interpreters
- Other interpreters can develop techniques for coping with distressing material
- Wide background experience ("culture générale") is vital for good interpreting so that they can cope with many different subjects (opposite of "*Fachidioten*")
- Quality control is essential on all levels
- Ongoing monitoring of interpreter performance is vital
- Resource management including terminology
- Preparation
- Relieving the load
- Interpreters will almost inevitably be made into scapegoats by participants at some stage
- Somebody will probably take an unreasoning dislike to one or all the interpreters (Norman Birkett)
- Somebody will criticize the interpretation
- Team leadership