Title: The Face of Justice: Historical Aspects of Court Interpreting

Author: Ruth Morris

Affiliation: Bar-Ilan University, Ramat-Gan, Israel

Abstract:

Historically, although overall attitudes to court interpreting vary over time, certain issues are perennial: in particular, an individual's right (or otherwise) to interpretation (entitlement), deciding whether a need for interpretation exists (determination), and interpreter competence (quality). This paper strives to convey an awareness of the various difficulties that seem from case reports to have existed historically - and may indeed still be present in various judicial systems - in addressing these issues in a way which seems satisfactory to the various participants involved. It does so by quoting extensively the words of some of the judicial actors who over the decades have addressed this vital, but often woefully under-considered issue. The lamentable plight in which some language-handicapped defendants have found themselves may be guessed at from appellate courts' comments about the behaviour of lower courts.

Bionote

Ruth Morris combines freelance translating and conference interpreting with a research interest in court interpreting: she was one of the "faceless voices" at the Demjanjuk war crimes trial, and her master's and doctoral theses examine the impact of interpretation on legal proceedings and images of the interpreter in the legal process.

THE FACE OF JUSTICE:

HISTORICAL ASPECTS OF COURT INTERPRETING

1. Introduction

Across the centuries and the oceans, the voices speak to us. They are seldom the voices of those who needed a competent interpreter when their liberty, property and happiness were at stake in legal proceedings involving them in one way or the other - for by definition, these are the voiceless ones. Rather, they are mainly the voices of those members of the judicial system who were presumably, according to their own lights, doing their best to administer justice at the time. It is the contention of this paper that justice must not only be seen to be done - it must be heard, too. And ever since the first individuals were brought to court to face charges in a language which they did not speak or understand properly, if at all, there has been a need for justice to be heard to be done in not just one, but two or more languages, which sometimes means resorting to the services of interpreters. Or so the enlightened members of the human race maintain. The degree to which this need has been satisfactorily addressed in different countries over the centuries in specific cases has varied widely, as evidenced by the law reports.

This article will provide a stage for just a few of those judicial actors who have long since gone to their eternal reward, but not before leaving their mark on the world of interpreting in the adversarial legal system: including those who were honest enough to admit that, like Lord Kenyon in the 1791 case of *Du Barr*' v. *Livette*, they "spoke with some doubt" but nevertheless preferred to err on the side of prudence. A counterpoint to the enlightened handful will be provided by those who failed to

understand the injustice of trying an individual without anything other than the degree of linguistic mediation required for the court's own purposes.

The voices on which this paper is based speak to us from out of those legal reports in which questions of court interpreting proper as well as related side issues are raised, sometimes obliquely and sometimes as the sole or primary issue under consideration. Based on a non-exhaustive survey of the legal literature of a number of primarily English-speaking jurisdictions, the study seeks to show that overall attitudes to culture-bound issues vary over time, but certain issues are perennial: in particular, an individual's right (or otherwise) to interpretation (entitlement), deciding whether a need for interpretation exists (determination), and interpreter competence (quality). Other questions of interest to the law include technical legal aspects such as the status or admissibility of material in the original language and in a translated or interpreted form (including hearsay issues), interpreter role and status, and issues appertaining to the record. Subsidiary but related issues include attitudes to foreigners and deaf people, giving evidence through an interpreter, demeanour, language rights, due process, natural justice, fitness to plead, immigration issues, oaths, and sensitivity both to different cultures and to the plight of the individual who has no command of the language of the proceedings. Space constraints preclude an exhaustive treatment of all these aspects, and therefore the present paper will concentrate on a limited number of issues only.

In writing an article on such a wide-ranging area as the history of court interpreting, difficulties result from the meagre case authority available on many of the issues involved, and at the same time from the large body of material to be searched – a situation which may be equated with the "needle in the haystack" syndrome. For a number of methodological reasons, therefore, as well as because of space and

readability constraints, this article will, rather, be more of a pot-pourri, trying to convey the "flavour" of issues arising in the area of court interpreting rather than to paint a systematic, chronological picture of policy and practice worldwide throughout the ages. Because of the author's research background, the main emphasis will be placed on English-speaking jurisdictions; however, given the imperial tradition which once coloured a considerable proportion of the globe pink, over a period spanning several centuries, this necessarily provides a geographically and linguistically broad coverage.

To the non-lawyer, beginning research into the area of court interpreting can be a daunting business. For example, it comes as something of a surprise to find out that in the English system, cases tend not to be reported unless they involve a new point of law (Clinch, 1989, 1990). Hence the *Iqbal Begum* appeal, a seminal case for the modern researcher into court interpreting, was heard in 1985 (four years after the original trial), but not reported until 1991, and then only as a result of pressure from elements outside the legal establishment. The increasing availability of electronic and Internet-based searches does not necessarily facilitate the English-language researcher's task: the mere fact that in English the word "interpretation" in the legal sphere is primarily associated with the process of determining the "true meaning" of a written document means that searches in legal data bases are likely to yield vast numbers of largely irrelevant references.

1.1 Statistics

The study is based on nearly 600 English-language legal reports involving language issues and covering a period of around four centuries. The earliest is an English slander case from 1596. Taking 1916 as the watershed between the two major divisions of

historical and modern cases, 20% fall into the historical category and 80% into the modern. The geographical coverage largely reflects Britain's colonial history and subsequent developments, as follows: Aden: 1, Australia: 48 (8%) (Federal 20, State 28), Canada: 49 (8%), Ceylon: 1, East Indies: 2, England: 166 (28%), Europe: 9 (2%), Hawaii: 2, India: 11 (2%), Ireland: 10 (2%), Kenya: 6, Malaya: 6, New Zealand: 20 (4%), Nigeria: 1, Papua & New Guinea: 1, Rhodesia: 2, Scotland: 12 (2%), Somaliland: 2, South Africa: 28 (5%), Swaziland: 1, Tanganyika: 8, Tanzania: 1, Trinidad and Tobago: 1, USA: 196 (33%) (Federal 70, State 126), Uganda: 3, Wales: 7.

1.2. Legislation, legal decisions and implementation

A puzzling issue for readers whose countries today have written constitutions and codes of criminal and civil law is the striking absence in England of any statutory instrument governing practice in respect of the provision of court interpreting. Admittedly, even in that most codified of common-law countries, the United States, the Federal Court Interpreters Act was only introduced in 1978 – the same year as the enactment in England of the misleadingly (for our purposes) named Interpretation Act (originally passed in 1889), which defines a number of common words and expressions used in statutes. Under the case-law or precedent-based approach characteristic of the development of English law, "practice" in respect of court interpretation is basically the upshot of judicial decisions handed down by judges. Mikkelson (1998: 30) makes the point that as a result, "individual courts' decisions on interpreter issues are binding on other courts". The precise degree to which they are binding is a moot point, however, depending partly on the level of court in question, and partly on the judge ruling on the matter.

An excellent example of a judge who did consider himself bound by such precedent can be found in a statement by one of the justices who heard the 1909 appeal on behalf of a man called Emery, who had been detained in Stafford Prison without trial under the provisions of Section 2 of the Criminal Lunatics Act, 1800 – because he was totally deaf and had been found not to be capable of understanding the proceedings against him: a state of affairs considered tantamount to insanity. Lord Alverstone's comments attest to the power of precedent:

A practice has been established by judges of great authority over seventy years ago which has been followed ever since and which to my mind is in accordance with reason and common sense... The question as to the proper direction to the jury upon the issue whether the prisoner was insane came before two very learned judges over seventy years ago at the assizes, and though the decision of a judge at the assizes is not binding upon us, I should be very unwilling to upset a practice which was laid down so long ago and has been followed ever since, and which seems to me to be reasonable. (*Emery* at 84, referring to *Pritchard*)

Fortunately, poor Emery's days have been succeeded by more enlightened times, and with them (sometimes) more enlightened judges also. But, as this paper will attempt to show, the problem may not so much be the decisions that judges take, but rather the way that those decisions are – or are not – effectively implemented.

A concomitant issue is how to change the attitudes of those responsible for the implementation of judicial rulings. A prime example of this situation can be found in a 1991 debate on court interpreting in Britain's House of Lords (*Hansard*, House of Lords, 26.3.91, col. 1007-1009), where one of the main issues raised was the revolutionary idea of imposing a statutory duty on the courts to obtain and provide

appropriate interpreter services, instead of the traditional *ad hoc* arrangements. Examples were given of miscarriages of justice which had occurred because of the lack of awareness about language issues among statutory agencies and the legal profession alike. Rejecting the suggestion of changing the system, a government spokesman stated flatly the law had been "settled since 1916" (pursuant to a ruling made by an appellate court in a seminal case called *R.* v. *Lee Kun*). As a result, where a defendant does not understand English the evidence must be translated, and regulations already exist for the payment of interpreters out of public funds for that purpose. The area of court interpreting services was therefore held to be "a matter for organisation and not for legislation". Such an approach, focusing on need but dismissive of the dual issues of determination and quality, is typical of administrators. It does little to avoid miscarriages of justice related to the issue of providing interpreting in the legal system.

The 1916 decision in *Lee Kun* was motivated by considerations of fairness to the accused, based on the principle that non-English-speaking individuals must receive interpretation of evidence in order to have an understanding of the case against them, and be able to instruct counsel accordingly. In this case, a Chinese defendant was sentenced to death on a murder charge after a trial held in English where the charge was interpreted to him, he was called upon through the interpreter to plead, and informed of his right to challenge the jury. None of the prosecution evidence was interpreted to him. The principle at the time was not to provide interpretation of testimony if a defendant was legally represented. The evidence had, on the whole, already been heard by the accused (through interpretation) in the lower court which had decided to send him or her for trial. An exception to this situation was granted if the defendant or defence counsel requested interpretation at the trial proper. Any new evidence, of course, was to

be interpreted. This situation's unsatisfactory nature in practice came to light in the *Lee Kun* appeal, where the defence lawyer admitted, "The matter never occurred to me until the verdict was interpreted to the prisoner, and he said in Chinese, 'Who is the witness?'" (*Lee Kun* at 294).

As in the seminal 1970 American case of *Negron*, *Lee Kun* focuses on the issue of enabling non-English-speaking defendants to confront witnesses against them. The English case of *Lee Kun* has been cited in appellate consideration of entitlement to interpretation in a number of other English-speaking jurisdictions (e.g. *R.* v. *Berger* (British Columbia), *Johnson* (Queensland), *Attorney-General* v. *Joyce* (Ireland), *H.M. Advocate* v. *Olsson* (Scotland), *R.* v. *Tran* (Canada), *Kunnath* (Judicial Committee of the Privy Council). This state of affairs indicates the degree to which a considerable number of issues of interpreting principle, practice and organisation are of shared concern to common-law justice systems, irrespective of the specific languages and cultural backgrounds of non-English-speaking persons present in individual countries – "as a matter of simple humaneness", as the *Negron* appellate court put it (*Negron* at 390).

Another seminal and much-cited case in the history of court interpreting is the 1791 English lawsuit of *Du Barr*ʏ v. *Livette,* in which Lord Kenyon, erring on the side of discretion, ruled that "everything said before that interpreter was equally in confidence as if said to the attorney when no interpreter was present; he was the organ through which the prisoner conveyed information to the attorney" (*Du Barr*ʏ v. *Livette* at 110-111). As a result of this ruling, interpreters at lawyer-client conferences enjoy the same delegated privilege as the lawyer (see Morris 2000).

2. Entitlement - provision and quality

The issue of entitlement to full interpretation of the proceedings is not a straightforward one. Appeals brought on the grounds of failure to provide a complete and accurate version of all the evidence presented in legal proceedings against non-English-speaking defendants often fail. Frequently the court rules that this is a technical aspect only, the issue being merely one of the weight rather than the admissibility of such interpreted evidence (*United States* v. *Oscar Leonard Hernandez* (1982) at 999). Enlightened judicial observation notes that the provision of an "interpreter" without specification as to the competence of the said individual cannot be said to satisfy the requirements of a fair trial. At one extreme, the interpreter may not even have spoken to the defendant in a language which she or he can understand, a state of affairs which the court hearing the 1985 *Iqbal Begum* appeal in England identified as being the root of the problem in that case:

Sufficient has now been said, we think, in this case to cause anyone who is called upon to assist a person such as the appellant as a first precaution to ensure that the interpreter who is engaged to perform the task of interpretation is fully competent so to do, by which we mean is fluent in the language which that person is best able to understand. (*Iqbal Begum* at 101)

Hence the crucial nature of the quality issue. Had Mrs. Begum had a competent interpreter through whom she could have communicated with her lawyer and stood trial, she might not have pleaded guilty to the charge of murdering her husband and therefore automatically received a life sentence.

The 1916 case of *Lee Kun* may have settled the point of providing interpretation as the "safer, and therefore the wiser, course" (*Lee Kun* at 301). What, crucially, the

ruling in *Lee Kun* failed to do was to take account of the quality issue. After laying down the principle that interpretation of evidence should be provided at trials of non-English-speaking individuals, the English legal system utterly failed to regulate the system for providing interpreters. Thus some 65 years later, in *Iqbal Begum* the court saw fit to rely on the services of the defence team's interpreter, neither the prosecution nor the court having made alternative arrangements. This effectively sealed Mrs. Begum's fate, for the defence failed to realize that their client was not responding because the so-called interpreter did not speak her language. This state of affairs was "beyond the understanding" of the appeal court (*Iqbal Begum* at 100).

Had the defence reached the correct linguistic conclusion and found somebody who could communicate effectively with the defendant, the outcome might have been very different. Instead, she was sentenced to life in prison. None of the mitigating circumstances which should have been revealed and argued came to light at the time. On appeal, Iqbal Begum's original trial was found to be a nullity because, since she had not understood the charge against her, she had not made a "proper plea". Her conviction was quashed. She was then retried on charges of manslaughter and found guilty. Since she had by then served the maximum sentence for manslaughter, she was released. After her release, she wandered the streets, never managed to reclaim her children, and eventually committed suicide.

When it comes to addressing quality issues, the trial judge is likely to be in an awkward position, frequently lacking the requisite language skills to objectively judge the interpreter's performance. This was acknowledged by the trial judge in the 1993 Scottish case of *Mikhailitchenko*, where the defendant was a Russian-speaking

Ukrainian footballer charged with a drink-driving offence and the court interpreter a Bulgarian with rusty Russian-language skills:

It may be that the court interpreter was having some difficulties from time to time....I was unaware of any difficulties but my education is sadly deficient so far as the Russian tongue is concerned. (*Mikhailitchenko* at 60)

The judge did, however, notice that the defence interpreter (engaged to assist communication between the defendant and his lawyer) was making fairly frequent comments to the court interpreter. Apparently the defence interpreter did not ask permission to address the judge in order to inform him of the shortcomings of the court interpreter's performance. If she had, the outcome of the case might have been different.

The enlightened appeal court ruled that the defendant had suffered "clear prejudice ... because he was not afforded the opportunity to which he was entitled of having an interpreter so that he could fully understand what was taking place before him" (*Mikhailitchenko* at 63). This was a principle derived from *Liszewski*, a 1942 case involving three Polish servicemen, stationed in Scotland during World War II. At their trial on charges of breach of peace, a sworn interpreter was not employed. Instead, the Pole who had some knowledge of the language was allowed to act as interpreter for the two other soldiers.

In accepting the appeal, the splendidly named Lord Justice-General commented forthrightly, "That appears to me to be entirely inconsistent with the due administration of justice." (*Liszewski* at 57) Another member of the appellate court made an additional comment, which the uncharitable reader might understand as a call for higher standards due to the prevailing circumstances, when "foreigners" had for a while become "Allies":

At the present time, when there are so many members of the Allied Forces in this country, it is essential that the proper procedure, in cases where there is any doubt about the ability of the accused to speak or understand the English language, should be carefully followed. (*Liszewski* at 58)

Because of the principle of *stare decisis* ("to stand by things decided"), in common law one case will inevitably refer to others. Application of the same principle can lead the researcher both through time and to different jurisdictions. From the 1993 Scottish case of the Ukrainian footballer we have already been transported some 50 years into the past. In this journey through the legal annals, we can ourselves go back a further half-century to 1889, to find another supreme court justice, this time in Michigan, anxiously addressing the related issue of determining both necessity and quality in court interpreting:

But the danger of mistakes in legal proceedings is such that nothing but practical necessity can justify the intervention of an interpreter between counsel and witness or witness and jury, although it is well settled that on a proper occasion it is allowable, and the occasion must usually be judged of by the trial court... 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. (*Rajnowski* at 850)

The appeal judges hearing these three cases - *Mikhailitchenko, Liszewski* and *Rajnowski* - were all concerned with the need to achieve natural justice in circumstances where interpretation is needed. They were not unreasonable in acknowledging that errors do occur, even in the best regulated systems and with the best interpreters in the

world, and in making the point that proper interpretation should be provided. As Claghorn (1923) showed in a detailed study of immigrants and the legal system in the late 19th and early 20th centuries, at that time the American legal system generally was sadly lacking in quality standards. What is highly regrettable is that at the beginning of the twenty-first century, in not a few jurisdictions and locations, the system has lamentably failed to organize and regulate the provision of *quality* interpretation so that individuals can fully understand what is taking place before them and hence be legally present at their own trial. Improvements have come about in certain areas and for certain languages, but reports indicate that progress is slow and patchy.

Taken to its logical conclusion, the provision of grossly inaccurate interpretation may be equated with perjury, whether by the interpreter or by the witness. The court's comments in the 1889 case of *Rajnowski* indicate that while being able to identify incompetent interpretation – what it calls "the evil" – as the source of inaccurate testimony, it nevertheless considered its remit to be limited to calling attention to that state of affairs, and not seeking to remedy it:

> 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. (*Rajnowski* at 850)

In the 1910 Canadian case of *R.* v. *Walker and Chinley*, the court made extremely trenchant and specific comments about the provision of competent interpreting services, basing itself on precedent, including both *R.* v. *Berry* (see below) and the 1820 trial of Britain's Queen Caroline (*Bills of Pains and Penalties against Her Majesty, Queen Caroline*). The observations in *Walker* illustrate the symbiotic link

between entitlement to an interpreter and the provision of proper interpretation. The trial judge himself was uneasy about the character of the particular interpreter engaged, but as cited he also expressed a general prejudice against interpreted evidence:

"I certainly did consider the interpreter unsatisfactory. I think any interpreted evidence is unsatisfactory and to that extent objectionable. I was, however, satisfied that this was the least objectionable or unsatisfactory one available." (*Walker and Chinley* at 105)

All the appeal judges were forthright in their condemnation of the trial judge's failure to act in the circumstances. The following comment by one of the appeal judges makes clear his own feelings in the matter, despite the pre-*Lee Kun* "unsettled" nature of the entitlement issue, with legal opinion and hence practice varying between different Canadian provinces (in this case British Columbia and Ontario):

> If anyone had asked me the question: is it not an inherent right in every person that the proceedings taken in our Courts against a prisoner should be made wholly intelligible to him? I should have thought there was only one answer to that question, but it seems there are some who would hold a different view: see *Rex* v. *Meceklette* (1909), 18 O.L.R. 408. (*Walker and Chinley* at 118)

Another of the *Walker* appeal judges made the point that the trial judge admitted at the outset that "the interpreter certainly seemed to lack ordinary intelligence and facility of expression":

...yet notwithstanding all these defects, the learned judge permitted the interpreter to attempt to discharge duties which he had shewn himself incompetent to perform. The learned judge also states that he was satisfied that the interpreter was "the least objectionable or unsatisfactory one available."

That, with all due deference, is clearly no ground for accepting his services, because the test is not one of availability but of competency. (*Walker and Chinley* at 118)

Yet the situation is a Catch-22 one: "It is, of course, for the judge to determine at the outset the question of competency and, if he is satisfied on that point, to permit the proffered interpreter to be sworn as such" (*Walker and Chinley* at 125). Hence objections from counsel, such as were advanced at the outset in *Walker*, may initially fail. It is, nevertheless, possible that as the trial proceeds it might become clear to the judge that the interpreter is not, in fact, performing competently. And on this point, in a dissenting opinion, Justice Martin is adamant:

But though a judge might feel justified in accepting the services of an interpreter at the beginning of a trial, yet as it proceeded the judge might, on any good ground which might arise and become evident from, *e.g.*, the demeanour of the interpreter, his drunkenness, partiality, or lack of understanding, decide that he was no longer to be deemed a fit and proper person to act as an officer of the Court, and in such case it would at once become the duty of the judge of his own motion to discharge the interpreter and, if necessary, adjourn the trial so that a competent person could be procured. (*Walker and Chinley* at 125)

A trial judge hearing a twentieth century case in a far-off African country encountered a similar problem to the *Walker* trial judge as far as the quality of interpretation was concerned. In the 1952 Kenyan case of *Meghi Naya*, the honest magistrate who heard the original case wrote: "Note.--The interpretation at this point was bad and I cannot put any weight on this." On appeal to Kenya's Supreme Court it was submitted that the Magistrate should have stopped the case when he realized the

interpretation was bad. In dismissing the appeal, the Supreme Court held that the Magistrate did not attach any weight to the particular submission being made by the prosecution, nor was there any objection by the appellant's lawyer. However, the case went further up the system, and the Court of Appeal for Eastern Africa, identifying the real issue, ruled as follows:

Because no objection to interpretation was made on the accused's behalf the Magistrate was not relieved of the responsibility of ensuring that the interpretation of the accused's evidence was at least adequate. Having realized the interpretation was bad he should have stopped the case and obtained the services of another interpreter. We appreciate that the learned Magistrate in his note was recording that because of the bad interpretation he was not going to hold it against the accused that he had given different explanations to the police about the production of the invoice. This showed great fairness on the part of the learned Magistrate, but can we be sure, on the hypothesis that the appellant's evidence was badly interpreted to the Court, that the Magistrate has had put before him the true sense of his testimony? Clearly not. (*Meghi Naya* at 247-248)

Giving evidence through an interpreter may be challenged on the grounds that the individual can perfectly well manage without an interpreter, but on the whole courts have accepted that if a non-English-speaking individual is to be questioned, then it may be expedient to use an interpreter. Certain judges, however, rather like the trial judge in *R.* v. *Walker and Chinley*, harbour an innate dislike of interpreters and will consistently attempt to avoid their services if at all possible. Such an attitude is evinced in the 1963 Australian case of *Filios* v. *Morland*, an action arising out of a road accident, where

counsel for the plaintiff tried unsuccessfully in the lower court to argue for his Greek-speaking client's right to testify through an interpreter.

When the case came to appeal, the New South Wales Supreme Court expounded in considerable detail on the law's precise reasons for preferring to dispense with interpreting services. Demonstrating typical judicial suspicion of interpreters, the lower court's attitude had been the following: "We will start him without the interpreter and see how we go and then if it is obvious he is not making a good fist of it then we can have the interpreter. But let us see first how much English he does speak" (*Filios* at 332). In this traditional view, the court's discretionary power to determine whether it considers that a non-English-speaking person has a language handicap, and if so how to deal with it always overrides that individual's preferences. The New South Wales Supreme Court cited the 1858 Irish case of *R.* v. *Burke, Wigmore on Evidence* (S. 811 at 221) and the Canadian case of *Donkin* v. *The Chicago Maru* in support of its argument:

> The primary consideration, especially where the witness in question is a party, is that what the witness has to say should be put before the court as fully and accurately, and as fairly and effectively, as all the circumstances permit. It may be that a witness with an imperfect understanding of English cannot achieve this by using English. It is not always the case that it will be better achieved by the use of an interpreter. (*Filios* v. *Morland* at 332)

Such a narrow approach fails to take into account the difficulties of non-English-speaking individuals not only in expressing themselves (active ability), but also in following questions and arguments (passive command of the language). In particular, it does not give sufficient weight to the point made by the Canadian case cited, *Donkin*, that the provision of interpretation depends on the objective evaluation of whether a

witness possesses “a sufficient knowledge of the language to really understand and answer the questions put to him” (*Donkin* at 804), regardless of the witness’s own assessment of his or her linguistic ability. In this view, the issue is a purely linguistic one, and the issue is one of effective communication rather than of fairness for one side rather than the other. By juxtaposing the linguistic needs of the witness and the judicial needs of the legal process and participants, the system trumps the issue of an non-English-speaking individual’s entitlement to an interpreter by claiming an ultimate entitlement to fairness on the part of the system. In this argument, the very use of an interpreter is often thought to be an unfair tactic or trick by an alien individual who can manage perfectly well without one but seeks to gain unjust advantage over the other party or the system by being allocated an interpreter, a device which allows extra time to prepare answers to questions. The English authorities’ attitudes to Ireland and, in particular, to the Irish language at the time of the 1858 case of *Burke* cited in support of this argument are perhaps not irrelevant to evaluation of the grounds on which it was decided.

Some judicial voices as recorded in appellate decisions in particular show themselves more sensitive than others to the human suffering which can result when an individual is treated as an “insensible object” of the legal system, and placed in a “Kafkaesque” situation. A corollary in this diversity is the willingness of some legal authorities to pay attention to the interpreting needs of the “more important” defendants. There is some evidence that both historically and today, more punctilious attention has been paid to the linguistic difficulties of the better connected defendant than to those of the less important individuals (see Morris, 1993b). Such unequal treatment of unequals is clearly undesirable for the administration of justice. Speaking in the 1991 House of

Lords debate referred to above, Lord Richard similarly made the point that in contemporary English practice, while interpreters were provided in major cases heard in the higher courts, it was "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." He accepted that many courts "now routinely supply interpretation", but reported that "the coverage is patchy." If the courts had a statutory duty to obtain and provide appropriate interpreter services, then the possibility of misunderstandings and potential for miscarriages of justice would be minimised (*Hansard*, House of Lords, 26.3.91, col. 1007).

What can happen when non-English-speaking individuals are refused an interpreter and forced to testify in English became very clear nearly 40 years before *Filios* in the 1925 Saskatchewan case of *Ponomoroff* v. *Ponomoroff et al*. One of the appeal judges expressed his criticism of the prejudiced views of the trial judge politely but forcefully, as follows:

On the other hand, and with all respect to the learned trial Judge, I cannot agree that a witness who persists in stating his ignorance of English, and that he does not understand the questions put to him, should be forced to give his evidence in English, as in the present case, where such a procedure has resulted in a mass of unintelligible evidence. Neither can I subscribe to the statement of the learned trial Judge that, by the experience of all the Judges these people usually want their own language so that they can lie better than any other way. If a witness from the beginning to the end of his evidence insists that he does not understand the questions put to him, that fact alone does not justify the inference that he is

not speaking the truth, or is affecting ignorance for the purpose of committing perjury. (*Ponomoroff* at 674)

In Australia, the arguments of the *Filios* appellate court – that in the adversarial system, the use of an interpreter may undermine that ultimate fairness which Justice claims to embody – remained unchallenged for another quarter of a century. Then in the 1988 case of *Gradidge*, in which a sign-language interpreter had ignored the court's instructions to stop interpreting for her deaf client, the Supreme Court of New South Wales acknowledged that Australian social and legal attitudes had changed, bringing about greater sensitivity to the difficulties of persons appearing in the courts without an ability to hear or speak the English language (*Gradidge* at 419). *Gradidge* acknowledges that the most crucial factor in dealing with language-handicapped people in the legal system is the attitude of the courts and the judicial system generally, and not the issue of need. If the enlightened views that *Gradidge* reflects become more generally accepted, *Burke*'s case and its attendant suspicions of individuals claiming to need interpretation may be less widely cited in all English-language jurisdictions, as judges generally throughout the adversarial legal system move closer to the heartfelt views expressed so eloquently in the 1970 American case of *United States ex rel. Negron*:

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. 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... (*Negron* at 389)

Symptomatic of the system's general indifference to the area addressed by this paper is the fact that there is "surprisingly little discussion in the case law of the right to a translator or interpreter at criminal trials" (*Negron* at 387). Judges who are faced with related issues, such as the right to conduct a case through an interpreter, are surprised, like Mr. Justice Roxburgh in *Trepca Mines*, that "there seems to be, strange though it is, no case in any of the books – and the researches for the respondent have extended back beyond the Middle Ages – in which this question has ever been discussed, and it is one of very far-reaching consequence and importance" (*Trepca Mines* at 27).

3. Developments in practice

3.1 To provide or not to provide?

Prior to the 1916 case of *Lee Kun*, English judges acted as they saw fit in respect of providing interpretation for non-English-speaking defendants. The great merit of the *Lee Kun* decision was that henceforth, all evidence was required to be interpreted to all "foreigners", including those represented by counsel – a state of affairs which had previously been held to obviate the need to arrange for interpretation so that the accused could follow the proceedings against them. In the 1864 case of *R.* v. *Lyons*, for example, where eight members of the crew of an English ship called *The Flowery Land* were tried for murdering their English captain, the court made no provision for interpreting the proceedings for the defendants, even though Spanish – not English – was the lingua franca on the vessel, and most of the crew did not understand English. This omission was based on the legal situation of the time, since all the accused were legally represented. Fortunately, the Spanish consul had come to court with his interpreter, and one of the defence lawyers successfully applied to the court for permission for this

individual to sit near the defendants “in order to communicate with them as the trial proceeded” (*Lyons* at 275).

How well this makeshift arrangement worked for the eight accused is a moot point. In any case, when the defendants gave testimony, most of them did so through an interpreter whose engagement had been arranged by the court. Such an arrangement is typical of the one-way attitude under which the court itself needs to communicate with the witness or accused in order to receive testimony, but is insensible to the plight of the defendant who is then left surrounded by a “babble of voices” (*Negron* at 388) – or in the case of a person with a hearing disability “silent and uninformed” (*Gradidge* at 423) – while the rest of the proceedings take place around them without the benefit of interpretation.

This “unsettled” nature of practice prior to the 1916 *Lee Kun* ruling is reflected in the contrasting approaches adopted in two other trials contemporary with the “Flowery Land” case. One is the 1872 murder case of *R.* v. *Dixblanc*, where the law report states forthrightly, “The prisoner being a Belgian, and not understanding English, the evidence was interpreted to her by Mr. Charles Albert” – despite the fact that the accused was defended by counsel. The other is *R.* v. *Cargalis* (1876), another case brought “for murder on the high seas within the jurisdiction of the Admiralty of England”. Here the main witness, a multilingual “Austrian” (probably from Dalmatia) had previously given testimony in France through an interpreter. He provided a sophisticated glimpse of the vagaries of contemporary police practice when dealing with non-French speakers on the other side of the English Channel, saying, “I mentioned Joe the Cook and French Peter, and if the interpreter did not put it down, that is not my fault” (*Cargalis* at 47). A number of non-English-speaking witnesses gave evidence,

and were obviously interpreted into English; but there is no indication that the defendants themselves received interpretation of the evidence against them.

3.2 Muteness, non-hearing individuals and non-English speakers

The issue of muteness is one which has exercised legal minds greatly over a number of centuries. Historically, English courts have long considered individuals who do not plead but remain silent to be either "mute of malice" or "mute by visitation of God". Unless communication can be established, individuals found to be mute by visitation of God and who do not plead, cannot therefore be tried, and as a consequence may be detained at the sovereign's pleasure. The same is not true of those considered mute of malice. In case this legal approach should be thought to belong to the past, it should be noted that the possibility of having to make this determination is explicitly mentioned in the 1991 report of the 1985 *Iqbal Begum* trial when the defendant's counsel informed the judge that he had been unable to obtain any answers from her "despite the activities of the interpreter" (*Iqbal Begum* at 98-99). Thus there is a great deal of overlap between the legal issues governing the participation of deaf people in the legal process and that of non-English-speaking defendants.

Where a physical handicap is responsible for an individual's muteness and inability to communicate orally, prevailing social attitudes and/or individual circumstances appear to determine the degree to which a court will attempt to establish communication in an alternative fashion, order a verdict of not guilty, put an end to the trial, or order the prisoner to be detained as non-sane – all options which have been acted on by the courts and recorded in law reports (see Morris 1993a). Sacks (1990:19) makes the point that prior to 1750, the general situation of the prelingually deaf (i.e. those who lost their

hearing before learning to speak) was a “calamity”. English case reports certainly indicate that until then, it was expected on the whole that a prelingually deaf person would therefore also be “dumb” or “mute”, unable to communicate and concomitantly considered stupid or insane.

With the introduction in England in the second half of the eighteenth century of sophisticated systems of sign language and the resultant trend towards literacy among deaf people (Sacks 1990:14), communication with this group generally became possible. Criminal trials were therefore held and sentence passed on individuals who could not hear the proceedings. Communication with them normally took place through the medium of sign-language interpretation or, occasionally, writing. Similarly, deaf individuals of high birth were able to show by communicating in writing that although frequently without speech, they were not idiots and could inherit (mutes had traditionally been disinherited) (Sacks, 1990:14, n.20).

Subsequently, the situation improved. An alternative approach to earlier legal views is provided by the oft-cited case of *Elizabeth Steel* (1787). After a finding by the jury that she was “mute by visitation of God”, the prisoner was remanded in order for the question to be considered whether there was therefore an “absolute bar to her being tried upon the indictment”:

... for although a person *surdus et mutus a nativitate* is, in contemplation of law, incapable of guilt, upon a presumption of ideotism, yet that presumption may be repelled by evidence of that capacity to understand by signs and tokens, which it is known that persons thus afflicted frequently possess to a very great extent.

(*Steel* at 452)

Although few details are given, the defendant was probably able both to lipread and to speak to some extent (hence not, strictly speaking a mute), because when asked whether she was guilty or not guilty, she is reported as replying, “You know I cannot hear” (*Steel* at 453). It was then suspected that Steel was pretending deafness, and the danger of this approach was pointed out to her. A jury was again empanelled to determine the cause of her muteness, with the same finding as previously. The defendant was tried, found guilty, and sentenced to transportation for seven years. Elizabeth Steel subsequently became a famous figure in the annals of deaf people in Australia.

However, in the second half of the nineteenth century attitudes changed, as the pressure for “oralism”, the insistence that the deaf learn speech and join the mainstream, became increasingly vociferous. This shift is reflected in a number of cases (such as *Dyson, Pritchard, Berry, Emery)* in which deaf-mute individuals were detained without trial because of their muteness. A nominally enlightened view thus led to a benighted situation, in which individuals were detained without having had the opportunity of presenting a defence to a charge of which they were perhaps not guilty.

In a key case, *Pritchard* (1836), the defendant (who had attended the Deaf and Dumb Asylum in London) could read and write, and showed that he understood the charge. The jury found the prisoner able to plead, but when required to determine the prisoner’s sanity, found him incapable of standing trial. In reaching this decision, they trusted the testimony of witnesses, rather than the evidence of their own eyes:

> It was however sworn by several witnesses that the prisoner was nearly an idiot, and had no proper understanding; and that though he might be able to be made to comprehend some matters, yet he could not understand the proceedings on the trial. (*Pritchard* at 304)

The outcome was that the judge ordered the prisoner to be confined in prison "during his Majesty's pleasure" – in other words, probably to serve a life sentence.

Because of prejudiced attitudes such as those in *Pritchard*, primary responsibility for communicating with the deaf in Great Britain eventually shifted to the social services. This institutionalized disempowerment, so that all deaf people tended to be viewed as problematic or marginal members of society. As a result, until as recently as the early 1980s, interpretation for deaf people in Britain was provided by social workers. In reaction to this background, those who interpret for the deaf today tend to be punctilious about avoiding the remotest semblance of paternalism and related attitudes.

As shown above, the non-hearing and non-English speakers tend to be juxtaposed in legal discussion of interpreting aspects. For example: if the inability of defendants to understand the nature of the proceedings against them amounts, in point of law, to a "finding of insanity" (*Berry* at 451), what is the situation of a non-English speaker facing a criminal charge through the medium of an interpreter who may not be effective? This is the issue touched upon in *Berry*'s case, and it is of crucial importance to the subject under discussion here.

Berry, a deaf mute, was tried and found guilty of theft. The nature of the proceedings and the evidence against him were conveyed to the prisoner through the sign-language interpretation of his brother-in-law. The jury found that the prisoner was not capable of understanding, and had not understood, the nature of the proceedings. The chairman of the lower court submitted the matter to the High Court for opinion. The appellate authority examined the authorities and considered the principle. The question addressed by the higher court was whether an individual who could not understand the

proceedings could be convicted. Its understanding that Berry was not capable of understanding was taken to mean that he had insufficient intellect to understand the nature of the proceedings.

It would be an outrage to the understanding of a man of common sense, to say that in such a case as the present the man should be convicted. He must be detained during His Majesty's pleasure... (*Berry* at 449)

Apparently this satisfied the sensibilities of the judges, who felt that it would be unfair to convict an individual who was intellectually incapable of understanding the nature of the proceedings. Like the judge in the 1976 Australian case of *Pioch* v. *Lauder*, referred to below, the modern reader may find such a solution somewhat distasteful.

In the discussion in *Berry*, Mr. Justice Kelly drew what he considered to be a valid parallel between the court's enlightened attitude to the deaf-mute, and his own judicial treatment of a foreign-language speaker with no knowledge of English, in a case where an interpreter had been provided:

I remember once trying a foreigner who knew no word of English, and, there being a doubt as to the efficiency of the interpreter, and whether the prisoner could understand every word of the proceedings, I ordered the jury to be discharged. (*Berry* at 51)

This comment is remarkable not only for its clear assumption of a foreign-speaker's entitlement to interpretation, but also for its insistence that the interpreter must be highly competent so as to ensure that the prisoner will have a complete understanding of the proceedings. For its date (1876), it may be considered an exceptional comment. Even at the time of writing, the beginning of the twenty-first century, Mr. Justice Kelly's comment, with its emphasis on interpretation quality, embodies a highly liberal

judicial attitude. Its attitude to the foreign-language speaker is certainly more enlightened than the situation in which the law places an individual who, because of a physical condition – deafness – cannot communicate fully and is therefore liable to be detained without trial. For this reason Kelly's analogy is, however, incomplete, as it contains an (unwarranted but at the time common) assumption that the deaf cannot ever be placed in a position where they can communicate, whereas a foreigner can, assuming a competent interpreter for the right language is engaged. Today's far more sophisticated world offers the hearing-impaired and the Deaf a variety of human and technical aids to communication which, in a properly organized system, enables most of them to participate effectively in legal proceedings.

There may, nevertheless, be cases today where the assumption is justified that for linguistic reasons individuals can understand nothing of the proceedings against them and are therefore unfit to plead. Such a case is Australia's *Pioch* v. *Lauder (*1976), involving a full-blood deaf-mute aboriginal brought up in a tribal community, who had not absorbed the cultural or moral values of either tribal or European society, and was at least of average intelligence with no evidence of mental incapacity. The Supreme Court justice summed up the legal situation as follows:

It was argued for the defendant and conceded by the Crown that he should be treated as if he were insane. This rather bizarre and no doubt offensive result seems to follow from the authorities (*Pritchard, Berry, Presser, Podola*). (*Pioch* v. *Lauder* at 84)

Since the offence was a "simple" and not an indictable one, the Supreme Court of the Northern Territory reached the following Solomonic conclusion:

After anxious consideration I have come to the conclusion that the learned stipendiary magistrate, having reached the conclusion he has reached as to the defendant's capacity, should simply go no further and desist from hearing the charge against him because of his unfitness. There is no other course consonant with justice for the learned stipendiary magistrate to adopt (*Pioch* v. *Lauder* at 86)

4. Justice vs. expense

On occasion, trenchant appellate comments on entitlement to interpretation have been criticised by criminal courts fearful of the consequences for the judicial system of recognising a genuine right to an interpreter. Inter alia, this would involve acknowledging a duty for the courts to provide accurate interpretation in a range of languages, thereby imposing on the system financial costs and the burden of administrative arrangements which it is unwilling to bear. The solution often espoused is for arrangements for interpretation to be considered as resting with the parties to proceedings, thereby relieving the courts of any responsibility for provision (the situation which led to Iqbal Begum's doom). However, many appellate authorities make clear that the court's ultimate responsibility for quality control cannot be evaded in this fashion.

Mr. Justice Kirby of the Supreme Court of New South Wales expressed the point thus in 1988:

Ultimately, it is for the court to be satisfied that a party understands what is happening. Otherwise, the court hearing may be reduced to little more than a charade so far as that party is concerned. Especially is this true in the case of a

person whose disability is not just the lack of English language but the lack of hearing. Into that silent world justice penetrates. (*Gradidge* at 425)

Another of the appellate judges hearing the *Gradidge* case, Mr. Justice Samuel, was more circumspect in his comments, albeit reaching the same conclusion:

> The case stated refers to matters of great emotive content such as procedural fairness, the face of justice and the legitimate expectations of litigants. It is necessary, therefore, to keep one's judicial feet firmly on the ground of principle and to avoid descent into irrational sentiment. (*Gradidge* at 425)

On the whole it is accepted that in civil cases the state has no obligation to provide or pay for interpretation services. This contrasts with the situation in criminal cases. However, both judicial comment (see *Fuld* at 655) and the literature (see Blair, 1979 and Groisser, 1981) argue that interpretation may be just as important for the protection of civil liberties in civil proceedings as in criminal ones. In the 1978 Californian civil case of *Jara*, where an indigent non-English speaker was named defendant in an automobile negligence action, the appellate court ruled that the trial court's refusal to appoint an interpreter at public expense to assist the non-English speaker did not unconstitutionally impair the litigant's access to the courts. Mr. Justice Tobriner expressed the following impassioned dissenting opinion:

> I cannot agree with the majority's assessment of the confusion, the despair, and the cynicism suffered by those who in intellectual isolation must stand by as their possessions and dignity are stripped from them by a Kafka-esque ritual deemed by the majority to constitute, nonetheless, a fair trial. (Jara at 851)

The majority opinion held that the appellant did not have a "common-law right to an interpreter", and that "refusal to appoint an interpreter for an indigent litigant in a civil case does not constitute abuse of discretion or denial of either due process or equal protection of the law" (*Jara* at 848). Since modern civil cases can cover a vast range of areas – including such areas as immigration and deportation (where normally an interpreter is provided by the state, but often only for its own limited purposes of examining the witness (*El Rescate*)), commercial matters (*Trepca Mines*), housing benefits (*Jalika Begum*) and other issues involving the welfare state, personal status (*Di Mento*), family law, divorce, maintenance (*Kashich*), child custody, inheritance (*Fuld*) and property rights – the scope for impairment of civil liberties in the absence of proper interpreting arrangements is concomitantly large.

Mr. Justice Frankfurter's dissenting opinion in *Dennis* (at 184) applies here most aptly to the impact of such refusal to appoint an interpreter for impoverished litigants in civil cases: "This is not to coddle Communists but to respect our professions of equal justice to all. It was a wise man who said that there is no greater inequality than the equal treatment of unequals."

In the 1960 English civil case of *Trepca Mines*, the judge, being fully aware of the financial aspects of providing interpretation, was perplexed as to what would happen in his court if the case brought by the Serbian plaintiff in person were to proceed:

> I do not myself see how the cross-examination of witnesses is going to be conducted if it ever becomes necessary. Proceeding with an interpreter is going to increase the costs very much indeed; but the applicant is a foreign resident abroad, who has thought fit to bring a claim for 2 1/2 million pounds and upwards... (*Trepca Mines* at 27)

In the 1989 case of *El Rescate Legal Services Inc., Central American Refugee Center, et al.,* v. *Executive Office for Immigration Review* (EOIR), William P. Gray, United States District Judge at the District Court for the Central District of California, expresses an opinion which comes close to winning the accolade for forthrightness over interpretation issues, and will therefore be quoted at length:

The defendants balk at full interpretation of immigration court proceedings for a number of reasons. First, they argue that if an alien is represented by counsel the need for translation is mitigated, particularly where the counsel speaks the client language. 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. (*El Rescate* at 563)

The author is tempted to rest her case with the following scathing words of the wise judge:

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. (*El Rescate* at 563)

In the 1960 case of *Trepca Mines* (at 27), counsel for the appellant argued that a foreign litigant should be able to conduct his case through an interpreter, "provided that the court is satisfied with the interpreter's qualifications." This reference to a court's responsibility for verifying the competence of the interpreter who will be mediating the non-English-speaking individual's words to it is an unusual occurrence in the annals of English legal proceedings – and tellingly, it comes from a lawyer, not a judge. In other jurisdictions, however, it has been recognised that if interpretation is to be provided – whether as a separate language right enshrined in legislation (such as Canada's Charter of Rights and Freedoms) or, more frequently, to satisfy one of the requirements for a fair trial (*Mercure* at 162) – those engaged to provide interpretation must be competent individuals, possessing high-level skills in both languages, an aptitude for and experience in interpreting, and familiarity with legal procedures. Unless such competence is achieved, there will be the appearance only of a fair trial, despite the ostensible provision of an "interpreter".

The logical consequence of such recognition is expounded in the 1985 Canadian case of *R.* v. *Mercure*, in which Mr. Justice Cameron adopts and expands the ruling in *Lee Kun* to include the all-important proviso of "accurate and effective translation"

(which clearly means the oral exercise called interpreting or interpretation in this article), which is the *sine qua non* for ensuring that the right to use a particular language in legal proceedings is a genuine one:

> It falls to the state, whose duty it is not only to provide for a fair trial but to ensure, as well, that the right of a party to use French in a proceeding before a court is an *effective* right, to see to it that such a person is understood by all those whose understanding of him is essential to his having a fair trial and that he, in turn, understands them. However, that does not mean the trial has to be conducted in the French language. It is enough, in my respectful opinion, if the State provides for the accurate and effective translation of the proceedings from French to English and if need be from English to French. (*Mercure* at 170)

Mr. Justice Cameron's emphasis on the quality of interpreting services, combined with Mr. Justice Hall's opinion in the same case that the use of simultaneous interpretation would "properly and adequately" (*Mercure* at 168) satisfy a statutory requirement that persons may use either the English or the French language in proceedings before the courts, represents the current Canadian compromise on the use of that country's two official languages whenever practical reasons prevent a monolingual trial from being held. Although other countries may have different linguistic provisions and conditions, the same principles apply: that regardless of whether any right to use a particular language in court exists, considerations of fairness dictate that "accurate and effective" interpreting services must be provided where there is a need or a desire for them.

As Iqbal Begum found to her cost, the mere provision of an "interpreter" who is incapable of communicating with the various parties concerned through accurate and effective interpretation makes a mockery of any ostensible striving to achieve the

"scrupulous care of the accused's interests which has distinguished the administration of justice" in English criminal courts (*Lee Kun* at 302). In an era which has shown that these reassuring words, uttered in 1916, are no longer able to be proclaimed in good faith, non-English-speaking individuals and their native English-speaking counterparts may, ironically speaking, be closer together than they were over eighty years ago. The "emotive content" which has been identified by some as a potential danger in discussing issues relating to the provision of court interpretation cannot be ignored by those who attach great importance to the "face of justice" – particularly the "Siamese twin figure" identified as that of an interpreter which has been found in an ancient Egyptian tomb sculpture (see Colin & Morris 1996: 182). It should be possible for all participants, whether witnesses, defendants or lawyers, to be "meaningfully present" (*Petrovic* at 425) at legal proceedings, and where necessary, proper and appropriate interpreting arrangements should be provided to guarantee that meaningful presence – in order that "all men may understand", in the sonorous phrase used by the manufacturers to describe the simultaneous interpretation system used for the 1945-1946 War Crimes Trial in Nuremberg (Gaiba, 1998:53, Note 15).

CONCLUSIONS

It may be argued that interpreting is one of the issues shared by the "commonwealth" of common-law systems, where the principle underlying its provision – a fair trial and due process – has over the years been accepted by diverse jurisdictions. Nevertheless, a tendency can be identified towards wide variation in the specifics of practice, both historically and in modern times. In particular, the nature of the proceedings (criminal/civil), the seriousness of the legal issues, and sometimes the status of the

individual involved are factors which may affect the quantity and quality of interpretation provided. It is to be hoped that with the new millennium, higher standards of practice will be brought to the area of court interpreting, based on greater judicial awareness of the multiplicity of issues, improved regulation and administration, as well as greater professionalization associated with improved training and other opportunities.

REFERENCES

Attorney-General v. *Joyce and Attorney-General* v. *Walsh* (1929) I.R. 526.

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

Blair, M.B. (1979). Right of an Indigent Defendant to an Interpreter in a Civil Trial: Jara v. Municipal Court. *Ohio State Law Journal* 40*,* 663-698.

Claghorn, Kate Holladay. (1923, reprinted 1969). *The Immigrant's Day in Court*. New York and London: Harper & Brothers Publishers, reprinted Arno Press & The New York Times.

Clinch, P.C. (1989). *Systems of Reporting Judicial Decisionmaking.* Unpublished Ph.D. thesis, University of Sheffield.

Clinch, P.C. (1990). The Use of Authority: Citation Patterns in the English Courts. *The Journal of Documentation*, 46:4, 287-317.

Colin, J. and Morris, R. (1996). *Interpreters and the Legal Process*. Winchester: Waterside Press.

Dennis v. *United States* 339 U.S. 162 (1950).

Di Mento (falsely called Visalli) v. *Visalli* [1973] 2 N.S.W.L.R. 199.

Donkin v. *The Chicago Maru* (1916) 28 D.L.R. 804.

Du Barr' v. *Livette* 170 ER 96 (Peake 108) (1791).

El Rescate Legal Services Inc., Central American Refugee Center, et al., v. *Executive Office for Immigration Review, et al.* 727 F. Supp. 557 (1989).

Emery - R. v. *Governor of H.M. Prison at Stafford, ex parte Emery* [1909] 2 K.B. 81.

Filios v. *Morland* [1963] S.R. (N.S.W.) 331.

Fuld - In the estate of (deceased) Hartley and Another v. *Fuld and Others* [1965] 2 All E.R. 652.

Gaiba, F. (1998). *The Origins of Simultaneous Interpretation: The Nuremberg Trial.* Ottawa: University of Ottawa Press.

Gradidge v. *Grace Bros. Pty. Ltd.* (1988) 93 FLR 414.

Groisser, D.S. (1981). A Right to Translation Assistance in Administrative Proceedings. *Columbia Journal of Law and Social Problems* 16:4, 469-520.

H.M. Advocate v. *Olsson* 1941 J.C. 63.

Hansard, Parliamentary Debates, 6th Series, Vol. 187, House of Lords, 26.3.91, col. 1007-1009.

Iqbal Begum (1991) 93 Cr.App.R. 96.

Jalika Begum - R. v. *Mayor and Burgesses of the London Borough of Tower Hamlets ex parte Jalika Begum* [1991] Imm AR 86.

Jara v. *Municipal Court for the San Antonio Judicial District of Los Angeles County* 145 Cal.Rptr. 847 (1978).

Johnson, Raymond Keith (1986) 25 A Crim R 433.

Kashich v. *Kashich* (1951) 116 J.P. 6.

Kunnath v. *The State* [1993] 4 All E.R. 30.

Liszewski v. *Thomson* [1942] J.C. 55.

Meghi Naya v. *R*. (1952) 19 E.A.C.A. 247.

Mikhailitchenko v. *Normand* 1993 S.C.C.R. 56.

Mikkelson, H. (1998). Towards a redefinition of the role of the court interpreter. *Interpreting,* 3/1, 21-45.

Morris, R. (1993a). Images of the Interpreter: A Study of Language-Switching in the Legal Process. Unpublished PhD thesis, Lancaster University.

Morris, R. (1993b). Nobs and Yobs--The Provision of Interpreters for Legal Proceedings Involving High-status Foreigners and Others. In Picken, C. (Ed.), *Proceedings, XIIIth World Congress of FIT. Translation - the vital link,* London: Institute of Translation and Interpreting, Vol. I, 356-366.

Morris, R. (2000). The Position of the Interpreter - Madame du Barry, privilege and the organ of the attorney. In *Proceedings, The History, Theory/ies and Practice of Legal Translation*, Geneva (forthcoming).

Pioch v. *Lauder* [1976] 27 F.L.R. 79.

Ponomoroff v. *Ponomoroff et al*. [1925] 3 W.W.R. 673.

R. v. *Attard* (1958) 43 Cr.App.R. 90.

R. v. *Berger* [1975] 27 C.C.C. (2d) 357.

R. v. *Berry* (1876) 1 Q.B. 447.

R. v. *Burke* (1858) 8 Cox C.C. 44 .

R. v. *Cargalis* (1876) 84 C.C.C. S.P.

R. v. *Dixblanc* (1872) 76 C.C.C. S.P. 103.

R. v. *Dyson* (1831) 7 C. & P. 305.

R. v. *Elizabeth Steel* (1787) 1 Leach 452.

R. v. *Francis Mercier* (1777) 1 Leach 183 (168 ER 194).

R. v. *Lee Kun* (1916) 11 Cr.App.R. 293.

R. v. *Lyons and others* (1864) 59 C.C.C. S.P. 275 (also known as the "*Flowery Land"*).

R. v. *Meceklette* (1909) 18 O.L.R. 408.

R. v. *Mercure* (1985) 23 C.C.C. (3D) 140.

R. v. *Petrovic* (1984) 13 C.C.C. (3d) 416.

R. v. *Podola* [1960] 1 Q.B. 325.

R. v. *Presser* [1958] V.R. 45.

R. v. *Pritchard* (1836) C.& P. 303.

R. v. *Schleter* (1866) 10 Cox C.C. 409.

R. v. *Tran* [1994] 2 S.C.R. 951.

R. v. *Walker and Chinley* 15 B.C.R. 100.

Rajnowski v. *Detroit, B. C. & A. R. Co.* 41 N.W. 849 (1889).

Sacks, O. (1990). *Seeing Voices*. London: Pan Books.

Trepca Mines, In re [1959] 3 All E.R. 799, [1960] 1 W.L.R. 24.

United States ex rel. Negron v. *the State of New York*, 310 F.Supp. 1304 (1970) and 434 F.2d 386 (1970).

United States v. *Oscar Leonard Hernandez* 693 F.2d 996 (1982).

Wigmore, J.H. 1970. *Code of the Rules of Evidence in Trials at Law. Boston: Little, Brown,* Chadbourn rev.